



WRNewswire

An AALU Washington Report

November 13, 2019
WRN 19.11.13

Impact of the Treasury Department's Final Regulations on Reportable Policy Sales on COLI/BOLI Marketplace

The Tax Cuts and Jobs Act of 2017 (the “**TCJA**”) modified the prior-law exceptions of the Transfer for Value rules (“**TFV Rules**”) to include a new reportable policy sale requirement that is applicable to all transfers for valuable consideration. In March, Treasury and the IRS proposed regulations detailing how this new provision interacts with existing TFV Rules. *This rulemaking has important implications for the company-owned life insurance (“**COLI**”) and bank-owned life insurance (“**BOLI**”) marketplaces and will affect the taxation of death benefits on some contracts.*

For readers unfamiliar with the TFV Rules, the tax code generally excludes the value of death benefits from taxable income. However, when insurance contracts are transferred or assigned in exchange for valuable consideration, the TFV Rules apply and limit the portion of the death benefit that is excludable for tax purposes. Unless an exception applies, under the TFV Rules the tax-free death benefit of a transferred life insurance policy may not exceed the sum of the consideration paid in exchange for the transferee to obtain the contract and the unpaid premiums which will now be paid by the transferee.

Prior to the TCJA, two critical exemptions to the TFV Rules excluded certain transactions involving life insurance contracts. Critically, these two exemptions

generally shielded COLI/BOLI policies acquired during ordinary-course mergers and acquisitions (“**Ordinary Course Transactions**”) from the TFV Rules’ tax burden.

The TCJA altered the framework for determining the amount of death benefits generally excluded from gross income, thereby potentially impacting the COLI/BOLI marketplace. The TCJA now requires a determination that the transaction is not a reportable policy sale before deciding whether the transaction falls under existing exemptions to avoid TFV Rules’ tax liability.

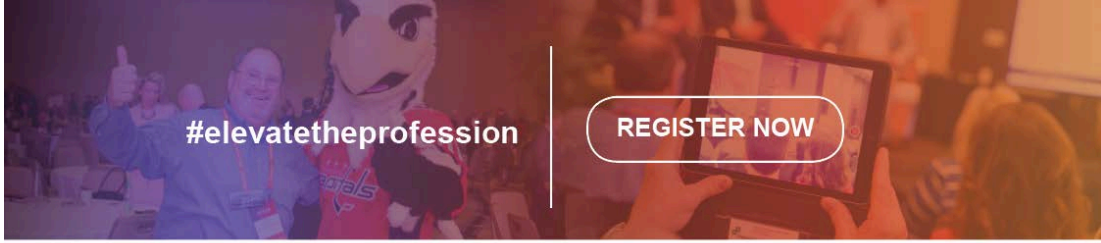
On Thursday, October 31, the Treasury Department finalized these rules (the “**RPS Final Rule**”) and published the regulations in the Federal Register. The RPS Final Rule became effective on October 31, 2019. However, taxpayers may choose to apply all of the rules retroactively to December 31, 2017 when the TCJA changes took effect.

[View full text of the analysis](#)

For any questions, contact [Armstrong Robinson](#), 202-772-2493.

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April 26-28, 2020 | Marriott Marquis | Washington, D.C.



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