NELSON MULLINS

Comp and Benefits Brief

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Retiree Lump-Sum Windows- IRS Changes Position

The IRS and the Treasury Department released Notice 2019-18 on March 6, which serves as a retraction of prior administrative guidance under Notice 2015-49 and indicates that the IRS no longer intends to propose regulations that would limit the use of retiree lump-sum payment windows to accelerate ongoing annuity payments under qualified defined benefits plans. This welcome "change of mind" will provide plan administrators with a new pension plan "de-risking" strategy and the flexibility to adopt a lump sum window program which allows a lump sum settlement to be elected by participants already in pay status.

By way of background, prior to 2015, it was not uncommon for a pension plan to offer participants who were in pay status the opportunity to elect to "cash out" future annuity payments and receive a single lump-sum distribution. The IRS even endorsed such programs through a series of private letter rulings. The IRS then announced that it intended to propose amendments to the Code Section 401(a)(9) minimum required distribution regulations that effectively halted the ability to amend an ongoing pension plan to offer a lump sum distribution to replace a participant's future annuity payments. The new notice now clears a path for plan sponsors to explore when considering how to reduce future pension liabilities.

While the IRS and Treasury Department will continue to study the issue of retiree lump-sum windows, until further guidance is issued, the IRS will not take the position that a plan amendment providing for a retiree lump sum window programs will be deemed to violate minimum distribution requirements under Code Section 401(a)(9). Employers contemplating the offering of a lump sum window must still carefully review any plan amendment for compliance with other applicable qualified plan requirements.

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