



Windsor Same-Sex Marriage Decision: IRS Issues Helpful New Guidance

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On April 4, 2014, the IRS released Notice 2014-19, which provides additional guidance on recognition of same-sex spouses in qualified retirement plans. The guidance is good news for plan sponsors because it clarifies that plans are *not* required to apply the Supreme Court's decision in *U.S. v. Windsor* on a retroactive basis prior to the date of the Supreme Court's decision.

The *Windsor* opinion, which was issued June 26, 2013, found that key elements of the Defense of Marriage Act were unconstitutional. As such, qualified retirement plans must now recognize same-sex marriages for a variety of purposes, including survivor benefits, joint and survivor annuities, spousal consents, and other administrative operations. After the *Windsor* decision, the IRS issued Revenue Ruling 2013-17, which provided that, effective September 16, 2013, plans should use the "state of celebration" to determine whether a same-sex couple was legally married for qualified plan purposes, without regard to the state where the couple resides. However, an important question remained unanswered until last week: As of what date must plans apply the *Windsor* ruling? Asked another way, if the law was unconstitutional in the first place, must a qualified plan go back and retroactively recognize same-sex marriages, potentially wreaking administrative havoc?

Notice 2014-19 requires that plans apply *Windsor* as of June 26, 2013 (the date of the decision) and apply the "state of celebration" approach as of September 16, 2013 (the effective date of Revenue Ruling 2013-17). A plan that did not recognize same-sex marriages prior to these dates will not incur a penalty or risk plan disqualification. A plan also may choose to apply *Windsor* and Revenue Ruling 2013-17 prior to those effective dates for certain purposes as long it does so in a nondiscriminatory basis and the amendment specifies the effective date.

Your plans may need to be amended. Plans with terms that are inconsistent with the *Windsor* decision must generally be amended appropriately by December 31, 2014. Note that this deadline also applies to single-employer defined benefit plans that (due to their funding status) are otherwise subject to restrictions on amendments that increase the plan's liabilities (however, these plans may not specify an effective date earlier than June 26, 2013).

If you have any questions about whether your qualified retirement plans (or other compensation arrangements) should be amended to apply *Windsor*, please contact a member of the Winston & Strawn employee benefits and executive compensation department.

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