

IRS Permits Lump Sum Window Programs for Retirees in Pay Status

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Section 401(a)(9) of the Internal Revenue Code provides that, by the required beginning date, an employee's accrued benefit in a tax-qualified retirement plan must either be paid in full or commence to be distributed as a nonincreasing annuity. The Treasury Regulations issued under Code Section 401(a)(9) contain an exception to the nonincreasing annuity requirement which permits increases due to a plan amendment that increases plan benefits. Some practitioners have interpreted the exception to permit sponsors to amend a plan to offer a lump sum window program to retirees already in pay status (*i.e.*, the option for a retiree to convert the unpaid portion of her existing annuity into a one-time, lump-sum payment during a specified window period). In Notice 2015-49, the IRS announced its intent to amend the Treasury Regulations to expressly prohibit defined benefit plans from offering such lump sum window programs to retirees in pay status. In Notice 2019-18, the IRS retracted its prior guidance issued in Notice 2015-49 and stated that until further guidance is issued, the IRS will not assert that a plan amendment providing for such a lump sum window program causes the plan to violate Code Section 401(a)(9). During this period, the IRS will also not issue private letter rulings with regard to retiree lump sum window programs. [View Notice 2015-49](#). [View Notice 2019-18](#).