IRS Guidance on Retiree Lump Sums (and other de-risking guidance)

The ERISA Industry Committee
FocusOn Call

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Background

- Required minimum distribution rules generally prohibit undue deferrals of payments, §401(a)(9)
- However, RMD regulations prohibit changing the form of benefit once an annuity has begun
- Exceptions include:
  - retirement, death, or plan termination
  - paying increased benefits that result from a plan amendment

Background (cont'd)

- Beginning in 2012, the IRS issued 10 private letter rulings permitting lump sum offers to retirees during limited window
  - Window offer considered new benefit
- Retiree lump sum offers drew criticism from media and policy-makers
  - GM offer to 44,000 retirees in 2012 was initial target
- In October 2014, Senators Wyden and Harkin sent letter to Treasury, DOL, PBGC, and CFPB
  - "consider clarifying all of the circumstances and conditions under which de-risking strategies are permissible in the absence of a formal plan termination."

IRS Notice 2015-49

- IRS intends to amend the RMD regulations to prohibit acceleration of annuity payments
- Effective date: July 9, 2015, except if—
  - previously adopted (or authorized by body with authority to amend plan)
  - covered by previously-issued PLR
  - previously communicated to participants in definitive terms
  - previously adopted in collective bargaining

Follow-Up Questions

- Why no comments yet?

- When will regulations be proposed?
  - recall Notice 96-8 announced anticipated regulations on whipsaw
- Lump sum offers in connection with plan termination?
  - Notice appears focused on exception in regulations for increased benefits, not exception for plan terminations

In other news....

- DOL Field Assistance Bulletin 2015-02
  - Addresses annuity selection for defined contribution plans
  - Makes clear that duty to monitor ends after liabilities transfer to insurance company under an annuity contract
  - no reason to apply standard differently to DB plans
- Connecticut adopts only one piece of National Conference of Insurance Legislators' model legislation
  - model legislation would have required lump sum offers and imposed disclosure obligations for annuitization
  - Connecticut merely protects group annuity benefits from creditors of annuitants

Questions?

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