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CFPB ISSUES MEMORANDUM REGARDING EQUAL TREATMENT OF SAME-SEX MARRIED COUPLES

The Consumer Financial Protection Bureau recently issued a memorandum to all Bureau staff designed to advise the staff on the basic principles pertaining to handling issues regarding equal treatment for legally married same-sex couples. The memorandum discusses the ramifications for Bureau policy of the United States Supreme Court's decision in *United States v. Windsor*, 133 S.Ct. 2675 (2013), in which the Supreme Court struck down as unconstitutional Section 3 of the Defense of Marriage Act, defining the term "marriage" to mean only a legal union between one man and one woman as husband and wife and the word "spouse" to refer only to a person of the opposite sex who is a husband or a wife.

The memorandum states that the Bureau's policy, subject to federal law and consistent with the United States Department of Justice's legal position, is to recognize all marriages valid at the time of the marriage in the jurisdiction where the marriage was celebrated. Thus, the Bureau will consider 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, no matter where the person resides. Persons in domestic partnerships, civil unions, or other relationships not considered by law as a marriage, will not be considered by the Bureau to be "married."

The terms "spouse," "marriage," "married," "husband," "wife," and other similar terms related to family or marital status in the statutes, regulations and policies administered, enforced or interpreted by the Bureau will include same-sex marriages and married same-sex spouses. Specific familial terms, including those mentioned above, that are included in the following laws are discussed in detail in the memorandum:

- Equal Credit Opportunity Act and Regulation B
- Fair Debt Collection Practices Act
- Interstate Land Sales Full Disclosure Act and Regulation J
- Truth in Lending Act and Regulation Z
- Real Estate Settlement Procedures Act and Regulation X
- Bureau Ethics Regulations

- Procedures for Bureau Debt Collection

With respect to ECOA, the memorandum states that it will not regard the statute's use of the gender-specific phrase "husband and wife" as limiting. Also, with respect to Regulation B's definition of "marital status," the Bureau will consider that a person has the marital status of "married" if they are in a marriage under the laws of any jurisdiction, while a person has the marital status of "unmarried" if they are in a domestic partnership, civil union, or other relationship not considered by law as a marriage. The memorandum notes that it does not address (i) how consumers should respond to credit application inquiries into marital status or (ii) 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.

The FDCPA, TILA and Regulation Z and RESPA all use the term "spouse." The use of the words "husband" and "wife" in Regulation X and Regulation Z will be treated by the Bureau as being gender-neutral.

Although it is unusual to announce a policy in a memorandum to staff, a review of policies and documents for conformity with the Bureau's stated policy would be prudent. We can assist in such reviews. □

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