

DB digest

Best Practices for Pension Administration

UPCOMING KEY DATES

5/15/15

File PBGC Form 10 if the 4/15/15 required quarterly contribution was missed by more than 30 days, unless PBGC Form 200 was already filed. (This filing may be waived for certain small plans.)

6/30/15

Deadline for submitting applications for opinion/advisory letters for preapproved plans for the plans' second 6-year remedial amendment cycle.

To download a PDF of the DB calendar, please go to: <http://tinyurl.com/ppzusjt>

Same-sex marriage and defined benefit plans

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Unless you've been in a coma for the last few years, you've heard about the Supreme Court's repeal of Section 3 of the Defense of Marriage Act (DOMA) on June 26, 2013. Section 3 of DOMA prevented the federal government from recognizing marriages between same-sex couples with regard to federal laws or programs, even if the couple was considered legally married in their home state. This section was deemed unconstitutional by the U.S. Supreme Court, as it violated the constitution's promise of equal protection under the Due Process Clause of the Fifth Amendment. The repeal of Section 3 prohibits federal law from discriminating against marriage when it is legal under state law, meaning that same-sex spouses are eligible for the same protection as an opposite-sex married couple with regard to retirement benefits when the marriage is legal in the state in which they were wed. To add an additional layer of complexity, we are still awaiting additional guidance from the IRS and DOL with regard to the effective date of the changes (i.e., whether they will be effective June 26, 2013, retroactively, or another date yet to be determined). Currently, jurisdictions where marriage licenses are issued to same-sex couples include 37 states and the District of Columbia. All of those 38 jurisdictions recognize the validity of their licenses with the exception of Kansas. Obviously, the list of states where same-sex marriage is legal is expected to change in the future, looking at historical trends.

We work in the world of retirement plans. We know this repeal has an impact on the plans we administer, but how exactly are they affected? What steps can we take now to ensure that we are legally compliant with regard to this repeal?

1. Review plan documents and Summary Plan Descriptions

Take a look at the definition of "spouse" in the plan document. Was it written based on the DOMA definition like many qualified plans were required to be? If so, it should be amended. The spousal definition needs to be written so that same-sex spouses are granted the same protection as traditional spouses. Per IRS Revenue Ruling 2013-17, effective September 16, 2013, the state where the marriage takes place (i.e., the "state of celebration") rather than the state of residence determines whether a same-sex couple is entitled to spousal rights and obligations. If you made amendments to the plan after the repeal of DOMA but before the IRS ruling 2013-17, you may need to make adjustments to the spousal definition if it was written based on the state of residence. If the plan doesn't define "spouse," there is no plan amendment required.

Example of a non-compliant spousal definition: *"Spouse is defined by federal law or as defined by the Defense of Marriage Act."*

Example of a compliant spousal definition: *"Spouse is anyone who marries another person in a state or foreign jurisdiction that recognizes the marriage (same-sex or opposite-sex), regardless of state of residence."*

2. Review policies and procedures for spouses and domestic partners

Gather up your procedural documents for benefit calculations, qualified domestic relations orders (QDROs), required minimum distributions (RMDs), hardship withdrawals, etc. A divorcing same-sex spouse will now be entitled to a portion of the participant's benefit if there is a QDRO submitted. Additionally, administrators could also be presented with QDROs by couples who divorced prior to the repeal of DOMA. With regard to IRS minimum distribution rules, the same-sex spouse of a participant passing away prior to commencing retirement benefits will be able to defer commencement of survivor benefits until the participant would have reached age 70 ½. Previously, the benefit payment to a same-sex spouse would need to commence within one year of the participant's death, and the benefit would have been subject to incidental death benefit rules, which also no longer apply to same-sex spouses.

3. Review retirement packages and forms for compliance with post-DOMA regulation

Under all defined benefit plans, the automatic form of payment for a married participant is a qualified joint and survivor annuity (QJSA), unless waived by the spouse. Before DOMA was overturned, these annuity benefits were not required to be offered to same-sex spouses. Benefit distribution packages should eliminate

language that is not inclusive of same-sex spouses in the QJSA notice, beneficiary designation forms, and spousal consent forms, among others. Keep in mind that additional review may be required effective September 16, 2013, for participants in legally recognized same-sex marriages if a non-spouse beneficiary was named as the primary beneficiary. If this is the case, payment may not be made to the non-spouse beneficiary unless the same-sex spouse waived his or her spousal rights.

4. Communicate changes to benefit plans and policies and obtain same-sex marriage information from participants

Once changes have been made to plan documentation, policies and procedures, and forms, communicate with participants how the repeal impacts their benefits and the subsequent changes that have been made. Administrators may want to consider targeted communications to participants most likely affected by these changes by looking at participants identified as being in a domestic partnership, etc. Keep in mind that participants in a particular plan may live in a state that recognizes same-sex marriage and other participants may not. Additionally, even if all participants did live in one state, it is possible that a participant was married in a state that recognizes same-sex marriage and relocated to a state that does not. Participant communications may need to be customized accordingly. On a similar note, processes should be developed to identify married participants (same-sex and opposite-sex alike) and gather proof documentation. Marriage certificates and licenses will be especially important, as the state of marriage and current residence, as well as date of marriage, will play an important role in administration of the plan.

It's overwhelming, I know. The above steps are guidelines to navigate the very complex nature of DOMA repeal, but are not meant to be a comprehensive list. Legal counsel may need to be sought, especially if faced with any requests or inquiries into retroactive benefits by participants. In this changing landscape of regulation and its effect on plan sponsorship, the only thing that is certain is change.

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