

July 13, 2015

IRS Signals End to Pension Lump Sum De-Risking for Retirees in Pay Status

In a series of private letter rulings issued during the last several years, the Internal Revenue Service ("IRS") approved programs allowing defined benefit plan sponsors to offer retirees in pay status the ability to convert existing annuity forms of payment into lump sums. These limited lump sum offers were viewed as a mechanism to de-risk the plan by transferring longevity risk and investment risk to the retirees. The basis for the private letter rulings was that the addition of the right to convert an annuity benefit into a lump sum payment was treated as an increase in benefits, which allowed the participant to change the annuity payment period pursuant to Treasury regulations issued under Section 401(a)(9) of the Internal Revenue Code.

On July 9, the IRS issued Notice 2015-49 ("Notice") announcing that the regulations under Section 401(a)(9) will be amended to prohibit defined benefit plan sponsors from replacing annuity payments currently being paid out with a lump sum payment or another accelerated form of distribution. The Notice indicates that revised regulations will reflect the intent to generally prohibit changes in the annuity payment period for ongoing annuity payments. The IRS intends to propose amendments that will preclude existing annuity payments from being accelerated, even where the plan is amended to increase benefits and the amount of the increase can be taken as a lump sum. The Notice does not affect lump sum de-risking programs aimed solely at terminated, vested participants who are not yet in pay status. The regulations, once promulgated, will have a retroactive effective date of July 9, 2015. Failure to comply with this guidance would result in a plan qualification failure.

The Notice does allow certain "existing" retiree lump sum offers to proceed if the plan amendment providing for the implementation of the lump sum election program meets one of the following four pre-Notice acceleration conditions:

- the plan amendment was adopted (or specifically authorized by a board, committee or similar body with authority to amend the plan) prior to July 9, 2015;
- a private letter ruling or determination letter was issued by the IRS prior to July 9, 2015, with respect to the plan amendment;
- a written communication to affected plan participants stating an explicit and definite intent to implement the lump sum election program was received by those participants prior to July 9, 2015; or
- the plan amendment was adopted pursuant to an agreement between the plan sponsor and an employee representative (with which the plan sponsor has entered into a collective bargaining agreement) specifically authorizing implementation of such a program that was entered into and was binding prior to July 9, 2015.

If you have any questions about pension de-risking, or any other employee benefits or executive compensation matter, please contact a member of Day Pitney's Employee Benefits and Executive Compensation group.

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