

IRS Guidance On Same-Gender Marriage - What Actions Should Plan Sponsors Take Now

Tuesday, May 13, 2014

Following the Supreme Court's decision in [United States v. Windsor](#), the IRS announced in [Revenue Ruling 2013-17](#) that lawfully married same-sex couples would be treated as married for all Internal Revenue Code purposes. On April 4, 2014, the IRS issued [Notice 2014-19](#), addressing retirement plan amendments and optional retroactive application of the Windsor decision. Retirement plan sponsors should evaluate what steps they need to take based on the Windsor decision and subsequent IRS guidance.

Retirement Plan Operations

From June 26, 2013 through September 15, 2013 (the period between the Windsor decision and the issuance of the Revenue Ruling), it was acceptable for retirement plans to either recognize all same-sex spouses as married or recognize same-sex spouses as married only for participants who were domiciled in a state that treated same-sex spouses as married.

Effective September 16, 2013, retirement plans must recognize a same-sex spouse if the couple is lawfully married under the laws of one of the 50 states, the District of Columbia, a U.S. territory, or a foreign jurisdiction, even if the couple is living in a state that does not recognize same-sex marriage.

For periods prior to June 26, 2013, retirement plans may, but do not have to, recognize same-sex spouses. Applying the rulings to a date before June 26, 2013 for all retirement plan purposes may create administrative difficulties and unintended consequences (such as changing the results of ownership attribution, which may affect the plan's non-discrimination testing). As a result, plan sponsors should carefully consider which plan provisions should be applied retroactively. Additionally, the decision to implement the rulings retroactively is subject to all of the normal qualification requirements, such as non-discrimination testing under §401(a)(4).

Caution: These dates were issued by the IRS for Internal Revenue Code purposes. They do not remove a same-sex spouse's right to make a claim for benefits for periods prior to these dates.

Retirement Plan Amendments May Be Required as Early as December 31, 2014

Plan sponsors must ensure that the retirement plan's terms comply with the *Windsor* decision and accurately reflect the plan's operation. If the plan's provisions do not conflict with those rulings (because, for example, "spouse" is defined as a spouse under the terms of the Internal Revenue Code or the documents do not define the term "spouse"), then the plan may not have to be amended. If, however, the plan has provisions that are inconsistent with *Windsor* or Revenue Ruling 2013-17, then the plan must be amended. For defined benefit plans, be aware that an amendment to reflect these rulings effective as of June 26, 2013, is not treated as an amendment to which the funding-based benefit restrictions under §436(c) apply, but earlier application of the ruling is subject to the funding-based benefit restrictions under §436(c).

Any needed plan amendment must be adopted by December 31, 2014, or, if later, the plan's normal remedial



Article By [Poyner Spruill LLP](#)
[Nancy C. Brower](#)
[p.s. publications full of ideas](#)

[Constitutional Law](#)
[Civil Rights](#)
[Tax](#)
[Labor & Employment](#)
[Litigation / Trial Practice](#)
[Administrative & Regulatory](#)
[All Federal](#)

amendment period.

Participant Communication and Administrative Forms

Plan sponsors should also review their communication materials and administrative forms to make sure no changes are needed as a result of *Windsor*. Particular attention should be paid to beneficiary designation forms and instructions, as well as to any form requiring spousal consent, such as distribution forms and certain plan loan forms. Some plan sponsors are reaching out to employees to let them know that beneficiary designations that name someone other than the same-sex spouse as beneficiary are not effective unless the same-sex spouse consented to the beneficiary designation.

© 2019 Poyner Spruill LLP. All rights reserved.

Source URL: <https://www.natlawreview.com/article/irs-guidance-same-gender-marriage-what-actions-should-plan-sponsors-take-now>