



MEMORANDUM FROM THE DIRECTOR

TO: All Bureau Staff

FROM: Director Cordray *Richard Cordray*

SUBJECT: Memorandum on Ensuring Equal Treatment for Same-Sex Married Couples

DATE: June 25, 2014

This memorandum sets forth guidance on equal treatment for legally married same-sex couples. This guidance is designed to advise Consumer Financial Protection Bureau (Bureau) personnel on the basic principles pertaining to the handling of these issues. Bureau staff should consult with the Legal Division to address any specific legal issues that may arise.

I. Same-Sex Marriage Recognition

On June 26, 2013, in *United States v. Windsor*, 133 S.Ct. 2675, the Supreme Court struck down as unconstitutional section 3 of the Defense of Marriage Act (DOMA). Section 3 of DOMA provided, “In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, 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.”¹

This memorandum describes the policy of the Bureau with respect to the *Windsor* decision and recognition of lawful marriages of same-sex couples for purposes of the statutes, regulations, and policies enforced, administered, or interpreted by the Bureau.² It is the Bureau’s policy, to the extent federal law permits and consistent with the legal position announced by the U.S. Department of Justice in interpreting relevant statutes, regulations and policies, to recognize all marriages valid at the time of the marriage in the jurisdiction where the marriage was celebrated. Accordingly, the Bureau will regard a person who is married under the laws of any jurisdiction to be married nationwide for purposes of the federal statutes and regulations under the Bureau’s jurisdiction regardless of the person’s place of residency. Consistent with other federal agencies, the Bureau will not regard a person to be married by virtue of being in a domestic partnership, civil union, or other relationship not denominated by law as a marriage.

¹ 1 U.S.C. § 7.

² Except as otherwise indicated, internal policies pertaining to Bureau employees have been addressed separately and are outside the scope of this memorandum.

II. Implementation

Under the above policy, the Bureau will use and interpret the terms “spouse,” “marriage,” “married,” “husband,” “wife,” and any other similar terms related to family or marital status in statutes, regulations, and policies administered, enforced, or interpreted by the Bureau to include same-sex marriages and married same-sex spouses. Except as otherwise noted below, the Bureau applies this policy to:

1. Equal Credit Opportunity Act (ECOA) and Regulation B;³
2. Fair Debt Collection Practices Act (FDCPA);⁴
3. Interstate Land Sales Full Disclosure Act (ILSA) and Regulation J;⁵
4. Truth in Lending Act (TILA) and Regulation Z;⁶

³ ECOA uses the word “marriage.” 15 U.S.C. § 1691d(a) and (b). ECOA also includes subsection titles using the phrase “husband and wife.” 15 U.S.C. § 1691d(a), (c), and (d). However, the Bureau will not regard the gender-specific language in the subsection titles as limiting. *See* 1 U.S.C. § 1 (“In determining the meaning of any Act of Congress, unless the context indicates otherwise—... words importing the masculine gender include the feminine as well.”). *See also* Memorandum from the Attorney General to All Department Employees, *Department Policy on Ensuring Equal Treatment for Same-Sex Married Couples* Feb. 10, 2014, page 2, available at <http://www.justice.gov/iso/opa/resources/9201421014257314255.pdf> (“Consistent with the Supreme Court’s *Windsor* decision and the Department’s policy of treating all individuals equally, regardless of sexual orientation, the Department will interpret the terms ‘spouse,’ ‘marriage,’ ‘widow,’ ‘widower,’ ‘husband,’ ‘wife,’ and any other term related to family or marital status in statutes, regulations, and policies administered, enforced, or interpreted by the Department, to include married same-sex spouses whenever allowable.”).

Regulation B defines “marital status” as “the state of being unmarried, married, or separated, as defined by applicable state law” and states that “unmarried *includes* persons who are single, divorced, or widowed” but does not state that those examples are exhaustive. 12 C.F.R. § 1002.2(u) (emphasis added). While referring to “applicable state law,” this definition does not specify which state’s law is applicable. Consistent with the Bureau’s policy, a person has the marital status of “married” by virtue of being in a marriage under the laws of any jurisdiction while a person has the marital status of “unmarried” by virtue of being in a domestic partnership, civil union, or other relationship not denominated as a marriage by a state.

The text of Regulation B and the Regulation B commentary also use the words “married,” “marriage,” and “spouse” throughout. 12 C.F.R. pt. 1002. This guidance does not, however, address how consumers should respond to credit application inquiries into marital status. Nor does it address which state’s law is applicable to determining whether the signature of a spouse is necessary to make community property available to satisfy the debt in the event of default.

⁴ FDCPA uses the word “spouse.” 15 U.S.C. § 1692c(d).

⁵ ILSA uses the word “spouse.” 15 U.S.C. § 1702. Regulation J also uses the word “spouse” throughout. 12 C.F.R. pt. 1010.

⁶ TILA uses the word “spouse.” 15 U.S.C. §§ 1637(c)(8)(B)(i) and 1637(p). The Regulation Z commentary also uses the word “spouse” throughout. 12 C.F.R. pt. 1026, Supp. I. In addition, Regulation Z refers to “a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party.” 12 C.F.R. § 1026.35(c)(4)(vii)(D).

5. Real Estate Settlement Procedures Act (RESPA) and Regulation X;⁷
6. Bureau Ethics Regulations;⁸ and
7. Procedures for Bureau Debt Collection.⁹

Further, the Regulation Z commentary uses the phrase “husband and wife” while making clear through use of the words “for example” and “such as” that the language is merely illustrative rather than limiting to opposite-sex marriages. 12 C.F.R. pt. 1026, Supp. I, Comments 15(a)(4)-1, 15(e)-2, 23(a)(4)-1, 23(e)-2, 41(a)-1, 41(e)(5)-3, 43(c)(2)(i)-5. The Bureau will apply this language gender-neutrally.

⁷ RESPA uses the word “spouse.” 12 U.S.C. § 2602. The Regulation X commentary uses the words “husband” and “wife” while making clear through use of the words “for example” that the language is merely illustrative rather than limiting to opposite-sex marriages. 12 C.F.R. pt. 1024, Supp. I, Comment 39(d)(1)-3. The Bureau will apply this language gender-neutrally.

⁸ The Bureau Ethics Regulations are published as the “Supplemental Standards of Ethical Conduct for Employees of the Bureau.” 5 C.F.R. pt. 9401. The rule use the words “spouse” throughout and the words “husband” and “wife” in 5 C.F.R. § 9401.102. The rule excludes from the definition of “spouse” an employee’s husband or wife by lawful marriage if: (1) the employee and spouse are legally separated; (2) the employee and spouse live apart; (3) the employee and spouse intend to end the marriage or separate permanently; and (4) the employee has no control over the legally separated spouse’s debt or equity interests. 5 C.F.R. § 9401.102.

⁹ The Bureau’s rule uses the word “spouse.” 12 C.F.R. § 1073.308(b).