

AFTER DOMA

WHAT IT MEANS FOR YOU

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

Keep in Mind:

- The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- The ruling striking down DOMA will not be effective until 25 days from the decision. Even when effective, federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who are on certain public benefits, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

This Guidance is intended to provide general information regarding major areas of federal marriage-based rights and protections based on how the various federal agencies have administered federal benefits. ***It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.*** Past practice is no guarantee of future developments. While laws and legal procedure are subject to frequent change and differing interpretations in the ordinary course, this is even more true now as the federal government dismantles DOMA and extends federal protections to same-sex couples. None of the organizations publishing this information can ensure the information is current or be responsible for any use to which it is put.

No tax advice is intended, and nothing therein should be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Contact a qualified attorney in your state for legal advice about your particular situation.

THE FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA)

This guidance addresses the Free Application for Federal Student Aid (FAFSA). The FAFSA is the unified application used to apply for federal student aid such as grants, loans, and work study. It is also used by public and private higher education institutions (like colleges and universities) and some private financial aid providers to determine whether an applicant qualifies for additional aid through his or her school.

You can access the FAFSA, fill out the online application, or print a paper application at www.fafsa.ed.gov.

The FAFSA calculates your potential aid based on your individual circumstances, the income of your household, and the possible contributions of your parents and spouse or “expected family contribution” (EFC). A dependent student's EFC is calculated based on his or her parents' adjusted gross income plus the student's available income. An independent student's EFC is calculated based on the student and spouse's combined adjusted gross income, if the independent student is married.

Under the federal Defense of Marriage Act (DOMA), applicants with married same-sex parents were instructed to treat their parents as if they were divorced, and were therefore permitted only to list the contributions and income of one parent. Likewise, applicants with same-sex spouses were informed that their marriage was not recognized by the federal government and were not permitted to list their spouse on the application. Now that DOMA has been declared unconstitutional, applicants with same-sex married parents will be required to list the incomes and contributions of both of their parents, and applicants with same-sex spouses will be required to list their spouse as part of their household.

The FAFSA is a complex federal form. Please do your own research and consult a financial aid officer or the Department of Education for advice about your specific circumstances.

Updated FAFSA Form

Prior to the Supreme Court's ruling on DOMA, the Department of Education proposed an update to the FAFSA application that requires all applicants to list both of their legal parents regardless of marital status, provided they live together. This update *only* impacts applicants filling out the FAFSA for the 2014-2015 school year and beyond. When this new form comes into effect during the 2014-2015 funding cycle, marital status will no longer be relevant for applicants whose same- or different-sex legal parents are living together.

This guidance is for applicants using the 2013-2014 or 2014-2015 FAFSA forms. Please be sure to refer to the section that corresponds to your FAFSA form.

This series of fact sheets produced together by:

American Civil Liberties Union | Center for American Progress | Family Equality Council | Freedom to Marry | Gay & Lesbian Advocates & Defenders
Human Rights Campaign | Immigration Equality | Lambda Legal | National Center for Lesbian Rights | National Gay and Lesbian Task Force | OutServe-SLDN.

Do I qualify for financial aid?

This guidance cannot answer that question because every financial aid applicant's situation is unique. Your eligibility for federal financial aid is an individual calculation based on your personal circumstances. Contact a financial aid officer for more information.

Should I list both of my parents on the FAFSA application?

2014-2015

If you are using the 2014-2015 FAFSA, you are **required** to list both your parents (and their income and potential contributions) if they live together and if they are your legal parents, regardless of their marital status. This is true for same- and different-sex couples.

If you are using the 2014-2015 FAFSA, you **will not** need to list both of your parents if:

- They do not live together; OR
- They are not both your legal parents (list only the legal parent). If you have a step-parent *married* to your legal parent, however, you will be required to list the step-parent.

2013-2014

If you are using the 2013-2014 FAFSA, there are two circumstances under which you **must** list both of your parents on the FAFSA form:

- Your parents live together AND
 - Are a different-sex couple and are married; OR
 - Are a same-sex couple and were validly married in a jurisdiction where same-sex couples may marry, and both are your legal parents.
 - If your parents were married in a marriage equality state, but now live in a state that does not recognize their relationship, you must list them. FAFSA uses a *place of celebration standard*, which means even if your parents were married in a marriage equality state and then moved to a state that does not recognize their marriage, they are considered married for the purposes of FAFSA.

If you are using the 2013-2014 FAFSA, you **do not need** to list both of your parents if:

- Your parents are not married, regardless of their living situation;
- Your parents are divorced, regardless of their living situation; OR
- Your parents have a registered domestic partnership or civil union, regardless of their living situation.

How do I know if my parents qualify as my "legal parents"?

Your parents qualify as "legal parents" if they are considered such under the state law where you live. Every state has different laws about who is a legal parent. Please contact a legal organization listed below for more information about your state. We also recommend that you consult with a lawyer in your state if you are unsure about who qualifies as your legal parents. As explained above, only legal parents who live together must both be listed. If you have two legal parents who do not live together, only the parent you live with should be listed.

A legal parent is anyone who:

- Is an adoptive parent; or
- Has a valid court order saying they are a parent.

Other people who may be your legal parent include:

- A biological parent, unless they are a sperm or egg donor or a surrogate under your state's laws, or their rights were terminated by a court;
- Parents who were married to or in a civil union or registered domestic partnership with a legal parent at the time you were born if you live in a state that recognizes their relationship; or
- In some states, parents who have lived with you and held themselves out as your parent, who were intended parents who conceived you through assisted reproduction, or who qualify under other laws in your state that recognize them as parents.

Should I list my same-sex partner on the FAFSA application?

2014-2015

If you are using the 2014-2015 FAFSA, you must list your same-sex *spouse* if you were validly married in a jurisdiction that allows same-sex couples to marry, regardless of where you now live. If you are not married, even if you have a legally recognized civil union or domestic partnership, you do not need to list your partner.

2013-2014

If you are using the 2013-2014 FAFSA, you must list your same-sex *spouse* if you were married in a jurisdiction that allows same-sex couples to marry, regardless of where you now live. If you are not married, even if you have a legally recognized civil union or domestic partnership, you do not need to list your partner.



FOR MORE INFORMATION, CONTACT

FAMILY EQUALITY COUNCIL

familyequality.org

NATIONAL CENTER FOR LESBIAN RIGHTS

nclrights.org

AMERICAN CIVIL LIBERTIES UNION

aclu.org/lgbt

GAY & LESBIAN ADVOCATES & DEFENDERS

glad.org

LAMBDA LEGAL

lambdalegal.org

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