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## The IRS Backtracks (Again!) on Retiree Lump-Sum Windows

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On March 7, 2019, [the IRS issued Notice 2019-18](#), which walked back its prohibition on offering retirees receiving annuity payments a time-limited opportunity to receive their remaining benefit value in one lump-sum payment (a “retiree lump-sum window”). While not a completely clear green light, this change is viewed by the IRS as a welcome opening for plan sponsors with intentions to de-risk their pension plans.

Pension de-risking is a term used to describe reducing the financial risk to the plan sponsor of maintaining a pension plan. Lump-sum windows, including those offered to retirees, are an effective pension de-risking strategy. A lump-sum window reduces pension volatility by reducing the plan’s overall liability and eliminating the investment, interest rate and longevity risk (i.e., the risk participants will live longer than expected) with respect to participants who take the lump sum. Reducing the participant headcount also reduces other financial risks and costs associated with maintaining a plan, such as the annual Pension Benefit Guaranty Corporation (PBGC) premium.

Pension annuitization is another strategy to de-risk pension plans. A pension annuitization generally occur in connection with plan terminations. But, since 2012, pension “lift outs” have become a common way to de-risk pension plans. An annuity “lift out” is when a plan purchases an annuity from an insurer and thereby transfers the plan’s obligations with respect to a covered group of participants. “Lift out” annuity transactions have generally been structured to cover retirees in pay status with relatively low dollar monthly benefits. A participant whose benefit has been properly annuitized is no longer a plan participant. As a result, a pension “lift out” generally reduces the same risks that a lump-sum window does.

### Background

Prior to 2012, it was generally accepted that retiree lump-sum windows were prohibited by the required minimum distribution (“RMD”) rules in Code Section 401(a)(9) because the Treasury Regulations addressing the RMD rules provide that once annuity payments begin the payment form and period can only be changed in accordance with certain limited exceptions.

Beginning in 2012, the IRS issued a line of private letter rulings (“PLRs”) to companies, including Ford and GM, which interpreted retiree lump-sum windows as meeting one of these exceptions. The PLRs took the position that the retiree lump-sum windows at issue were not prohibited by the RMD rules because they were an increase in benefit payments resulting from a plan amendment, which was one of the exceptions. These PLRs propelled retiree lump-sum windows into prominence as a de-risking strategy.

## Notice 2015-49

In 2015, however, [the IRS announced in Notice 2015-49](#) that retiree lump-sum windows were generally prohibited effective immediately except for certain windows already announced or approved and, further, that the IRS intended to amend the RMD rules to prohibit retiree lump-sum windows specifically. Notice 2015-49 also provided that the IRS would not issue PLRs or determination letters regarding the tax consequences of a retiree lump-sum window.

The prohibition on retiree lump-sum windows undoubtedly increased the pace of “lift out” annuitization transactions as the only way to de-risk retirees in pay status.

## Notice 2019-18

In Notice 2019-18, the IRS changed its view on this issue again. The IRS announced it no longer intends to amend the RMD rules as contemplated in Notice 2015-49 and, until further guidance is issued, will no longer assert that a retiree lump-sum window required by a plan amendment violates Code Section 401(a)(9). However, Notice 2019-18 provides that the IRS would continue to study whether any plan amendment requiring a retiree lump sum amendment continues to satisfy certain other code sections.

In the meantime, however, the IRS will also not issue PLRs on retiree lump-sum windows, but determination letters issued to plan sponsors will no longer have a caveat expressing any opinion on the tax ramifications of such a window, if applicable.

The upshot from Notice 2019-18 is that a retiree lump-sum window may again be a feasible strategy for plan sponsors interested in pension de-risking.

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