

October 27, 2014

Social Security Administration
Attn: Faye Lipsky
Reports Clearance Director
1905 9th St NE
Washington, DC 20018

Dear Ms. Lipsky:

RE: Agency Information Collection Activities: Comment Request

On behalf of Family Equality Council, please accept these comments on the Social Security Administration's (SSA) Proposed Information Collection regarding SSA Form 754-F4: Statement of Marital Relationship. Family Equality Council is a national organization working to ensure full social and legal equality for lesbian, gay, bisexual, transgender, and queer (LGBTQ) parents and their children by providing direct support, educating the American public, and securing inclusion in legislation, policies, and practices impacting families. On behalf of the more than three million LGBTQ parents and their six million children across the United States,¹ Family Equality Council would like to thank the Commissioner, the Board, and the Administration for your work to provide inclusive and comprehensive services to LGBTQ individuals and their families across the United States.

Spouse Designations

The Social Security Administration administers SSA Form 754-F4,² which is completed by a common law spouse, to determine eligibility as a new claimant for benefits based on a common law marital relationship. The form requires the common law spouse making a claim for social security benefits as a spouse to attest to whether or not the she and her partner held each other out as spouses.³ This information is gathered in fields employing the gendered terms of "husband and wife" to describe the two partners.⁴

In the wake of the US Supreme Court's decision striking down the federal Defense of Marriage Act,⁵ Currently, only ten states and the District of Columbia have laws recognizing common law marriages between unmarried partners, and of those jurisdictions, Rhode Island,⁶ Colorado⁷ and the District of Columbia⁸ recognize common law marriages between same-sex partners.⁹

¹ Movement Advancement Project, Family Equality Council and Center for American Progress, "All Children Matter: How Legal and Social Inequalities Hurt LGBT Families," October 2011, *Issue Brief: Obstacles and Opportunities: Ensuring Health and Wellness for LGBT Families*.

² *Statement of Marital Relationship*, SSA Form 754-F4, Social Security Administration.

³ *Id.*

⁴ *Id.* at Question 4.

⁵ *U.S. v. Windsor*, 570 U.S. 12 (2013).

⁶ *DeMelo v. Zompa*, 844 A.2d 174 (R.I. 2004) (recognizing common law marriages of couples meeting certain required behaviors regarding relationship); R.I. Gen. Laws § 15-1-17 (2013).

⁷ Colo. Stat. §14-2-109.5.

⁸ *Hoage v. Murch Bros. Construction Co.*, 60 App. D.C. 218, 50 F.2d 983 (1931); D.C. Code § 46-401(b).

⁹ The states of Iowa and Utah also recognize common law marriage and same-sex marriages. Utah Stat. §30-1-4.5; Iowa Code § 701-73.25 (recognizing common law marriages); *Varnum v. Brien*, 763 N.W.2d 262 (Iowa 2009) (overturning state prohibition on same-sex marriage and creating legal recognition of same-sex marriage). However, because the Iowa and Utah legislatures both codified their recognition of common law marriage using gendered

For same-sex couples, Form 754-F4's usage of the term "husband and wife" to describe qualifying common law relationships may cause needless delay in processing the form and potential denial of benefits because these claimants are of the same gender as their potential common law spouse. Using gendered spousal terms potentially excludes same-sex common law spouses and adds nothing to the information gathered by the form that could not be ascertained through the use of non-gendered terms. As the intent of this form is to determine whether the claimant stood in the position of a common law spouse to her partner and is therefore eligible for benefits based on status as a common law spouse, asking whether the claimant and partner held one another out as "husband and wife" serves to confuse potential claimants, witnesses, and SSA staff and complicate the benefit provision process.

Recommendations

We recommend changes to SSA Form 4178 to eliminate all gendered spousal language. We suggest the following edits to questions on the form (edits in bold and strikethrough).

At Question 4:

"WHEN DID YOU BEGIN LIVING TOGETHER IN A ~~HUSBAND AND WIFE~~ **SPOUSAL** RELATIONSHIP?"

At Question 5:

"B. Where have you lived together as ~~husband and wife~~ **spouses** and for what periods of time?"

At Question 13B:

"WERE YOU SHOWN AS THE OTHER'S ~~HUSBAND/WIFE~~ **SPOUSE**?"

At Question 21:

"A. DID YOU EVER LIVE WITH ANY OTHER PERSON AS ~~HUSBAND AND WIFE~~ **SPOUSES**?"

At Question 22:

"A. DID THE PERSON NAMED IN ITEM 3 EVER LIVE WITH ANYONE ELSE AS ~~HUSBAND AND WIFE~~ **SPOUSES**?"

The term "husband and wife" in the aforementioned questions can easily be changed to use non-gendered spousal terms without undermining or compromising the information gained from this form. The underlying intent of this form is not to restrict benefits to only opposite-gender spouses, but to ensure recognition of *all* common law spouses. Updating this form to be inclusive of a claimant's partner who is

terms, and in the case of Iowa the court in *Varnum* did not consider or extend its ruling to common law marriages (the ruling solely dealt with same-sex marriage), the Iowa and Utah common law marriage statutes likely do not apply to same-sex unmarried couples.



of the same gender will facilitate the Department accurately providing these benefits to all eligible spousal beneficiaries.

The suggested changes above do not broaden the pool of qualified claimants as the number of potential beneficiaries is still limited to spouses with federally recognized common law marriages. Making the changes described above will increase the efficiency of the Social Security Administration, allowing the Administration to identify potential beneficiaries more accurately and without risking confusion based on inaccurate forms and incomplete information.

The Commissioner has the authority to change this form under 42 U.S.C. § 902(a) and 42 U.S.C. § 216. The statutes governing this form do not use gendered terms to define “spouse”, “claimant,” “beneficiary,” or other relevant terms; for this reason, SSA Form 754-F4 does not require statutory or regulatory changes in order to be modernized. Ultimately, changing this form to use non-gendered spousal language rather than “husband and wife” will be a cost-neutral change more accurately reflecting the varied composition of today’s families.

We respectfully recommend that the Social Security Administration modernize the gendered spousal fields on this and all other forms to include language inclusive of same-sex spouses to better reflect and serve all American families. We commend the Social Security Administration for its work, and look forward to the final draft of this form.

We are happy to provide your office with any additional information or clarification that you might need. Please contact Michael Porcello (mporcello@familyequality.org, 202-607-2140) in our Washington, D.C. office with any questions.

Sincerely,



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