United States Senate
WASHINGTON, DC 20510

March 27, 2019

The Honorable Steven T. Mnuchin
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Charles Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Mnuchin and Commissioner Rettig:

We write today regarding Notice 2019-18, which announced that the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) "no longer intend to amend the required minimum distribution regulations under §401(a)(9) of the Internal Revenue Code (Code)" for the purpose of prohibiting pension plans from offering lump-sum buyouts to retirees. This practice is particularly concerning for retirees who will once again be required to make critical decisions that could leave their retirement security at much greater risk without receiving sufficient information for making such decisions. Treasury and IRS announced the proposed prohibition four years ago in Notice 2015-49. The decision to reverse course on this issue, without providing any explanation for the reversal, is baffling and alarming.

A buyout is an offer by a pension plan to a retiree, who is already receiving pension benefits, for a lump-sum payment in lieu of future lifetime payments from the pension plan. Companies who sponsor pension plans generally offer lump-sum buyouts to improve their balance sheets and reduce the total liabilities of their pension plans. In doing so, however, they also transfer their risk to retirees that the retirees might outlive their savings. The complex actuarial formulas used to determine the immediate value of the lifetime pension benefit also often leave retirees who accept a lump sum offer with less money than they may have received otherwise.

Though not all lump-sum buyouts are bad for those retirees accepting such offers, the decision about whether to accept such a buyout offer is complex. In 2015, GAO published a report[1] that found that disclosures to retirees about buyout offers sometimes omitted key information and that retirees often did not fully understand the trade-offs involved in the choice they were given. The

[1] U.S. Gov't Accountability Office, GAO-15-74, Participants Need Better Information When Offered Lump Sums That Replace Their Lifetime Benefits (Jan. 2015) (noting that participants lacked crucial information needed to make an informed decision to accept a lump sum buyout and certain details regarding such offer were unclear).

underlying issues raised in the 2015 GAO report prompted the effective prohibition of the practice in Notice 2015-49, and these issues have yet to be resolved. Given that there has been no justification provided for changing this previously prohibited practice, we would like to understand why Treasury and IRS have changed course now. Please provide a briefing by no later than April 12th that answers the following questions:

1. When was the decision made to allow lump-sum buyout offers to retirees in pay status again? Who made this decision?

2. What prompted this decision? Was this decision made following meetings or correspondence with groups, individuals, or organizations? If so, identify the groups, individuals, and organizations.

3. Were any reports, analysis, or data considered or produced by Treasury or IRS in making this decision? If so, provide such reports, analysis, and data.

4. Has Treasury, IRS, or other parts of the Trump administration discussed any of the concerns that prompted Notice 2015-49?

5. Does Treasury, IRS, or other parts of the Trump administration have any plans to address the concerns that prompted Notice 2015-49?

6. What information will the Treasury and IRS look for as it "continue[s] to study the issue of retiree lump-sum windows" as announced in Notice 2019-18?

While we do appreciate that this administration plans to continue to study this issue, it provides cold comfort for those retirees who make irrevocable decisions that may result in outliving their assets. We strongly urge you to reconsider retracting the intent to propose regulations under section 401(a)(9) of the Code until such time that better protections are in place for our nation's retirees.

Thank you in advance for your prompt attention to this request. If you or members of your staff have any questions regarding this letter, please contact Kendra Isaacson, Senior Pensions Counsel, HELP Committee, Minority Staff, at (202) 224-6572 or Drew Crouch, Senior Tax and ERISA Counsel, Senate Finance Committee, Minority Staff, at (202) 224-4515.

Sincerely,

Patty Murray

Patty Murray
United States Senator
Ranking Member, Health, Education, Labor, and Pensions Committee

Ron Wyden

Ron Wyden
United States Senator
Ranking Member, Finance Committee