

**MEMO# 27377**

July 16, 2013

# **Supreme Court Holding in U.S. v. Windsor Will Impact Retirement Plan Administration**

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TO: PENSION MEMBERS No. 31-13  
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 20-13  
OPERATIONS COMMITTEE No. 32-13  
TRANSFER AGENT ADVISORY COMMITTEE No. 54-13 RE: SUPREME COURT HOLDING IN U.S. v. WINDSOR WILL IMPACT RETIREMENT PLAN ADMINISTRATION

In *United States v. Windsor*, the U.S. Supreme Court ruled that Section 3 of the Defense of Marriage Act [\[1\]](#) (DOMA) was unconstitutional. [\[2\]](#) Section 3 of DOMA defines for purposes of federal law the term “marriage” as a legal union between one man and one woman as husband and wife, and the term “spouse” as a person of the opposite sex who is a husband or wife. Because DOMA limited the definition of “marriage” and “spouse” under both the Internal Revenue Code and ERISA, the Court’s decision will have an impact on retirement plan administration. In states that recognize same-sex marriage, [\[3\]](#) the following areas of plan administration will likely be impacted:

- Qualified Joint and Survivor Annuities - QJSA options will apply to same-sex spouses unless the same-sex spouse consents otherwise.
- Qualified Pre-Retirement Survivor Annuities - Same-sex spouses will now be eligible for a QPSA.
- Qualified Domestic Relations Orders - A same-sex spouse will be able to be an alternate payee and obtain a QDRO.
- Rollovers - A same-sex spouse will be able to roll-over a plan distribution to a plan or to his or her own IRA.
- Beneficiary Designation - A surviving same-sex spouse will be entitled to the participant’s account balance unless he or she consents to the designation of another beneficiary.
- Hardship Withdrawals - Same-sex spouses will be treated as a primary beneficiary for certain hardship withdrawals (medical, tuition, funeral expenses) if provided for under the terms of the plan.
- Loans - If a plan’s rules require spousal consent, same-sex spouses will have to

consent to participant loans.

- Minimum Required Distributions - Under the MRD rules, a surviving same-sex spouse will be able to delay distributions longer than a non-spouse beneficiary.

## Unresolved Issues

There remain several unresolved issues regarding the impact of the Windsor case on retirement plan administration. Section 2 of DOMA, which provides that no state shall be required to recognize as a marriage any relationship between persons of the same sex that is treated as a marriage by another state, nor to grant rights based on the relationship, was not at issue in the case and remains in effect. Further, some states recognize valid same-sex marriage licenses issued in other states, while others do not. Thus, one unresolved issue is the effect of a valid same-sex marriage, but a domicile in a state that does not recognize same-sex marriage. Additionally, it is unresolved as to whether the ruling is retroactive, or may be given retroactive effect.

We understand that the IRS will likely issue guidance on the impact of the Windsor decision on retirement plans and we will continue to update Institute members on this matter.

Howard Bard  
Associate Counsel

### endnotes

[1] DOMA, which was signed into law on September 21, 1996, amended the federal Dictionary Act – a law providing definitions for more than 1,000 federal laws and the whole realm of federal regulations – to define “marriage” and “spouse” as limited to a union between one man and one woman and excluding same-sex partners. DOMA also allows states to refuse to recognize same-sex marriages entered into in other states.

[2] A copy of the decision is available here:  
[http://www.supremecourt.gov/opinions/12pdf/12-307\\_6j37.pdf](http://www.supremecourt.gov/opinions/12pdf/12-307_6j37.pdf).

[3] Currently same-sex marriage licenses are issued in Connecticut, Delaware, Iowa, Maine, Maryland, Massachusetts, New Hampshire, New York, Vermont, Washington, and the District of Columbia. Rhode Island and Minnesota’s laws take effect on August 1, 2013.