From the compliance desk...

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Supreme Court Ruling Impacts Definition of Spouse in Retirement Plans

On June 26, 2013, the United States Supreme Court ruled in U.S. versus Windsor that Section 3 of the Defense of Marriage Act (DOMA) is unconstitutional.

Background

DOMA, which was passed into law on September 21, 1996, included a provision under Section 3 of the Act that defined the term "marriage" as the legal union of one man and one woman as husband and wife. The term "spouse" referred to a person of the opposite sex who is a husband or wife.

This law preempted state law for purposes of determining an individual's spouse under qualified retirement plans. So, even if state law recognized same sex marriages, only opposite sex spouses were recognized when determining the spouse for plan purposes. The identification of a participant's spouse is important for a number of plan provisions, such as:

- A spouse is considered the default beneficiary of the participant and the participant cannot name a non-spouse beneficiary unless the spouse consents to that naming
- A participant has the ability to take a hardship distribution for medical, tuition, and funeral expenses of such spouse
- A spouse is entitled to 50 percent survivor annuity protection unless consent to waiver of such benefit
- A spouse has the ability to rollover the death benefit of a deceased participant to their own IRA or retirement plan
- A spouse may be an alternate payee under a Qualified Domestic Relations Order (QDRO)
- In determining ownership under the family attribution rules (e.g., for purposes of determining highly compensated employees, key employees or family members under the controlled group rules), an individual is deemed to own the shares owned by their spouse

Impact of DOMA on Retirement Plans

With the Supreme Court ruling DOMA unconstitutional, federal law no longer preempts state law when determining an individual's spouse for retirement plan purposes. Therefore, plan sponsors will need to consider same sex marriages when determining a participant's spouse under the plan. Currently the following states recognize same sex marriages: Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, Rhode Island, Vermont, Washington, and the District of Columbia.

While the ruling made it clear that Federal law no longer preempts state law when determining who is a spouse, there were still many outstanding questions on how and when to apply this change for qualified plan purposes. For example – if an employer whose primary place of business is in a state that does not recognize same sex marriages, and employs individuals who reside in a state that does recognize same sex marriages – does that employer need to recognize any same sex spouse of those employees as the spouse for plan purposes? Also, since the Supreme Court ruling determined that this section of DOMA was unconstitutional, does the change apply retroactively to the date DOMA was passed, as of the date of the ruling, or prospectively?

IRS and DOL Provide Clarifying Guidance

The IRS and DOL each have recently issued guidance to help clarify how to apply the repeal of DOMA to retirement plans.

Revenue Ruling 2013-17 issued by the IRS on August 29, 2013. Within this ruling the IRS announced that it would recognize marital status based on the law of the jurisdiction (domestic or foreign) in which the marriage was solemnized and celebrated. This will apply for all federal tax purposes, which includes the provisions that govern the term "spouse" in retirement plans. Therefore, a participant's "spouse" will be determined based on the law of the state or other foreign jurisdiction in which the participant was married, not where the participant lives or works. This Ruling is effective as of September 16, 2013. The IRS plans to provide additional guidance on the impacts to retirement plans on such things as the timing requirements for any necessary plan amendments, as well as any retroactive application.

Technical Release No. 2013-04 issued by the DOL on September 18, 2013. Within this guidance, the DOL takes the same stance as the IRS in that the term "marriage" will include any same sex marriage that is legally recognized as a marriage under any state law or of any U.S. territory, U.S. possession, or foreign jurisdiction having the legal authority to sanction marriages.

Domestic Partner or Civil Union

Both the IRS and DOL have indicated that for Federal tax purposes, the terms "spouse" and "husband and wife" do not include individuals (whether same sex or opposite sex) in a domestic partnership or civil union. Therefore, a domestic partnership or civil union is not considered a marriage for qualified plan purposes.

Action and Next Steps

Effective immediately, plan sponsors must recognize a participant's partner in a same sex marriage as the participant's "spouse" for plan purposes. A same sex spouse will have all the same rights available under the plan as an opposite sex spouse. Plan sponsors should review their practices and procedures to ensure same sex spouses are taken into consideration for all plan purposes.

The IRS will be providing additional guidance on whether plan documents need to be amended for the change in definition of spouse, as well as the timing of any required amendments. The language in the American Trust & Savings Bank preapproved plan document allows the Plan Administrator to interpret and apply the term "spouse" in a manner which is consistent with applicable law. If an amendment is needed to further define the term "spouse" under your plan, we will notify you at the time such change is required.

If you have questions on the impact of the U.S. versus Windsor ruling, please contact your Relationship Manager at 800.548.2995.