



DOMA Guidance for ICMA-RC Plan Sponsor Clients

On August 30, 2013, the Treasury Department and the IRS provided some welcome guidance regarding federal treatment of same-sex marriages following the Supreme Court's Windsor decision striking Section 3 of the Defense of Marriage Act ("DOMA"). Specifically, the guidance made clear that the "state of celebration" will establish whether same-sex married couples are entitled to be treated as spouses for federal tax purposes. Where the legally married same-sex couples currently live will not matter: their federal tax status will be the same as the federal tax status for married opposite-sex couples.

The guidance also made clear that only a union specifically called "marriage" in the relevant state or country would be considered a marriage for federal tax purposes. Thus, a civil union or a registered domestic partnership, or other non-marital formal relationship, will not be considered a marriage for federal tax purposes.

The guidance is effective September 16, 2013, but may be relied upon for prior periods. So, at least by September 16, plans should begin providing same-sex spouses the same rights as opposite-sex spouses, including Qualified Domestic Relations Orders ("QDROs"), Required Minimum Distribution rights, rollovers, and unforeseeable emergency withdrawals. Also by September 16, subject to further IRS guidance, plans should also have procedures in place to obtain spousal consent from same-sex spouses where the rules or plan provisions require spousal consent (including, for example, the designation of a non-spouse beneficiary for plans that have adopted the Qualified Joint and Survivor Annuity requirements).

Retirement plan sponsors in states that *do not* celebrate or recognize same-sex marriages should consult with their internal or local counsel to determine how to navigate divergent state and federal treatment of same-sex marriages.

Retirement plan sponsors in the District of Columbia and in states that *do* celebrate or recognize same-sex marriages should also consult with their internal or local counsel and *should consider taking the following steps*:

- **Obtain same-sex marriage information from employees and modify payroll systems accordingly**
Employers should have a means of identifying plan participants who are in same-sex marriages. For instance, if an employer has been requiring same-sex spouses to complete domestic-partner information, the employer will now need to distinguish between those employees that are actually married and those that are in true domestic-partner relationships.
- **Review plan documents and procedures:**
 1. Plan sponsors should carefully review all retirement plan documents, to identify any definitions of "marriage" and "spouse" that need updating. Employers using ICMA-RC's model plan documents, without modification, can rest assured that the plan document is consistent with the new federal definition of spouse. Plan sponsors using individually designed plan documents will need to identify any required changes, and make the necessary operational changes, by September 16, 2013.

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2. Particular areas to review, to the extent not handled by ICMA-RC for the plan sponsor, are:
 - Benefit-distribution materials and procedures
 - Minimum required distributions materials and procedures
 - QDRO materials and procedures
 - Open enrollment materials
 - Beneficiary designation forms and procedures
- Plan sponsors of individually designed plans should consider removing references to DOMA, even if the reference is implicit, such as a statement that “whether a person is married will be determined in accordance with federal law.”
- Plan sponsors should ensure that Human Resources materials and manuals also are updated to be consistent with the changes to Plan materials and procedures.

IRS Resources:

- **August 30, 2013 Guidance:**
<http://www.irs.gov/pub/irs-drop/rr-13-17.pdf>
- **Same-Sex Couples FAQ:**
<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Same-Sex-Married-Couples>
- **Domestic Partner FAQ:**
<http://www.irs.gov/uac/Answers-to-Frequently-Asked-Questions-for-Registered-Domestic-Partners-and-Individuals-in-Civil-Unions>