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Retiree Cashout Windows Once Again Viable

IRS has announced that it will not move forward with previously announced changes to the minimum distribution regulations that would have prohibited retiree lump-sum windows. Instead, it will continue to evaluate whether such windows satisfy other qualification requirements — but will not issue PLRs on them. IRS will no longer caveat determination letters to limit the opinion about the windows.

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Background

After several plan sponsors obtained private letter rulings (PLRs) acknowledging that accelerating plan distributions to retirees in pay status by offering lump sums to cash out remaining benefits would not violate the minimum distribution regulations under IRC 401(a)(9), many others followed suit in an effort to de-risk portions of their plan liabilities. We wrote about this development in our [August 27, 2012](#) and [April 23, 2014](#) issues of *For Your Information*.

Apparently unsettled by the escalating number of these windows, IRS Notice 2015-49 conveyed the position that the existing regulation only permits increased annuity payments and not accelerated payments and expressed the intent to propose revisions to the minimum distribution regulation to clarify this position. The revised regulation would have been effective immediately — July 9, 2015 — with exceptions allowed for situations where concrete steps had been previously taken to offer the windows. Details are in our [July 10, 2015](#) *For Your Information*.

This notice stalled new offers of lump sums to existing retirees, but no regulation ever materialized. As time passed, plan sponsors wondered if it ever would.

Notice 2019-18 retracts intent to propose regulations

After reciting the concerns leading to the 2015 notice, [Notice 2019-18](#) announces that there will be no amendments to the minimum distribution regulation to prohibit retiree lump sum windows. However, the Treasury Department and the IRS will continue to study the issue. In the meantime, they will not

assert that a retiree lump-sum window program causes a minimum distribution violation, but will continue to evaluate whether the plan, as amended, satisfies other requirements such as nondiscrimination, vesting, maximum benefit limits, qualified joint and survivor payment, and distribution restrictions for poorly funded plans.

During this period, the IRS will not issue PLRs on retiree lump-sum windows. However, if a taxpayer is eligible to apply for and receive a determination letter, the IRS will no longer include a caveat expressing “no opinion” on the tax consequences of such a window.

In closing

IRS Notice 2019-18 sets to rest the mystery as to whether IRS will continue to hold hostage employer efforts to de-risk using retiree lump-sum windows. Assuming any other concerns with a particular situation are addressed (such as nondiscrimination), employers will be able to once again add this feature to their list of options for controlling plan costs.

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