



# SBA Information Notice

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**TO:** All Employees

**CONTROL NO.:** 7000-0208

**SUBJECT:** Changes in Law due to  
U.S. Supreme Court Decisions  
in *United States v. Windsor* and  
*Obergefell v. Hodges*

**EFFECTIVE:** July 7, 2015

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On June 26, 2013, in *United States v. Windsor*, the U.S. Supreme Court ruled that Section 3 of the Defense of Marriage Act (DOMA), which prevented federal recognition of same-sex marriages, is unconstitutional. On June 26, 2015, in *Obergefell v. Hodges*, the Supreme Court held that state marriage bans, which forbid same-sex couples from marrying within the state, and prohibit the recognition of same-sex couples' out-of-state marriages, are also unconstitutional. As a result of these changes in law and in accordance with guidance from the U.S. Department of Justice, federal agencies are treating married same-sex couples the same as married opposite-sex couples for the benefits and obligations for which marriage is relevant, to the greatest extent possible under the law. Additionally, most federal agencies have recognized same-sex marriages as valid based on the law of the jurisdiction where the marriage took place (the "place of celebration"), regardless of where the married same-sex couple currently resides (the "place of domicile").

As a result of these changes in law, married same-sex couples are treated the same as married opposite-sex couples under all SBA programs. Further, SBA recognizes same-sex marriages as valid based on the law of the jurisdiction in the place of celebration, regardless of the place of domicile of the married same-sex couple. The terms "marriage," "spouse" and "family members," among others, found in SBA's regulations, SOPs, directives, and official forms are affected by this change in law. SBA programs affected include, but are not limited to: Business Loan Programs (including 7(a), 504, Microloan and Intermediary Lending Pilot), Disaster Loan Program, SBIC and New Markets Venture Capital Programs, and Contracting Programs (including 8(a) Business Development Program, Service-Disabled Veteran-Owned Small Business Concerns, and Women-Owned Small Business Concerns). SBA's Size Eligibility Requirements in 13 CFR Part 121 (applicable to both SBA programs and other federal agency programs) and SBA's Standards of Conduct regulations in 13 CFR Part 105 are affected as well. SBA previously issued guidance regarding the effect of this change in law on Federal employee and annuitant benefits in SBA Information Notice 3000-3097 (Effective 7/8/2013), and on Federal ethics provisions in SBA Information Notice 7000-197 (Effective 9/13/2013).

Some examples of the effect of these changes in law on SBA's programs are discussed below. This is not intended to be an exhaustive list. Additionally, SBA recognizes that the law in this area is continuing to evolve, and issues may arise that need to be resolved on a case-by-case basis. For example, in some SBA programs certain requirements do not apply to legally-

separated spouses; however same-sex spouses may encounter difficulties in obtaining a legal separation. The Office of General Counsel should be consulted in such situations.

### **I. Business Loan Programs - 7(a), 504, Microloan, and Intermediary Lending Pilot (ILP)**

**A. Affiliation Analysis:** Pursuant to 13 CFR 120.100(d)(7(a) loans), 13 CFR 120.100(d) (504 loans), 13 CFR 120.707(a) (Microloan), and 13 CFR 109.400(a)(3) (ILP), applicants for SBA's business loan programs must be small under SBA's Size Eligibility Requirements. 13 CFR 121.103(f) of SBA's regulations provides that affiliation may arise among two or more persons with an identity of interest. Individuals that have identical or substantially identical business or economic interests, such as family members, may be treated as one party with such interests aggregated. **The affiliation analysis for applicants for 7(a), 504, Microloan, and ILP loans must take into account the identity of interest between married same-sex couples.**

**B. Associate of a Lender:** Pursuant to 13 CFR 120.10 (7(a) Lender and Certified Development Company (CDC)), SOP 52 00, Chapter 2, Para. 2.2 (Microloan Intermediary), and 13 CFR 109.20 (ILP Intermediary), an Associate of a 7(a) Lender, CDC, Microloan Intermediary and ILP Intermediary is defined to include any entity owned or controlled (at least 20%) by a Close Relative of an officer, director, key employee, holder of more than 20% of the value of the 7(a) Lender's, CDC's, Microloan Intermediary's, or ILP Intermediary's stock or debt instruments, or an agent involved in the 7(a), 504, Microloan, or ILP loan process. A Close Relative is defined in the same regulations and SOP to include a spouse of the officer, director, key employee, holder or agent, and the spouse of a child or sibling of the same. **The same-sex spouses of the foregoing are covered under the definition of a Close Relative, and therefore are included in the definition of an Associate of a 7(a) Lender, CDC, Microloan Intermediary or ILP Intermediary.**

**C. Personal Guarantees:** Pursuant to SOP 50 10 5(H), Subpart B, Chapter 4, Para. II.B.1.(c)i. (7(a) loans), and SOP 50 10 5(H), Subpart C, Chapter 3, Para. I.E.1.(c)i. (504 loans), each spouse owning 5% or more of a 7(a) or 504 loan applicant must personally guarantee the loan in full when the combined ownership interest of both spouses is 20% or more. **For married same-sex couples, each same-sex spouse owning 5% or more of a 7(a) or 504 loan applicant must personally guarantee the loan in full when the combined ownership interest of both spouses is 20% or more.**

**D. Collateral Requirements:** For 7(a) loans over \$350,000, SOP 50 10 5(H), Subpart B, Chapter 4, Para. II.A.3.(b)i. provides that when an individual together with his or her spouse owns 20% or more of a 7(a) loan applicant, the 7(a) Lender must consider taking as collateral a lien on personal real estate (investment or residential) that is jointly owned by the individual and his or her spouse. **This requirement applies to married same-sex couples with a combined ownership interest of 20% or more of a 7(a) loan applicant.**

Pursuant to the 7(a) and 504 loan authorizations, it is the 7(a) Lender's and CDC's responsibility to obtain valid and enforceable loan documents, including obtaining the signature or written

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consent of any obligor's spouse if such consent or signature is necessary to bind the marital community or create a valid lien on marital property. Under SOP 50 10 5(H), Subpart B, Chapter 4, Para. II.B.1.(c)ii. (7(a) loans), and SOP 50 10 5(H), Subpart C, Chapter 3, Para. I.E.1.(c)ii. (504 loans), a non-owner spouse of an obligor must sign collateral documents when necessary to perfect a lien on collateral. Additionally, for 504 loans, the CDC must obtain a legal opinion from a CDC counsel verifying that the documents executed by the borrower and guarantors are valid and binding obligations, enforceable in accordance with their respective terms. **7(a) Lenders, CDCs, and CDC counsel must analyze applicable state law to determine whether the signature or written consent of an obligor's same-sex spouse is necessary in order to obtain valid and enforceable loan documents.**

SOP 52 00, Chapter 3, Para. 3.F.16 requires Microloan Intermediaries to be aware of, and operate under, their respective state laws regarding marital signature requirements. Additionally, a Microloan Intermediary may require the signature of a spouse, for security purposes only, if collateral being offered by a Microborrower is jointly-owned. **Microloan Intermediaries must analyze applicable state law to determine whether the signature of a same-sex spouse is necessary in order to obtain valid and enforceable loan documents.**

To the extent that an ILP Intermediary obtains collateral for an ILP loan to an Eligible Small Business Concern, the ILP Intermediary **must analyze applicable state law to determine whether the signature of a same-sex spouse is necessary in order to obtain valid and enforceable loan documents.**

**E. SBA Form 413 (Personal Financial Statement):** Each owner of 20% or more of the equity of a 7(a) or 504 loan applicant must submit a SBA Form 413 (Personal Financial Statement) with the loan application. SBA Form 413 requires the owner to include assets of the owner's spouse on the financial statement. **A married owner of 20% or more of the equity of a 7(a) or 504 loan applicant must include the assets of the owner's same-sex spouse on the SBA Form 413.**

**F. SBA Form 770 (Financial Statement of Debtor):** SBA Form 770 (Financial Statement of Debtor), used in servicing and liquidation of 7(a) and 504 loans, requires the debtor to provide information about the debtor's spouse, including the spouse's income on the financial statement. **A married debtor must include information about the debtor's same-sex spouse on the financial statement.**

**G. SBA Veterans Advantage:** Pursuant to SBA Information Notice 5000-1319 (Effective 9/19/2014), SBA announced the renewal and expansion of fee relief for *SBA Veterans Advantage* for all covered 7(a) loans that are approved from October 1, 2014 through September 30, 2015. Businesses eligible for the fee relief include those that are 51% or more owned or controlled by an individual that is a current spouse of any Veteran, Active Duty service member, or any Reservist or National Guard member; or widowed spouse of a service member who died while in service or of a service-connected disability. **Married same-sex spouses are included in the definition of spouse for purposes of SBA Veterans Advantage fee relief.** Married same-sex spouses seeking to meet the eligibility documentation requirements for *SBA Veterans Advantage*

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should review the December 13, 2013 Department of Defense announcement that all eligible dependents of service members and retirees, including same-sex spouses, can obtain Department of Defense ID cards at ID card facilities on all DoD bases.

## **II. Disaster Loan Program**

**A. Affiliation Analysis:** Pursuant to 13 CFR 123.300(b) and 13 CFR 123.702(a)(3), applicants for Economic Injury Disaster Loans (EIDL) (except private non-profit organizations) and applicants for Immediate Disaster Assistance Program (IDAP) loans must be small under SBA's Size Eligibility Requirements. 13 CFR 121.103(f) of SBA's regulations provides that affiliation may arise among two or more persons with an identity of interest. Individuals that have identical or substantially identical business or economic interests, such as family members, may be treated as one party with such interests aggregated. **Affiliation analyses for EIDL and IDAP loan applicants must take into account the identity of interest between married same-sex couples.**

**B. SBA Form 413 (Personal Financial Statement):** Each owner of 20% or more of the equity of a disaster business loan applicant must submit a SBA Form 413 (Personal Financial Statement) with the disaster business loan application. SBA Form 413 requires the owner to include assets of the owner's spouse on the financial statement. **A married owner of 20% or more of the equity of a disaster business loan applicant must include the assets of the owner's same-sex spouse on the SBA Form 413.**

**C. Signature Requirement:** SOP 50 30 8, Chapter 3, Paragraph 3.5.E., provides that for disaster loans, a spouse may be required to sign all collateral or obligation documents covering property in both names if required under state law to perfect SBA's collateral. **This disaster loan program requirement applies to both married same-sex spouses and married opposite-sex spouses.**

**D. SBA Form 770 (Financial Statement of Debtor):** SBA Form 770 (Financial Statement of Debtor), used in servicing and liquidation of disaster loans, requires the debtor to provide information about the debtor's spouse, including the spouse's income on the financial statement. **A married debtor must include information about the debtor's same-sex spouse on the financial statement.**

## **III. Small Business Investment Company (SBIC) and New Markets Venture Capital (NMVC) Programs**

**A. Affiliation Analysis:** Pursuant to 13 CFR 107.700 (SBIC) and 13 CFR 108.700 (NMVC), SBIC Licensees and NMVC Companies are permitted to provide financial assistance and management services only to a Small Business, using the size requirements in 13 CFR 121.301(c) of SBA's regulations. 13 CFR 121.103(f) provides that affiliation may arise among two or more persons with an identity of interest. Individuals that have identical or substantially identical business or economic interests, such as family members, may be treated as one party with such interests aggregated. **SBIC Licensees and NMVC Companies must take into**

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**account the identity of interest between married same-sex couples in determining whether a Small Business qualifies for assistance or services.**

**B. Associate of SBIC Licensee or NMVC Company:** 13 CFR 107.50 defines an Associate of an SBIC Licensee and 13 CFR 108.50 defines an Associate of an NMVC Company. An Associate includes a Close Relative of certain Associates and a Secondary Relative of certain Associates. A Close Relative, as defined in 13 CFR 107.50 (SBIC) and 13 CFR 108.50 (NMVC), includes a current or former spouse and a father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law. A Secondary Relative, as defined in 13 CFR 107.50 (SBIC) and 13 CFR 108.50 (NMVC), includes the spouse of any grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative, and also includes the spouse of any uncle, aunt, nephew, niece, or first cousin. **Same-sex spouses are covered under the definition of a Close Relative and Secondary Relative, and therefore are included in the definition of an Associate of an SBIC Licensee or NMVC Company.**

#### **IV. SBA's Size Eligibility Requirements – Contracting and Other Programs**

SBA's Size Eligibility Requirements found in Part 121 of 13 CFR apply to all SBA programs, including those not otherwise addressed in this notice such as the Surety Bond Guarantee Program, Small Disadvantaged Business Program, HUBZone Program, and Certificates of Competency. Qualification as a participant in the 8(a) Business Development program, as a Service-Disabled Veteran-Owned Small Business Concern, or as a Women-Owned Small Business Concern (WOSB) requires that the entity be a small business as defined in Part 121. SBA's Size Eligibility Requirements are also used to determine whether a business entity is small for purposes of other federal agency programs and contracting or other preferences reserved for small business concerns.

For determining whether an entity is a small business, SBA considers the size of the firm in question and of its affiliates. 13 CFR 121.103(f) provides that affiliation may arise among two or more persons with an identity of interest. Individuals that have identical or substantially identical business or economic interests, such as family members, may be treated as one party with such interests aggregated. **For purposes of determining size in connection with SBA's programs and other federal agency programs and preferences reserved for small business concerns (if using SBA's Size Eligibility Requirements), the identity of interest between married same-sex couples must be taken into account in determining affiliation.**

#### **V. 8(a) Business Development Program, Economically Disadvantaged Women-Owned Small Businesses, and Service-Disabled Veteran-Owned Small Business Concerns**

**A. Immediate Family Member:** In the 8(a) Business Development (8(a) BD) program, 13 CFR 124.3 defines an "immediate family member" to include a husband, wife, father-in-law and mother-in-law. For the purpose of determining qualification as an Economically Disadvantaged Women-Owned Small Business (EDWOSB), 13 CFR 127.102 defines an "immediate family member" to include a husband, wife, son, daughter, stepchild,

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father-in-law, mother-in-law, son-in-law and daughter-in-law. **Same-sex spouses are considered immediate family members for all 8(a) BD Program requirements and for all EDWOSB qualification requirements.**

**B. Submission of Spouse’s Financial Information:** 13 CFR 124.104(a)(2) requires that when married, an individual claiming economic disadvantage for purposes of the 8(a) BD Program must submit separate financial information for his or her spouse, unless the individual and spouse are legally separated, and SBA will consider a spouse’s financial situation in determining an individual’s access to credit and capital where the spouse has a role in the business or has lent money to, provided credit support to, or guaranteed a loan of the business. Under SOP 80 05 3, a spouse’s financial information must include an SBA Form 413. **An individual claiming economic disadvantage for purposes of the 8(a) BD Program must submit separate financial information, including an SBA Form 413, for his or her same-sex spouse, unless the individual and the same-sex spouse are legally separated.**

13 CFR 127.203(c)(2) provides that in order to determine whether a concern qualifies as an EDWOSB, SBA may consider a spouse’s financial situation in determining a woman’s access to credit and capital. When married, an individual claiming economic disadvantage must submit separate financial information for her spouse, unless the individual and spouse are legally separated, and SBA will consider a spouse’s financial situation in determining an individual’s access to credit and capital where the spouse has a role in the business or has lent money to, provided credit or financial support to, or guaranteed a loan of the business. SBA may also consider the spouse’s financial condition if the spouse’s business is in the same or similar line of business as the EDWOSB and the spouse’s business shares a similar name, websites, equipment or employees. In addition, all transfers to a spouse within two years of certification will be attributed to a woman claiming economic disadvantage. **A woman claiming economic disadvantage for purposes of qualification as an EDWOSB must follow the foregoing requirements for her same-sex spouse.**

**D. Title 38 Definition of Spouse:** Eligibility of a Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) may be premised on control of the concern by the spouse or permanent caregiver or a veteran with permanent or severe disability. For these firms, 13 CFR 125.8(h) of SBA’s regulations defines “spouse” for purposes of an SDVO SBC with reference to section 101(31) of Title 38, United States Code. **SBA has been advised that due to the Windsor decision, the Administration is no longer enforcing the opposite sex definition found in Title 38.**

## **VI. SBA’s Standards of Conduct Requirements**

13 CFR 105.204 provides that the prior written approval of SBA’s Standards of Conduct Committee is required before SBA Assistance, other than Disaster loans, is furnished to a person when the sole proprietor, partner, officer, director or significant stockholder of the person is an SBA employee or a Household Member.

13 CFR 105.301(a) provides that SBA must receive a written statement of no objection by the pertinent department or military service before it gives any SBA Assistance, other than Disaster loans, to a person when its sole proprietor, partner, officer, director or stockholder with a 10 percent or more interest, or a Household Member, is an employee of another government department or agency having a grade of at least GS-13 or its equivalent.

13 CFR 105.301(b) provides that the SBA Standards of Conduct Committee must approve an SBA contract with an entity if a sole proprietor, general partner, officer, director, or stockholder with a 10 or more percent interest, or a Household Member, is an employee of a government department or agency.

13 CFR 105.301(c) provides that the SBA Standards of Conduct Committee must approve SBA Assistance, other than Disaster loans, to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest, or a Household Member, is a member of Congress or an appointed official or employee of the legislative or judicial branch of the U.S. government.

13 CFR 105.302 (a) provides that the SBA Standards of Conduct Committee must approve SBA Assistance, other than Disaster loans, to a person if its sole proprietor, general partner, officer, director or stockholder with a 10 percent or more interest, or a Household Member, is a member or employee of a small business advisory committee or is a SCORE volunteer (which is an SBA grantee).

SBA Assistance is defined in 13 CFR 105.201(e) to mean financial, contractual, grant, managerial or other aid, including size determinations, section 8(a) participation, licensing, certification, and other eligibility determinations made by SBA. The term also includes an express decision to compromise or defer possible litigation or other adverse action. A Household Member is defined in 13 CFR 105.201(d) to mean: (1) the spouse of an SBA employee; (2) the minor children of an SBA employee; and (3) the SBA employee's, and his or her spouse's, blood relatives who reside in the same place of abode with the SBA employee. **SBA considers same-sex spouses to be included in the definition of a Household Member.**

## **Questions**

Questions on this Information Notice may be directed to Melvin F. Williams, Jr., General Counsel, Office of General Counsel, at [Melvin.Williams@sba.gov](mailto:Melvin.Williams@sba.gov).

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Melvin F. Williams, Jr.  
General Counsel

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