

## **DOMA Decision: Assessing Its Impact**

The U.S. Supreme Court's decision in *United States v. Windsor*\* holding Section 3 of the federal Defense of Marriage Act (DOMA) unconstitutional means that same-sex marriages are recognized for purposes of federal law. The decision affects qualified retirement plans in several key areas.

**Spousal consents.** Where spousal consents are required for certain plan-related actions — such as a retirement distribution other than a qualified joint and survivor annuity (QJSA), naming someone other than the participant's spouse as the beneficiary of a retirement plan account, and taking certain plan loans — those consents must be obtained from same-sex spouses.

**Required minimum distributions (RMDs).** The RMD rules generally are more liberal for retirement plan participants who are married than for those who are not. Be prepared to document the marital status of retirees in same-sex marriages — both those who are currently receiving RMDs from your plan and those who will soon have to take them.

**Qualified domestic relations orders (QDROs).** Plan procedures for QDROs may have to be updated. Domestic relations orders may give a spouse, former spouse, child, or other dependent (an "alternate payee") the right to share in the plan participant's retirement benefits. The plan administrator — often the employer — has to determine if the order is qualified before distributing any plan benefits to an alternate payee.

Following the decision, the IRS issued guidance\*\* saying that same-sex couples legally married in jurisdictions that recognize their marriages will be treated as married for federal tax purposes, regardless of whether the state they live in recognizes same-sex marriages. Qualified retirement plans must comply with this guidance as of September

16, 2013. The IRS plans to issue further guidance addressing retroactive application and plan amendment requirements, among other items.

\* *United States v. Windsor*, 570 U.S. \_\_ (2013)

\*\* IR-2013-72, Rev. Rul. 2013-17