

MEMO# 28022

April 8, 2014

IRS Issues Guidance on the Application of U.S. v. Windsor and Revenue Ruling 2013-17 to Qualified Retirement Plans

[28022]

April 8, 2014

TO: PENSION MEMBERS No. 15-14

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 17-14

OPERATIONS COMMITTEE No. 20-14

TRANSFER AGENT ADVISORY COMMITTEE No. 22-14 RE: IRS ISSUES GUIDANCE ON THE APPLICATION OF U.S. V. WINDSOR AND REVENUE RULING 2013-17 TO QUALIFIED RETIREMENT PLANS

On April 4, 2014, the Internal Revenue Service (IRS) issued Notice 2014-19 (the Notice), [\[1\]](#) providing guidance on the application of U.S. v. Windsor [\[2\]](#) and Revenue Ruling 2013 [\[3\]](#) to qualified retirement plans. The guidance is in the form of questions and answers and confirms that, beginning June 26, 2013 (i.e., the date of the Windsor decision), any retirement plan qualification rule that applies because a participant is married must be applied with respect to a participant who is married to an individual of the same sex.

Importantly, the guidance also provides that a retirement plan will not be treated as failing to meet the requirements of Section 401(a) of the Internal Revenue Code merely because it did not recognize the same-sex spouse of a participant as a spouse prior to June 26, 2013. The guidance further provides that a qualified retirement plan will not lose its qualified status due to an amendment to reflect the outcome of Windsor for some or all purposes as of a date prior to June 26, 2013. IRS notes, however, that recognizing same-sex spouses for all purposes under a plan prior to June 26, 2013 may trigger requirements that are difficult to implement retroactively. You may recall that the Institute submitted a letter to IRS in December, 2013, focusing on the administrative problems associated with the retroactive application of Windsor and urging IRS not to retroactively apply Windsor to qualified retirement plans. [\[4\]](#)

Plan Amendments

The guidance states that whether a plan amendment is required depends on the terms of the plan. For example, as of June 26, 2013, if a plan's terms define a marital relationship

by reference to section 3 of DOMA, [5] or are otherwise inconsistent with the outcome of Windsor, the guidance in Revenue Ruling 2013-17, or the Notice, an amendment would be required. An amendment is also required if a plan sponsor chooses to apply the rules with respect to married participants in a manner that reflects the outcome of Windsor for a period prior to June 26, 2013.

However, if a plan's terms are not inconsistent with Windsor (for example, the term "spouse," "legally married spouse" or "spouse under Federal law" is used in the plan without any distinction between a same-sex spouse and an opposite-sex spouse), the guidance in Revenue Ruling 2013-17, or the Notice, an amendment generally would not be required -- but the plan must be operated in accordance with the Notice. The guidance notes that in such circumstances a clarifying amendment may be useful for plan administration.

If an amendment is required, the deadline to adopt the amendment is the later of (1) the otherwise applicable deadline under section 5.05 of Revenue Procedure 2007-44, or (2) December 31, 2014. [6]

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endnotes

[1] Notice 2014-09 is available here: <http://www.irs.gov/pub/irs-drop/n-14-19.pdf>.

[2] For the Institute's Memorandum on the impact of the Windsor decision 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] Revenue Ruling 2103-17 is available here: <http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>. 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.

[4] See [Memorandum](#) to Pension Members No. 58-13, Bank, Trust and Retirement Advisory Committee No. 43-13, Operations Committee No. 58-13, Transfer Agent Advisory Committee No. 86-13 [27755], dated December 11, 2013.

[5] In Windsor, the Supreme Court held that Section 3 of DOMA was unconstitutional. Section 3 provided that in determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word "marriage" means only a legal union between one man and one woman as husband and wife, and the word "spouse" refers only to a person of the opposite sex who is a husband or wife.

[6] Revenue Ruling 2007-44 provides, in relevant part, that an interim amendment generally is required by the later of (1) the end of the plan year in which the change is effective, or (2) the due date for the employer's tax return that includes the date the change is first effective.

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