



PENSION ANALYST COMPLIANCE BULLETIN



IRS guidance on recognition of same-sex marriages may require quick action

On August 29, 2013, the IRS released [preliminary guidance](#) regarding the recognition of same-sex marriages for federal tax purposes. This guidance included two sets of Frequently Asked Questions (FAQs), one for [same-sex spouses](#) and the other for [domestic partners and civil union partners](#).

In general, this guidance provides that for all federal tax purposes, the IRS will look to the jurisdiction (state, District of Columbia, territory or country) in which the marriage was celebrated to determine the legality of a same-sex marriage. For purposes of administering qualified retirement plans (401(a) plans, 403(b) plans, 457(b) plans, and IRAs) this is good news for plan sponsors. However, with this news comes the challenge of implementation, since the IRS guidance provides that this “state of celebration rule” is effective September 16, 2013.

Open questions

The IRS does acknowledge that there are still open questions regarding the application of these rules to qualified retirement plans, for which they plan to issue additional guidance. These questions include:

- How to apply this guidance to periods prior to September 16, 2013.
- Plan amendment requirements, including the timing of any required amendments.
- How to correct plan operations, if necessary, for periods prior to the issuance of additional guidance.

The IRS has not provided any indication of the possible timing for issuing this additional guidance.

Required actions

Beginning September 16, 2013, regardless of plan document provisions, a qualified plan must treat same-sex spouses as “spouses” 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).

To the extent a nonqualified plan’s provisions are tied to a related qualified plan, these issues may flow through to the nonqualified plan as well.

Registered domestic partnerships and civil unions that are not marriages under state law are not considered marriages under this guidance.

Prudential Retirement is currently assessing its policies and procedures to identify changes required by this guidance and will keep you apprised of future developments.

Compliance Bulletin by Prudential Retirement

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