
ASSETS FOR INDEPENDENCE PROGRAM

**U.S. Department of Health and Human Services
Administration for Children and Families
Office of Community Services
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447**

<http://www.acf.hhs.gov/programs/ocs/programs/afi>

Information Memorandum 2014-01

Date: May 21, 2014

TO: All Assets for Independence (AFI) Grantees

SUBJECT: Federal Recognition of Same-Sex Spouses/Marriages

PURPOSE: To provide guidance on applying the Department of Health and Human Services' policy of recognizing same-sex spouses and marriages in the administration of AFI projects.

FROM: Office of Community Services, Division of Community Demonstration Programs

**RELATED
REFERENCES:** *United States v. Windsor*
Defense of Marriage Act, Pub.L. 104-199.
Assets for Independence Act, 42 U.S.C. 604 note, as amended.

BACKGROUND: On June 26, 2013, the U.S. Supreme Court, in *United States v. Windsor*, struck down the prohibition on federal recognition of same-sex marriages. OCS is issuing this guidance to advise AFI grantees of HHS's policy consistent with the decision in *United States v. Windsor* in the administration of all AFI projects.

Policy Summary

In keeping with the Supreme Court's analysis and reasoning in *United States v. Windsor*, this guidance implements a policy of treating same-sex marriages on the same terms as opposite-sex marriages to the greatest extent reasonably possible. The AFI program now recognizes as family members and spouses any individuals in same-sex marriages as long as they have been lawfully married under the law of a state, territory, or foreign jurisdiction, as long as it would be recognized in at least one state. In other words, same-sex spouses are recognized so long as they have entered into a valid marriage in the jurisdiction in which they were married, regardless of whether they currently reside in a state that does not recognize same-sex marriages.

Accordingly, in all cases where the AFI Act (the Act) refers to a "spouse," the program recognizes a same-sex spouse in the same manner as it does an opposite-sex spouse, and treats them and their dependents on the same terms. In the cases where the Act refers to a "spouse," members of a civil union or domestic partnership are not recognized as spouses. The specific statutory references to which this policy applies are addressed below.

This guidance is effective immediately and applies in both current projects as well new projects to be awarded.

Guidance for Administering AFI Projects

AFI Statutory References to Spouse(s):

There are three references to “spouse” in the Act:

Emergency Withdrawals for Medical Care - As an exception to the restriction that withdrawals be limited to qualified expenses, Section 404 (3)(C) (i) of the Act enables beneficiaries to make emergency withdrawals in limited instances that include times when expenses are either needed for medical care or necessary to obtain medical care, for a program participant or his or her “spouse” or a “dependent.” This program feature applies equally to spouses and dependents of program participants in same-sex and opposite-sex marriages.

Qualified First-Time Homebuyer –Section 404(8)(B)(iii)(I) of the Act defines “qualified first-time homebuyer” as an individual and, if married, the individual’s “spouse” who has no present ownership interest in a principal residence during the three-year period ending on the date of acquisition of the principal residence. This program definition applies equally to the same-sex and opposite-sex spouses of program participants.

Transfer of Individual Development Accounts - In Section 404(8)(D) of the Act, transfers to IDAs of family members are defined as amounts paid from an individual development account directly into another such account established for the benefit of an eligible individual who is either the individual’s “spouse” or “dependent.” This program definition applies equally to spouses and dependents of program participants in same-sex and opposite-sex marriages.

Eligibility for Participation:

The AFI program’s eligibility criteria, as provided in Section 408 of the Act, must be applied to individuals in same-sex marriages in the same manner as they are applied to individuals in opposite-sex marriages. When applying either of the eligibility tests in Section 408 of the Act grantees should treat both same- and opposite-sex marriages on the same terms.

Additional Information

For more information on the references in this IM, see the Supreme Court’s decision in *United States v. Windsor*, available online at http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf. The AFI Act is online at <http://www.acf.hhs.gov/programs/ocs/resource/afi-legislation-0>, and the DOMA legislation (Pub.L. 104-199) is available on the Government Printing Office (GPO) website at <http://www.gpo.gov/fdsys/pkg/PLAW-104publ199/html/PLAW-104publ199.htm>.

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