ALABAMA WORKFORCE INVESTMENT SYSTEM

Department of Economic and Community Affairs
Workforce Development Division
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July 16, 2014

GOVERNOR'S WORKFORCE DEVELOPMENT DIRECTIVE NO. PY 2014-02

SUBJECT: Training and Employment Guidance Letter (TEGL)

1. Purpose. This Directive transmits TEGL NO. 26-13:

Date	Subject
6/18/14	Impact of the U.S. Supreme Court's Decision in *United States v. Windsor* on Eligibility and Services Provided Under Workforce Grants Administered by the Employment and Training Administration

2. Discussion. Following the Supreme Court's finding in *United States v. Windsor* regarding the Defense of Marriage Act's (DOMA) definition of marriage, the Department of Labor's (DOL) policy is to recognize lawful same-sex marriages as broadly as possible to the extent that federal law permits, and to recognize all marriages valid in the jurisdiction where the marriage was celebrated – i.e., the "state of celebration." The Employment and Training Administration's (ETA) current policy is to recognize all marriages (including same-sex marriages) that are lawfully entered in the state of celebration. Under ETA's policy, grantees are required to develop policies recognizing such marriages as valid as soon as possible, unless the grantee is a **State grantee.** ETA does, however, advise and encourage state grantees to honor all marriages valid in the state of celebration.

ETA requires non-state workforce grantees to apply the terms "family", "husband" and "wife" in a gender neutral manner so that same-sex married couples are included in the WIA definition of "family." For state grantees, ETA encourages grantees to interpret "family" to include same-sex spouses, but will not require it.

3. Action. All DOL/ETA grantees of workforce programs should review current policies and procedures and revise policies, including those related to eligibility, as applicable and necessary.

4. Contact. Questions should be addressed to the United States Department of Labor, Employment and Training Administration, Sam Nunn Atlanta Federal Center, Room 6M12, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 302-5300.

Steve Walkley, Division Chief
Workforce Development Division

Attachment

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION WIA/Same-Sex Marriage
	CORRESPONDENCE SYMBOL OWI
	DATE June 18, 2014

ADVISORY: TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 26-13

TO: STATE WORKFORCE AGENCIES
STATE WORKFORCE LIAISONS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS
NATIONAL FARMWORKER JOBS PROGRAM GRANTEES
SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM GRANTEES
YOUTHBUILD GRANTEES
INA PROGRAM GRANTEES
JOB CORPS OPERATORS

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: Impact of the U.S. Supreme Court's Decision in *United States v. Windsor* on Eligibility and Services Provided Under Workforce Grants Administered by the Employment and Training Administration

1. Purpose. To advise you of the implications of the *Windsor* decision for ETA workforce grant programs.

2. References.

- Workforce Investment Act of 1998 (WIA), as amended (29 U.S.C 2801, et seq.);
- Workforce Investment Act of 1998 regulations, 20 CFR Part 652 et al;
- Wagner-Peyser Act, as amended (29 U.S.C. 49, et seq.);
- 2006 Older Americans Act Amendments (OAA) (Pub. L. 109-365, 42 U.S.C. 3056 et seq.);
- Training and Employment Guidance Letter (TEGL) No. 12-06, *Revised Income Inclusions and Exclusions and Procedures for Determining Senior Community Service Employment Program (SCSEP) Eligibility* Attachment 2;
- 38 U.S.C. 4215, Priority of service for veterans in Department of Labor job training programs;
- 20 CFR part 1010, Application of Priority of Service for Covered Persons;
- *United States v. Windsor*, 570 U.S. 12, 133 S. Ct. 2675 (2013); and

RESCISSIONS	EXPIRATION DATE
None	Continuing

- YouthBuild Transfer Act of 2006 (Pub. Law 109-281; 29 U.S.C. 2918a.
- TEGL No. 27-13, Impact of the U. S. Supreme Court's Decision in *United States v. Windsor* on the Trade Adjustment Assistance Program;
- Unemployment Insurance Program Letter (UIPL) No. 14-14, Effect of the U. S. Supreme Court's Decision in *United States v. Windsor* on the Federal-State Unemployment Compensation Program

3. Background. On June 26, 2013, the Supreme Court found that Section 3 of the Defense of Marriage Act (DOMA, codified at 1 U.S.C. section 7) violates the U.S. Constitution. Because that section no longer controls the definition of marriage or spouse under the federal framework for ETA workforce grant programs, DOMA no longer bars the recognition of same-sex marriages in such programs. The Department of Labor's policy is to recognize lawful same-sex marriages as broadly as possible to the extent that federal law permits, and to recognize all marriages valid in the jurisdiction where the marriage was celebrated—i.e., the "state of celebration."

4. ETA Policy On Same-Sex Marriages. Consistent with the policy of the Department of Labor, ETA's policy is to recognize all marriages (including same-sex marriages) that are lawfully entered in the state of celebration. ETA will recognize the marriage even if the marriage is not recognized in the state where the married individual resides. For the purposes of this TEGL, "State" includes any state, Indian tribe, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, or any other territory, or possession of the United States, or any foreign jurisdiction that has the legal authority to sanction marriages so long as the marriage could have been entered into in a state.

At the time of issuance of this TEGL, 19 states and the District of Columbia allow same-sex marriage. State laws may change. For a current list of States that allow same-sex marriage, please visit the following Web site:

http://answers.usa.gov/system/templates/selfservice/USAGov/#!portal/1012/article/4109/Same-Sex-Marriage-Laws.

Consistent with ETA's policy to recognize same-sex marriages as broadly as legally possible, we require grantees to develop policies recognizing such marriages as valid as soon as possible, unless the grantee is a "State grantee." For purposes of this TEGL, a "State grantee" includes the subsets of a state such as a city or local board, any Indian tribe, the District of Columbia, Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau or any other territory, or possession of the United States that receives grants from ETA. Additionally, we will treat INA program grantees the same as state grantees for purposes of this TEGL. We strongly advise and

encourage such entities to honor all marriages that are valid in the state of celebration. However, we will not require a state grantee to honor a marriage recognized as valid in the state of celebration as we do require for a non-state grantee.

The effects of the *Windsor* decision on partner programs in the state workforce system are described in TEGL No. 27-13, Impact of the U.S. Supreme Court's Decision in *United States v. Windsor* on the Trade Adjustment Assistance Program, and UIPL No. 14-14, Effect of the U. S. Supreme Court's decision in *United States v. Windsor* on the Federal-State Unemployment Compensation Program.

5. <u>ETA Policy On Interpreting Terms of Marriage in the Workforce Investment Act.</u> Consistent with the Supreme Court's *Windsor* decision and with ETA's policy of treating all individuals equally, regardless of sexual orientation, ETA interprets gender specific terms of marriage such as "widow," "widower," "husband," and "wife," to include married same-sex spouses. We find such gender specific terms in Section 101(15) Workforce Investment Act of 1998 (WIA) in the definition of "family," codified at 29 U.S.C. § 2801(15):

> (15) Family
>
> The term "family" means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:
>
> (A) A husband, wife, and dependent children.
>
> (B) A parent or guardian and dependent children.
>
> (C) A husband and wife.

Interpreting the terms "husband" and "wife" to include same-sex spouses comports with *Windsor*'s rejection of the creation of "second-class marriages for purposes of federal law." 133 S. Ct. at 2693-94. The Court concluded that Section 3 "violates basic due process and equal protection principles" by "impos[ing] a disadvantage, a separate status, and so a stigma upon all who enter into same-sex marriages made lawful by the unquestioned authority of the States." *Id.* at 2693. Interpreting the gender-specific terms in WIA and those in other statutes to categorically exclude same-sex couples from the definition of "family", etc., arguably has the same effect of diminishing the stability and predictability of legally recognized same-sex marriages and thereby raises significant due process and equal protection concerns.

The text of the WIA also permits a gender-neutral construction of these terms. The Dictionary Act, 1 U.S.C. section 1 is instructive here. The Dictionary Act provides, in part, that when "determining the meaning of any Act of Congress, unless the context indicates otherwise, ...words importing the masculine gender includes the feminine as well." The purpose of this provision was to avoid having to "specify males and females by using a great deal of unnecessary language when one word would express the whole." Cong. Globe, 41st Cong., 3d Sess. 777 (1871) (statement of Sen. Trumbull, sponsor of Dictionary Act). This provision has been read to require construction of the phrase "husband and wife" to include same-sex married couples. *See Pedersen*

v. Office of Personnel Mgmt., 881 F. Supp. 2d 294, 306-07 (D. Conn. 2012). The Dictionary Act thus supports interpreting the terms "husband" and "wife," in a gender-neutral manner "unless the context indicates otherwise." 1 U.S.C. § 1. "'Context'" for purposes of the Dictionary Act "means the text of the Act of Congress surrounding the word at issue, or the texts of other related congressional Acts." *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 199 (1993). Nothing in the surrounding text of the WIA forecloses a gender-neutral reading of the relevant terms.

In conclusion, although WIA's definition of "family" uses the terms "husband" and "wife," ETA requires non-state workforce grantees to apply these terms in a gender neutral manner as soon as possible so that same-sex married couples are included in the WIA definition of "family." For state grantees, ETA encourages the grantee to interpret "family" to include same-sex spouses, but ETA will not require it.

6. Effects of ETA's Policy on Workforce Grantees.

WIA Title I Youth Activities: In order to be eligible for youth activities under WIA section 101(13), an applicant must be a low-income individual as defined in the WIA section 101(25). This definition of a low-income individual takes into consideration family income compared to either the poverty line or to 70% of the lower living standard income level. Under WIA, only state grantees, as defined above in this TEGL, are eligible for WIA Title I Youth grants, and local areas in the State receive subgrants. Consistent with ETA's policy stated above to recognize same-sex marriage as broadly as legally possible, we encourage grantees to include same-sex spouses within WIA's definition of "family" as soon as possible. Interpreting "husband" and "wife" as gender neutral in WIA's definition of "family" could change an individual's family income and therefore impact his or her eligibility for youth activities.

WIA Title I Adult and Dislocated Worker Activities: Eligibility for WIA Title I Adult services likewise incorporates the definition of family, where low-income priority of service is a consideration (20 CFR 663.600(d) and Section 134(d)(4)(E) of WIA). Under WIA, only state grantees, as defined above in this TEGL, are eligible for WIA Title I Adult or Dislocated Worker grants, and local areas in the state receive subgrants. Consistent with ETA's policy stated above, we encourage grantees to include same-sex spouses within WIA's definition of "family" as soon as possible. Interpreting "husband" and "wife" as gender neutral in WIA's definition of "family" could impact an individual's family income calculation.

WIA Title I Adult and Dislocated Worker Program: Section 101(10) of WIA defines a "displaced homemaker" as an individual who has been providing unpaid services to family members in the home and who (A) has been dependent on the income of another family member but is no longer supported by that income; and (B) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment. The definition of "displaced homemaker" is only used in the WIA Title I Adult and Dislocated Worker Programs. Consistent with ETA's policy, we encourage state and local grantees, to include both genders as possible

"homemakers" and to include same-sex married couples as within the word "family." Interpreting the word "family" in the term "family member" to include a same-sex spouse could result in previously non-qualifying individuals now qualifying as displaced homemakers.

WIA, Section 166, Indian and Native American Programs (INA Programs): Section 166 of WIA authorizes DOL to competitively award funds to Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, or Native Hawaiian organizations to support employment and training activities. Under 20 CFR 668.300(a), participant eligibility for INA program services requires at least one of five listed characteristics. One eligibility characteristic is "a low-income individual, as defined in WIA section 101(25)." 20 CFR section 668.300(b)(3). As mentioned above, this definition of low-income individual takes into consideration family income compared to either the poverty line or to 70% of the lower living standard income level. For purposes of this TEGL, we will treat INA grantees the same as state grantees. Therefore, consistent with ETA's policy, we encourage INA program grantees to include same-sex spouses of a marriage that is valid in the "state of celebration" within WIA's definition of "family." Interpreting "husband" and "wife" as gender neutral in WIA's definition of "family" could impact an individual's family income calculation.

National Farmworker Jobs Program: To qualify as eligible for services from the National Farmworker Jobs Program (NFJP) under Section 167 of WIA, and under 20 CFR part 669, an individual must be a disadvantaged migrant and seasonal farmworker or a dependent of an eligible farmworker. A "dependent" may be the "spouse" of a qualifying farmworker (20 CFR 669.110). The regulation does not further define "spouse." Therefore, consistent with ETA's policy stated above, we require NFJP grantees, except for state grantees, to include same-sex spouses of a marriage that is valid in the "state of celebration." If a state NFJP grantee does not recognize such marriages, we encourage (but will not require) the state grantee to recognize such a marriage.

Job Corps: Job Corps centers are operated under contracts or agreements with DOL, rather than grants. In addition to private entities, Federal, state, or local agencies are eligible to operate Job Corps centers. Section 147(a) of WIA. To be eligible for Job Corps, a participant must be a low-income individual. Section 144(2) of WIA. A participant may qualify as a low-income individual based on their "family income." Consistent with ETA's policy to recognize same-sex marriages as broadly as legally possible, we require Job Corps operators, except for state operators, to include same-sex spouses of a marriage that is valid in the "state of celebration" for purposes of determining family income. If a state operator does not recognize such marriages, we encourage (but will not require) the state operator to recognize such a marriage. ETA will separately issue a Job Corps Policy and Requirements Handbook change notice with further instructions for operators of Job Corps programs.

YouthBuild Program: Unlike the programs referred to above, YouthBuild was not originally part of WIA. Instead, the YouthBuild Transfer Act of 2006 amended WIA to add YouthBuild as a

WIA youth activities program at WIA section 173A, 20 USC 2918a. The statute establishes that although it is a WIA program, when considering participant eligibility, YouthBuild grantees must apply the definition of "low income family" at 42 USC 1437a(b)(2). Section 1437a(b)(3)(B) further clarifies the definition of family includes "spouses," but the word "spouse" is not further defined. Therefore, consistent with ETA's policy stated above, we require YouthBuild grantees, except for state grantees, to include same-sex spouses of a marriage that is valid in the "state of celebration." If a state YouthBuild grantee does not recognize such marriages, we encourage (but will not require) the state grantee to recognize such a marriage.

Senior Community Service Employment Program: In TEGL 12-06, Attachment 2, Section 5, SCSEP's Procedures for Calculating Family Income, SCSEP's "Standard Definition of Family" mirrors WIA's definition of family, including the words "husband" and "wife." Consistent with ETA's policy stated above, we require SCSEP non-state grantees to recognize same-sex spouses as within the SCSEP definition of "family." ETA encourages state SCSEP grantees to include same-sex spouses in the definition of family, but will not require it. In furtherance of this policy, ETA will update the SCSEP Data Collection Handbook with a new definition of family income. Interpreting these terms as gender neutral could impact an individual's family income calculation.

Eligible Spouses for Veterans' Priority of Service: Pursuant to 38 U.S.C. 4215, all ETA workforce programs provide priority of service to veterans and certain spouses of veterans who qualify as "covered persons." DOL has implemented the priority of service requirements in 20 CFR part 1010. 20 CFR 1010.110 defines a "covered person" as "a veteran or an eligible spouse." It further defines "eligible spouse" as "the spouse of any of the following:

> (1) Any veteran who died of a service-connected disability;
> (2) Any member of the Armed Forces serving on active duty who, at the time of application for the priority, is listed in one or more of the following categories and has been so listed for a total of more than 90 days:
>> (i) Missing in action;
>> (ii) Captured in line of duty by a hostile force; or
>> (iii) Forcibly detained or interned in line of duty by a foreign government or power;
>
> (3) Any veteran who has a total disability resulting from a service-connected disability, as evaluated by the Department of Veterans Affairs;
> (4) Any veteran who died while a disability, as indicated in paragraph (3) of this section, was in existence."

The regulation does not further define "spouse." Consistent with ETA's policy stated above, we require workforce grantees, other than state grantees, to include as a "covered person" the same-sex spouse of a veteran who is in one of the above categories where the marriage was valid in the state of celebration. If a state grantee does not recognize same-sex marriages, we encourage but will not require the state grantee to recognize the marriages for the purposes of these provisions.

7. Action Requested. Now that DOMA no longer bars their recognition of same-sex marriages in federal statutes such as WIA, and consistent with ETA's policy to recognize lawful marriages as broadly as possible, ETA requests all grantees of ETA workforce programs to review their policies and procedures currently in place on the recognition of same-sex marriages and revise their policies accordingly as soon as possible. ETA will consider such policies as effective as soon as the grantee indicates they are effective. (ETA will consider them effective immediately unless otherwise indicated.)

ETA will not require grantees to make their policies retroactive. Grantees will not need to go back and analyze whether current participants should be removed from eligibility based on the information in this TEGL. However, if you believe former applicants were declined eligibility because of your previous policy and may now be eligible because of the new policy, we encourage you to reach out to those former applicants and let them know they may now be eligible.

8. Inquiries. Please direct any questions about DOL's recognition of same-sex marriages to your appropriate ETA regional office.