



## **NEW IRS GUIDANCE ON SAME-SEX MARRIAGE: ACTION MAY BE REQUIRED FOR QUALIFIED RETIREMENT PLANS**

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The IRS has issued guidance on the application of the Supreme Court's 2013 decision regarding same-sex marriage to qualified retirement plans. In *United States v. Windsor*, the Supreme Court ruled that Section 3 of the Defense of Marriage Act ("DOMA") is unconstitutional. Section 3 of DOMA defined "marriage" for federal law purposes as between a man and a woman. Subsequent IRS guidance indicated that, for federal tax purposes, the terms "spouse," "husband," and "wife" include an individual married to a person of the same sex if the individuals were lawfully married under the laws of the state in which the marriage occurred. We previously have written about the *Windsor* decision and related tax guidance in the following Client Alerts:

- [Same-Sex Marriage Decision Impacts Employee Benefit Plans](#)
- [New Tax Guidance on Same-Sex Marriage: Action Required for Employee Benefit Plans by September 16](#)

New IRS Notice 2014-19 provides long-awaited guidance on the application of the *Windsor* decision to qualified retirement plans (including 401(k) plans and defined benefit pension plans):

- Qualified retirement plan operations must reflect the outcome of the *Windsor* decision as of June 26, 2013. Qualified retirement plans are not required to recognize a same-sex spouse as a participant's spouse prior to that date.
- A retirement plan will not fail to be qualified if prior to September 16, 2013, the plan recognized a participant's same-sex spouse only if the participant was domiciled in a state that recognized same-sex marriages.
- Qualified retirement plans with terms that are inconsistent with the *Windsor* decision or the subsequent IRS guidance must be amended as necessary to reflect the outcome of the *Windsor* decision and the IRS guidance.
- Any necessary amendment must be effective on or prior to June 26, 2013, although recognition of same-sex spouses under a plan prior to that date may trigger requirements that are difficult to implement retroactively and may create unintended consequences. In addition, if a defined benefit plan's funded status prohibits certain amendments, any necessary amendment must be effective on June 26, 2013.

- Any required amendment must be adopted by the later of (i) the otherwise applicable deadline under current IRS guidance (generally, the later of the end of the plan year in which the change is first effective or the due date of the employer's tax return for the tax year that includes the date the change is first effective), or (ii) December 31, 2014.

We recommend that employers review the terms of their qualified retirement plans to determine whether changes are necessary and adopt any plan amendments that may be needed. Please contact the Thompson & Knight attorney with whom you regularly work or any of the following employee benefits attorneys for assistance.

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**CONTACTS:****Sharon M. Fountain**

214.969.1518

[Sharon.Fountain@tklaw.com](mailto:Sharon.Fountain@tklaw.com)**J. Mike Holt**

214.969.1500

[Mike.Holt@tklaw.com](mailto:Mike.Holt@tklaw.com)**Jessica S. Morrison**

817.347.1704

[Jessica.Morrison@tklaw.com](mailto:Jessica.Morrison@tklaw.com)**Russell G. Gully**

214.969.1511

[Russell.Gully@tklaw.com](mailto:Russell.Gully@tklaw.com)**Jason Patrick Loden**

214.969.1556

[Jason.Loden@tklaw.com](mailto:Jason.Loden@tklaw.com)**Neely P. Munnerlyn**

214.969.1585

[Neely.Munnerlyn@tklaw.com](mailto:Neely.Munnerlyn@tklaw.com)**Shelly A. Youree**

310.203.6901

[Shelly.Youree@tklaw.com](mailto:Shelly.Youree@tklaw.com)

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