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BENEFITS ALERT: Same-Sex Marriage

Retirement Plans Must Adjust

Recent guidance from the IRS highlights the fact that, **effective September 16, 2013**, pension and annuity plans need to treat same-sex marriages the same as opposite-sex marriages for a number of purposes.

In particular, Plans must treat a participant as being married if the participant got married to someone of the same sex in a state that recognizes same-sex marriage (e.g., New York, Delaware, and most recently, New Jersey), even if the participant lives in a state that does not (e.g., Pennsylvania).

Plan Administration

Survivor Annuities (qualified joint and survivor annuities, optional joint and survivor annuities and qualified pre-retirement survivor annuities): Plans that provide these benefits must offer them to participants in same-sex marriages.

Spousal Consent: Wherever required in a plan, participants in a same-sex marriage must have their spouse consent. *E.g.*, when obtaining a loan, designating a beneficiary, or electing a non-survivor annuity form of benefit.

Required Minimum Distributions: Whether determining life expectancy or when to start distributions, plans must treat same-sex spouses the same as an opposite-sex spouse when applying these rules.

QDROs: Same-sex spouses must have a plan-approved QDRO in order to be entitled to any of the participant's benefits upon divorce.

Rollovers: Surviving same-sex spouses will be able to rollover a participant's benefit to an IRA or another plan.

Plan Amendment

For plans that limit the definition of “spouse” to an opposite-sex spouse, defer to the plan’s governing law, or defer to the participant’s state of residence, the trustees must amend the plan to recognize same-sex spouses.

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