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DOMA Defanged: Retirement Benefits for Same Sex Couples are Affected

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Once the Supreme Court defanged the Defense of Marriage Act in its Windsor decision, federal agencies began reviewing and revising their regulations to ensure that marriages of same sex couples would receive the same respect as opposite sex marriages.

Spouses of participants in certain types of employer-sponsored retirement plans are accorded special rights that are intended to ensure that the non-employee spouse is not unknowingly deprived of a retirement benefit because the participating employee made a benefit election without his or her spouse's knowledge or input.

The IRS, which has the task of regulating these retirement plans, has issued guidance to require retirement plans to make sure that any reference to marriage or spouse does not have the effect of disenfranchising same sex marriages or spouses from these rights and benefits.

Every married couple should look at the benefit election and beneficiary designation for each spouse when he or she begins to participate in an employer-sponsored plan and at each point in life where their economic circumstances change significantly, such as, at the time of a divorce, the birth or adoption of a child, or the illness or decline in health of one of the spouses.

This is particularly important for same sex couples, because they may have made choices to account for the discrimination they faced before Windsor that are not necessary, or appropriate, today.

This can be difficult to figure out. You can get help if you need it from an unbiased financial adviser or a lawyer who understands estate planning and the tax rules governing retirement plans.