

[IRS Issues Post-Windsor Guidance for Qualified Plans](#)

On April 4, 2014, the IRS issued [Notice 2014-19](#) as a follow-up to [Revenue Ruling 2013-17](#) regarding the Supreme Court's decision in the *U.S. v. Windsor* DOMA case. While Rev. Rul. 2013-17 gave general tax-status guidance resulting from the *Windsor* decision, Notice 2014-19 specifically focuses on Section 401(a) qualified plans (including 401(k) plans).

The notice generally provides for the following:

- **General Effective Date.** Participants (and their spouses) who are in same-gender marriages generally must be treated as married for all purposes under a qualified retirement plan (including a 401(k) plan) as of June 26, 2013 (the date of the *Windsor* decision).
- **Optional Effective Date.** A sponsor of a qualified plan may elect to recognize only same-gender marriages of participants as of June 26, 2013 *if* they live in a state that recognizes same-gender marriages. For participants who live in a state that does not recognize same-gender marriages, a sponsor of the plan is permitted to recognize their marriages as of Sept. 16, 2013 (the date Rev. Rul. 2013-17 was issued). A plan amendment would be required to reflect the use of this optional effective date.
- **Optional Retroactive Effective Date.** A sponsor of a qualified retirement plan may elect to recognize same-gender marriages as of a date that is *prior* to June 26, 2013 for *some or all purposes* under the plan (as long as all qualification requirements of the Code are satisfied). A plan amendment would be required to reflect the use of the optional *retroactive* effective date.
- **Amendment of Plan Definitions.** If the plan defines “spouse,” “legally married spouse,” “spouse under federal law,” etc., in a manner consistent with *Windsor* (or does not define those terms), then the plan does not need to be amended (so long as the plan has been properly administered). However, if the plan's definitions of these (or other) terms are not consistent with *Windsor*, then the plan must be amended.
- **Timing of Plan Amendments.** In general, amendments to qualified retirement plans are due by Dec. 31, 2014.

Notice 2014-19 does not include plans that are not qualified under Section 401(a), such as 403(b) and governmental 457(b) plans. However, these plans must generally follow the Code's rules regarding the definition of spouse after *Windsor*. Therefore, sponsors of such plans should consider the guidance in Notice 2014-19 when determining whether to amend their plans.

While NAPA does not expect any further guidance from the IRS on *Windsor*, we anticipate that the Department of Labor will issue additional guidance focused on ERISA-covered retirement plans.

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