



# An important and attractive change to structured settlement payments

By Steve Reinisch ■ April 26, 2021

A new statutory change to the Claim Resolution Structured Settlement Agreement (CRSSA), signed into law by Washington Governor Inslee April 16, 2021, provides a new lump sum payment option, in addition to initial payment and subsequent monthly payments. The lump sum payment provision now makes CRSSAs an even more attractive settlement option for employers and workers.

On January 1, 2012, the Washington legislature enacted RCW 51.04.063, the CRSSA statute. This ushered in an important additional settlement vehicle for workers and employers to utilize in Washington workers' compensation claims. The settlement provided that as of January 1, 2012, if the worker was 55 years of age or older, the employer and worker, with Board of Industrial Insurance Appeals (the Board) approval, could enter into a written settlement agreement that would limit the worker's future workers' compensation benefits to medical treatment only and result in immediate claim closure.

Currently, a worker must be at least 50 years old to qualify for a CRSSA. Prior to this most recent legislative change, a CRSSA had to include an initial payment, which could be up to six times the average monthly wage (currently not more than \$34,849.98) with at least two subsequent periodic monthly payments of between 25% of the average monthly wage up to 150% of the average monthly wage (\$1,452.08 to \$8,712.50). This payment schedule changes every year effective July 1 as the average monthly wage amount changes annually. The Board has a helpful website regarding CRSSAs that provides each year's anticipated initial and monthly payment ranges – [click here](#).

CRSSAs must still follow a specific written format and are reviewed by the Board. The Board will issue a Decision and Order either accepting or rejecting the CRSSA. It is common for the Board to reject CRSSAs for a variety of reasons. It is important to note however, that it is easy to remedy any objections the Board has noted. The parties to a CRSSA are allowed to resubmit the written settlement document for further Board review and approval. Following Board approval of the CRSSA, either party may withdraw from the CRSSA during a 30-day revocation period. Upon expiration of this 30-day period that starts to run from the date the Board has approved the CRSSA, the CRSSA payment(s) are

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## Lump-sum structured settlement payments (continued)

made according to the schedule noted in the settlement document. It is also important to note that although a lump sum CRSSA payment is now allowed, the parties may continue to choose to have the CRSSA paid through the initial payment, and at least two subsequent monthly payments, providing that the payment amounts comply with the statutory payment amount noted.

A separate Board approval of a CRSSA is outlined in RCW 51.04.063 if the worker is unrepresented.

This recently passed lump-sum settlement payment option will likely help to avoid Social Security offsets. More recently, the Social Security Administration has attempted to offset periodic CRSSA settlement payments against social security disability benefits received by a worker who has entered into a CRSSA. Previously, the Social Security Administration was not doing so. Pursuant to the Social Security POMS DI 52120.265 (D)(4) enacted on or about July 23, 2019, the Social Security Administration signaled that it intended to reduce a worker's Social Security disability payment to the extent that same worker was receiving monthly CRSSA payments. The Social Security Administration did not consider the initial payment as part of that offset. As a result, many workers and their attorneys have been more reluctant to enter into CRSSAs.

Here are some practice tips for those administering CRSSA settlements:

- Prior to entering into a CRSSA, always check the employer's excess coverage provisions, which state when an excess carrier may be involved. Depending on the size of the CRSSA, the employer's excess carrier may need to be involved in authorizing a CRSSA and determining the settlement amount and payment plan option.
- If the worker clearly is not receiving Social Security disability benefits and has no intention to apply for Social Security disability benefits, there is no risk that the Social Security Administration will claim an offset against the subsequent monthly CRSSA payments if the parties decide not to utilize the lump sum CRSSA payment provision. Similarly, once a worker reaches the Social Security retirement age, Social Security will not use receipt of CRSSA payments as an offset against Social Security retirement benefits.
- Before determining whether to pay a CRSSA in a lump sum or through an initial and subsequent monthly payments, always check with the employer's risk management team to ensure that the employer agrees to the payment method. Some employers prefer a lump sum payment in larger CRSSA settlement amounts if periodic payments would extend beyond the fiscal year in which the settlement was negotiated. A lump sum payment allows the employer to "close the books" on this particular claim liability group, rather than having to continue to carry the ongoing payment amounts forward in a subsequent fiscal year or years.

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- It is always helpful to have a good understanding of the worker's financial circumstances at the time of settlement negotiation. Some workers and their attorneys would prefer a lump sum payment option. In some cases, your defense counsel may be able to use the prospect of lump sum payment as another tool in the settlement negotiation process to reduce the dollar amount of the CRSSA because the worker will have the use of the settlement money immediately, rather than receiving smaller amounts over a lengthy period of time.

Should you have further questions regarding any aspect of CRSSAs, please do not hesitate to contact any of our Washington-practice attorneys at Reinisch Wilson Weier PC. ■

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