

## Supreme Court Ruling on DOMA and Qualified Plans

The United States Supreme Court, in a recent decision, declared Section 3 of the federal Defense of Marriage Act (“DOMA”) unconstitutional. The definition of marriage in Section 3 of DOMA provides that the term “spouse” only applies to a person of the opposite sex who is a husband or a wife.

The ruling, *United States v. Windsor*, was limited to same-sex marriages and the Supreme Court did not address civil unions or domestic partnerships. Further, the Supreme Court did not opine on Section 2 of DOMA which authorizes states to honor, or not honor, same-sex marriages of other states. In short, this decision means that in states that recognize same-sex marriages, same-sex couples are entitled to marriage benefits under federal law.

This decision 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. Guidance will be required from the Department of Labor and the Internal Revenue Service on a number of issues, including how ERISA and the Code should apply to plan sponsors based in a state that does not recognize same-sex marriages performed in another state.

An important question for the IRS is whether the application will be retroactive. Internal Revenue Code Section 7805(b) provides the Service with a great deal of discretion in establishing whether the rules will be prospective or retroactive. For example, Rev. Rul. 2005-23, limited retroactive application of the Supreme Court’s 2004 decision in the *Central Laborer’s Pension v. T.E. Heniz* case. We expect the IRS to provide guidance on the effective date, plan provisions

(including any required amendments), and the impact of the ruling on plan administration.

QUALIFIED PLANS SUMMARY (applicable in states that recognize same-sex marriages)

	DOMA Changes
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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