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**IRS Will Not Amend
Regulations to Bar Lump-Sum
Payment Option to Retirees
Receiving Annuity Payments
(Notice 2019-18)**



In [Notice 2019-18, Offering a Lump-Sum Payment Option to Retirees Currently Receiving Annuity Payments under a Defined Benefit Plan](#), the Department of the Treasury and the Internal Revenue Service (“IRS”) announced

that they no longer intend to amend the required minimum distribution (RMD) regulations under Internal Revenue Code Section 401(a)(9) to address the practice of offering retirees and beneficiaries who are currently receiving annuity payments under a defined benefit plan a temporary option to elect a lump-sum payment in lieu of future annuity payments. Notice 2019-18 states that [Notice 2015-49](#) is superseded.

[In Notice 2015-49](#), 2015-30 IRB 79, the IRS had announced that it intended to propose amendments to the RMD regulations to provide that a lump-sum or other accelerated payment made pursuant to a plan amendment to a qualified defined benefit plan that gives a participant currently receiving annuity payments the right to convert those annuity payments into an immediate lump-sum or other accelerated payment would not be treated as a payment of increased benefits described in Reg § 1.401(a)(9)-6, Q&A A-14(a)(4). Consequently, a retiree lump-sum window would not be eligible for the Reg § 1.401(a)(9)-6, Q&A A-13(a) exception under which an annuity payment period may be changed in association with an annuity payment increase described in Reg § 1.401(a)(9)-6, Q&A A-14(a). Thus, under the amended regulations that IRS was considering, a qualified defined benefit plan generally would not be allowed to replace any joint and survivor, single life, or other annuity that is currently being paid with a lump sum payment or other accelerated form of distribution.

[In Notice 2015-49](#), IRS noted that the Code Sec. 401(a)(9) provisions and related regulations regarding pension plan annuities were crafted to provide an administrable way to ensure that a distribution of the employee’s benefit will not

be unduly tax-deferred. For example, a pension plan may not permit an employee who has passed the required beginning date to defer distribution of the bulk of the employee's benefit (and thus defer the tax) until later in life, while taking relatively small periodic benefits in the interim. Under the regulations, a defined benefit plan may not permit the annuity payment period to be changed or the annuity payment to be increased, except in a narrow set of circumstances specified in the regulations, such as in the case of retirement, death, or plan termination. And, if a participant has the ability to accelerate distributions at any time, then the actuarial cost associated with that acceleration right would result in smaller initial benefits, which contravenes the purpose of Code Sec. 401(a)(9).

Notice 2015-49 provided that IRS intended that these amendments to the regulations would apply as of July 9, 2015, except in the case of a retiree lump-sum window with respect to which specified concrete steps (adoption, specific authorization to adopt, collective bargaining, or written communication furnished to participants) with respect to the plan amendment had been taken, or a determination letter or letter ruling had been received, before that date. Notice 2015-49 further provided that IRS would not express an opinion in private letter rulings or determination letters as to the federal tax consequences of a retiree lump-sum window.

In Notice 2019-18, IRS stated that it no longer intends to propose the amendments to the regulations under Code Sec. 401(a)(9) that were described in Notice 2015-49. However, IRS will continue to study the issue of retiree lump-sum windows.

Until further guidance is issued, IRS will not assert that a plan amendment providing for a retiree lump-sum window program causes the plan to violate Reg § 401(a)(9), but will continue to evaluate whether the plan, as amended, satisfies the requirements of Code Sec. 401(a)(4), Code Sec. 411, Code Sec. 415, Code Sec. 417, Code Sec. 436, and other Code sections.



During this period, IRS will not issue private letter rulings with regard to retiree lump-sum windows. However, if a taxpayer is eligible to apply for and receive a determination letter, IRS will no longer include a caveat expressing no opinion regarding the tax consequences of such a window in the letter.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New

York and Florida. We are also able to practice in additional states that have passed firm mobility.

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