

**TECHNICAL RELEASE 2013-04**

DATE: SEPTEMBER 18, 2013

SUBJECT: GUIDANCE TO EMPLOYEE BENEFIT PLANS ON THE DEFINITION OF “SPOUSE” AND “MARRIAGE” UNDER ERISA AND THE SUPREME COURT’S DECISION IN UNITED STATES V. WINDSOR.

I. INTRODUCTION

On June 26, 2013, the Supreme Court of the United States ruled, in *United States v. Windsor*, that section 3 of the Defense of Marriage Act (DOMA) is unconstitutional. Section 3 provides that, in any Federal statute, the term “marriage” means a legal union between one man and one woman as husband and wife, and that “spouse” refers only to a person of the opposite sex who is a husband or a wife. The Supreme Court concluded that section 3 of DOMA “undermines both the public and private significance of state-sanctioned same sex marriages” and found that “no legitimate purpose” overcomes Section 3’s “purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect[.]” The President has directed the Attorney General to work with other members of the Cabinet to review all relevant federal statutes to ensure the Supreme Court’s decision, including its implications for federal benefits and obligations, is implemented swiftly and smoothly. Following consultation with the Department of Justice, the Department of the Treasury and other appropriate federal executive agencies, the Department of Labor (Department) is issuing this Technical Release to provide guidance to employee benefit plans, plan sponsors, plan fiduciaries, and plan participants and beneficiaries on the meaning of “spouse” and “marriage” as these terms appear in the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code that the Department interprets.¹

II. GUIDANCE

In general, where the Secretary of Labor has authority to issue regulations, rulings, opinions, and exemptions in title I of ERISA and the Internal Revenue Code, as well as in the Department's regulations at chapter XXV of Title 29 of the Code of Federal Regulations, the term “spouse” will be read to refer to any individuals who are lawfully married under any state law, including individuals married to a person of the same sex who were legally married in a state that recognizes such marriages, but who are domiciled in a state that does not recognize such marriages.² Similarly, the term “marriage” will be read to include a same-sex marriage that is legally recognized as a marriage under any state law. This is the most natural reading of those terms; it is consistent with *Windsor*, in which the plaintiff was seeking tax benefits under a statute that used the term “spouse”; and a narrower interpretation would not further the purposes of the relevant statutes and regulations.

¹ Reorganization Plan No. 4 of 1978 transferred the authority to interpret certain provisions of title I of ERISA that have parallel language in the Internal Revenue Code from the Secretary of Labor to the Secretary of the Treasury. At the same time, the authority to interpret certain provisions, such as section 4975 of the Internal Revenue Code, which parallels provisions in ERISA, was transferred to the Secretary of Labor. 5 U.S.C. App. 237 (2006). In addition, under 26 U.S.C. 414(p)(3), the Secretary of Labor has rulemaking authority for certain other provisions of the Code that use the term “spouse.”

² This definition of the term “spouse” also applies as the term is used in 5 U.S.C. § 8477(a)(4)(F).

For purposes of this guidance, the term “state” means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Northern Mariana Islands, any other territory or possession of the United States, and any foreign jurisdiction having the legal authority to sanction marriages.

The terms “spouse” and “marriage,” however, do not include individuals in a formal relationship recognized by a state that is not denominated a marriage under state law, such as a domestic partnership or a civil union, regardless of whether the individuals who are in these relationships have the same rights and responsibilities as those individuals who are married under state law. The foregoing sentence applies to individuals who are in these relationships with an individual of the opposite sex or same sex.

A rule that recognizes marriages that are valid in the state in which they were celebrated, regardless of the married couple’s state of domicile, provides a uniform rule of recognition that can be applied with certainty by stakeholders, including employers, plan administrators, participants, and beneficiaries.

A rule for employee benefit plans based on state of domicile would raise significant challenges for employers that operate or have employees (or former employees) in more than one state or whose employees move to another state while entitled to benefits. Furthermore, substantial financial and administrative burdens would be placed on those employers, as well as the administrators of employee benefit plans. For example, the need for and validity of spousal elections, consents, and notices could change each time an employee, former employee, or spouse moved to a state with different marriage recognition rules. To administer employee benefit plans, employers (or plan administrators) would need to inquire whether each employee receiving plan benefits was married and, if so, whether the employee’s spouse was the same sex or opposite sex from the employee. In addition, the employers or plan administrators would need to continually track the state of domicile of all same-sex married employees and former employees and their spouses. For all of these reasons, plan administration would grow increasingly complex, administrators of employee benefit plans would have to be retrained, and systems reworked, to comply with an unprecedented and complex system that divides married employees according to their sexual orientation. In many cases, the tracking of employee and spouse domiciles would be less than perfectly accurate or timely and would result in errors or delays.

Such a system would be burdensome for employers and would likely result in errors, confusion, and inconsistency for employers, individual employees, and the government. In addition, given the interconnectedness of statutory provisions affecting employee benefit plans, recognition of marriage based on domicile could prevent qualification for tax exemption, lead to loss of vested rights if spouses move, and complicate benefits determinations if spouses live in different states. All of these problems are avoided by the adoption of a rule that recognizes marriages that are valid in the state in which they were celebrated. That approach is consistent with the core intent underlying ERISA of promoting uniform requirements for employee benefit plans. In addition, Congress requires that the Department, the Department of Treasury/Internal Revenue Service (IRS) and the Department of Health and Human Services (HHS) coordinate policies with respect to the Health Insurance Portability and Accountability Act (HIPAA), which has parallel provisions in ERISA, the Code and the Public Health Service Act. HIPAA § 104. The Departments operate under a Memorandum of Understanding that implements section 104 of HIPAA, and subsequent amendments, and provides that requirements over which two or more Secretaries have responsibility (“shared provisions”) must be administered so as to have the same effect at all times. HIPAA section 104 also requires the coordination of policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement. Congress also provided that, whenever the Departments of Treasury and Labor are required to carry out provisions relating to the

same subject matter under ERISA, they shall consult with each other in order to, among other things, reduce conflicting requirements. ERISA § 3004(a); 29 U.S.C. § 1204(a). The Department has coordinated with Treasury/IRS and HHS in developing this Technical Release, and agreed with those agencies that recognition of “spouses” and “marriages” based on the validity of the marriage in the state of celebration, rather than based on the married couple’s state of domicile, promotes uniformity in administration of employee benefit plans and affords the most protection to same-sex couples.

III. FOR FURTHER INFORMATION

The terms “spouse” and “marriage” appear in numerous provisions of title I of ERISA and the Department's regulations. In addition to the above general guidance, the Department’s Employee Benefits Security Administration (EBSA) intends to issue future guidance addressing specific provisions of ERISA and its regulations. Additional information will be made available at www.dol.gov/ebsa.