



## IRS Revenue Ruling on DOMA and Qualified Plans

The IRS issued [Revenue Ruling 2013-7](#) on August 29, 2013, announcing that all legal same-sex marriages will be recognized for federal tax purposes. The ruling applies to all federal tax provisions where marriage is a factor. The ruling was issued in response to the Supreme Court’s recent decision in *United States v. Windsor*, declaring Section 3 of the federal Defense of Marriage Act (“DOMA”), which limited the term “spouse” to a person of the opposite sex, as unconstitutional.

### The Ruling Applies to All Same-Sex Marriages

Similar to the *Windsor* decision, the ruling is limited to same-sex marriages and does not include civil unions or domestic partnerships. However, unlike *Windsor*, which only extended federal marriage benefits to same-sex couples residing in states recognizing same-sex marriages, the IRS ruling applies to *all* same-sex married couples, regardless of where they live. In implementing this rule of uniformity, the IRS expressly recognized the administrative challenges that would otherwise be placed on plan sponsors.

### The Ruling Must Be Applied Prospectively

As of September 16, 2013, the ruling must be applied prospectively. As it relates to qualified plans, by this date, such plans must recognize all valid same-sex marriages and treat same-sex spouses as a spouse for purposes of satisfying the federal tax laws relating to qualified retirement plans. This will affect a number of retirement plan provisions that relate to spouses, including: QJSA, QPSA, payment of a death benefit, Hardship Distributions, Rollovers, QDROs, and Attribution rules.

### The Ruling May Be Applied Retroactively

The ruling may be also be applied retroactively, and affected taxpayers are permitted to file new or amended returns choosing to be treated as married for federal tax purposes for any or all years still open under the statute of limitations. This will generally apply to the 2010, 2011, and 2012 tax years.

 **Key Point:** The retroactive application does not currently extend to matters relating to qualified retirement plans or other tax-favored retirement arrangements. The IRS intends to issue further guidance on this issue and has stated it will take into account the potential consequences of a retroactive application, including its effect on plan sponsors, the plans or arrangements, employers, and affected employees and beneficiaries.

The IRS expects to address plan amendment requirements and any necessary corrections relating to plan operations for periods before the future guidance is issued. The IRS did not provide a timeframe for the issuance of this guidance, but expects the guidance to provide sufficient time for plan amendments and any necessary corrections.

### Summary of Changes to Qualified Plans

QJSA and QPSA	For plans providing for a spousal annuity, such as pension and money purchase plans, same-sex spousal consent will be required
Payment of Death benefit	Death benefit payable to same-sex spouse unless consent is provided to another beneficiary
Hardship Distribution	Same-sex spouse must be recognized as primary beneficiary for hardship distributions
Rollovers	Spouses, including same-sex, may rollover plan distributions to IRA or an employer plan
Loans	Plans requiring spousal consent must include same-sex spouses
QDROs	Same-sex spouse may obtain a qualified domestic relations order

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