AMERICAN BENEFITS COUNCIL

January 13, 2009

Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Sir or Madam:

The American Benefits Council is writing to raise a critical issue arising under the proposed defined benefit plan funding regulations. The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than100 million Americans.

The recent economic downturn has put enormous financial pressures on companies, including pressures related to defined benefit plan funding obligations. These pressures have led to increased scrutiny of the proposed regulations. That scrutiny has, in turn, resulted in the identification of one key issue that was largely overlooked earlier. The issue relates to the election of the full corporate bond yield curve under Code section 430(h)(2)(D)(ii).

In general, a plan's funding target is determined based on specified interest rates, i.e., the first, second, and third "segment rate[s] with respect to the applicable month". See Code section 430(h)(2)(B). The segment rates for any month are defined in Code section 430(h)(2)(C) by reference to the "corporate bond yield curve for such month". Under Code section 430(h)(2)(E):

> the term "applicable month" means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month.

For example, assume a calendar year plan using a January 1 valuation date. The plan's funding target for, for example, 2009 may be based on the three segment rates as determined for any "applicable month", i.e., September, October, November, or December of 2008 or January of 2009. The applicable month is elected by the plan sponsor and must be used in all future years unless the IRS consents to a change.

For purposes of determining minimum required contributions, plan sponsors, however "may, in lieu of [using] the segment rates…, elect to use interest rates under the corporate bond yield curve." The proposed funding regulations interpret this rule to require that the corporate bond yield curve used must be the one "for the month preceding the month that includes the valuation date". Prop. Reg. § 1.430(h)(2)-1(e)(4). This means that if the plan sponsor of the plan in the above example elects the corporate bond yield curve, the plan sponsor must use the yield curve for December of 2008 and has no choice to use the yield curve for any other applicable month.

Briefly stated, there is no statutory basis for eliminating a plan sponsor's ability to use the corporate bond yield curve for any applicable month.

The statute permits the use of the corporate bond yield curve in lieu of the segment rates. That is all the statute says. Accordingly, it is clear that, if this election is made, the corporate bond yield curve is to be substituted for the segment rates wherever the segment rates are used in the statute. That would mean, of course, that the corporate bond yield curve for any applicable month" could be used. The statute does not say that if a plan sponsor elects to use the corporate bond yield curve, the plan sponsor loses its ability to elect an applicable month.

It is true that the proposed regulation is consistent with the explanation of the Pension Protection Act of 2006 prepared by the staff of the Joint Committee on Taxation. But that explanation, like the proposed regulation, has no basis in the statute. Nowhere in the statute is there a reference to the month specified in the proposed regulation. On the contrary, the entire structure of the Code section 430(h) is based explicitly on the use of interest rates—either segment rates or the corporate bond yield curve—for an applicable month.

Because of the recent drop in interest rates, this issue has enormous importance. For that reason, it is especially important that the statute be followed in a meticulous fashion. When billions of dollars turn on a discrete and narrow issue, it is critical that the issue be interpreted based on the words of the statute.

We thank you for your consideration of our views.

Sincerely,

James A. Klein

James A. Klein
President

cc: William Bortz
Marjorie Hoffman
James Holland
Nancy J. Marks
Linda Marshall
Martin Pippins
W. Thomas Reeder
Alan Tawshunsky
Harlan Weller