AMERICAN BENEFITS
COUNCIL

March 29, 2017

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Internal Revenue Service
CC:PA:LPD:PR (REG-112324-15)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

**Re: Comments on Proposed Regulations to Update Mortality Tables Under
        Internal Revenue Code Section 430(h)(3) (RIN 1545-BM71)**

Dear Sir or Madam:

   The American Benefits Council (the "Council") appreciates the opportunity to
comment on the rules[1] proposed by the Department of the Treasury ("Treasury") and
the Internal Revenue Service (the "Service") with respect to the mortality tables that the
Secretary is required to prescribe and periodically revise under Internal Revenue Code
("Code") section 430(h)(3) for purposes of the pension rules, including funding, benefit
restrictions, and lump sum distributions. We recognize the tremendous amount of hard
work and time that Treasury and the Service have put into developing this proposal,
and we further appreciate the willingness of Treasury and the Service to engage in a
very constructive dialogue throughout this process of updating the mortality table
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 directly sponsor or
provide services to retirement and health plans that cover more than 100 million
Americans.

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[1] 81 Fed. Reg. 95,911 (Dec. 29, 2016).

SUMMARY OF THE COUNCIL'S COMMENTS

This letter covers our substantive concerns about the impact and operation of the rules. Our concerns about the process used in promulgating the regulations are discussed in a separate letter. As proposed, the mortality table regulations would create a large new burden on businesses that maintain defined benefit plans which, in turn, will materially affect businesses' ability to increase productivity, create jobs, and pursue opportunities. The Council has written to Treasury and the Service several times over the years expressing concerns about such possible effects of new mortality tables. In addition to our comments regarding process, the Council has the following substantive comments and concerns, each of which is discussed in further detail below:

- Due to the impact on business planning, a minimum of 18 months is needed between finalization of the regulations and their effective date.

- The proposed future mortality projections are overly speculative and inconsistent with Social Security Administration projections.

- To prevent delays in processing substitute mortality table applications, an automatic approval process is needed.

- If the proposed substitute mortality table application process is retained, adjustments are needed to the user fees to reflect the simplified process and the availability to smaller plans.

- Plans currently using substitute mortality tables should be grandfathered from the new substitute mortality table rules until their current substitute mortality tables expire.

- For substitute mortality tables, formulas should be provided rather than described.

DISCUSSION

Introduction to Substantive Issues with Proposed Changes to Mortality Tables

If Treasury and the Service, after having completed the requested economic analysis and compliance with the Executive Orders, proceed to implement the proposed regulation, we remain concerned that the proposed updates are based on the uncharacteristically controversial mortality assumptions used in the development of the RP-2014 Mortality Tables Report and the accompanying Mortality Improvement Scale MP-2014 Report (the latter of which was subsequently updated for 2015 and 2016).

A significant number of actuaries consider the methodology used to calculate rates of mortality and the mortality projection scale in the Society of Actuaries' ("SOA") 2014 reports to be problematic both procedurally and substantively. As we have previously observed, some critical projections used with respect to the construction of the base tables have turned out to be materially incorrect, as shown by data for pre-2014 years. Some of this has been corrected by the SOA in 2015 and 2016, but the other process shortcomings, such as the large amount of data that was disregarded, have never been remedied. We are concerned that the proposed regulations' use of the assumptions as is could overstate pension liabilities, causing defined benefit pension plan liabilities (and lump sums and other optional forms of payments) to be overvalued by tens of billions of dollars nationally. Such a result would in turn trigger a number of adverse effects, including forcing plan sponsors to overfund their plans and/or cut or freeze benefits. Plan sponsors would also face added pressure to take de-risking action with respect to their plans.

The following comments were prepared in coordination with our plan sponsors and our actuarial members who work with plan sponsors. As in the past, we hope to coordinate with Treasury and the Service as this rulemaking project progresses, and we would continue to offer our assistance as it may be helpful to Treasury and the Service.

1.   Need for a Minimum 18-Month Delay in Effective Date

We believe it is very important that there be a minimum of an 18-month period between the finalization of any regulations containing new mortality table rate assumptions and the effective date of those regulations for the following reasons:

- First, an earlier effective date would almost certainly leave insufficient time between publication of the final rules and the effective date of the rules. The new assumptions in the proposed regulations would have a significant effect on plan sponsors' funding obligations, and changes to a company's funding obligations have an effect on the company's entire corporate budget, disrupting or cancelling corporate growth initiatives and potentially having a deleterious impact on jobs. Accordingly, plan sponsors will generally need at least 18 months prior to the effective date to adjust business plans in order to take the new assumptions into account.

- Second, significant changes to (1) administrative and pension calculation systems and (2) valuation calculations and programs will be needed to comply with the regulations, adding to the need for an 18-month period between the regulations' finalization and effective date.

- Third, without an extension of the transition period, under the proposed regulations, plan sponsors wishing to use a substitute mortality table for the first year of the new tables will be effectively precluded from doing so until *after* the

effective date. The process to develop the needed experience studies will take months, likely followed by several more months of review by the Service, and possibly further followed by Service-required changes to the substitute table. All of this needs to be done far in advance of the beginning of the year so that companies can reasonably budget and make any changes to corporate initiatives which result from increased funding obligations. As noted, these changes are not simple and can have a far reaching impact on a company's operations. Yet with a proposed 2018 effective date, that process cannot feasibly be completed until well into 2018, long past the date for quarterly contributions for 2018 and the date that business plans for 2018 must be finalized. This is not a workable schedule. In effect, the timing would force employers to forego the benefits of a substitute mortality table that Congress required Treasury and the Service to effectuate.

We recognize that the statute requires mortality table revisions every 10 years. But there is no statutory requirement that the revisions be immediately and fully effective. Thus, we see no legal impediment to the 18-month period recommended above. For example, assume that the regulations were not finalized until January 15, 2018. In that situation, no one would contend that such regulations should be effective for 2018. So the 10-year requirement should clearly not be interpreted to require immediate application of rules issued too late to be appropriate for 2018.

2.   **Future Mortality Projections are Overly Speculative and Inconsistent with SSA Projections**

Under the proposed regulations, both the generally applicable mortality tables and any substitute mortality tables must reflect the mortality improvement rates contained in the Mortality Improvement Scale MP-2016 Report ("MP-2016 Report"). The MP-2016 Report includes a flat long-term mortality improvement rate of 1.0% to age 85, with linear decreases to 0.85% at age 95 and 0.0% at age 115.

As we have stated in comments the Council has previously submitted to Treasury and the Service, opinions about future rates of mortality improvement are inherently highly speculative and a wide range of views exists among experts. Three important reasons to question the mortality improvement rates contained in the MP-2016 Report are the following:

- Historical rates of mortality improvement have shown a more significant grade-down after age 85 than are reflected in the MP-2016 Report. Although this may seem like a minor point, it has a significant effect on defined benefit plan liabilities. Mortality rates at these ages are currently high and thus liabilities change more significantly when the MP-2016 mortality improvement rates are applied.

- In contrast to the MP-2016 Report, the Social Security Administration's ("SSA") mortality improvement projections at later ages (and in general) are more in line with long-term historical observations than shorter-term trends, which are more volatile. The SSA generally uses a lower average rate of long-term improvement (with a longer convergence period but more rapid grading to long-term rates). Although the SSA's rate of improvement varies by age, it is more equivalent to using a 0.75% long-term rate of mortality improvement than the 1.0% used in the MP-2016 Report.

- The SOA's demonstrated overreliance on pre-2006 mortality rate improvements continues to cast doubt on its future mortality rate improvement projections. In other words, the RP-2014 Mortality Tables Report was based on what has proved to be significantly overstated projections regarding mortality improvements between 2006 and 2014. Although the SOA has addressed these short-term overstatements through updates issued in 2015 and 2016, it has never revised the long-term 1% projected improvement rate that was determined at the same time that shorter-term improvement rates were overstated. This casts significant doubt on the 1% projection as likely overstating future mortality improvements.

3.   Processing of Substitute Mortality Tables

Code section 430(h)(3)(C) allows plan sponsors to submit to the Secretary a substitute mortality table based on a plan's own experience that may be used in lieu of the generally applicable mortality tables if certain criteria are met and the substitute table is approved by the Secretary. Rules regarding the development of substitute mortality tables for plans with full credibility are currently set forth in regulations that were published in 2008. The proposed regulations contain a number of revisions to the current rules. Moreover, the proposed regulations would accommodate the changes made by section 503 of the Bipartisan Budget Act of 2015, which allows for the use of substitute mortality tables by plans with partially credible mortality experience (in addition to those with full credibility).

As described in the preamble, "[t]he method for developing substitute mortality tables that is set forth in the proposed regulations is *simpler*"[2] than the method set forth under the existing rules (emphasis added). Very generally, instead of requiring the application of a graduation technique with respect to raw mortality rates, the proposed regulations would require a plan to multiply its experience and credibility-based mortality ratio (as defined in the proposed regulations) by a projected version of the generally applicable mortality table. The preamble notes that this change would "make it easier for plan sponsors to develop the substitute tables" and would also "make it

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[2] *Id*. at 95,914.

easier for the IRS to review applications to use substitute mortality tables."[3] Between the simplification of the development process and newly allowing plans with partial credibility to apply to use a substitute mortality table, Treasury and the Service "expect significantly more plan sponsors to request the use of substitute mortality tables."[4] Similarly, the Council is aware that many of our members would like to use the new process for plans with partial credibility.

We very much appreciate the changes that have been proposed to simplify the development of substitute mortality tables whether based on a plan's full or partial credibility. In fact, these simplifications underscore the need for a corresponding simplification in the process used to review applications that could avoid material burdens on the Service and plan sponsors, as well as avoid significant processing delays. As the Council has previously suggested, *in light of our concern over the very real possibility of significant processing delays, and because the proposed regulations provide for a substitute mortality table development process that is straightforward and formulaic, we would strongly support the use of "automatic approval" mechanisms to expedite the application review process.* For example, this automatic approval process could be implemented through the use of a standard attachment to the annual Schedule SB – similar to the *Schedule of Active Participant Data* or *Description of Weighted Average Retirement Age* – to document the plan experience and partial credibility used to generate substitute mortality rates.

3.   Reduced User Fee for Substitute Mortality Table Applications

As noted above, the proposed regulations would simplify the process that plan sponsors must use when choosing to develop their own substitute mortality tables. This simplified process should significantly reduce the amount of resources required by the Service to review each application for a substitute table. For this reason, we respectfully request that Treasury and the Service review the continued appropriateness of the current user fee amount, and reduce that fee by an amount that reflects the reduced resources required by the Service to review each application. (Obviously, if automatic approval is used, as we recommend, there would be no user fee involved.)

We also believe that a reduction in the user fee is appropriate because the proposed regulation would expand the available use of substitute tables to smaller plans with partially credible mortality data. The current user fee was based on a review of applications submitted by large plan sponsors with full credibility. We would suggest that, in addition to reducing the user fee due to the proposed regulations' simplification of the development process for substitute tables, Treasury and the Service should consider the introduction of tiered fees under which smaller plans applying based on

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[3] *Id.* at 95,916.

[4] *Id.*

partial credibility would pay a lower fee than larger plans submitting an application based on full credibility.

4. Request to Grandfather Existing Approved Substitute Mortality Tables

Under the proposed regulations, any substitute mortality table that is used for plan years beginning on or after January 1, 2018, must comply with the revised rules. As a result, plans that are currently using a substitute mortality table that was previously approved under the regulations published in 2008 would be required to resubmit an application using the revised methods. In some cases, a plan may have very recently had its substitute tables approved by the Service for up to a ten-year period. It would be very costly and burdensome for a plan sponsor wanting to continue its use of a substitute mortality table to conduct a new experience study and redevelop a proposed substitute mortality table before the term for its current substitute table, as initially approved by the Service, expires.

We therefore request that Treasury and the Service provide for a grandfathering provision under which plans that have obtained approval to use a substitute mortality table based on the 2008 regulations would be allowed to continue using such substitute tables until the term of use as permitted under the 2008 regulations expires, or at least during a reasonable transition period. Upon expiration, plans wishing to continue using a substitute mortality table would then be required to resubmit an application using the revised methods. In the case of a plan using a grandfathered substitute mortality table, the requirement for other plans in the controlled group to use substitute mortality tables based on partial credibility should be delayed for a reasonable period to allow such other plans to develop data and submit a written request to use a substitute mortality table.

5. For Substitute Mortality Tables, Formulas Should Be Provided Rather Than Described

Although the proposed regulations describe in words the necessary calculations, they leave numerical ambiguity, especially with respect to adjustments for people who leave on account of reasons other than death. For example, we would ask for the provision of explicit formulas such as:

Full credibility = FC = $1{,}082 \cdot [\sum_x \sum_j q^E_x E_{xj}] \cdot [\sum_x \sum_j q^E_x E_{xj} b^2_{xj}] \div [\sum_x \sum_j q^E_x E_{xj} b_{xj}]^2$
Where x indicates age, xj denotes the jth experience record at age x, E_{xj} is exposure for record xj, and b_{xj} is record xj's benefit amount.

Mortality ratio = $\hat{f} = [\sum_x \sum_j b_{xj} d_{xj}] \div [\sum_x \sum_j q^E_x E_{xj} b_{xj}]$
 = actual benefits for those who died ÷ expected benefits deaths

With $d_{xj} = 1$ if record xj died, 0 otherwise.

Partial credibility = Z = (Actual Deaths ÷ Full-credibility Threshold)$^{1/2}$ = $([\sum_x \sum_j d_{xj}] \div FC)^{1/2}$

Substitute mortality $= q_x^Z = Zf^\wedge q_x^E + (1-Z)q_x^E = q_x^E \cdot [1 + Z(f^\wedge - 1)]$

Numerical examples would also be helpful, including terminations by reason other than death. It would also be helpful for the proposed regulations to clarify that the rate at age 120 remains 1.00 to denote the end of the table, as opposed to being a probability subject to adjustment.

CONCLUSION

These regulations will place a significant new burden on plan sponsors. We thank you for your consideration of our comments and look forward to discussing these issues with you further.

Sincerely,

Lynn D. Dudley
Senior Vice President,
   Global Retirement and Compensation Policy