



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

THE ASSISTANT SECRETARY

GEN-14-15

Subject: Additional Guidance on the Supreme Court's Ruling on the Defense of Marriage Act

Summary: This letter provides information on how the Supreme Court's *Windsor* decision affects the eligibility of spouses of certain members of the armed forces to receive in-State tuition at public institutions of higher education.

Dear Colleague:

In Dear Colleague Letters GEN-13-25 and GEN-14-14, we provided guidance on how the Supreme Court's decision in *United States v. Windsor*, 570 U.S. ___, 133 S. Ct. 2675 (2013), that invalidated section 3 of the Defense of Marriage Act (DOMA), affected:

- How students and families complete the Free Application for Federal Student Aid (FAFSA);
- How parents of dependent undergraduate students qualify for Direct PLUS Loans; and
- How married borrowers repay their federal student loans under income-driven repayment plans.

In this letter we provide information on the impact of the *Windsor* decision on the eligibility of spouses of certain members of the armed forces to receive in-State tuition at public institutions of higher education, as provided for in section 135 of the Higher Education Act of 1965, as amended (HEA). In general, section 135 requires a State that receives assistance under the HEA not to charge a member of the armed forces who is on active duty for more than 30 days and whose domicile or permanent duty station is in the State more than the in-State tuition rate for attendance at a public institution of higher education. Critical to the subject of this letter is that section 135 also provides that the spouse or dependent child of such a service member may not be charged more than the in-State tuition rate.

Until the Supreme Court's decision on same-sex marriages in *Windsor*, the U.S. Department of Education (Department) had interpreted all provisions of the HEA consistent with section 3 of DOMA. Section 3 of DOMA prohibited federal agencies from recognizing same-sex marriages. Specifically, section 3 provided that "the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife." In *Windsor*, the Supreme Court held that section 3 of DOMA is unconstitutional because it violates the principles of due process and equal protection.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.


Following the *Windsor* decision, the Department has determined that any legal marriage that is recognized by the jurisdiction in which the marriage was celebrated will be recognized without regard to whether the marriage is between persons of the same sex or opposite sex, and without regard to where the couple resides. This determination applies only to marriages and does not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under State law.

This interpretation applies to any use of the word "spouse" in the HEA, including section 135. Thus, under section 135, as discussed above, a "spouse" to whom a public institution of higher education must extend in-State tuition benefits includes a spouse in a same-sex marriage who is married to a member of the armed forces, provided that the couple was legally married in any domestic or foreign jurisdiction that recognizes the relationship as a valid marriage.

We expect all States that receive assistance under the HEA and their public institutions of higher education to comply with section 135 of the HEA, regardless of any conflicting provisions of State law. If a State that receives assistance under the HEA does not comply with section 135, the Department may take appropriate steps to ensure compliance.

The Office of Postsecondary Education issues this letter to provide information on the effect of the U.S. Supreme Court's decision in *United States v. Windsor* with respect to the extension of in-State tuition benefits to a spouse in a same-sex marriage who is married to a member of the armed forces. This letter does not impose any requirements beyond those set forth in applicable law. If you are interested in commenting on this letter, please e-mail your comment to Jessica.Finkel@ed.gov or write to us at the following address: Office of Postsecondary Education, 1990 K St., N.W., Office 8031, Washington, DC 20006.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn B. Mahaffie", with a long horizontal flourish extending to the right.

Lynn B. Mahaffie
Acting Assistant Secretary