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Alerts

Repeal of DOMA: Impact on Retirement Plans

What was repealed?

The U.S. Supreme Court ruled in *United States vs. Windsor* that Section 3 of the Defense of Marriage Act (DOMA) was unconstitutional. Section 3 dealt with the definition of marriage, as a legal union between one man and one woman... and further defined the word “spouse” to be a person of the opposite sex who is a husband or wife. The court’s decision had a tremendous impact in a variety of areas, including on retirement plans.

What has transpired to-date?

Thus far guidance on the impact from two of the agencies responsible for regulating retirement plans has been issued, including:

- On August 29, 2013, the IRS issued Revenue Ruling 2013-17;
- On September 18, 2013, the DOL issued Technical Release 2013-04.

On October 4th, in follow up to the IRS’ Revenue Ruling, the American Society of Pension Professionals and Actuaries (ASPPA) submitted a “comment letter” to the IRS detailing their recommendations on the forthcoming guidance the IRS has indicated they’ll issue. Generally speaking, they’re recommending the impact be made prospectively rather than retroactively, that *pre-Windsor* actions stand, and that no interim amendments be required to retirement plans.

How does the Repeal Impact Retirement Plans?

Generally, basically (and a whole lot of other caveats here!):

- Beneficiary designations;
- Joint and Survivor Annuity Payments or Waivers;
- Consent for Participant Loans;
- Attribution rules for Highly Compensated Employee Determination;
- Attribution rules for Key Employee determinations;
- Attribution rules for Controlled group and Affiliated Service Group determinations;
- QDRO’s and their taxation;
- Hardship Distributions;
- Required Minimum Distributions;
- Plan document amendments.

What is Pinnacle’s “best practice” recommendation?

- Be aware of the issues affected by same-gender marriages;
- Seek counsel when an issue arises that may be impacted;
- Watch for additional guidance. IRS’ Employee Plan News is a good source.
 - <http://www.irs.gov/Retirement-Plans/Employee-Plans-News>