

## Part III – Administrative, Procedural, and Miscellaneous

### Comments On Mortality Tables

Notice 2003–62

The Internal Revenue Service and the Treasury Department request comments regarding the mortality tables used in determining current liability under § 412(l)(7) of the Internal Revenue Code and § 302(d)(7) of the Employee Retirement Income Security Act of 1974 (ERISA). The Service and Treasury anticipate that in no event will there be any change in the mortality tables for plan years beginning before January 1, 2005.

#### BACKGROUND

Section 412 of the Code and § 302 of ERISA provide minimum funding requirements with respect to defined benefit and money purchase pension plans. Section 412(l) of the Code and § 302(d) of ERISA provide additional funding requirements for certain underfunded defined benefit pension plans, generally based on a plan's unfunded current liability, as defined in § 412(l)(8) of the Code and § 302(d)(8) of ERISA.

Section 412(l)(7)(C)(ii) of the Code and § 302(d)(7)(C)(ii) of ERISA provide that, for purposes of determining current liability, the mortality table used shall be the table prescribed by the Secretary. These sections also set forth the basis for the Secretary to use in prescribing a mortality table. Under § 412(l)(7)(C)(ii)(I) of the Code and § 302(d)(7)(C)(ii)(I) of ERISA, the initial mortality table used in determining current liability under § 412(l)(7) of the Code and § 302(d)(7) of ERISA must be based on the prevailing commissioners' standard table (described in § 807(d)(5)(A) of the Code) used to determine reserves for group annuity contracts issued on January 1, 1993. Rev. Rul. 95-28, 1995-1 C.B. 74, sets forth two gender-specific mortality tables for this purpose.

Under § 412(l)(7)(C)(ii)(III) of the Code and § 302(d)(7)(C)(ii)(II) of ERISA, the Secretary of the Treasury is instructed 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) of the Code and § 302(d)(7)(C)(ii)(II) of ERISA further provide that such tables shall take into account the results of available independent studies of mortality of individuals covered by pension plans. Under § 412(l)(7)(C)(ii)(II) of the Code and § 302(d)(7)(C)(ii)(II) of ERISA, the earliest possible effective date for any new mortality tables is plan years beginning after December 31, 1999.

Section 412(l)(7)(C)(iii)(I) of the Code and § 302(d)(7)(C)(iii)(I) of ERISA provide that, in the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under § 412(l)(7)(C)(ii) of the Code and § 302(d)(7)(C)(ii) of ERISA) to determine current liability under § 412(l)(7) of the Code and § 302(d)(7) of ERISA for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

Section 412(l)(7)(C)(iii)(II) of the Code and § 302(d)(7)(C)(iii)(II) of ERISA provide that in the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under § 412(l)(7)(C)(iii)(I) of the Code and § 302(d)(7)(C)(iii)(I) of ERISA shall apply only with respect to individuals described in each subclause 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 § 412(l)(7)(C)(iii).

In Rev. Rul. 95-28, the Service and Treasury requested comments regarding mortality tables to be used for determining current liability for plan years beginning after December 31, 1999.

In Announcement 2000-7, 2000-1 C.B. 586, the Service and Treasury also requested comments regarding mortality tables to be used for determining current liability for plan years beginning after December 31, 1999, but also indicated that it was anticipated that in no event would there be any change in the mortality tables for plan years beginning before January 1, 2001. To date, no change has been made in the mortality tables issued in Rev. Rul. 95-28 or Rev. Rul. 96-7.

## INDEPENDENT STUDIES OF MORTALITY OF INDIVIDUALS COVERED BY PENSION PLANS

The Service and Treasury are aware of a number of reviews of mortality experience for retirement plan participants undertaken by the Retirement Plans Experience Committee of the Society of Actuaries. The most recent of these studies, titled the RP-2000 Mortality Tables Report, published in 2002 and based on pension plan experience for the years 1990-94, was submitted to the Secretary in response to Announcement 2000-7. The Service and Treasury invite commentators to submit any other independent studies of pension plan experience.

## REFLECTION OF MORTALITY TRENDS

As noted above, any updated mortality tables the Secretary issues are to reflect projected trends in mortality experience. In that regard, the Service and Treasury request the submission of studies regarding trends in mortality experience, whether or not the studies are limited to individuals covered by pension plans. However, to the extent that a study relating to mortality experience is not limited to individuals covered by pension plans, comments are requested about how such mortality trends might be modified to reflect the trends among individuals covered by pension plans.

To the extent the Service and Treasury determine that it is appropriate to project increased longevity in the future, it will be necessary to determine the methodology to use in incorporating this increased longevity into the tables. The Service and Treasury are aware that mortality trends may be reflected on an ongoing basis through the use of the following types of mortality tables:

- generational (i.e., tables that are updated each year through the use of prescribed projection factors. Thus, separate sets of mortality factors are determined for each year of birth.)
- modified generational (i.e., generational tables that are applicable for grouped calendar years of birth)
- sequentially static (i.e., tables that are applicable for all calendar years of birth that are updated periodically through the use of prescribed projection factors at prescribed times)

The Service and Treasury request comments on these methods and any other methods commentators believe appropriately reflect mortality trends. In particular, the Service and Treasury request comments on the relative administrative complexities of the various methods of reflecting mortality trends. In addition, with regard to modified generational tables, comments are requested as to the size of the calendar year groupings, and with regard to sequentially static tables, comments are requested as to how often such tables should be updated.

## OTHER FACTORS TO BE TAKEN INTO ACCOUNT

In addition to age and year of birth, there are other factors that have been demonstrated to be relevant in predicting an individual's mortality. For example, as noted above, the current mortality tables used for purposes of determining current liability are gender specific. Comments are requested as to the extent that separate mortality tables should be prescribed that take into account gender or other factors, with particular attention paid to the administrative issues in applying such distinctions. Comments in this regard are specifically requested as to the how it would be determined which category an

individual fits into, the extent to which an individual, once categorized, remains in that same category, the classification of individuals for whom adequate information is unavailable, whether distinctions are applicable to beneficiaries, and the extent to which distinctions may overlap or work at cross purposes. Some examples of factors that could be used to create separate mortality tables are the following:

- gender (i.e., male versus female)
- tobacco use (i.e., smoker versus nonsmoker)
- job classification (e.g., blue collar versus white collar)
- annuity size (i.e., high annuity amount versus low annuity amount)
- Income (i.e., high income versus low income)

Comments are also requested with regard to whether classification systems, if permitted, should be mandatory or optional.

#### COMMENTS REQUESTED

The Service and Treasury invite comments on the issues identified in this notice and other issues related to the mortality tables used in the determination of current liability. Comments should be submitted by December 31, 2003, and should reference Notice 2003-62.

Comments may be submitted to CC:PA:RU (Notice 2003-62), room 5203, Internal Revenue Service, Attention: SE:T:EP:RA:T:A1, POB 7604 Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered between the hours of 8 a.m. and 5 p.m. Monday to Friday to: CC:PA:RU (Notice 2003-62), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. Alternatively, comments may be submitted via the Internet at **Notice.Comments@irsounsel.treas.gov**. All comments will be available for public inspection and copying.

#### DRAFTING INFORMATION

The principal author of this notice is Lawrence Isaacs of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number) between the hours of 8:00 a.m. and 6:30 p.m., Eastern Time, Monday through Friday. Mr. Isaacs can be reached at (202) 283-9888 (not a toll-free number).