The ERISA Industry Committee

Driven By and For Large Employers

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Will Hansen, Senior Vice President of Retirement Policy

April 13, 2017

U.S. Department of Treasury
The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Office of Management and Budget
The Honorable Mick Mulvaney
Director
725 17th Street, NW
Washington, DC 20503

RE: Mortality Tables for Determining Present Value Under Defined Benefit Pension Plans

Dear Secretary Mnuchin and Director Mulvaney,

We respectfully request that your agencies deem the defined benefit mortality table proposed regulations as subject to Executive Orders 12866 and 13771, causing the regulations to receive additional review, including a thorough economic analysis.

As background, on March 29, 2017, The ERISA Industry Committee (ERIC) filed comments on a rule proposed by the Department of Treasury ("Treasury") and Internal Revenue Service ("Service") with respect to mortality tables that the Secretary is required to prescribe and periodically revise under Internal Revenue Code Section 430(h)(3).

Today, the Treasury and the Service are holding a hearing on the proposed rule to update mortality tables that are used by defined benefit pension plans.

At the hearing, we are testifying on requested changes to the substance of the rule, but, in addition to our remarks at the hearing, we separately request that the Treasury and Office of Management and Budget ("OMB") review the procedure that was used to determine the proposed rule was not deemed 'significant', and, therefore, not subject to Executive Orders 12866 and 13771. If subject to both Executive Orders, the proposed rule would be subject to additional review by the respective agencies, including a thorough economic analysis.

ERIC is the only national association that advocates exclusively for large employers on health, retirement, and compensation public policies at the federal, state, and local levels. ERIC's members provide comprehensive retirement benefits to tens of millions of active and retired workers and their families. ERIC has a strong interest in proposals, such as the proposed rule, that would affect its members' ability to provide predictable and secure pension benefits in an efficient and tax-compliant manner.

E.O. 12866 defines a "significant regulatory action" as "any regulatory action that is likely to result in a rule that may…have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities…" It has been widely reported that if the proposed rule is finalized, most plan sponsors will realize an increase in pension funding liabilities. For some large plan sponsors, the increase in liabilities could represent tens of millions of dollars, if not larger. As a whole, the increase in liabilities for all plan sponsors of defined benefit plans in the United States would easily exceed the $100 million threshold stated in E.O. 12866.

In addition to being subject to E.O. 12866, the proposed rule should also be subject to E.O. 13771. As you know, if a regulatory action is subject to E.O. 13771, the agency promulgating the regulation must identify two regulations to be repealed and the total incremental cost of all new regulations from a particular agency must not be greater than zero (including the repeal of regulations) during the fiscal year. To be subject to this section of E.O. 13771, the regulatory action must be deemed 'significant' under E.O. 12866. As stated above, we believe that the economic impact of this rule, if implemented, would clearly cause the rule to be deemed 'significant' under E.O. 12866.

Attached to this letter is a comment we submitted to the Treasury and the Service, jointly with the American Benefits Council. The comment provides greater detail as to why we encourage you to determine this particular proposed rule as 'significant'.

Assets in all retirement plans in the United States represent trillions of dollars. Based on that figure, most regulatory actions that impact retirement plans would most likely surpass the $100 million threshold to be considered 'significant' under E.O. 12866. A thorough review by OMB of new regulations, including an economic analysis on the impact any regulatory action may have on the retirement industry, would benefit not only plan sponsors that must constantly make changes to comply with new regulations, but also the millions of participants who benefit from these retirement plans. We firmly believe that if the regulatory burden is reduced on plan sponsors of retirement plans, this country will realize an increase in retirement plans under the voluntary retirement system, ensuring more Americans properly save for retirement.

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If you have any questions concerning this letter, or if we can be of further assistance, please contact Will Hansen at whansen@eric.org or 202-789-1400.

Sincerely,

Will Hansen

Will Hansen
Senior Vice President, Retirement Policy