

Marriage Requirements

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A. Background

This internal guidance provides guidance for establishing the existence of a marital relationship in PBGC-trusted plans. PBGC's general rule has been that we recognize a marriage based on the laws of the jurisdiction in which the marriage was celebrated. But, for purposes of interpreting any federal law, Section 3 of the Defense of Marriage Act of 1996 ("DOMA") defined "marriage" as a "legal union of one man and one woman as husband and wife" and "spouse" as "a person of the opposite sex who is a husband or a wife." 1 U.S.C. § 7. In accordance with DOMA, PBGC did not recognize same-sex spouses for purposes of paying spousal benefits, even if the marriage was recognized in the jurisdiction where it was celebrated. On June 26, 2013, the U.S. Supreme Court ruled that Section 3 of DOMA is unconstitutional. See *United States v. Windsor*, 133 S. Ct. 2675 (2013). As a result, PBGC changed its internal guidance effective June 26, 2013, to recognize same-sex marriages in our administration of benefits in terminated plans under the same rules applicable to opposite-sex marriages in all new marriage determinations.

On April 4, 2014, the IRS issued Notice 2014-19, which provided guidance on how qualified retirement plans should treat same-sex marriages following the Supreme Court's decision in *United States v. Windsor*. Under this guidance, plans could amend to reflect the outcome of the *Windsor* ruling as of a date earlier than June 26, 2013, and could choose for what purposes it would apply *Windsor* retroactively. Accordingly, PBGC changed its internal guidance so that, in a case where PBGC previously determined that it would not recognize a same-sex marriage but where PBGC still considered the case to be "open," PBGC would treat the marriage under the same rules applicable to an opposite-sex marriage.

On June 26, 2015, the U.S. Supreme Court held in *Obergefell v. Hodges* that state-level bans on same-sex marriages were unconstitutional. However, the Supreme Court did not address whether the *Obergefell* decision should be applied retroactively. PBGC's research and experience shows that the trend among federal and state courts is to interpret *Obergefell* as having a retroactive effect, and that states whose laws were unclear before *Obergefell* but where certain counties issued licenses to same-sex couples before June 29, 2015, the states recognize the validity of these marriages. As a result, PBGC is changing its internal guidance to clarify that PBGC recognizes same-sex marriages performed prior to *Obergefell* in our administration of benefits in terminated plans under the same rules applicable to opposite-sex marriages. This edition of the internal guidance will be effective for both marriage determinations made for the first time on or after the effective date of this internal guidance, and marriage determinations where PBGC or the prior plan administrator previously denied survivor benefits.

B. Scope and Effective Date

This internal guidance statement applies to participants in PBGC-trusted plans. It provides guidance on recognizing a marital relationship and applying a pension plan's length of marriage requirement, if applicable, in determining entitlement to benefits based on a marital relationship (e.g., QPSA and QJSA benefits). This internal guidance is effective upon issuance.

C. Internal Guidance

1. PBGC Recognition of a Marriage

General rule. PBGC recognizes a marriage based on the laws of the jurisdiction in which the marriage was celebrated. PBGC will recognize as marriages only those arrangements specifically denominated as marriages by state law – PBGC will not recognize other arrangements such as civil unions, domestic partnerships, etc., as marriages unless they are explicitly denominated as marriages by state law.

For purposes of this internal 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.

PBGC will not apply a plan's marriage requirements if they are inconsistent with the laws of the jurisdiction in which the marriage was celebrated.

In rare circumstances PBGC may not recognize a marriage, even though the marriage was valid where it was celebrated, if the marriage would not be recognized as valid by the United States (for example, a polygamous marriage). However, PBGC will not routinely attempt to establish that a marriage is not valid unless PBGC finds reason to suspect the validity of the marriage.

- a. **Marriage Determinations after the Effective Date of this Internal Guidance.** In any case in which a marriage determination has not previously been made, PBGC will apply the general rule in C.1. to determine if the spouse is entitled to benefits.
- b. **Marriage Determinations Where Spousal Benefits were Previously Denied.** Request guidance by emailing PSDGuidance@pbgc.gov in any case in which a spouse requests survivor benefits that were previously denied by PBGC or the plan. PBGC will re-examine the case and issue a revised marriage determination, if appropriate.
 1. **Retroactive QJSA Entitlement.** Any retroactive entitlements will be determined in accordance with Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities).
 2. **Retroactive QPSA Entitlement.** In cases where the spouse's QPSA entitlement was previously denied, PBGC will apply the general rule in C.1. to determine if the spouse of a participant who died without commencing benefits is eligible for QPSA benefits. If the spouse is determined to be eligible for the QPSA, and the Earliest QPSA Commencement Date (as defined in Internal Guidance Payment of

Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984) has already passed, PBGC will offer the surviving spouse the opportunity to commence QPSA benefits retroactively in accordance with Section D.6. of Internal Guidance Annuity Starting Dates.

- c. **Competing Beneficiaries.** If PBGC determines that a spouse previously denied benefits is entitled to benefits, and the spouse's entitlement would result in another beneficiary's losing entitlement to benefits, request guidance by emailing PSDGuidance@pbgc.gov.

If the plan or PBGC paid any death benefits other than the QPSA either to the spouse or to another beneficiary, request guidance by emailing PSDGuidance@pbgc.gov.

2. Length of Marriage Requirements

Pension plans may require a participant to have been married for up to one year (but no more than one year) before Qualified Preretirement Survivor Annuity (QPSA) or Qualified Joint and Survivor Annuity (QJSA) coverage applies. Plans with a one-year marriage requirement may deny QPSA benefits if a participant has not been married for a full year as of the participant's death. Plans are required to pay benefits in the form of a QJSA to a married participant (unless the spouse waives the QJSA). However, if the participant dies or the couple divorce before a full year of marriage, the spouse may not be entitled to survivor benefits.

To be valid, a plan's one-year marriage requirement must be explicit. If a plan is silent, no such requirement applies. A plan may impose a one-year marriage requirement for one type of spousal benefit but not another (for example, for QPSAs but not QJSAs).

A plan's length of marriage requirement may be less than one year. But because one year is the most common, length of marriage requirements are referred to in this internal guidance as one-year marriage requirements regardless of the length of the period. The same PBGC rules that apply to a one-year marriage requirement apply to a requirement that is less than one year.

a. Death or Divorce Prior to Date of Plan Termination (DOPT)

1. **Death.** PBGC will apply a plan's one-year marriage requirement to eligibility for QPSA or QJSA survivor benefits if a participant dies before DOPT and the spouse applies for benefits on or after DOPT.
2. **Divorce.** PBGC will apply a plan's one-year marriage requirement to eligibility for QJSA benefits if a couple divorces before DOPT.
3. **Qualified Domestic Relations Orders (QDRO).** If a QDRO assigns survivor benefits to a former spouse, PBGC will pay survivor benefits under the terms of a QDRO without regard to a plan's one-year marriage requirement if the participant's death occurs prior to DOPT.
4. **Conversion to Automatic Form of Benefit for Unmarried Participants.** If a plan so provides, a participant's benefit will revert to the automatic form of benefit payable to a single participant the first of the month after
 - the effective date of a divorce, or
 - the death of the spouse,

if the couple were not married for one year. If the divorce or death occurs after the one-year period has elapsed, PBGC will not change the participant's form of benefit.

b. Death or Divorce on or after DOPT

1. **Death.** PBGC will not apply a plan's a one-year marriage requirement to eligibility for QJSA or QPSA survivor benefits if a married participant dies on or after DOPT.
2. **Divorce.** PBGC will not apply a plan's a one-year marriage requirement to eligibility for QJSA survivor benefits if a married participant divorces on or after DOPT.
3. **QDRO.** If a participant divorces before DOPT and a QDRO assigns survivor benefits to a former spouse, PBGC will pay survivor benefits under the terms of the QDRO without regard to a plan's one-year marriage requirement if the participant's death occurs on or after DOPT.

3. Multiple Marriages

In cases where a participant has been married more than once, PBGC will generally assume that all previous marriages properly terminated in death or divorce and that the latest marriage is valid. However, if PBGC has evidence that calls into question the validity of a later marriage (such as a claim by a prior spouse that he or she remains married to the participant), PBGC may need to examine state laws to determine which of two competing spouses is entitled to spousal benefits.