April 2, 2019

The Honorable Steven T. Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue NW
3330 Main Treasury Building
Washington, DC 20220

Dear Secretary Mnuchin:

We the undersigned retiree, labor and consumer organizations, representing the interests of millions of retirees covered by defined benefit pension plans in the United States, are writing to urge you to retract Treasury Notice 2019-18 and restore guidance preventing employers from offering a lump sum payment to retirees in lieu of their remaining annuity. We are concerned that the Treasury Department's reversal of the 2015 Notice will undercut lifetime retirement security for vulnerable retirees and surviving spouses across the country.

Four years ago, after studying the issue, the Treasury Department and the IRS issued Notice 2015-49 to announce their intention to amend the minimum distribution regulations under IRC Section 401(a)(9) to provide that "qualified defined benefit plans generally are not permitted to replace any joint and survivor, single life, or other annuity currently being paid with a lump sum payment or other accelerated form of distribution." The Notice filled in an important gap in the regulations' interpretation of section 401(a)(9), and we believe its reasoning -- which the new notice does not disclaim or further analyze -- was consistent with the purpose of section 401(a)(9).

The 2015 Notice was correct as a matter of law, but equally important, it provided important protections to participants. Except in rare situations—such as where an unmarried participant has a terminal illness and the plan annuity thus has little value—participants incur substantial economic, money-management, and legal costs when they elect a lump sum. Employers typically offer lump sum payments with the expectation that many participants will imprudently select a lump sum payout because they underestimate the economic value and legal protections of the annuity and overestimate their ability to invest and manage the lump sum. Lump sum buyouts typically end up as a windfall to companies and impair economic security for retirees. Indeed, the Government Accountability Office issued a 2015 report that confirmed that participants in pay status often suffer significant loss when they elect a lump sum during a temporary election "window."

We also are concerned that, in some cases, older retirees may no longer have the capacity to make complicated financial decisions and may rely on others who may not have their best interests in mind. For instance, financial advisors who will make substantial fees managing the distributed assets, and relatives who might benefit from an elderly parent receiving a six-figure payment, may exercise undue influence on such participants to elect a lump sum.

In short, we encourage the Department and other agencies to continue studying the issues related to "lump-sum windows," and not to retract Notice 2015-49, which correctly ended an abusive practice in which plan sponsors profited at the expense of plan participants. For all of these reasons, we urge you to rescind Treasury Notice 2019-18 and reinstate Notice 2015-49.

Respectfully,

AARP
Alliance for Retired Americans
National Retiree Legislative Network
Pension Rights Center