

MEMO# 27582

September 23, 2013

DOL Issues Guidance to Employee Benefit Plans in Response to U.S. v. Windsor and Adopts "State of Celebration" Rule

[27582]

September 23, 2013

TO: PENSION MEMBERS No. 46-13
BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 34-13
OPERATIONS COMMITTEE No. 49-13
TRANSFER AGENT ADVISORY COMMITTEE No. 72-13 RE: DOL ISSUES GUIDANCE TO
EMPLOYEE BENEFIT PLANS IN RESPONSE TO U.S. V. WINDSOR AND ADOPTS "STATE OF
CELEBRATION" RULE

Following the IRS's issuance of Revenue Ruling 2013-17 [\[1\]](#), in response to the U.S. Supreme Court's holding in U.S. v. Windsor [\[2\]](#) (providing that same-sex couples, legally married in jurisdictions that recognize their marriages, will be treated as married for federal tax purposes), the U.S. Department of Labor, Employee Benefits Security Administration (EBSA) recently issued its own guidance. [\[3\]](#) Noting that the terms "spouse" and "marriage" appear in numerous provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), and the Department of Labor's regulations, EBSA issued Technical Release 2013-04: Guidance to Employee Benefit Plans on the Definition of "Spouse" and "Marriage" under ERISA and the Supreme Court's Decision in United States v. Windsor.

In the Guidance, EBSA states that, "[i]n general, where the Secretary of Labor has authority to issue regulations, rulings, opinions, and exemptions in Title I of ERISA and the Internal Revenue Code, as well as in the Department's regulations at chapter XXV of Title 29 of the Code of Federal Regulations, the term spouse will be read to refer to any individuals who are lawfully married under any state law, including individuals married to a person of the same sex who were legally married in a state that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages. Similarly, the term marriage will be read to include a same-sex marriage that is legally recognized as a marriage under any state law." The Guidance notes that EBSA's approach is the most natural reading of the terms "spouse" and "marriage," is consistent with the Windsor decision, and that a

narrower interpretation would not further the purposes of the relevant statutes and regulations.

The Guidance further provides that the terms “spouse” and “marriage” do not include same-sex or opposite-sex individuals in a formal relationship recognized by a state that is not denominated a marriage under state law, such as a domestic partnership or civil union. For this purpose, the term “state” means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Northern Mariana Islands, any other territory or possession of the United States, and any foreign jurisdiction having the legal authority to sanction marriages.

In the Technical Release, EBSA explains that recognizing marriages that are valid in the state in which they were celebrated (a “state of celebration” rule), regardless of the married couple’s state of domicile, provides a uniform rule of recognition that can be applied with certainty by stakeholders, including employers, plan administrators, participants and beneficiaries. EBSA states that this approach is “consistent with the core intent underlying ERISA of promoting uniform requirements for employee benefit plans.” EBSA notes that a rule for employee benefit plans based on state of domicile would “raise significant challenges for employers that operate or have employees (or former employees) in more than one state or whose employees move to another state while entitled to benefits.”

Unlike IRS Revenue Ruling 2103-17, the Guidance does not include an effective date or address potential retroactivity, although it states that EBSA intends to issue future guidance addressing specific provisions of ERISA and its regulations. The Guidance concludes by stating that EBSA has coordinated with Treasury/IRS in developing the Technical Release, and agreed with Treasury/IRS that recognition of “spouses” and “marriages” based on the validity of the marriage in the state of celebration rather than based on the married couple’s state of domicile, promotes uniformity in administration of employee benefit plans and affords the most protection to same-sex couples.

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endnotes

[1] For the Institute’s summary of Revenue Ruling 2013-17, see [Memorandum](#) to Pension Members No. 41-13, Bank Trust and Retirement Advisory Committee No. 28-13, Operations Committee No. 43-13, Transfer Agent Advisory Committee No. 66-13, Tax Committee No. 26-13 [27533], dated September 3, 2013.

[2] For the Institute’s Memorandum on the impact of *United States v. Windsor* on retirement plans, see [Memorandum](#) 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 [27377], dated July 16, 2013.

[3] The Guidance is available here: <http://www.dol.gov/ebsa/pdf/tr13-04.pdf> and EBSA’s News Release is available here: <http://www.dol.gov/ebsa/newsroom/2013/13-1720-NAT.html>.

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