KRAVITZ

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Update: Impact of the U.S. Supreme Court DOMA Decision on Retirement Plan Sponsors

Background:

On June 26, 2013, the U.S. Supreme Court issued a decision on same-sex marriage which has broad implications for retirement plan sponsors. In U.S. v. Windsor, the Court ruled unconstitutional Section 3 of the Defense of Marriage Act (DOMA), which denied federal benefits and protections to married same-sex couples even in states where those marriages are legally recognized.

What Does it Mean for Retirement Plan Sponsors?

For plan sponsors , legally married same-sex and opposite-sex spouses must be treated equally under ERISA law, and are entitled to the same spousal benefits. This includes, but is not limited to, the following changes:

- A same-sex spouse is now entitled to a participant's death benefits under a retirement plan
- For Cash Balance and defined benefit plans, a same-sex spouse is entitled to a qualified joint and survivor annuity (QJSA) or qualified preretirement survivor annuity (QPSA)
- In all retirement plans where a spouse is the default beneficiary, same-sex spouses will be recognized, and they must consent to any changes to beneficiary designations
- A same-sex spouse now qualifies as an alternate payee under a qualified domestic relations order (QDRO)
- Plan participants can receive hardship distributions for a same-sex spouse's medical, tuition or funeral expenses
- Spousal consent for loans and other qualified plan distributions applies equally to same-sex spouses

The Treasury Department and the IRS have issued guidance stating that the DOMA ruling covers all same-sex marriages entered into in the US, its territories, or in a foreign country; however it does not cover domestic partnerships or civil unions. Further, the law is applicable even if a legally married same-sex couple resides in a state that does not recognize the validity of same sex marriages. We are still awaiting guidance on whether the IRS will apply the DOMA decision retroactive to June 26, 2013, and how that would affect plan sponsors and participants.

What Should Plan Sponsors Do Now?

We recommend the following initial action steps:

1. Ensure that appropriate spousal consent is obtained when benefit elections are made by participants that are known to be married, including obtaining notarized signatures.
2. Obtain same-sex marriage information from plan participants and beneficiaries. Update beneficiary designation forms for employees in same-sex marriages.
3. Review corporate and human resources policies and procedures related to spouses and domestic partners, removing any DOMA-related language.
4. Prepare for employees asking questions about rights to various retirement plan benefits.

Kravitz will be able to offer you consulting services in partnership with legal counsel once further IRS guidance becomes available. We will review your plan document and SPD (summary plan description) to determine what changes and/or amendments should be made for compliance with post-DOMA regulations. This may include eliminating DOMA-related language and modifying certain provisions. Plan documents for non-qualified plans should also be reviewed.

We will communicate with you regularly regarding the implications of this ruling as we continue seeking concrete guidance from the IRS and the Department of Labor. If you have any questions, please contact your Kravitz Consultant.

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