

IRS Issues Windsor Guidance for Qualified Retirement Plans

On April 4, 2014, the IRS released Notice 2014-19, providing guidance on the application of United States v. Windsor to qualified retirement plans. The Notice is the third piece of guidance issued by the IRS regarding the Supreme Court's decision on June 26, 2013 invalidating the provision in the 1996 Defense of Marriage Act that defined marriage between a man and a woman.

The Notice provides welcome guidance on the timing requirements for qualified retirement plans to reflect the Windsor decision by treating persons in the same-sex marriages the same as persons in opposite-sex marriages. Specifically, the Notice provides for guidance on the following points:

- Plan operations are required to reflect the Windsor outcome only as of June 26, 2013. This means that qualified plans are not required to recognize same-sex marriages for dates prior to June 26, 2013.
- Qualified plans are not required to have determined whether same-sex couples are married by reference to the state law under which the marriage was celebrated before September 16, 2013, the effective date of Rev. Rul. 2013-17, which announced the IRS position on this question. This means that plans will not be penalized for having determined marital status by reference to the participant's state of domicile before September 16, 2013.
- Plans that choose to comply with the outcome of Windsor as of any date prior to June 26, 2013, and can choose the purposes for which same-sex marriages are recognized for periods prior to that date. For example, a plan sponsor may choose to amend its plan to recognize same-sex marriages solely for purposes of the qualified joint and survivor annuity requirements and solely with respect to participants with annuity starting dates on or after a specified date before June 26, 2013. The Notice notes that early recognition may create implementation challenges.
- Plans with terms that are inconsistent with the Windsor decision must be amended to reflect the Windsor decision by the later of (i) the date the plan otherwise would have to be amended for changes in applicable law (generally, the later of the end of the plan year in which the change is first effective and the due date of the employer's tax return for the tax year that includes the date the change is first effective) and (ii) December 31, 2014, Government plans have until the end of the first regular legislative session of the body with amendment authority that ends after December 31, 2014.
- Plans with a funded status that generally prohibits certain amendments may nevertheless be amended effective June 26, 2013 to reflect the outcome of Windsor. However, such plans are generally not permitted to adopt amendments implementing the Windsor decision as of an earlier date.

This guidance will allow plan sponsors to determine the effect of the Windsor decision on the written terms of their qualified retirement plan and allows plan sponsors flexibility in determining how to bring their plan into line with the Windsor decision.

