

Administration for Community Living

Guidance for ACL grantees regarding the Supreme Court Decision on United States v. Windsor

The purpose of this guidance is to advise ACL grantees of the Federal government's policy regarding same-sex marriages, in light of the Supreme Court's ruling in United States v. Windsor, 133 S. Ct. 2675 (2013). In Windsor, the Court struck down as unconstitutional section 3 of the Defense of Marriage Act, which prohibited federal recognition of same-sex marriages and spouses. In keeping with the Supreme Court's analysis and reasoning in that decision, ACL's post-Windsor policy calls for treating same-sex marriages on the same terms as opposite-sex marriages to the greatest extent reasonably possible. Thus, ACL programs should recognize as family members individuals of the same sex who are lawfully married under the law of a state, territory, or foreign jurisdiction. This policy applies based on the jurisdiction of celebration. In other words, if individuals of the same sex are legally married in any jurisdiction, ACL will recognize the marriage, regardless of whether the individuals are domiciled or reside in a state or territory that does not recognize the marriage. Thus, when this guidance discusses individuals of the same sex who are "legally married," the intention is to include all legal marriages, regardless of the individuals' current domicile or residence.¹

The programs affected by this policy include the following:

Administration on Intellectual and Developmental Disabilities

- State Protection and Advocacy Systems under the Developmental Disabilities Act ("DD Act")

Under section 144(a)(1)(B) of the DD Act, 42 U.S.C. § 15044(a)(1)(B), in a State in which the protection and advocacy system used to protect individuals with disabilities is organized as a private nonprofit entity with a multimember governing board, or a public system with a multimember governing board, the governing board must include a majority of members who are:

- (i) individuals with disabilities, including individuals with developmental disabilities, who are eligible for services, or have received or are receiving services through the system; or
- (ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i)

For purposes of complying with this requirement, ACL will recognize individuals of the same sex who are legally married as family members.

¹ There may be circumstances where a legal marriage from a foreign country is not recognized by any State in the United States, or where the United States does not recognize the marriage. This guidance would not apply in such circumstances.

An equivalent analysis will apply to the advisory councils, as required under section 144(a)(5)(B) of the DD Act, 42 U.S.C. § 15044(a)(5)(B). This section requires a majority of the advisory council members to be:

- (i) individuals with developmental disabilities who are eligible for services, or have received or are receiving services, through the system; or
- (ii) parents, family members, guardians, advocates, or authorized representatives of individuals referred to in clause (i).

- National Network of University Centers for Excellence in Developmental Disabilities Education, Research & Service

Under section 154(a)(3)(E) of the DD Act, 42 U.S.C. § 15064(a)(3)(E), University Centers for Excellence must include in their applications reasonable assurances that the Center will establish a consumer advisory committee:

- (i) of which a majority of the members shall be individuals with developmental disabilities and family members of such individuals;

Legally married individuals of the same sex will be considered family members.

- Projects of National Significance

Section 161 of the DD Act, 42 U.S.C. § 15081, generally authorizes grants, contracts or cooperative agreements for projects of national significance. The DD Act anticipates that such grants, contracts or cooperative agreement will, among other things, support the development of national and State policies that encourage family support activities. In interpreting such family support services, ACL will recognize spouses of the same sex in legal marriages as family members.

- Help America Vote Act Protection and Advocacy Systems

Under 42 U.S.C. § 15461(c)(3)(B), for a protection and advocacy (P&A) system to be eligible for a grant, the P&A must be “governed by a board with respect to which the majority of its members are individuals with disabilities or family members of such individuals or individuals who are blind.” ACL will recognize spouses of the same sex in a legal marriage as family members for purposes of this provision.

Administration on Aging

- Home-Delivered Nutrition Services

Section 339(2)(i) of the Older Americans Act, 42 U.S.C. § 3030g–21(2)(I), requires a state that establishes and operates a nutrition project under the Older Americans Act to “ensure that the project...ensures that nutrition services will be available to older individuals and to their spouses...”

Federal law defines the category of beneficiaries under this provision, and ACL will recognize individuals of the same sex who are legally married as spouses.

- National Family Caregiver Support Program

Section 372(a)(2) of the Older Americans Act, 42 U.S.C. § 3030s(a)(2), defines “grandparent or older individual who is a relative caregiver” as

a grandparent or stepgrandparent of a child, or a relative of a child by blood, marriage, or adoption, who is 55 years of age or older and--

(A) lives with the child;

(B) is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregiver of the child; and

(C) has a legal relationship to the child, as such legal custody or guardianship, or is raising the child informally.

Federal law defines the category of beneficiaries under this provision, and ACL will recognize a legally married same sex spouse as a relative of a child by marriage.

- References to “Family” in the Older Americans Act

The term “family” is used throughout the Older Americans Act. See, e.g., section 102(a)(11), (18) of the Older Americans Act, 42 U.S.C. § 3002(a)(11) (definition of case management services, caregiver); section 201(d)(2)(B)(iii), 42 U.S.C. § 3011(d)(2)(B)(iii) (requirements for the Director of the Office of Long-Term Care Ombudsman Programs); section 302(3), 42 U.S.C., § 3022(3) (definition of family caregiver). ACL will recognize an individual of the same sex who is legally married as a member of one’s family with respect to each such reference.

To the extent necessary, ACL will revise grant terms and conditions to incorporate the above guidance. If you have a program-specific concern or specific questions, please contact your ACL program officer, grants officer, or regional office.

Thank you for your attention to this priority matter.