

## EMPLOYEE BENEFITS

### THE IRS BACKTRACKS ON RETIREE LUMP SUM WINDOW PROHIBITION; SOME CONCERNS REMAIN

by Eric W. Gregory

In an about-face from 2015 guidance, the IRS announced in [Notice 2019-18](#) that no regulatory amendments are forthcoming to prohibit retiree lump sum windows for defined benefit pension plans. While the IRS cautioned that it will continue to look at the issue for other reasons, it will not hold that a retiree lump sum window is necessarily a violation of the required minimum distribution rules. In light of this latest guidance, employers who otherwise might not have explored retiree lump sum buyouts as a de-risking measure may want to re-consider the option.

#### Background on Retiree Lump Sum Buyouts and Notice 2015-49

Private Letter Rulings (“PLRs”) issued by the IRS in the 2012-2014 timeframe clearly provided that non-terminating pension plans could offer retirees currently receiving annuity payments a limited window period to convert their streams of payments into lump sums, if designed correctly to avoid prohibited payment and nondiscrimination issues. Nevertheless, in 2015, the IRS issued [Notice 2015-49](#) providing that existing regulations only permitted increased annuity payments and not accelerated lump sums. In that Notice, the IRS indicated that it intended to amend the required minimum distribution regulations under Internal Revenue Code (“Code”) Section 401(a)(9) to expressly prohibit replacing any form of annuity in pay status with a lump sum distribution or any other accelerated form of distribution. Those proposed regulations would be effective retroactive back to July 9, 2015.

Later, the IRS announced that plan sponsors requesting favorable determination letters for defined benefit plans had to specifically identify whether the plan had lump sum risk transfer language. Plans with risk transfer language that did not meet certain conditions could not receive a determination letter, and all other letters contained a caveat that the plan had no reliance that any risk transfer language satisfied the qualification requirements provided by the Code.

#### The Retraction of Intent to Amend Regulations in Notice 2019-18

After years of silence, the IRS finally ended the mystery with Notice 2019-18. In the new Notice, the IRS definitively announced that no amendments to the minimum distribution regulations prohibiting lump sum windows would be proposed. However, the IRS cautioned that it continues to consider whether such windows might violate nondiscrimination, minimum vesting, maximum benefit limit, qualified joint and survivor payment, and distribution restrictions provided elsewhere in the Code.

Additionally, the IRS will no longer include the previously mentioned caveat language on favorable determination letter rulings. The IRS, however, will not issue PLRs on retiree lump sum windows.

## Conclusion

Employers may want to check with their actuaries and attorneys in considering whether a retiree lump sum window might be appropriate in light of this latest development. Careful consideration should be paid to the nondiscrimination and other Code restrictions that the IRS continues to evaluate as a concern with retiree lump sum windows, especially in light of the fact that the IRS will—in no circumstances—grant a PLR on this subject. Nevertheless, the Notice re-establishes a potentially helpful tool for employers who wish to de-risk their pension plans.

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