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PENSION ANALYST COMPLIANCE BULLETIN

Prudential
Bring Your Challenges

U.S. Supreme Court rules that all states must license and recognize same-sex marriages

On June 26, 2015, the U.S. Supreme Court ("the Court") issued its decision in *Obergefell v. Hodges* ("the *Obergefell* decision") and ruled that states must:

- Issue marriage licenses to same-sex couples, and
- Recognize same-sex marriages performed in other states.

This decision came on the second anniversary of the *Windsor* decision. In that decision, the Court ruled that Section 3 of the Defense of Marriage Act (DOMA), which recognized only opposite sex spouses for federal purposes, was unconstitutional. During the intervening two years, the number of states legalizing same sex marriages had almost tripled, from 13 and the District of Columbia to 37 and the District of Columbia. As a result of the ruling, the 13 states that did not already issue marriage licenses to same-sex couples were required to do so beginning no later than July 21, 2015. The Commonwealth of Puerto Rico has determined that it is also bound by this decision.

Impact on plan administration

Broadly-speaking, this ruling should streamline retirement plan administration for most plan sponsors and recordkeepers. However, some types of plans and plan sponsors may need to undertake greater efforts than other plans and sponsors to come into compliance with the decision. The impact of this decision on various plan types is described in the chart below. In general, the impact should be the same on both defined contribution and defined benefit 401(a)-qualified plans, as well as 403(b) plans.

Plan Type	Likely Impact
Corporate/Tax-Exempt Employer Plans -- Single Employer and Multiple Employer Multiemployer Plans Governmental Plans in states that already allowed or recognized same-sex marriages Church Plans	• Should make administration easier as once an employee/member is married in one state, s/he will remain married no matter where s/he relocates. • Tax-reporting should be easier, especially for multi-state plans since same-sex couples will be considered married for both federal and state purposes in all 50 states; no more disjoints. • Distribution forms and other employee/member communications may need to be revised to remove references to tax disjoints and make the marriage references more neutral.
Governmental Plans in states that did not previously allow or recognize same-sex marriages	• Will need to extend spousal benefits mandated under state law to same-sex spouses. • Tax-reporting should be easier – same-sex couples will be considered married for both federal and state purposes. • Distribution forms and other employee communications may need to be revised to remove references to tax disjoints and make the marriage references more neutral. • Beneficiary designations that name someone other than the spouse will need to be reviewed and consent obtained, if required under state law, or the beneficiary changed.

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Domestic partner and civil union laws are not affected by the ruling

It is important to note that this decision did not impact state or local domestic partner or civil union laws. States and localities that have such laws are not required to remove them. In fact, some of these laws are designed to accommodate opposite sex partners as well as same-sex partners, especially those who have reached Social Security Retirement Age.

If a plan currently contains provisions that extend spousal-type coverage to civil union or domestic partners, the sponsor has the option of retaining or eliminating those provisions. Naturally, all potential plan amendment activity in this regard should be carefully reviewed with legal counsel familiar with applicable state laws and the plan sponsor's benefit packages.

Plan sponsors should keep in mind that the federal government does not treat civil union or domestic partners as spouses for purposes of federal law such as the Internal Revenue Code and ERISA. Registered domestic partnerships and civil unions that are not marriages under state law are not considered marriages for purposes of:

- Default beneficiary designations;
- Designation of beneficiaries other than the participant's spouse, which requires spousal consent;
- Spousal death benefits such as the Qualified Preretirement Survivor Annuity (QPSA);
- Default forms of payment such as the Qualified Joint and Survivor form, especially from defined benefit and money purchase plans;
- Election of an optional form of payment, which requires spousal consent;
- Other provisions that require spousal consent (e.g., loans, withdrawals);
- Eligibility to elect a rollover to a qualified plan;
- Eligibility for hardship withdrawals for payment of a spouse's medical, tuition, or funeral expenses; and
- Calculation of required minimum distributions (RMDs).

In addition, the *Obergefell* decision does not impact state laws that automatically converted civil union or domestic partner relationships to civil marriages in Connecticut, New Hampshire, Washington, Delaware, and Rhode Island. Those civil marriages are still considered marriages for federal and state purposes.

Retroactive effect

As was the case with the *Windsor* decision, the retroactive effect, if any, of the *Obergefell* decision is unclear. While IRS Notice 2014-19 made it clear that the *Windsor* decision applied only prospectively for purposes of plan qualification, it did not address its application with respect to actual plan benefits provided under the terms of a plan. Theoretically, participants or surviving same-sex spouses could make claims for changes to distributions that were made before either Supreme Court decision in violation of the spousal coverage rules. These claims could go back as far as 2004, when Massachusetts became the first state to legalize same-sex marriages.

Plan sponsor next steps

Plan sponsors should review their plan records to determine if marital status indicators must be updated for any employees or participants. All changes to participants' marital status should be promptly forwarded to the plan's recordkeeper.

Sponsors should also review their plan documents to determine if any amendments are needed or desired. Particular attention should be paid to any civil union or domestic partner coverage in a plan. In addition, governmental plans maintained under state laws that did not previously recognize same-sex marriage may need to be revised to properly reflect the *Obergefell* decision. Plan sponsors may need to distribute participant communications to explain changes that are made to their plans as a result of this ruling.

Prudential Retirement is available to support plan sponsors in making required changes to documents or plan administration.

Compliance Bulletin by Prudential Retirement
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