



August 27, 2007

Via Electronic Filing

CC:PA:LPD:PR (REG-143601-6)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Re: Proposed Regulations on Mortality Tables for Determining Present Value

Dear Sir or Madam:

The American Benefits Council (Council) appreciates the opportunity to comment on the proposed regulations concerning mortality tables used in making present value calculations for purposes of calculating funding requirements for defined benefit plans. 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 than 100 million Americans.

The Council recognizes the significant workload placed upon the Internal Revenue Service (Service) and the U.S. Treasury Department (Treasury) by the enactment of the Pension Protection Act (PPA) and applauds the Service and Treasury for providing guidance on mortality tables, including use of substitute mortality tables, in an expedited manner. However, the Council would encourage Treasury and the Service to make a few enhancements to the guidance which will enable more plan sponsors to use substitute mortality tables when appropriate. Before expressing our concerns and suggestions, we believe it is helpful to discuss some background.

### **Background**

The PPA made very significant changes to the funding rules governing the amount that a company is required to contribute to a defined benefit plan that it maintains. Under the new rules, a company's funding obligation is generally

based on the excess (if any) of the present value of the plan's liabilities over the value of the plan's assets.

A plan's liabilities are generally based on the value of life annuity benefits promised to participants. To value those life annuity benefits, it is necessary to make assumptions regarding how long plan participants are expected to live. The PPA generally directed Treasury to issue regulations setting forth mortality tables that plans would be required to use for this purpose.

However, the PPA also recognized that the mortality experience of some plans could be materially different from Treasury's table. For example, a plan may have a participant population that has, on average, an unusually short life expectancy. In such a case, use of plan-specific life expectancy data would produce a far more accurate valuation of the plan's liabilities than would Treasury's table. Use of Treasury's table, on the other hand, would artificially overstate the plan's liabilities, requiring the company to systematically overfund the plan.

Accordingly, the PPA generally permitted plans to use their own plan-specific mortality table under certain conditions. Those conditions include, in relevant part, (1) Treasury approval, and (2) the plan having a sufficient number of plan participants and a sufficiently long history to have "credible" plan-specific mortality experience. The proposed regulations provide guidance with respect to whether a plan has a "credible" mortality experience. In general, in order to have credible mortality experience with respect to males or females, the proposed regulations require a plan to have had at least 1,000 deaths of that gender within a four-year period.

### **Concerns Regarding Proposed Regulations**

The Council has three basic concerns regarding the proposed regulations. First, under the proposed regulations, only the very largest plans will be able to use a plan-specific mortality table. A very significant number of plans with thousands of participants will be unable to use their own plan-specific mortality table despite having life expectancies materially shorter than Treasury's table. This is not a technical point, but it is helpful background.

Second, from an actuarial perspective, there are two possible approaches to the determination of "credible" experience. The proposed regulations took one approach. Under that approach, a plan must have enough experience to demonstrate that its future experience is unlikely to deviate materially from its plan-specific table. There is, however, a different, actuarially sound approach to the credibility issue. Under this different approach, a plan should be permitted to use its own plan-specific mortality table whenever it can be shown with a very

high degree of confidence that the plan's own table is, with respect to the plan's population, materially more accurate than Treasury's table. In other words, under the proposed regulations, if a plan is not huge, it can be forced to use a table -- Treasury's table -- that is demonstrably less accurate and less reliable than its own table. In our view, this position does not reflect Congressional intent and should be modified.

The third concern relates to a more mechanical problem with the proposed regulations. The proposed regulations very appropriately have special rules for newly acquired plans. For example, if a company acquires a plan in a corporate transaction, the "buyer" can take into account pre-transaction deaths in determining whether the acquired plan has credible experience. However, the proposed regulations lack a reciprocal rule permitting a "seller" to use post-transaction experience. Assume, for example, that a plan has 20,000 active participants and 20,000 retired participants. Assume further that in the context of a corporate transaction, the plan splits into two plans and the company transfers one of the plans to the buyer with 10,000 active participants and 10,000 retired participants. Immediately before the transaction, the seller could use deaths among the 20,000 retirees to demonstrate compliance with the credibility requirement. Under the proposed regulations, any post-transaction deaths among the 10,000 transferred retirees (or the 10,000 transferred actives) could not be taken into account, solely because of the corporate transaction. This is a critical problem with the proposed regulations. The final regulations should permit the seller to take into account deaths among the transferred participants, as long as there is not a material difference between the transferred participants and the retained participants in terms of job classification, income levels, and industry.

Again, we appreciate the opportunity to comment on these mortality table issues. We believe that the American Benefits Council offers an important and unique perspective of the employer sponsors of retirement plans and we would be pleased to make this perspective and additional information available to Treasury and the Service. If this would be helpful, please call me at 202-289-6700.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson", written in a cursive style.

Jan M. Jacobson  
Retirement Policy Legal Counsel