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Material Incorporated by Reference

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specified in Table 1 to perform the actions required by this AD. The Director of the Federal Register previously approved the incorporation by reference of the service information specified in Table 1 on February 26, 2007 (72 FR 2610, January 22, 2007). Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D-15827 Dahlewitz, Germany; telephone 49 (0) 33-7086-1768; fax 49 (0) 33-7086-3356 for a copy of this

service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

TABLE 1—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
Da72-536: Total Pages: 23	All	1	August 25, 2003.
Da72-538: Total Pages: 21	All	Original	June 10, 2005.

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Carlos Pestana,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9419]

RIN 1545-BG30

Mortality Tables for Determining Present Value

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance regarding the mortality tables to be used in determining present value or making any computation 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 July 31, 2008.

Applicability date: Section 1.430(h)(3)-1, which provides generally applicable mortality tables for single employer defined benefit pension plans, and § 1.431(c)(6)-1, which provides for the use of those mortality tables for multiemployer defined benefit pension plans, apply to plan years beginning on or after January 1, 2008. Section 1.430(h)(3)-2, which provides rules regarding the approval and use of substitute mortality tables for single employer defined benefit pension plans,

applies to plan years beginning on or after January 1, 2009.

FOR FURTHER INFORMATION CONTACT:

Lauson C. Green or Linda S.F. Marshall at (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 412 provides minimum funding requirements for defined benefit pension plans. The Pension Protection Act of 2006 (PPA), Public Law 109-280 (120 Stat. 780), makes extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA, specifies the minimum funding requirements that apply to defined benefit plans that are not multiemployer plans.¹ Section 430(a) defines the minimum required contribution for a defined benefit plan that is not a multiemployer plan by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in

section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any present value or making any computation under section 430. Those tables are to be based on the actual experience of pension plans and projected trends in such experience. In prescribing those tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans. This standard for issuing the mortality table under section 430(h)(3)(A) is the same as the standard for issuing updated mortality tables pursuant to the review under section 412(l)(7)(C)(ii)(III) of the mortality table used in determining a plan's current liability pursuant to section 412(l)(7)(C)(ii)(I) for plan years before the effective date of the PPA changes.

Section 430(h)(3)(C) provides rules for a plan sponsor's use of substitute mortality tables. Upon the request of a plan sponsor and approval by the Secretary, mortality tables that meet the requirements for substitute mortality tables are used in determining present value or making any computation under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request. Substitute mortality tables cease to be in effect as of the earliest of the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or the date on which the plan actuary determines that those tables do not meet the requirements for substitute mortality tables. The plan sponsor's request to use substitute mortality tables is to be made at least 7 months before the first day of the first plan year for which substitute mortality tables are to apply. A request to use substitute mortality tables is deemed approved unless the Secretary denies approval for the use of those mortality tables within 180 days of the

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 Internal Revenue Code (Code), and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 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 Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

request (subject to extension of this period by mutual agreement).

Mortality tables meet the requirements for substitute mortality tables if the pension plan has a sufficient number of plan participants and the plan has been maintained for a sufficient period of time in order to have credible mortality experience, and such tables reflect the actual experience of the plan and projected trends in general mortality experience of participants in pension plans. Except as provided by the Secretary, a plan sponsor cannot use substitute mortality tables for any plan unless substitute mortality tables are established and used for each other plan maintained by the plan sponsor and the plan sponsor's controlled group.

Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to section 430(h)(3)(A) or the substitute mortality tables under section 430(h)(3)(C). The Secretary is to establish separate tables for individuals with disabilities occurring in plan years beginning before January 1, 1995, and in later plan years, with the mortality tables for individuals with disabilities occurring in those later plan years applying only to individuals who are disabled within the meaning of Title II of the Social Security Act.

Section 431, which was added by PPA, specifies the minimum funding requirements that apply to multiemployer plans. Under section 431(c)(6)(B), a plan's full funding limitation cannot be less than the excess (if any) of 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year) over the value of the plan's assets. Section 431(c)(6)(D)(iv)(II) provides that the Secretary may by regulation prescribe mortality tables to be used in determining a plan's current liability for purposes of section 431(c)(6). The standards for these mortality tables are the same as the standards for mortality tables to be prescribed under section 430(h)(3)(A). Section 431(c)(6)(D)(iv)(I) provides that, until mortality tables are prescribed under section 431(c)(6)(D)(iv)(II), the mortality table used in determining a plan's current liability for purposes of section 431(c)(6) is the table prescribed by the Secretary that is 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.

On February 2, 2007, the IRS issued final regulations under section 412(l)(7) (TD 9310, 72 FR 4955) setting forth mortality tables to be used in determining a plan's current liability with respect to nondisabled pension plan participants during the 2007 plan year. Those updated mortality tables were based on the tables contained in the RP-2000 Mortality Tables Report.² Those regulations permitted plans to use separate mortality tables for nonannuitant and annuitant periods, with different projection periods for annuitants and nonannuitants based on an estimate of the duration of the respective liabilities. Alternatively, plans were permitted to use a combined table that applied the same mortality rates to both annuitants and nonannuitants.

On May 29, 2007, the IRS issued proposed regulations under section 430(h)(3) (72 FR 29456). Those proposed regulations provide guidance regarding the mortality tables to be used for purposes of applying certain defined benefit plan funding requirements, including § 1.430(h)(3)-1, which provides generally applicable mortality tables, and § 1.430(h)(3)-2, which provides rules regarding the approval and use of substitute mortality tables. On May 31, 2007, the IRS issued Rev. Proc. 2007-37 (2007-1 CB 1433), which sets forth procedures by which a plan sponsor may request approval to use substitute mortality tables in accordance with proposed § 1.430(h)(3)-2, including guidelines for the construction of substitute mortality tables. See § 601.601(d)(2)(ii)(b) of this chapter.

On January 31, 2008, the IRS issued Notice 2008-21 (2008-7 IRB 431). See § 601.601(d)(2)(ii)(b) of this chapter. Notice 2008-21 provides that, when certain pension funding regulations (including the § 1.430(h)(3)-2 regulations issued under section 430(h)(3)(C) regarding substitute mortality tables) are finalized, those final regulations will not apply to plan years beginning before January 1, 2009. For plan years beginning during 2008, taxpayers must follow applicable statutory provisions and can rely on the proposed regulations for compliance with those statutory provisions. Under Notice 2008-21, the IRS will not challenge a reasonable interpretation of

section 430 (taking into account the items with respect to which guidance is provided in Notice 2008-21) for plan years beginning during 2008.

Several comments were received on the proposed regulations, and no public hearing was requested or held. After consideration of the comments received, the IRS and the Treasury Department are issuing these final regulations to adopt the rules set forth in the proposed regulations with certain modifications that are noted in this preamble.

Explanation of Provisions

Generally Applicable Mortality Tables

These regulations adopt the methodology set forth in the proposed regulations that the IRS will use to establish mortality tables as provided under section 430(h)(3)(A) to be used for participants and beneficiaries to determine present value or make any computation under section 430. These mortality tables apply as well for purposes of determining the current liability of a multiemployer plan pursuant to section 431(c)(6)(D)(iv)(II). In addition, pursuant to § 1.412(l)(7)-1(a), these regulations apply for purposes of determining the current liability of a plan for which application of the PPA changes to section 412 is delayed (see sections 104 through 106 of PPA). Under these regulations, mortality tables to be used with respect to disabled individuals will be provided in guidance published in the Internal Revenue Bulletin (IRB). This guidance has been issued as Notice 2008-29 (2008-12 IRB 637). See § 601.601(d)(2)(ii)(b).

The new mortality tables under section 430(h)(3)(A) are based on the tables contained in the RP-2000 Mortality Tables Report because, as with the mortality tables used under section 412(l)(7)(C)(ii), the IRS and the Treasury Department 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 individuals) based on pension plan experience, including expected trends. Like the mortality tables provided in the final section 412(l) regulations, the mortality tables set forth in these regulations are gender-distinct because of significant differences between expected male mortality and expected female mortality.

The mortality tables set forth in these regulations provide separate mortality rates for annuitants and nonannuitants. This distinction has been made because the RP-2000 Mortality Tables Report indicates that these two groups have

² The RP-2000 Mortality Tables Report was released by the Society of Actuaries 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/>.

significantly different mortality experience. This is particularly true at typical ages for early retirees, where the number of health-induced early retirements results in a population that has higher mortality rates than the population of currently employed individuals. While the use of separate mortality rates for these groups of individuals will likely entail changes in programming of actuarial software, the IRS and the Treasury Department believe that the improvement in accuracy resulting from the use of separate mortality tables for annuitants and nonannuitants more than offsets the added complexity.

Under these regulations, the annuitant mortality tables are applied to determine the present value of benefits for annuitants. The annuitant mortality tables are also used for nonannuitants (active employees and terminated vested participants) for the periods beginning when the nonannuitants are projected to commence receiving benefits, while the nonannuitant mortality tables are applied for the periods before nonannuitants are projected to commence receiving benefits. For any period in which an annuitant is projected to be receiving benefits, the mortality table applicable to any beneficiary of that annuitant is the annuitant mortality table.

The RP-2000 Mortality Tables Report sets forth mortality tables that reflect expected mortality as of 2000, along with projection factors that are used to reflect the impact of expected improvements in mortality. Similarly, the mortality tables set forth in these regulations are based on expected mortality as of 2000 and reflect the impact of expected improvements in mortality. The regulations permit plan sponsors to apply the projection of mortality improvement in either of two ways: Through use of static tables that are updated annually to reflect expected improvements in mortality, or through use of generational tables.

The regulations set forth base tables for annuitants and nonannuitants, as well as a set of projection factors. The base tables set forth in the regulations generally provide the same rates as the RP-2000 mortality tables, except that they have been extended so that the annuitant and nonannuitant tables have mortality rates available at each age. The RP-2000 Mortality Tables Report did not develop annuitant rates before age 50 or nonannuitant rates after age 70. The extended nonannuitant tables in these regulations were created by (1) using nonannuitant rates through age 70, (2) using annuitant rates for ages over 80, and (3) blending the rates to

produce a smooth transition between the two tables, using increasing fractions. The total difference between the rates at ages 70 and 80 is divided by 55; the rate at age 71 is set equal to the rate at age 70 plus 1/55 of the total difference, the age 72 rate is equal to the rate at age 71 plus 2/55 of the total difference, etc.

A similar approach was used to develop the base tables for annuitants. For male annuitants, annuitant rates from the RP-2000 Mortality Tables Report were used for ages 50 and over, nonannuitant rates from the RP-2000 Mortality Tables Report were used through age 40, and rates between ages 41 and 49 were smoothed to create a smooth transition using the same methodology as was used for the nonannuitant tables. For female annuitants, annuitant rates from the RP-2000 Mortality Tables Report were used for ages 50 and over. However, to avoid anomalous results, female nonannuitant rates were used through age 46 (rather than age 40) and, accordingly, rates were smoothed between ages 47 and 49. The smoothing methodology for the female annuitant tables was the same as that used for the male tables but, because a shorter transition period was used, the difference between the age 46 and the age 50 mortality rates was smoothed using a denominator of 10 instead of 55.

For a plan sponsor that chooses to use the generational mortality tables, the mortality rate for each particular age would be projected for each individual participant to reflect projected improvement for the period of time until the participant reaches the particular age using the applicable base table along with the projection factors provided under the regulations. These projection factors are from Mortality Projection Scale AA, which was recommended for use in the UP-94 Study³ and in the RP-2000 Mortality Tables Report.

The static mortality tables that are permitted to be used under the regulations are constructed from the base table used for purposes of the generational mortality tables. The static mortality tables are projected from the base table for the year 2000 through the year of valuation with further projection to reflect the approximate expected duration of liabilities. The static mortality tables for annuitants under the regulations reflect projection through the year of valuation with a further

projection period of 7 years, and the static mortality tables for nonannuitants under the regulations reflect projection through the year of valuation with a further projection period of 15 years. These projection periods were selected as the expected average duration of liabilities. To be consistent with the original construction of the RP-2000 mortality tables, both the static annuitant and nonannuitant tables use the rates from the projected annuitant table for ages 80 and over and from the projected nonannuitant table for ages 40 and younger (ages 44 and younger for females). For a smooth transition between the different projection periods for annuitants versus nonannuitants, the nonannuitant rates for ages 71 through 79 and the annuitant rates for ages 41 through 49 (ages 45 through 49 for females) were smoothed using the same technique as that used in constructing the base tables.

The static mortality tables that apply with respect to valuation dates occurring during 2008 are set forth in these regulations, which also include an example of how to apply the tables in that year. The mortality tables to be used for valuation dates in subsequent years will be published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b). The IRS intends to publish a notice in the near future that provides a series of tables for valuation dates occurring during 2009 through 2013.

These regulations provide an option for smaller plans that choose to use static mortality tables to use a single blended static table for all participants—in lieu of the separate tables for annuitants and nonannuitants—in order to simplify the actuarial valuation for these plans. The final regulations provide that the smaller plans to which this rule applies are plans where the total of active and inactive participants is 500 or fewer, and clarify that this participant count is determined as of the plan's valuation date. The blended table is constructed from the separate nonannuitant and annuitant tables using 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 51 or after age 69, the IRS and the Treasury Department have extended the table of weighting factors (using straight-line interpolation) for ages 41 through 50 (ages 45–50 for females) and for ages 70 through 79 in order to develop the blended table.

Since the publication of proposed regulations under sections 430(h) and

³ 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.

430(d), questions have arisen regarding whether small plans are required to apply mortality assumptions using the mortality tables provided under section 430(h) for the period before a participant is projected to commence receiving benefits under the plan. Final regulations under section 430(d) are expected to clarify that the mortality tables provided under section 430(h) must be used to determine present values under section 430 when mortality assumptions are applied and that, in appropriate cases, it is permissible to assume no mortality for the period before a participant is projected to commence receiving benefits under the plan.

Substitute Mortality Tables

These regulations generally adopt the methodology set forth in the proposed regulations for the development and use of substitute mortality tables upon written request of the plan sponsor and approval of the Commissioner. Pursuant to section 430(h)(3)(C), substitute mortality tables apply in lieu of the mortality tables provided under section 430(h)(3)(A) and § 1.430(h)(3)–1 for purposes of making present value determinations and other computations.

Substitute mortality tables must reflect the actual mortality experience of the pension plan for which the tables are to be used, and that mortality experience must be credible. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality experience with respect to that gender. If the mortality experience for one gender is credible but the mortality experience for the other gender is not credible, the substitute mortality tables are used for the gender that has credible mortality experience, and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality experience. If separate mortality tables under section 430(h)(3)(D) are used for certain disabled individuals under a plan, then those individuals are disregarded for all purposes with respect to substitute mortality tables under section 430(h)(3)(C). Thus, if the mortality tables under section 430(h)(3)(D) are used for certain disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in determining mortality rates for substitute mortality tables with respect to a plan.

The proposed regulations provided that a substitute mortality table would be based on credible mortality

experience for a gender within a plan if and only if the mortality experience were based on at least 1,000 deaths within that gender over the period covered by the experience study. The proposed regulations required that the experience study be based on mortality experience data over a 2, 3, or 4 consecutive year period, the last day of which must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply.

Commentators requested an expansion of this rule that would allow the plan to demonstrate credibility on the basis of divergence between the actual number of deaths and the number of deaths expected under the standard mortality tables in § 1.430(h)(3)–1. The IRS and the Treasury Department have rejected this suggestion because, although such a measure of divergence may show that the standard mortality tables are not necessarily the best estimate of future mortality under the plan, the existence of this divergence does not demonstrate that a particular alternative table reflects the actual experience of the pension plans maintained by the sponsor unless the experience study data reflects a sufficient number of deaths to support the use of that alternative table.

The 1,000-death threshold in the proposed regulations was set at a level so that there is a high degree of confidence that the plan's past mortality experience will be predictive of its future mortality, and is consistent with relevant actuarial literature (see, for example, Thomas N. Herzog, *Introduction to Credibility Theory* (1999); Stuart A. Klugman, *et al.*, *Loss Models: From Data to Decisions* (2004)). A number of commentators requested that substitute mortality tables be made available to plans with fewer annual deaths. For example, one commentator requested an extension of the 4-year maximum period for the mortality experience study in order to allow a smaller plan to satisfy the 1,000-death threshold. In response to these comments, these regulations lengthen the maximum period for the experience study and provide that the experience study for purposes of demonstrating 1,000 deaths within a gender can be conducted over as long as a 5-year period. In addition, in accordance with the delegation of authority set forth in the regulations, the Commissioner may, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b)), provide for further extensions of this maximum experience study period.

Development of a substitute mortality table under the regulations requires creation of a base table and identification of a base year, which are then used to determine a substitute mortality table. The base table must be developed from a study of the mortality experience of the plan using amounts-weighted data. The regulations set forth rules regarding development of amounts-weighted mortality rates for an age. The regulations provide that amounts-weighted mortality rates may be derived from amounts-weighted mortality rates for age groups. The regulations provide for grouping of ages and alternative methods of graduation in order to simplify the construction of substitute mortality tables. The regulations provide rules for determination of the base year for a substitute mortality table. These rules have been modified from the rules set forth in the proposed regulations to reflect the potential for a longer experience study period than permitted under the proposed regulations.

In general, substitute mortality tables are permitted to be used for a plan for a plan year only if, for that plan year, substitute mortality tables are also approved and used for each other pension plan subject to the requirements of section 430 that is maintained by the plan sponsor or by a member of the sponsor's controlled group. The final regulations clarify the application of this rule where plans maintained within a controlled group have different plan years. In such a case, a plan that uses substitute mortality tables for a plan year satisfies the requirement that all plans within the controlled group use substitute mortality tables for the plan year if all plans within the controlled group use substitute mortality tables for at least some portion of the plan year. Under the regulations, the use of substitute mortality tables for one plan is not prohibited merely because another plan subject to section 430 that is maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) cannot use substitute mortality tables because neither the males nor the females under that plan have credible mortality experience for a plan year. Thus, if a sponsor's controlled group contains two pension plans that are subject to section 430, each of which has credible mortality experience for at least one gender, either both plans must obtain approval from the Commissioner to use substitute mortality tables or neither plan may use substitute mortality tables. By contrast, if for one of those plans neither males nor females

have credible mortality experience, then the plan without credible mortality experience will not interfere with the ability of the plan with credible mortality experience to use substitute mortality tables.

Under the regulations, the requirement that the plan sponsor demonstrate the lack of credible mortality experience for both the male and female populations in other plans maintained by the plan sponsor (and by members of the plan sponsor's controlled group) for which substitute mortality tables are not used must be satisfied for each plan year for which substitute mortality tables are used. This demonstration is made for a plan population by showing that the population has not experienced at least 1,000 deaths over a time period that satisfies the requirements set forth in the regulations. In general, for each plan year in which a plan uses substitute mortality tables, the demonstration that both genders of another plan maintained by the plan sponsor do not have credible mortality experience is made by counting the number of deaths for that plan population over a 4-year period. However, if the experience study period for the experience study on which the substitute mortality tables are based is longer than 4 years, the demonstration that both genders of another plan maintained by the plan sponsor do not have credible mortality experience (that is, there are less than 1,000 deaths within each gender) must be made using a consecutive period for mortality experience that is the same length as the period of the experience study. In either case, the period for mortality experience that is used to demonstrate lack of credible mortality experience with respect to a plan year must end less than 3 years before the first day of that plan year.

For example, a plan sponsor that requests to use substitute mortality tables for a plan for the plan year that begins January 1, 2009, using data obtained over a 4-year experience study period must show, as part of its submission to the Commissioner, that both the male and female populations in all other defined benefit plans of the plan sponsor (and of members of the plan sponsor's controlled group) that are subject to section 430 and that do not use substitute mortality tables do not have credible mortality experience using a 4-year period that ends no earlier than January 2, 2006 (that is, each gender in those plans did not experience 1,000 deaths during that 4-year period). If the plan sponsor chooses to use the 4-year period from January 1, 2004, through December 31, 2007, to

demonstrate the lack of credible mortality experience for the other plans, then the plan can rely on this same data to demonstrate the lack of credible mortality experience for 2010 as well because the less-than-3-years requirement is still met with respect to the 2010 plan year. However, the plan cannot use this same data to demonstrate lack of credible mortality experience for the 2011 plan year because the last day of the experience study used for the demonstration (the January 1, 2004–December 31, 2007 period) is too distant in time (3 or more years) from the first day of the plan year (January 1, 2011).

Although the regulations permit a plan sponsor to use a single experience study to demonstrate a lack of credible mortality experience for a plan population for multiple years, plan sponsors are encouraged to update experience studies annually as new mortality data become available for the plan population. In such a case, if an updated test reveals 1,000 or more deaths for the more recent 4-year period (or 5-year period in the case of a plan using a 5-year experience study period), the plan sponsor nonetheless will be able to continue to use substitute mortality tables for one plan year by demonstrating that the other plans in the controlled group do not have credible mortality experience based on the earlier experience study. This will give the plan sponsor sufficient time to develop substitute mortality tables for the plan population with newly credible mortality experience and to obtain the Commissioner's approval to use those tables prior to the first year substitute mortality tables are to be used for that population.

Under the regulations, a plan's substitute mortality tables must be generational mortality tables. Substitute mortality tables are determined using the base mortality tables developed from the experience study and the projection factors provided in Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable base mortality rate from the base mortality table for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 \text{ minus the projection factor for that age})^n$, where n is equal to the projection period (that is, the number of years between the base year for the base mortality table and the year for which the probability of death is being determined).

The regulations require separate tables to be established for males and females under a plan. Under the regulations, separate substitute mortality tables are permitted (but not required) to be established for separate populations within a gender, such as annuitants and nonannuitants or hourly and salaried individuals. The regulations provide that separate substitute mortality tables are permitted to be used for a separate population within a gender under a plan only if all individuals of that gender in the plan are divided into separate populations, each separate population has credible mortality experience (determined in the same manner as determining whether a gender has credible mortality experience), and the separate substitute mortality table for each separate population is developed using mortality experience data for that population. For example, in the case of a plan that has credible mortality experience data for both its male hourly and male salaried populations, separate substitute mortality tables could be used for those two separate populations. However, if the plan does not have credible mortality experience for its male salaried population, it is not permissible to use substitute mortality tables for its male hourly population and the standard mortality tables described in § 1.430(h)(3)–1 for its male salaried population.

The requirement that each separate population have credible mortality experience does not apply in the case of separate mortality tables that are developed for annuitant and nonannuitant populations within a gender. Thus, the regulations provide that substitute mortality tables for separate annuitant and nonannuitant populations may be used within a gender even if only one of those separate populations has credible mortality experience. Similarly, if separate populations with credible mortality experience are established within a gender, then any of those populations may be further subdivided into separate annuitant and nonannuitant subpopulations, provided that at least one of the two resulting subpopulations has credible mortality experience. In such a case, the standard mortality tables under § 1.430(h)(3)–1 must be used for a resulting subpopulation that does not have credible mortality experience. For example, in the case of a plan that has credible mortality experience for both its male hourly and salaried individuals, if the male salaried annuitant population has credible mortality

experience, the plan may use substitute mortality tables with respect to that population even if the standard mortality tables under § 1.430(h)(3)–1 are used for the male salaried nonannuitant population (because that nonannuitant population does not have credible mortality experience). For purposes of demonstrating that an annuitant or nonannuitant population within a gender or within a separate population does not have credible mortality experience, the demonstration of lack of credible mortality experience is made on the same basis as for purposes of demonstrating a lack of credible mortality experience for a gender.

The proposed regulations provide a limited time period during which a newly acquired plan that does not use substitute mortality tables does not prevent another plan from using substitute mortality tables. The proposed regulations implied that this exception applies only where a newly acquired plan does not use substitute mortality tables (and not to the case where a plan that uses substitute mortality tables is acquired by a plan sponsor that maintains other plans for which substitute mortality tables are not used). In response to commentator concerns, the final regulations replace the term “newly acquired plan” with the term “newly affiliated plan.” Thus, the final regulations eliminate the implication that this exception is unavailable in situations in which the acquiring plan sponsor does not use substitute mortality tables for its other plans but the acquired plan uses substitute mortality tables.

Under the regulations, the use of substitute mortality tables for a plan is not prohibited merely because a newly affiliated plan does not use substitute mortality tables, but only through the last day of the plan year of the plan using substitute mortality tables that contains the last day of the transition period described in section 410(b)(6)(C)(ii) (without regard to any change in coverage during that period) for either the newly affiliated plan or the plan using substitute mortality tables, whichever is later. For the following plan year, the mortality tables prescribed under § 1.430(h)(3)–1 apply with respect to the plan (and all other plans within the plan sponsor’s controlled group, including the newly affiliated plan) unless approval to use substitute mortality tables has been obtained with respect to the newly affiliated plan, or the newly affiliated plan cannot use substitute mortality tables because neither the males nor the females under the plan have credible

mortality experience. For example, if on September 1, 2009, a plan sponsor of a plan that uses substitute mortality tables and that has a calendar year plan year acquires a business that maintains a plan that does not use substitute mortality tables and that has a plan year that ends June 30, the maintenance of the latter plan within the controlled group will not impair the continued use of substitute mortality tables by the former plan through the end of the plan year that ends on December 31, 2011. This is because December 31, 2010, is the last day of the period described in section 410(b)(6)(C)(ii) for the plan using substitute mortality tables, June 30, 2011, is the last day of the period described in section 410(b)(6)(C)(ii) for the newly affiliated plan that does not use substitute mortality tables, and the last day of the plan year of the plan using substitute mortality tables that contains the later of those two dates is December 31, 2011. Similarly, if on September 1, 2009, a plan sponsor of a plan that uses substitute mortality tables and that has a calendar year plan year is acquired by an employer that maintains a plan that does not use substitute mortality tables and that has a plan year that ends June 30, the maintenance of the latter plan within the controlled group will not impair the continued use of substitute mortality tables by the former plan through the end of the plan year that ends on December 31, 2011.

Under the regulations, a plan is treated as a newly affiliated plan if it becomes maintained by the plan sponsor (or by a member of the plan sponsor’s controlled group) in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f). The regulations provide that a plan is also treated as a newly affiliated plan if it is established in connection with a transfer of assets and liabilities from another employer’s plan in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f).

In the case of a newly affiliated plan that does not use substitute mortality tables, the demonstration of whether credible mortality experience exists for the plan may be made by either including or excluding mortality experience data for the period prior to the date the plan becomes maintained within the controlled group that includes the plan sponsor of the plan that uses substitute mortality tables. If a plan sponsor excludes mortality experience data prior to the date the plan became maintained within the controlled group that includes the plan sponsor of the plan that uses substitute

mortality tables, the exclusion must apply for all populations within the plan. For example, it is impermissible to include the data for hourly individuals for the pre-acquisition period but exclude the data for salaried individuals for that same period.

In order to demonstrate a lack of credible mortality experience with respect to a gender for a plan year, a special rule applies if the plan’s mortality experience demonstration for a plan year is made by excluding mortality experience for the period prior to the date the newly affiliated plan becomes maintained within the new plan sponsor’s controlled group. In such a case, an employer is permitted to demonstrate a plan’s lack of credible mortality experience using an experience study period of less than four years, provided that the experience study period begins with the date the plan becomes maintained within the employer’s controlled group and ends not more than one year and one day before the first day of the plan year with respect to which the lack of credible mortality experience demonstration is made.

The regulations provide rules for aggregating plans for purposes of using substitute mortality tables. Under the regulations, in order to use a set of substitute mortality tables for two or more plans, the rules set forth in the regulations are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used for all such plans and must be based on data collected with respect to all such plans. Although plans generally are not required to be aggregated, the regulations require a plan to be aggregated with any plan that was previously spun off from that plan if one purpose of the spinoff was to avoid the use of substitute mortality tables for any of the plans involved in the spinoff.

Under the regulations, in order to use substitute mortality tables with respect to a plan, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables comply with applicable requirements. A request to use substitute mortality tables must state the first plan year and the term of years (not more than 10) that the tables are requested to be used. In general, substitute mortality tables cannot be used for a plan year unless the plan sponsor submits the written request to use substitute mortality tables at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply. However, the timing of the written request to use substitute mortality tables does not

prevent a plan from using substitute mortality tables for a plan year if the written request is submitted no later than October 1, 2007. This special rule, which was provided under the proposed regulations, allowed plan sponsors sufficient time to review the proposed regulations and other guidance in order to prepare requests to use substitute mortality tables for use in 2008. In addition, the timing of the written request to use substitute mortality tables does not prevent a plan from using substitute mortality tables for a plan year that begins during 2009 if the written request is submitted no later than October 1, 2008. This special rule allows plan sponsors sufficient time to review the final regulations in order to prepare requests to use substitute mortality tables for plan years that begin during 2009.

Under the regulations, experience data cannot be used to develop a base table if the number of individuals in the population covered by the table (for example, the male annuitants) as of the last day of the plan year before the year the request to use substitute mortality tables is made (or a reasonable estimate of that number), compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based, reflects a difference of 20 percent or more, unless it is demonstrated to the satisfaction of the Commissioner that the experience data is accurately predictive of future mortality of that plan population (taking into account the effect of the change in individuals) after appropriate adjustments to the data are made (for example, excluding data from individuals with respect to a spun-off portion of the plan).

Under the regulations, the Commissioner may, in revenue rulings and procedures, notices or other guidance published in the IRB (see § 601.601(d)(2)(ii)(b) of this chapter), provide additional guidance regarding the approval and use of substitute mortality tables under section 430(h)(3)(C) and related matters. The IRS intends to publish a revenue procedure in the near future that updates the requirements set forth in Rev. Proc. 2007-37 regarding approval to use substitute mortality tables to reflect the provisions of these final regulations.

In general, the Commissioner has a 180-day period to review a request for the use of substitute mortality tables. If the Commissioner does not issue a denial within this 180-day period, the request is deemed to have been approved unless the Commissioner and

the plan sponsor have agreed to extend that period. The Commissioner may request additional information with respect to a submission. Failure to provide that information on a timely basis is grounds for denial of the plan sponsor's request. In addition, the Commissioner will deny a request if the request fails to meet the requirements to use substitute mortality tables or if the Commissioner determines that a substitute mortality table does not sufficiently reflect the mortality experience of the applicable plan population. One commentator suggested that the 180-day period for approval of substitute mortality tables should automatically be tolled during any period between the time additional information is requested and received, and should resume after that information is received. These regulations do not adopt this suggestion. It is anticipated that the Commissioner and the taxpayer will establish a reasonable period for the taxpayer to collect and submit the requested data and extend the 180-day period to the extent necessary.

The regulations provide rules regarding the duration of use of substitute mortality tables. Under the regulations, substitute mortality tables generally are used with respect to a plan for the term of consecutive plan years specified in the plan sponsor's written request to use such tables and approved by the Commissioner, or such shorter period prescribed by the Commissioner in the approval to use substitute mortality tables. If the term of use of a substitute mortality table ends for any reason, the mortality tables specified in § 1.430(h)(3)-1 will apply with respect to the plan unless the plan sponsor has obtained approval to use substitute mortality tables for a further term. The regulations provide that a plan's substitute mortality tables cannot be used as of the earliest of the following: The second plan year following the plan year in which there is a significant change in the population covered by the substitute mortality table (generally, a change of at least 20% from the average number of individuals included in the experience study); or the plan year following the plan year in which a substitute mortality table for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner. In addition, the regulations provide that a plan's substitute mortality tables cannot be used after the date specified in guidance

published in the IRB (see § 601.601(d)(2)(ii)(b)) pursuant to a replacement of mortality tables specified under section 430(h)(3)(A) (other than annual updates to the static mortality tables).

Effective/Applicability Date

Section 1.430(h)(3)-1, which provides generally applicable mortality tables, applies to plan years beginning on or after January 1, 2008. Section 1.430(h)(3)-2, which provides rules regarding the approval and use of substitute mortality tables, applies to plan years beginning on or after January 1, 2009. Taxpayers may rely on the provisions of § 1.430(h)(3)-2 for plan years beginning during 2008. For example, taxpayers can use the exceptions contained in § 1.430(h)(3)-2(d)(1) from the general rule that all controlled group members must use substitute mortality tables in order for any controlled group member to use substitute mortality tables. Because section 430(h)(3) provides that substitute mortality tables can be used only if the use of those tables is approved by the Secretary, taxpayers can use substitute mortality tables for plan years beginning during 2008 only if those mortality tables were approved by the IRS under the procedures set forth in Rev. Proc. 2007-37.

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 is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Pension plans of small entities generally are precluded from requesting to use substitute mortality tables pursuant to § 1.430(h)(3)-2 because they will not have 1,000 deaths for a permitted population over a permissible mortality experience study period as required under § 1.430(h)(3)-2(c)(1)(ii) and, thus, will not have credible mortality experience as required by the regulation. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue 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 Lauson C. Green and Linda S. F. Marshall, Office of Division

Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 1.430(h)(3)–1 is added to read as follows:

§ 1.430(h)(3)–1 Mortality tables used to determine present value.

(a) *Basis for mortality tables*—(1) *In general.* This section sets forth rules for the mortality tables to be used in determining present value or making any computation under section 430. Generally applicable mortality tables for participants and beneficiaries are set forth in this section pursuant to section 430(h)(3)(A). In lieu of using the mortality tables provided under this section with respect to participants and beneficiaries, plan-specific substitute mortality tables are permitted to be used for this purpose pursuant to section 430(h)(3)(C) provided that the requirements of § 1.430(h)(3)–2 are satisfied. Mortality tables that may be used with respect to disabled individuals are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(2) *Static tables or generational tables permitted.* The generally applicable mortality tables provided under section 430(h)(3)(A) are the static tables described in paragraph (a)(3) of this section and the generational mortality tables described in paragraph (a)(4) of this section. A plan is permitted to use either of those sets of mortality tables with respect to participants and beneficiaries pursuant to this section.

(3) *Static tables.* The static mortality tables that are permitted to be used pursuant to paragraph (a)(2) of this section are updated annually to reflect expected improvements in mortality experience as described in paragraph (c)(2) of this section. Static mortality tables that are to be used with respect to valuation dates occurring during 2008 are provided in paragraph (e) of this

section. The mortality tables to be used with respect to valuation dates occurring in later years are to be provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(4) *Generational mortality tables*—(i) *In general.* The generational mortality tables that are permitted to be used pursuant to paragraph (a)(2) of this section are determined pursuant to this paragraph (a)(4) using the base mortality tables and projection factors set forth in paragraph (d) of this section. Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable mortality rate from the table set forth in paragraph (d) of this section for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period. For this purpose, the projection period is the number of years between 2000 and the year for which the probability of death is being determined.

(ii) *Examples of calculation.* As an example of the use of generational mortality tables under paragraph (a)(4)(i) of this section, for purposes of determining the probability of death at age 54 for a male annuitant born in 1974, the base mortality rate is .005797, the projection factor is .020, and the projection period (the period from the year 2000 until the year the participant will attain age 54) is 28 years, so that the mortality improvement factor is .567976, and the probability of death at age 54 is .003293. Similarly, under these generational mortality tables, the probability of death at age 55 for the same male annuitant would be determined by using the base mortality rate and projection factor at age 55, and a projection period of 29 years (the period from the year 2000 until the year the participant will attain age 55). Thus, the base mortality rate is .005905, the projection factor is .019, so that the mortality improvement factor is .573325 $((1 - .019)^{29})$, and the probability of death at age 55 is .003385 (.573325 times .005905). Because these generational mortality tables reflect expected improvements in mortality experience, no periodic updates are needed.

(b) *Use of the tables*—(1) *Separate tables for annuitants and nonannuitants*—(i) *In general.* Separate tables are provided for use for annuitants and nonannuitants. 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 beginning when 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 (for example, an active employee or a terminated vested participant). 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. In addition, for any period in which an annuitant is projected to be receiving benefits, any beneficiary with respect to that annuitant is also treated as an annuitant for purposes of this paragraph (b)(1).

(ii) *Examples of calculation.* As an example of the use of separate annuitant and nonannuitant tables under paragraph (b)(1)(i) of this section, with respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target would be determined using the nonannuitant mortality table for the period before the participant attains age 55 (so that, if the static mortality tables are used pursuant to paragraph (a)(3) of this section, the probability of an active male participant living from age 45 to age 55 using the table that applies for a plan year beginning in 2008 is 98.61%) 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, the funding target 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.

(2) *Small plan tables.* If static mortality tables are used pursuant to paragraph (a)(3) of this section, as an alternative to the separate static tables specified for annuitants and nonannuitants pursuant to paragraph (b)(1) of this section, a combined static table that applies the same mortality rates to both annuitants and nonannuitants is permitted to be used for a small plan. For this purpose, a small plan is defined as a plan with 500

or fewer participants (including both active and inactive participants) on the valuation date.

(c) *Construction of static tables*—(1)

Source of basic rates. The static mortality tables that are used pursuant to paragraph (a)(3) of this section are based on the base mortality tables set forth in paragraph (d) of this section.

(2) *Projected mortality improvements.*

The mortality rates under the base mortality tables are projected to improve using the projection factors provided in Projection Scale AA, as set forth in paragraph (d) of this section. Using these projection factors, the mortality rate for an individual at each age is determined as the individual's base mortality rate (that is, the applicable base mortality rate from the table set forth in paragraph (d) of this section for the individual at that age) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period. The annuitant mortality rates for a plan year are determined using a

projection period that runs from the calendar year 2000 until 7 years after the calendar year that contains the valuation date for the plan year. The nonannuitant mortality rates for a plan year are determined using a projection period that runs from the calendar year 2000 until 15 years after the calendar year that contains the valuation date for the plan year. Thus, for example, for a plan year with a January 1, 2012, valuation date, the annuitant mortality rates are determined using a projection period that runs from 2000 until 2019 (19 years) and the nonannuitant mortality rates are determined using a projection period that runs from 2000 until 2027 (27 years).

(3) *Construction of combined tables for small plans.* The combined mortality tables that are permitted to be used for small plans pursuant to paragraph (b)(2) of this section are constructed from the separate nonannuitant and annuitant tables using the weighting factors for small plans that are set forth in paragraph (d) of this section. The weighting factors are applied to develop

these mortality tables using the following equation: Combined mortality rate = [nonannuitant rate * $(1 - \text{weighting factor})$] + [annuitant rate * weighting factor].

(d) *Base mortality tables and projection factors.* The following base mortality tables and projection factors are used to determine generational mortality tables for purposes of determining present value or making any computation under section 430 as set forth in paragraph (a)(4) of this section. In addition, the following base mortality tables and projection factors are used to determine the static mortality tables that are used for purposes of determining present value or making any computation under section 430 as set forth in paragraphs (a)(3) and (c) of this section. See § 1.430(h)(3)–2(c)(3) for rules regarding the required use of the projection factors set forth in this paragraph (d) in connection with a plan-specific substitute mortality table.

Age	Male	Male	Male	Male	Female	Female	Female	Female
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
1	0.000637	0.000637	0.020	.....	0.000571	0.000571	0.020	.....
2	0.000430	0.000430	0.020	.....	0.000372	0.000372	0.020	.....
3	0.000357	0.000357	0.020	.....	0.000278	0.000278	0.020	.....
4	0.000278	0.000278	0.020	.....	0.000208	0.000208	0.020	.....
5	0.000255	0.000255	0.020	.....	0.000188	0.000188	0.020	.....
6	0.000244	0.000244	0.020	.....	0.000176	0.000176	0.020	.....
7	0.000234	0.000234	0.020	.....	0.000165	0.000165	0.020	.....
8	0.000216	0.000216	0.020	.....	0.000147	0.000147	0.020	.....
9	0.000209	0.000209	0.020	.....	0.000140	0.000140	0.020	.....
10	0.000212	0.000212	0.020	.....	0.000141	0.000141	0.020	.....
11	0.000219	0.000219	0.020	.....	0.000143	0.000143	0.020	.....
12	0.000228	0.000228	0.020	.....	0.000148	0.000148	0.020	.....
13	0.000240	0.000240	0.020	.....	0.000155	0.000155	0.020	.....
14	0.000254	0.000254	0.019	.....	0.000162	0.000162	0.018	.....
15	0.000269	0.000269	0.019	.....	0.000170	0.000170	0.016	.....
16	0.000284	0.000284	0.019	.....	0.000177	0.000177	0.015	.....
17	0.000301	0.000301	0.019	.....	0.000184	0.000184	0.014	.....
18	0.000316	0.000316	0.019	.....	0.000188	0.000188	0.014	.....
19	0.000331	0.000331	0.019	.....	0.000190	0.000190	0.015	.....
20	0.000345	0.000345	0.019	.....	0.000191	0.000191	0.016	.....
21	0.000357	0.000357	0.018	.....	0.000192	0.000192	0.017	.....
22	0.000366	0.000366	0.017	.....	0.000194	0.000194	0.017	.....
23	0.000373	0.000373	0.015	.....	0.000197	0.000197	0.016	.....
24	0.000376	0.000376	0.013	.....	0.000201	0.000201	0.015	.....
25	0.000376	0.000376	0.010	.....	0.000207	0.000207	0.014	.....
26	0.000378	0.000378	0.006	.....	0.000214	0.000214	0.012	.....
27	0.000382	0.000382	0.005	.....	0.000223	0.000223	0.012	.....
28	0.000393	0.000393	0.005	.....	0.000235	0.000235	0.012	.....
29	0.000412	0.000412	0.005	.....	0.000248	0.000248	0.012	.....
30	0.000444	0.000444	0.005	.....	0.000264	0.000264	0.010	.....
31	0.000499	0.000499	0.005	.....	0.000307	0.000307	0.008	.....
32	0.000562	0.000562	0.005	.....	0.000350	0.000350	0.008	.....
33	0.000631	0.000631	0.005	.....	0.000394	0.000394	0.009	.....
34	0.000702	0.000702	0.005	.....	0.000435	0.000435	0.010	.....
35	0.000773	0.000773	0.005	.....	0.000475	0.000475	0.011	.....
36	0.000841	0.000841	0.005	.....	0.000514	0.000514	0.012	.....
37	0.000904	0.000904	0.005	.....	0.000554	0.000554	0.013	.....

Age	Male	Male	Male	Male	Female	Female	Female	Female
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
38	0.000964	0.000964	0.006	.....	0.000598	0.000598	0.014	.....
39	0.001021	0.001021	0.007	.....	0.000648	0.000648	0.015	.....
40	0.001079	0.001079	0.008	.....	0.000706	0.000706	0.015	.....
41	0.001142	0.001157	0.009	0.0045	0.000774	0.000774	0.015	.....
42	0.001215	0.001312	0.010	0.0091	0.000852	0.000852	0.015	.....
43	0.001299	0.001545	0.011	0.0136	0.000937	0.000937	0.015	.....
44	0.001397	0.001855	0.012	0.0181	0.001029	0.001029	0.015	.....
45	0.001508	0.002243	0.013	0.0226	0.001124	0.001124	0.016	0.0084
46	0.001616	0.002709	0.014	0.0272	0.001223	0.001223	0.017	0.0167
47	0.001734	0.003252	0.015	0.0317	0.001326	0.001335	0.018	0.0251
48	0.001860	0.003873	0.016	0.0362	0.001434	0.001559	0.018	0.0335
49	0.001995	0.004571	0.017	0.0407	0.001550	0.001896	0.018	0.0419
50	0.002138	0.005347	0.018	0.0453	0.001676	0.002344	0.017	0.0502
51	0.002288	0.005528	0.019	0.0498	0.001814	0.002459	0.016	0.0586
52	0.002448	0.005644	0.020	0.0686	0.001967	0.002647	0.014	0.0744
53	0.002621	0.005722	0.020	0.0953	0.002135	0.002895	0.012	0.0947
54	0.002812	0.005797	0.020	0.1288	0.002321	0.003190	0.010	0.1189
55	0.003029	0.005905	0.019	0.2066	0.002526	0.003531	0.008	0.1897
56	0.003306	0.006124	0.018	0.3173	0.002756	0.003925	0.006	0.2857
57	0.003628	0.006444	0.017	0.3780	0.003010	0.004385	0.005	0.3403
58	0.003997	0.006895	0.016	0.4401	0.003291	0.004921	0.005	0.3878
59	0.004414	0.007485	0.016	0.4986	0.003599	0.005531	0.005	0.4360
60	0.004878	0.008196	0.016	0.5633	0.003931	0.006200	0.005	0.4954
61	0.005382	0.009001	0.015	0.6338	0.004285	0.006919	0.005	0.5805
62	0.005918	0.009915	0.015	0.7103	0.004656	0.007689	0.005	0.6598
63	0.006472	0.010951	0.014	0.7902	0.005039	0.008509	0.005	0.7520
64	0.007028	0.012117	0.014	0.8355	0.005429	0.009395	0.005	0.8043
65	0.007573	0.013419	0.014	0.8832	0.005821	0.010364	0.005	0.8552
66	0.008099	0.014868	0.013	0.9321	0.006207	0.011413	0.005	0.9118
67	0.008598	0.016460	0.013	0.9510	0.006583	0.012540	0.005	0.9367
68	0.009069	0.018200	0.014	0.9639	0.006945	0.013771	0.005	0.9523
69	0.009510	0.020105	0.014	0.9714	0.007289	0.015153	0.005	0.9627
70	0.009922	0.022206	0.015	0.9740	0.007613	0.016742	0.005	0.9661
71	0.010912	0.024570	0.015	0.9766	0.008309	0.018579	0.006	0.9695
72	0.012892	0.027281	0.015	0.9792	0.009700	0.020665	0.006	0.9729
73	0.015862	0.030387	0.015	0.9818	0.011787	0.022970	0.007	0.9763
74	0.019821	0.033900	0.015	0.9844	0.014570	0.025458	0.007	0.9797
75	0.024771	0.037834	0.014	0.9870	0.018049	0.028106	0.008	0.9830
76	0.030710	0.042169	0.014	0.9896	0.022224	0.030966	0.008	0.9864
77	0.037640	0.046906	0.013	0.9922	0.027094	0.034105	0.007	0.9898
78	0.045559	0.052123	0.012	0.9948	0.032660	0.037595	0.007	0.9932
79	0.054469	0.057927	0.011	0.9974	0.038922	0.041506	0.007	0.9966
80	0.064368	0.064368	0.010	1.0000	0.045879	0.045879	0.007	1.0000
81	0.072041	0.072041	0.009	1.0000	0.050780	0.050780	0.007	1.0000
82	0.080486	0.080486	0.008	1.0000	0.056294	0.056294	0.007	1.0000
83	0.089718	0.089718	0.008	1.0000	0.062506	0.062506	0.007	1.0000
84	0.099779	0.099779	0.007	1.0000	0.069517	0.069517	0.007	1.0000
85	0.110757	0.110757	0.007	1.0000	0.077446	0.077446	0.006	1.0000
86	0.122797	0.122797	0.007	1.0000	0.086376	0.086376	0.005	1.0000
87	0.136043	0.136043	0.006	1.0000	0.096337	0.096337	0.004	1.0000
88	0.150590	0.150590	0.005	1.0000	0.107303	0.107303	0.004	1.0000
89	0.166420	0.166420	0.005	1.0000	0.119154	0.119154	0.003	1.0000
90	0.183408	0.183408	0.004	1.0000	0.131682	0.131682	0.003	1.0000
91	0.199769	0.199769	0.004	1.0000	0.144604	0.144604	0.003	1.0000
92	0.216605	0.216605	0.003	1.0000	0.157618	0.157618	0.003	1.0000
93	0.233662	0.233662	0.003	1.0000	0.170433	0.170433	0.002	1.0000
94	0.250693	0.250693	0.003	1.0000	0.182799	0.182799	0.002	1.0000
95	0.267491	0.267491	0.002	1.0000	0.194509	0.194509	0.002	1.0000
96	0.283905	0.283905	0.002	1.0000	0.205379	0.205379	0.002	1.0000
97	0.299852	0.299852	0.002	1.0000	0.215240	0.215240	0.001	1.0000
98	0.315296	0.315296	0.001	1.0000	0.223947	0.223947	0.001	1.0000
99	0.330207	0.330207	0.001	1.0000	0.231387	0.231387	0.001	1.0000
100	0.344556	0.344556	0.001	1.0000	0.237467	0.237467	0.001	1.0000
101	0.358628	0.358628	0.000	1.0000	0.244834	0.244834	0.000	1.0000
102	0.371685	0.371685	0.000	1.0000	0.254498	0.254498	0.000	1.0000
103	0.383040	0.383040	0.000	1.0000	0.266044	0.266044	0.000	1.0000
104	0.392003	0.392003	0.000	1.0000	0.279055	0.279055	0.000	1.0000
105	0.397886	0.397886	0.000	1.0000	0.293116	0.293116	0.000	1.0000
106	0.400000	0.400000	0.000	1.0000	0.307811	0.307811	0.000	1.0000

Age	Male	Male	Male	Male	Female	Female	Female	Female
	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans	Base non-annuitant mortality rates (year 2000)	Base annuitant mortality rates (year 2000)	Scale AA projection factors	Weighting factors for small plans
107	0.400000	0.400000	0.000	1.0000	0.322725	0.322725	0.000	1.0000
108	0.400000	0.400000	0.000	1.0000	0.337441	0.337441	0.000	1.0000
109	0.400000	0.400000	0.000	1.0000	0.351544	0.351544	0.000	1.0000
110	0.400000	0.400000	0.000	1.0000	0.364617	0.364617	0.000	1.0000
111	0.400000	0.400000	0.000	1.0000	0.376246	0.376246	0.000	1.0000
112	0.400000	0.400000	0.000	1.0000	0.386015	0.386015	0.000	1.0000
113	0.400000	0.400000	0.000	1.0000	0.393507	0.393507	0.000	1.0000
114	0.400000	0.400000	0.000	1.0000	0.398308	0.398308	0.000	1.0000
115	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
116	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
117	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
118	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
119	0.400000	0.400000	0.000	1.0000	0.400000	0.400000	0.000	1.0000
120	1.000000	1.000000	0.000	1.0000	1.000000	1.000000	0.000	1.0000

(e) *Static mortality tables with respect to valuation dates occurring during 2008.* The following static mortality

tables are used pursuant to paragraph (a)(3) of this section for determining present value or making any

computation under section 430 with respect to valuation dates occurring during 2008.

Age	Male	Male	Male	Female	Female	Female
	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans
1	0.000400	0.000400	0.000400	0.000359	0.000359	0.000359
2	0.000270	0.000270	0.000270	0.000234	0.000234	0.000234
3	0.000224	0.000224	0.000224	0.000175	0.000175	0.000175
4	0.000175	0.000175	0.000175	0.000131	0.000131	0.000131
5	0.000160	0.000160	0.000160	0.000118	0.000118	0.000118
6	0.000153	0.000153	0.000153	0.000111	0.000111	0.000111
7	0.000147	0.000147	0.000147	0.000104	0.000104	0.000104
8	0.000136	0.000136	0.000136	0.000092	0.000092	0.000092
9	0.000131	0.000131	0.000131	0.000088	0.000088	0.000088
10	0.000133	0.000133	0.000133	0.000089	0.000089	0.000089
11	0.000138	0.000138	0.000138	0.000090	0.000090	0.000090
12	0.000143	0.000143	0.000143	0.000093	0.000093	0.000093
13	0.000151	0.000151	0.000151	0.000097	0.000097	0.000097
14	0.000163	0.000163	0.000163	0.000107	0.000107	0.000107
15	0.000173	0.000173	0.000173	0.000117	0.000117	0.000117
16	0.000183	0.000183	0.000183	0.000125	0.000125	0.000125
17	0.000194	0.000194	0.000194	0.000133	0.000133	0.000133
18	0.000203	0.000203	0.000203	0.000136	0.000136	0.000136
19	0.000213	0.000213	0.000213	0.000134	0.000134	0.000134
20	0.000222	0.000222	0.000222	0.000132	0.000132	0.000132
21	0.000235	0.000235	0.000235	0.000129	0.000129	0.000129
22	0.000247	0.000247	0.000247	0.000131	0.000131	0.000131
23	0.000263	0.000263	0.000263	0.000136	0.000136	0.000136
24	0.000278	0.000278	0.000278	0.000142	0.000142	0.000142
25	0.000298	0.000298	0.000298	0.000150	0.000150	0.000150
26	0.000329	0.000329	0.000329	0.000162	0.000162	0.000162
27	0.000340	0.000340	0.000340	0.000169	0.000169	0.000169
28	0.000350	0.000350	0.000350	0.000178	0.000178	0.000178
29	0.000367	0.000367	0.000367	0.000188	0.000188	0.000188
30	0.000396	0.000396	0.000396	0.000210	0.000210	0.000210
31	0.000445	0.000445	0.000445	0.000255	0.000255	0.000255
32	0.000501	0.000501	0.000501	0.000291	0.000291	0.000291
33	0.000562	0.000562	0.000562	0.000320	0.000320	0.000320
34	0.000626	0.000626	0.000626	0.000345	0.000345	0.000345
35	0.000689	0.000689	0.000689	0.000368	0.000368	0.000368
36	0.000749	0.000749	0.000749	0.000389	0.000389	0.000389
37	0.000806	0.000806	0.000806	0.000410	0.000410	0.000410
38	0.000839	0.000839	0.000839	0.000432	0.000432	0.000432
39	0.000869	0.000869	0.000869	0.000458	0.000458	0.000458
40	0.000897	0.000897	0.000897	0.000499	0.000499	0.000499
41	0.000928	0.000955	0.000928	0.000547	0.000547	0.000547

Age	Male	Male	Male	Female	Female	Female
	Non-annu- itant mor- tality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annu- itant mor- tality rates	Annuitant mortality rates	Optional combined table for small plans
42	0.000964	0.001070	0.000965	0.000602	0.000602	0.000602
43	0.001007	0.001243	0.001010	0.000662	0.000662	0.000662
44	0.001058	0.001474	0.001066	0.000727	0.000727	0.000727
45	0.001116	0.001763	0.001131	0.000776	0.000779	0.000776
46	0.001168	0.002109	0.001194	0.000824	0.000882	0.000825
47	0.001225	0.002513	0.001266	0.000873	0.001037	0.000877
48	0.001284	0.002975	0.001345	0.000944	0.001244	0.000954
49	0.001345	0.003495	0.001433	0.001021	0.001502	0.001041
50	0.001408	0.004072	0.001529	0.001130	0.001812	0.001164
51	0.001472	0.004146	0.001605	0.001252	0.001931	0.001292
52	0.001538	0.004168	0.001718	0.001422	0.002142	0.001476
53	0.001647	0.004226	0.001893	0.001617	0.002415	0.001693
54	0.001767	0.004281	0.002091	0.001842	0.002744	0.001949
55	0.001948	0.004428	0.002460	0.002100	0.003130	0.002295
56	0.002177	0.004663	0.002966	0.002400	0.003586	0.002739
57	0.002446	0.004983	0.003405	0.002682	0.004067	0.003153
58	0.002758	0.005413	0.003926	0.002933	0.004565	0.003566
59	0.003046	0.005876	0.004457	0.003207	0.005130	0.004045
60	0.003366	0.006435	0.005095	0.003503	0.005751	0.004617
61	0.003802	0.007175	0.005940	0.003818	0.006418	0.005327
62	0.004180	0.007904	0.006825	0.004149	0.007132	0.006117
63	0.004680	0.008864	0.007986	0.004490	0.007893	0.007049
64	0.005082	0.009807	0.009030	0.004838	0.008715	0.007956
65	0.005476	0.010861	0.010232	0.005187	0.009613	0.008972
66	0.005994	0.012218	0.011795	0.005531	0.010586	0.010140
67	0.006363	0.013527	0.013176	0.005866	0.011632	0.011267
68	0.006557	0.014731	0.014436	0.006189	0.012774	0.012460
69	0.006876	0.016273	0.016004	0.006495	0.014055	0.013773
70	0.007009	0.017702	0.017424	0.006784	0.015529	0.015233
71	0.007888	0.019586	0.019312	0.007411	0.016975	0.016683
72	0.009646	0.021747	0.021495	0.008666	0.018881	0.018604
73	0.012283	0.024223	0.024006	0.010548	0.020673	0.020433
74	0.015799	0.027024	0.026849	0.013058	0.022912	0.022712
75	0.020195	0.030622	0.030486	0.016195	0.024916	0.024768
76	0.025470	0.034131	0.034041	0.019959	0.027451	0.027349
77	0.031624	0.038547	0.038493	0.024351	0.030694	0.030629
78	0.038657	0.043489	0.043464	0.029370	0.033835	0.033805
79	0.046569	0.049071	0.049064	0.035017	0.037355	0.037347
80	0.055360	0.055360	0.055360	0.041291	0.041291	0.041291
81	0.062905	0.062905	0.062905	0.045702	0.045702	0.045702
82	0.071350	0.071350	0.071350	0.050664	0.050664	0.050664
83	0.079534	0.079534	0.079534	0.056255	0.056255	0.056255
84	0.089800	0.089800	0.089800	0.062565	0.062565	0.062565
85	0.099680	0.099680	0.099680	0.070761	0.070761	0.070761
86	0.110516	0.110516	0.110516	0.080120	0.080120	0.080120
87	0.124300	0.124300	0.124300	0.090716	0.090716	0.090716
88	0.139683	0.139683	0.139683	0.101042	0.101042	0.101042
89	0.154366	0.154366	0.154366	0.113903	0.113903	0.113903
90	0.172706	0.172706	0.172706	0.125879	0.125879	0.125879
91	0.188113	0.188113	0.188113	0.138232	0.138232	0.138232
92	0.207060	0.207060	0.207060	0.150672	0.150672	0.150672
93	0.223365	0.223365	0.223365	0.165391	0.165391	0.165391
94	0.239646	0.239646	0.239646	0.177391	0.177391	0.177391
95	0.259578	0.259578	0.259578	0.188755	0.188755	0.188755
96	0.275506	0.275506	0.275506	0.199303	0.199303	0.199303
97	0.290981	0.290981	0.290981	0.212034	0.212034	0.212034
98	0.310600	0.310600	0.310600	0.220611	0.220611	0.220611
99	0.325288	0.325288	0.325288	0.227940	0.227940	0.227940
100	0.339424	0.339424	0.339424	0.233930	0.233930	0.233930
101	0.358628	0.358628	0.358628	0.244834	0.244834	0.244834
102	0.371685	0.371685	0.371685	0.254498	0.254498	0.254498
103	0.383040	0.383040	0.383040	0.266044	0.266044	0.266044
104	0.392003	0.392003	0.392003	0.279055	0.279055	0.279055
105	0.397886	0.397886	0.397886	0.293116	0.293116	0.293116
106	0.400000	0.400000	0.400000	0.307811	0.307811	0.307811
107	0.400000	0.400000	0.400000	0.322725	0.322725	0.322725
108	0.400000	0.400000	0.400000	0.337441	0.337441	0.337441
109	0.400000	0.400000	0.400000	0.351544	0.351544	0.351544
110	0.400000	0.400000	0.400000	0.364617	0.364617	0.364617
111	0.400000	0.400000	0.400000	0.376246	0.376246	0.376246

Age	Male	Male	Male	Female	Female	Female
	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans	Non-annuitant mortality rates	Annuitant mortality rates	Optional combined table for small plans
112	0.400000	0.400000	0.400000	0.386015	0.386015	0.386015
113	0.400000	0.400000	0.400000	0.393507	0.393507	0.393507
114	0.400000	0.400000	0.400000	0.398308	0.398308	0.398308
115	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
116	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
117	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
118	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
119	0.400000	0.400000	0.400000	0.400000	0.400000	0.400000
120	1.000000	1.000000	1.000000	1.000000	1.000000	1.000000

(f) *Effective/Applicability date.* This section applies for plan years beginning on or after January 1, 2008.

■ **Par. 3.** Section 1.430(h)(3)–2 is added to read as follows:

§ 1.430(h)(3)–2 Plan-specific substitute mortality tables used to determine present value.

(a) *In general.* This section sets forth rules for the use of substitute mortality tables under section 430(h)(3)(C) in determining any present value or making any computation under section 430 in accordance with § 1.430(h)(3)–1(a)(1). In order to use substitute mortality tables, a plan sponsor must obtain approval to use substitute mortality tables for the plan in accordance with the procedures set forth in paragraph (b) of this section. Paragraph (c) of this section sets forth rules for the development of substitute mortality tables, including guidelines for determining whether a plan has sufficient credible mortality experience to use substitute mortality tables. Paragraph (d) of this section sets forth special rules regarding the use of substitute mortality tables. The Commissioner may, in revenue rulings and procedures, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), provide additional guidance regarding approval and use of substitute mortality tables under section 430(h)(3)(C) and related matters.

(b) *Procedures for obtaining approval to use substitute mortality tables—(1) Written request to use substitute mortality tables—(i) General requirements.* In order to use substitute mortality tables, a plan sponsor must submit a written request to the Commissioner that demonstrates that those substitute mortality tables meet the requirements of section 430(h)(3)(C) and this section. This request must state the first plan year and the term of years

(not more than 10) that the tables are requested to be used.

(ii) *Time for written request—(A) In general.* Except as provided in this paragraph (b)(1)(ii), substitute mortality tables cannot be used for a plan year unless the plan sponsor submits the written request described in paragraph (b)(1)(i) of this section at least 7 months prior to the first day of the first plan year for which the substitute mortality tables are to apply.

(B) *Special rule for requests submitted on or before October 1, 2007.* Notwithstanding the rule of paragraph (b)(1)(ii)(A) of this section, the timing of the written request described in paragraph (b)(1)(i) of this section does not prevent a plan from using substitute mortality tables for a plan year provided that the written request is submitted no later than October 1, 2007.

(C) *Special rule for requests submitted on or before October 1, 2008, with respect to plan years beginning during 2009.* Notwithstanding the rule of paragraph (b)(1)(ii)(A) of this section, the timing of the written request described in paragraph (b)(1)(i) of this section does not prevent a plan from using substitute mortality tables for a plan year that begins during 2009 provided that the written request is submitted no later than October 1, 2008.

(2) *Commissioner's review of request—(i) In general.* During the 180-day period that begins on the date the plan sponsor submits a request to use substitute mortality tables for a plan pursuant to this section, the Commissioner will determine whether the request to use substitute mortality tables satisfies the requirements of this section (including any published guidance issued pursuant to paragraph (a) of this section), and will either approve or deny the request. The Commissioner will deny a request if the request fails to meet the requirements of this section or if the Commissioner determines that a substitute mortality table does not sufficiently reflect the

mortality experience of the applicable plan population.

(ii) *Request for additional information.* The Commissioner may request additional information with respect to the submission. Failure to provide that information on a timely basis constitutes grounds for denial of the request.

(iii) *Deemed approval.* Except as provided in paragraph (b)(2)(iv) of this section, if the Commissioner does not issue a denial within the 180-day review period, the request is deemed to have been approved.

(iv) *Extension of time permitted.* The Commissioner and a plan sponsor may, before the expiration of the 180-day review period, agree in writing to extend that period, provided that any such agreement also specifies any revisions in the plan sponsor's request, including any change in the requested term of use of the substitute mortality tables.

(c) *Development of substitute mortality tables—(1) Mortality experience requirements—(i) In general.* Substitute mortality tables must reflect the actual mortality experience of the pension plan for which the tables are to be used and that mortality experience must be credible mortality experience as described in paragraph (c)(1)(ii) of this section. Separate mortality tables must be established for each gender under the plan, and a substitute mortality table is permitted to be established for a gender only if the plan has credible mortality experience with respect to that gender.

(ii) *Credible mortality experience.* There is credible mortality experience for a gender within a plan if and only if, over the period covered by the experience study described in paragraph (c)(2)(ii) of this section, there are at least 1,000 deaths within that gender.

(iii) *Gender without credible mortality experience—(A) In general.* If, for the first year for which a plan uses substitute mortality tables, one gender has credible mortality experience but

the other gender does not have credible mortality experience, the substitute mortality tables are used for the gender that does have credible mortality experience and the mortality tables under § 1.430(h)(3)–1 are used for the gender that does not have credible mortality experience. For a subsequent plan year, the plan sponsor may continue to use substitute mortality tables for the gender with credible mortality experience without using substitute mortality tables for the other gender only if the other gender continues to lack credible mortality experience for that subsequent plan year.

(B) *Demonstration of lack of credible mortality experience for a gender.* In general, in order to demonstrate that a gender within a plan does not have credible mortality experience for a plan year, the demonstration that the gender population within the plan has fewer than 1,000 deaths over a 4-year period must be made using a 4-year period that ends less than 3 years before the first day of that plan year. For example, if a plan uses substitute mortality tables based on credible mortality experience obtained over a 4-year experience study period for its male population and the standard mortality tables under § 1.430(h)(3)–1 for its female population, there must be a demonstration that the plan's female population does not have at least 1,000 deaths in a 4-year period that ends less than 3 years before the first day of that plan year. However, if the experience study period described in paragraph (c)(2)(ii)(A) of this section exceeds 4 years, then in order to demonstrate that a gender within a plan does not have credible mortality experience for a plan year, the mortality experience of that population must be analyzed over a period that is the same length as the experience study on which the substitute mortality tables are based and that ends less than 3 years before the first day of that plan year.

(iv) *Disabled individuals.* Under section 430(h)(3)(D), separate mortality tables are permitted to be used for certain disabled individuals. If such separate mortality tables are used for those disabled individuals, then those individuals are disregarded for all purposes under this section. Thus, if the mortality tables under section 430(h)(3)(D) are used for disabled individuals under a plan, mortality experience with respect to those individuals must be excluded in developing mortality rates for substitute mortality tables under this section.

(2) *Base table and base year*—(i) *In general.* Development of a substitute

mortality table under this section requires creation of a base table and identification of a base year under this paragraph (c)(2). The base table and base year are then used to determine a substitute mortality table under paragraph (c)(3) of this section.

(ii) *Experience study and base table requirements*—(A) *In general.* The base table for a plan population must be developed from an experience study of the mortality experience of that plan population that generates amounts-weighted mortality rates based on experience data for the plan that is collected over an experience study period. The minimum length of the experience study period is 2 years. The maximum length of the experience study period is 5 years, but can be extended by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). The last day of the final year reflected in the experience data must be less than 3 years before the first day of the first plan year for which the substitute mortality tables are to apply. For example, if July 1, 2009, is the first day of the first plan year for which the substitute mortality tables will be used, then an experience study using calendar year data must include data collected for a period that ends no earlier than December 31, 2006.

(B) *Amounts-weighted mortality rates.* The amounts-weighted mortality rate for an age is equal to the quotient determined by dividing the sum of the accrued benefits (or payable benefits, in the case of individuals in pay status) for all individuals at that age at the beginning of the year who died during the year, by the sum of the accrued benefits (or payable benefits, in the case of individuals in pay status) for all individuals at that age at the beginning of the year, with appropriate adjustments for individuals who left the relevant plan population during the year for reasons other than death. Because amounts-weighted mortality rates for a plan cannot be determined without accrued (or payable) benefits, the mortality experience study used to develop a base table cannot include periods before the plan was established.

(C) *Grouping of ages.* Amounts-weighted mortality rates may be derived from amounts-weighted mortality rates for age groups. The Commissioner, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), may specify grouping rules (for example, 5-year age groups, except for

extreme ages such as ages above 100 or below 20) and methods for developing amounts-weighted mortality rates for individual ages from amounts-weighted mortality rates initially determined for each age group.

(D) *Base table construction.* The base tables must be constructed from the amounts-weighted mortality rates determined in paragraph (c)(2)(ii)(B) of this section. The base tables must be constructed either directly through graduation of the amounts-weighted mortality rates or indirectly by applying a level percentage to the applicable mortality table set forth in § 1.430(h)(3)–1, provided that the adjusted table sufficiently reflects the mortality experience of the plan. The Commissioner also may permit the use of other recognized mortality tables in the construction of base tables, applying a similar mortality experience standard.

(iii) *Base year requirements.* The base year is the calendar year that contains the day before the midpoint of the experience study period. If the base table is constructed by applying a level percentage to a table set forth in § 1.430(h)(3)–1, then the percentage must be applied to the table under § 1.430(h)(3)–1 after it has been projected to the base year using Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Thus, for example, if the base year of the mortality experience study is 2005, the applicable base (year 2000) mortality rates must be projected 5 years prior to determining the level percentage to be applied to the applicable projected base (year 2000) mortality rates.

(iv) *Change in number of individuals covered by table.* Experience data cannot be used to develop a base table if the number of individuals in the population covered by the table (for example, the male annuitant population) as of the last day of the plan year before the year the request to use substitute mortality tables is made, compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based, reflects a difference of 20 percent or more, unless it is demonstrated to the satisfaction of the Commissioner that the experience data is accurately predictive of future mortality of that plan population (taking into account the effect of the change in individuals) after appropriate adjustments to the data are made (for example, excluding data from individuals with respect to a spun-off portion of the plan). For this purpose, a reasonable estimate of the number of individuals in the population covered

by the table may be used, such as the estimated number of participants and beneficiaries used for purposes of the PBGC Form 1-ES.

(3) *Determination of substitute mortality tables*—(i) *In general.* A plan's substitute mortality tables must be generational mortality tables. Substitute mortality tables are determined using the base mortality tables developed pursuant to paragraph (c)(2) of this section and the projection factors provided in Projection Scale AA, as set forth in § 1.430(h)(3)–1(d). Under the generational mortality tables, the probability of an individual's death at a particular age is determined as the individual's base mortality rate (that is, the applicable mortality rate from the base mortality table for the age for which the probability of death is being determined) multiplied by the mortality improvement factor. The mortality improvement factor is equal to $(1 - \text{projection factor for that age})^n$, where n is equal to the projection period (the number of years between the base year for the base mortality table and the calendar year in which the individual attains the age for which the probability of death is being determined).

(ii) *Example of calculation.* As an example of the use of generational mortality tables under paragraph (c)(3)(i) of this section, if approved substitute mortality tables are based on data collected during 2005 and 2006, the base year would be 2005 because 2005 would be the year that contains the day before the midpoint of the experience study period. If the tables show a base mortality rate of .006000 for male annuitants at age 54, the probability of death at age 54 for a male annuitant born in 1974 would be determined using the base mortality rate of .006000, the age-54 projection factor of .020 (pursuant to the Scale AA Projection Factors set forth in § 1.430(h)(3)–1(d)) and a projection period of 23 years. The projection period is the number of years between the base year of 2005 and the calendar year in which the individual reaches age 54. Accordingly, the mortality improvement factor would be .628347 and the probability of death at age 54 would be .003770.

(4) *Separate tables for specified populations*—(i) *In general.* Except as provided in this paragraph (c)(4), separate substitute mortality tables are permitted to be used for separate populations within a gender under a plan only if—

(A) All individuals of that gender in the plan are divided into separate populations;

(B) Each separate population has credible mortality experience as provided in paragraph (c)(4)(iii) of this section; and

(C) The separate substitute mortality table for each separate population is developed using mortality experience data for that population.

(ii) *Annuitant and nonannuitant separate populations.* Notwithstanding paragraph (c)(4)(i)(B) of this section, substitute mortality tables for separate populations of annuitants and nonannuitants within a gender may be used even if only one of those separate populations has credible mortality experience. Similarly, if separate populations that satisfy paragraph (c)(4)(i)(B) of this section are established, then any of those populations may be further subdivided into separate annuitant and nonannuitant subpopulations, provided that at least one of the two resulting subpopulations has credible mortality experience. The standard mortality tables under § 1.430(h)(3)–1 are used for a resulting subpopulation that does not have credible mortality experience. For example, in the case of a plan that has credible mortality experience for both its male hourly and salaried individuals, if the male salaried annuitant population has credible mortality experience, the plan may use substitute mortality tables with respect to that population even if the standard mortality tables under § 1.430(h)(3)–1 are used for the male salaried nonannuitant population (because that nonannuitant population does not have credible mortality experience).

(iii) *Credible mortality experience for separate populations.* In determining whether a separate population within a gender has credible mortality experience, the requirements of paragraph (c)(1)(ii) of this section must be satisfied but, in applying that paragraph (c)(1)(ii), the separate population should be substituted for the particular gender. In demonstrating that an annuitant or nonannuitant population within a gender or within a separate population does not have credible mortality experience, the requirements of paragraph (c)(1)(iii) of this section must be satisfied but, in applying that paragraph, the annuitant (or nonannuitant) population should be substituted for the particular gender.

(d) *Special rules*—(1) *All plans in controlled group must use substitute mortality tables*—(i) *In general.* Except as otherwise provided in this paragraph (d)(1), substitute mortality tables are permitted to be used for a plan for a plan year only if, for that plan year (or any portion of that plan year), substitute

mortality tables are also approved and used for each other pension plan subject to the requirements of section 430 that is maintained by the sponsor and by each member of the plan sponsor's controlled group. For purposes of this section, the term *controlled group* means any group treated as a single employer under paragraph (b), (c), (m), or (o) of section 414.

(ii) *Plans without credible experience*—(A) *In general.* For the first year for which a plan uses substitute mortality tables, the use of substitute mortality tables for the plan is not prohibited merely because another plan described in paragraph (d)(1)(i) of this section cannot use substitute mortality tables because neither the males nor the females under that other plan have credible mortality experience for a plan year. For each subsequent plan year, the plan sponsor may continue to use substitute mortality tables for the plan with credible mortality experience without using substitute mortality tables for the other plan only if neither the males nor the females under that other plan have credible mortality experience for that subsequent plan year.

(B) *Analysis of mortality experience.* For each plan year in which a plan uses substitute mortality tables, in order to demonstrate that the male and female populations of another plan maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) do not have credible mortality experience, the requirements of paragraph (c)(1)(iii)(B) of this section must be satisfied for that plan year. Thus, a plan is not prohibited from using substitute mortality tables for a plan year merely because another plan in the controlled group of the plan sponsor does not have at least 1,000 male deaths and does not have at least 1,000 female deaths in a 4-year period (or a period that is the length of the experience study period if the experience study period under paragraph (c)(2)(ii)(A) of this section is longer than 4 years) that ends less than 3 years before the first day of that plan year.

(iii) *Newly affiliated plans not using substitute mortality tables*—(A) *In general.* The use of substitute mortality tables for a plan is not prohibited merely because a newly affiliated plan does not use substitute mortality tables, but only through the last day of the plan year of the plan using substitute mortality tables that contains the last day of the period described in section 410(b)(6)(C)(ii) for either the newly affiliated plan or the plan using substitute mortality tables, whichever is later. Thus, for the following plan year, the mortality tables prescribed under

§ 1.430(h)(3)–1 apply with respect to the plan (and all other plans within the plan sponsor's controlled group, including the newly affiliated plan) unless—

(1) Approval to use substitute mortality tables has been obtained with respect to the newly affiliated plan pursuant to paragraph (b)(1) of this section; or

(2) The newly affiliated plan cannot use substitute mortality tables because neither the males nor the females under the plan have credible mortality experience as described in paragraph (c)(1)(ii) of this section (as determined in accordance with the rules of paragraph (d)(1)(iv) of this section).

(B) *Definition of newly affiliated plan.* For purposes of this section, a plan is treated as a newly affiliated plan if it becomes maintained by the plan sponsor (or by a member of the plan sponsor's controlled group) in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f). A plan also is treated as a newly affiliated plan for purposes of this section if the plan is established in connection with a transfer of assets and liabilities from another employer's plan in connection with a merger, acquisition, or similar transaction described in § 1.410(b)–2(f).

(iv) *Demonstration of credible mortality experience for newly affiliated plan—(A) In general.* In general, in the case of a newly affiliated plan described in paragraph (d)(1)(iii) of this section, the demonstration of whether credible mortality experience exists for the plan for a plan year may be made by either including or excluding mortality experience data for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group. If a plan sponsor excludes mortality experience data for the period prior to the date the plan becomes maintained within the new plan sponsor's controlled group, the exclusion must apply for all populations within the plan.

(B) *Demonstration of credible mortality experience.* Regardless of whether mortality experience data for the period prior to the date a newly affiliated plan becomes maintained within the new plan sponsor's controlled group is included or excluded for a plan year, the provisions of this section, including the demonstration of credible mortality experience in accordance with paragraph (c)(1)(ii) of this section, must be satisfied before substitute mortality tables may be used with respect to the plan. Thus, for example, the plan must meet the rule in paragraph (c)(2)(ii)(A) of this section that the base table be

based on mortality experience data for the plan over a 2-year or longer consecutive period that ends less than 3 years before the first day of the plan year for which substitute mortality tables will be used.

(C) *Demonstration of lack of credible mortality experience.* In the case of a newly affiliated plan described in paragraph (d)(1)(iii) of this section, in order to demonstrate a lack of credible mortality experience with respect to a gender for a plan year, the rules of paragraph (c)(1)(iii)(B) of this section generally will apply. However, a special rule applies if the plan's mortality experience demonstration for a plan year is made by excluding mortality experience for the period prior to the date the plan becomes maintained by a member of the new plan sponsor's controlled group. In such a case, an employer is permitted to demonstrate a plan's lack of credible mortality experience using an experience study period of less than four years, provided that the experience study period begins with the date the plan becomes maintained within the sponsor's controlled group and ends not more than one year and one day before the first day of the plan year with respect to which the lack of credible mortality experience demonstration is made.

(D) *Example.* The following example illustrates the application of this paragraph (d)(1):

Example. (i) Employer A is a corporation and maintains Plan M, which has a calendar year plan year and has obtained approval to use substitute mortality tables for 10 years beginning with the plan year that begins on January 1, 2009. Employer B is a corporation and maintains Plan N, which does not use substitute mortality tables and has a calendar year plan year. On July 1, 2010, Employer A acquires 100% of the stock of Employer B.

(ii) Pursuant to paragraph (d)(1)(iii) of this section, the maintenance of Plan N within the controlled group that maintains Plan M does not impair the use of substitute mortality tables by Plan M through the end of the plan year that ends on December 31, 2011.

(iii) Pursuant to paragraph (d)(1)(iii) of this section, beginning with the plan year that begins on January 1, 2012, Plan M continues to use substitute mortality tables only if either Plan N obtains approval to use substitute mortality tables or Employer A can demonstrate that Plan N does not have credible mortality experience. Pursuant to paragraph (d)(1)(iv)(C) of this section, Employer A is permitted to either exclude mortality experience data for the period of time before July 1, 2010 (the date Plan N became maintained with Employer A's controlled group), or include that mortality experience data for purposes of demonstrating that Plan N does not have credible mortality experience. Thus, if there is an experience study that shows that the

male and female populations of Plan N each do not have 1,000 deaths during the period from July 1, 2010, through December 31, 2010, then the maintenance of Plan N within the Employer A's controlled group does not impair Plan M's use of substitute mortality tables for Plan M's 2012 plan year.

(iv) For Plan M's 2013 plan year, pursuant to paragraph (d)(1)(iv)(C) of this section, the maintenance of Plan N within Employer A's controlled group does not impair Plan M's use of substitute mortality tables if there is an experience study that shows that the male and female populations of Plan N each do not have 1,000 deaths during the period from July 1, 2010, through December 31, 2011.

(2) *Duration of use of tables.* Except as provided in paragraph (d)(4) of this section, substitute mortality tables are used with respect to a plan for the term of consecutive plan years specified in the plan sponsor's written request to use such tables under paragraph (b)(1) of this section and approved by the Commissioner, or such shorter period prescribed by the Commissioner in the approval to use substitute mortality tables. Following the end of such term of use, or following any early termination of use described in paragraph (d)(4) of this section, the mortality tables specified in § 1.430(h)(3)–1 apply with respect to the plan unless approval under paragraph (b)(1) of this section has been received by the plan sponsor to use substitute mortality tables for a further term.

(3) *Aggregation—(i) Permissive aggregation of plans.* In order for a plan sponsor to use a set of substitute mortality tables with respect to two or more plans, the rules of this section are applied by treating those plans as a single plan. In such a case, the substitute mortality tables must be used for the aggregated plans and must be based on data collected with respect to those aggregated plans.

(ii) *Required aggregation of plans.* In general, plans are not required to be aggregated for purposes of applying the rules of this section. However, for purposes of this section, a plan is required to be aggregated with any plan that was previously spun off from that plan for purposes of this section if the Commissioner determines that one purpose of the spinoff is to avoid the use of substitute mortality tables for any of the plans that were involved in the spinoff.

(4) *Early termination of use of tables—(i) General rule.* A plan's substitute mortality tables cannot be used as of the earliest of—

(A) The plan year in which the plan fails to satisfy the requirements of paragraph (c)(1) of this section (regarding credible mortality experience requirements and demonstrations);

(B) The plan year in which the plan fails to satisfy the requirements of paragraph (d)(1) of this section (regarding use of substitute mortality tables by controlled group members);

(C) The second plan year following the plan year in which there is a significant change in individuals covered by the plan as described in paragraph (d)(4)(ii) of this section;

(D) The plan year following the plan year in which a substitute mortality table used for a plan population is no longer accurately predictive of future mortality of that population, as determined by the Commissioner or as certified by the plan's actuary to the satisfaction of the Commissioner; or

(E) The date specified in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) pursuant to a replacement of mortality tables specified under section 430(h)(3)(A) and § 1.430(h)(3)-1 (other than annual updates to the static mortality tables issued pursuant to § 1.430(h)(3)-1(a)(3)).

(ii) *Significant change in coverage*—(A) *Change in coverage from time of experience study.* For purposes of applying the rules of paragraph (d)(4)(i)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals of at least 20 percent compared to the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

(B) *Change in coverage from time of certification.* For purposes of applying the rules of paragraph (d)(4)(i)(C) of this section, a significant change in the individuals covered by a substitute mortality table occurs if there is an increase or decrease in the number of individuals covered by a substitute mortality table of at least 20 percent compared to the number of individuals in a plan year for which a certification described in paragraph (d)(4)(ii)(A) of this section was made on account of a prior change in coverage. However, a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used by the plan with

respect to the covered population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the plan population).

(e) *Effective/Applicability date.* This section applies for plan years beginning on or after January 1, 2009.

■ **Par. 4.** Section 1.431(c)(6)-1 is added to read as follows:

§ 1.431(c)(6)-1 Mortality tables used to determine current liability.

(a) *Mortality tables used to determine current liability.* The mortality assumptions that apply to a defined benefit plan for the plan year pursuant to section 430(h)(3)(A) and § 1.430(h)(3)-1(a)(2) are used to determine a multiemployer plan's current liability for purposes of applying the rules of section 431(c)(6). A multiemployer plan is permitted to apply either the static mortality tables used pursuant to § 1.430(h)(3)-1(a)(3) or generational mortality tables used pursuant to § 1.430(h)(3)-1(a)(4) for this purpose. However, for this purpose, a multiemployer plan is not permitted to use substitute mortality tables under § 1.430(h)(3)-2.

(b) *Effective/applicability date.* This section applies for plan years beginning on or after January 1, 2008.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: July 20, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 9414]

RIN 1545-BE52

**Grantor Retained Interest Trusts—
Application of Sections 2036 and 2039;
Correction**

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final regulations (TD 9414) that were published in the **Federal Register** on Monday, July 14, 2008 (73 FR 40173). The final regulations provide guidance on the portion of property transferred to a trust or otherwise, that

is properly includible in a grantor's gross estate under Internal Revenue Code (Code) sections 2036 and 2039 if the grantor has retained the use of the property or the right to an annuity, unitrust, or other payment from such property for life, for any period not ascertainable without reference to the grantor's death, or for a period that does not in fact end before the grantor's death.

DATES: The correction is effective on July 31, 2008 and applicable to the estates of decedents dying after August 16, 1954.

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9414) that is the subject of this correction are under sections 2036 and 2039 of the Code.

List of Subjects for 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 20 is corrected by making the following correcting amendment:

**PART 20—ESTATE TAX; ESTATES OF
DECEDENTS DYING AFTER AUGUST
16, 1954**

■ **Paragraph 1.** The authority citation for part 20 continues to read in part as follows:

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

■ **Par. 2.** Section 20.2036-1 is amended by adding paragraph (a)(3)(ii) to read as follows:

§ 20.2036-1 Transfers with retained life estate.

(a) * * *

(3) * * *

(ii) The right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income (except that, if the transfer was made before June 7, 1932, the right to designate must be retained by or reserved to the decedent alone).

* * * * *

Cynthia E. Grigsby,

Senior Federal Register Liaison Officer,
Publications and Regulations Branch, Legal
Processing Division, Associate Chief Counsel
(Procedure and Administration).

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