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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9310]

RIN 1545-BE72

Updated Mortality Tables for Determining Current Liability

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing mortality tables to be used in determining current liability for purposes of applying certain pension funding requirements. These regulations affect sponsors, administrators, participants, and beneficiaries of certain retirement plans.

DATES: Effective Date: These regulations are effective February 2, 2007.

Applicability Date: These regulations apply for plan years beginning on or after January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Bruce Perlin or Linda Marshall at (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 412 of the Internal Revenue Code provides minimum funding requirements with respect to certain defined benefit pension plans. Title I of the Pension Protection Act of 2006 (PPA), Pub. L. 109-280, 120 Stat. 780, makes extensive changes to the rules of section 412, generally applicable to plan years beginning on or after January 1, 2008. Except as otherwise stated, all references to section 412 in this document refer to section 412 without regard to the amendments made by Title I of PPA.

Section 412(1) provides additional funding requirements for certain defined benefit pension plans, based in part on a plan's unfunded current liability, as defined in section 412(1)(8). Pursuant to section 412(c)(6), if the otherwise applicable minimum funding requirement exceeds the plan's full funding limitation (defined in section 412(c)(7) as the excess of a specified measure of plan liability over the plan assets), then the minimum funding requirement for the year is reduced by that excess. Under section 412(c)(7)(E),

the full funding limitation cannot be less than the excess of 90% of the plan's current liability (including the expected increase in current liability due to benefits accruing during the plan year) over the value of the plan's assets. For this purpose, the term current liability generally has the same meaning given that term under section 412(l)(7).

Section 412(l)(7)(C)(ii) provides that, for purposes of determining current liability in plan years beginning on or after January 1, 1995, the mortality table used is the table prescribed by the Secretary. Under section 412(l)(7)(C)(ii)(I), the initial mortality table used in determining current liability under section 412(l)(7) must be based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993. For purposes of section 807(d)(5), Rev. Rul. 92-19 (1992-1 C.B. 227) specifies the prevailing commissioners' standard table used to determine reserves for group annuity contracts issued on January 1, 1993, as the 1983 Group Annuity Mortality Table (1983 GAM). Accordingly, Rev. Rul. 95-28 (1995-1 C.B. 74) sets forth two gender-specific mortality tables, based on 1983 GAM, for purposes of determining current liability for participants and beneficiaries (other than disabled participants).

Section 412(l)(7)(C)(iii)(I) specifies that the Secretary is to establish different mortality tables to be used to determine current liability for individuals who are entitled to benefits under the plan on account of disability. One such set of tables is to apply to individuals whose disabilities occur in plan years beginning before January 1, 1995, and a second set of tables for individuals whose disabilities occur in plan years beginning on or after such date. Under section 412(l)(7)(C)(iii)(II), the separate tables for disabilities that occur in plan years beginning after December 31, 1994, apply only with respect to individuals who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder. Rev. Rul. 96-7 (1996-1 C.B. 59) sets forth the mortality tables established under section 412(l)(7)(C)(iii).

Under section 412(l)(7)(C)(ii)(III), the Secretary is required to periodically (at least every 5 years) review any tables in effect under that subsection and, to the extent necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience. Section 412(l)(7)(C)(ii)(II) provides that the updated tables are to take into account the results of available independent studies of mortality of individuals covered by pension plans. Pursuant to section 412(l)(7)(C)(ii)(II), any new mortality tables prescribed by regulation can be effective no earlier than the first plan year beginning after December 31, 1999. Under section 412(l)(10), increases in current liability arising from the adoption of such a new mortality table are required to be amortized over a 10-year period.

Notice 2003-62 (2003-2 C.B. 576) was issued as part of the periodic review by the IRS and the Treasury Department of the mortality tables used in determining current liability under section 412(l)(7). At the time Notice 2003-62 was issued, the IRS and the Treasury Department were aware of two reviews of mortality experience for retirement plan participants undertaken by the Retirement Plans Experience Committee of the Society of Actuaries (the UP-94 Study and the RP-2000 Mortality Tables Report),² and commentators were invited to submit

any other independent studies of pension plan mortality experience. Notice 2003-62 also requested the submission of studies regarding projected trends in mortality experience. With respect to projecting mortality improvements, the IRS and the Treasury Department requested comments regarding the advantages and disadvantages of reflecting these trends on an ongoing basis through the use of generational, modified generational, or sequentially static mortality tables.

The IRS and the Treasury Department have reviewed the mortality tables that are used for purposes of determining current liability for participants and beneficiaries (other than disabled participants). The existing mortality table for determining current liability (1983 GAM) was compared to independent studies of mortality of individuals covered by pension plans, after reflecting projected trends for mortality improvement through 2007. The comparison indicated that the 1983 GAM is no longer appropriate for determining current liability.

Based on this review of the 1983 GAM compared to more recent mortality experience, the IRS and the Treasury Department have determined that updated mortality tables based on the RP-2000 Mortality Tables Report should be used to determine current liability for participants and beneficiaries (other than disabled participants).³

On December 2, 2005, the IRS issued proposed regulations under section 412(l)(7) (70 FR 72260) setting forth mortality tables, proposed to be effective for plan years beginning on or after January 1, 2007, to be used for nondisabled pension plan participants. The proposed regulations would have required plans of 500 or more participants to use separate mortality tables (derived from the RP-2000 mortality tables) for nonannuitant and annuitant periods. These separate tables were developed by projecting mortality improvement from a base year of 2007 over the period of the approximate expected duration of liabilities (7 years for the annuitant tables and 15 years for the nonannuitant tables). Small plans, defined as those with fewer than 500 participants (including both active and inactive participants), would have been permitted to use a combined table that applies the same mortality rates to both annuitants and nonannuitants. The proposed regulations provided for updated tables to be issued annually reflecting a new base year and using the projection factors described in the proposed regulations, to reflect expected improvements in mortality. Two comments on the proposed regulation were received, and no public hearing was requested or held.

On August 17, 2006, PPA was enacted. PPA contains a comprehensive revision of the minimum funding requirements for single employer plans, based on the calculation of a funding target that replaces the current liability calculation under section 412(l). These minimum funding provisions of PPA are generally effective for plan years beginning after December 31, 2007. Under section 430(h)(3)(A) as enacted in PPA, the Secretary is directed to prescribe by regulation the mortality tables used in determining present value or making any computation under the funding rules. The specifications for developing the mortality tables under section 430(h)(3)(A) are the same as the specifications set forth in section 412(l)(7)(C)(ii)(III).

Explanation of Provisions

These regulations set forth the mortality tables to be used under section 412(1)(7)(C)(ii) to determine current liability for participants and beneficiaries (other than disabled participants) for plan years beginning on or after January 1, 2007. These mortality tables are the same mortality tables that were published for 2007 in the proposed regulations, and are based on the tables contained in the RP-2000 Mortality Tables Report. The IRS and the Treasury Department have reviewed the RP-2000 mortality tables and the accompanying report published by the Society of Actuaries, and have determined that the RP-2000 mortality tables form the best available basis for predicting mortality of pension plan participants and beneficiaries (other than disabled participants) based on pension plan experience and expected trends. As under the mortality tables applicable for earlier plan years, the mortality tables set forth in these regulations are gender-distinct because of significant differences between expected male mortality and expected female mortality.

Of the two comments received on the proposed regulations, one commentator stated that requiring separate annuitant and nonannuitant mortality tables adds complexity without increasing accuracy. According to this commentator, the complexity could be avoided without loss of accuracy by using the RP-2000 blended table. This commentator suggested that, if separate annuitant and nonannuitant mortality tables are required, they should not be required to be used before 2008. The other commentator agreed with the use of separate annuitant and nonannuitant tables.

In a change from the proposed regulations, the IRS and the Treasury Department have chosen to permit all plans to use a blended table for 2007 rather than require the use of separate annuitant and nonannuitant tables. This decision was made because of the sweeping changes made to the minimum funding requirements for single employer plans by PPA that will generally become effective in 2008. The IRS and the Treasury Department believe that using separate annuitant and nonannuitant tables results in a more accurate measure of a plan's current liability. However, in view of the sweeping PPA changes and the resulting need to overhaul actuarial valuation systems, it was determined that all plans (and not just small plans) should be permitted to use the combined mortality tables for the 2007 plan year.⁴ It is expected that proposed regulations under section 430(h)(3)(A) providing mortality tables for purposes of determining present value under section 430 will require large plans to use separate annuitant and nonannuitant tables to achieve a more accurate measure of the present value of plan benefits.

If the separate tables for annuitants and nonannuitants are used, the nonannuitant mortality table is applied to determine the probability of survival for a nonannuitant for the period before the nonannuitant is projected to commence receiving benefits. The annuitant mortality table is applied to determine the present value of benefits for each annuitant, and for each nonannuitant for the period after which the nonannuitant is projected to commence receiving benefits. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits and a nonannuitant means a plan participant who has not yet commenced receiving benefits (e.g., an active employee or a terminated vested participant). Thus, for example, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, current

liability would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (i.e., so that the probability of an active male participant living from age 45 to the age of 55 for the table that applies in plan years beginning in 2007 is 98.59%) and the annuitant mortality table for the period ages 55 and above. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 65 and the annuitant mortality table for ages 65 and above. A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit which has commenced and a nonannuitant with respect to the balance of the benefit.

As under the proposed regulations, the annuitant and nonannuitant tables were developed by applying projected mortality improvements to the annuitant and nonannuitant tables from the RP-2000 Mortality Tables Report. Mortality improvement was projected forward from the base year of 2007 by 7 years for annuitants and 15 years for nonannuitants, to approximate an average expected duration of liabilities. The projection factors used are from Mortality Projection Scale AA, which was also recommended for use in the UP-94 Study and RP-2000 Mortality Tables Report.

The blended table provided under these regulations was constructed in the same manner as under the proposed regulations, by applying the nonannuitant/annuitant weighting factors published in the RP-2000 Mortality Tables Report. However, because the RP-2000 Mortality Tables Report does not provide weighting factors before age 50 or after age 70, the IRS and the Treasury Department have extended the table of weighting factors for ages 41 through 50 (ages 45-50 for females) and for ages 70 through 79 in order to develop the blended table.

For most plans, these regulations will be in effect only for the 2007 plan year because the minimum funding requirements enacted in PPA will replace the currently applicable minimum funding requirements for plan years beginning on or after January 1, 2008. For plans that remain subject to the pre-PPA requirements of section 412 after the 2007 plan year (see sections 104 through 106 of PPA), these regulations require that the mortality tables that will be provided pursuant to section 430(h)(3)(A) are to be used as the mortality tables that apply for determining current liability under section 412 for those later plan years.

Applicability Date

These regulations apply to plan years beginning on or after January 1, 2007.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of

proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Bruce Perlin and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.412(l)(7)-1 is added to read as follows:

§1.412(l)(7)-1 Mortality tables used to determine current liability.

(a) In general. The mortality tables set forth in paragraph (d) of this section are to be used in determining current liability under section 412(l)(7) for participants and beneficiaries (other than disabled participants) for plan years beginning in 2007. For plan years beginning on or after January 1, 2008, the mortality tables described in section 430(h)(3)(A) are to be used in determining current liability under section 412(l)(7) for participants and beneficiaries (other than disabled participants).

(b) Separate tables for annuitants and nonannuitants. The separate tables for annuitants and nonannuitants are used unless the plan applies the optional combined table pursuant to paragraph (c) of this section. If these separate tables are used, the nonannuitant mortality table is applied to determine the probability of survival for a nonannuitant for the period before the nonannuitant is projected to commence receiving benefits. The annuitant mortality table is applied to determine the present value of benefits for each annuitant, and for each nonannuitant for the period after which the nonannuitant is projected to commence receiving benefits. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits and a nonannuitant means a plan participant who has not yet commenced receiving benefits (e.g., an active employee or a terminated vested participant). Thus, for example, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (i.e., so that the probability of an active male participant living from age 45 to the age of 55 for the table that applies in plan years beginning in

2007 is 98.59%) and the annuitant mortality table for the period ages 55 and above. Similarly, if a 45-year-old terminated vested participant is projected to commence an annuity at age 65, current liability would be determined using the nonannuitant mortality table for the period before the participant attains age 65 and the annuitant mortality table for ages 65 and above. For purposes of this section, a participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit which has commenced and a nonannuitant with respect to the balance of the benefit.

(c) Optional combined tables. As an alternative to the separate tables specified for annuitants and nonannuitants as described in paragraph (b) of this section, the optional combined table, which applies the same mortality rates to both annuitants and nonannuitants, can be used.

(d) Mortality tables for 2007. As set forth in paragraph (a) of this section, the following tables are to be used for determining current liability for plan years beginning during 2007 in accordance with the rules of this section.

[SET AS TABLE]

Age

MALE

MALE

MALE

FEMALE

FEMALE

FEMALE

Non-Annuitant Table

Annuitant Table

Optional

Combined

Table

Non-Annuitant Table

Annuitant Table

Optional

Combined

Table

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(e) Effective date. This section applies for plan years beginning on or after January 1, 2007.

Linda M. Kroening,

Acting Deputy Commissioner for Services and Enforcement.

Approved: January 26, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

1 Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) sets forth funding rules that are parallel to those in section 412 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these regulations for purposes of ERISA, as well as the Code. Thus, these final Treasury regulations issued under section 412 of the Code apply as well for purposes of section 302 of ERISA.

2 The UP-94 Study, prepared by the UP-94 Task Force of the Society of Actuaries, was published in the Transactions of the Society of Actuaries, Vol. XLVII (1995), p. 819. The RP-2000 Mortality Table Report was released in July, 2000. Society of Actuaries, RP-2000 Mortality Tables Report, at <http://www.soa.org/ccm/content/research-publications/experience-studies-tools/the-rp-2000-mortality-tables/>.

3 Because of the enactment of PPA, the IRS and Treasury Department are not planning to complete a review of the section 412(l)(7)(C)(iii) mortality tables for disabled participants pursuant to section 412(l)(7)(C)(ii)(III). The IRS and Treasury Department will review recent mortality experience and expected trends for disabled participants to determine what mortality tables should be used for disabled participants under section 430(h)(3)(D) as added by PPA.

4 For most single employer plans, these regulations will be in effect only for the plan year beginning in 2007 because changes to section 412 made by PPA will eliminate the need for single employer plans to calculate current liability for plan years beginning on or after January 1, 2008. However, sections 104 through 106 of PPA provide later effective dates for the PPA changes to section 412 with respect to certain plans, and therefore those plans will continue to be required to determine current liability for some plan years beginning on or after January 1, 2008.

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