PBGC Protecting America's Pensions

Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

December 11, 2013

[redacted]

Re: Appeal 2012-[redacted] Case Number 199627, United Airlines Inc. Pilots Fixed Benefit Income Plan (the "Plan")

Dear [redacted]

We are responding to your appeal of PBGC's determination of your benefit under the Plan. PBGC determined that your monthly PBGC benefit, in the form of a Straight Life Annuity ("SLA"), is (1) $2,510.09 from January 1, 2005 through [redacted] 2009, and (2) $1,688.22 starting on [redacted] 2009.

For the reasons explained in this decision, the Appeals Board changed an actuarial factor that PBGC had used when it calculated your benefit funded by the Plan's assets in "Priority Category 3." The change in this factor increased your monthly PBGC benefit from the amounts PBGC determined. The Board decided you are entitled to receive: (1) $2,734.95 from January 1, 2005 through [redacted] 2009, and (2) $1,839.46 starting on [redacted] 2009. These amounts are before the deduction for PBGC's recoupment of benefit overpayments. In all other respects, your appeal is denied.

In Enclosure 1 to this decision, we provide a new Benefit Statement Worksheet prepared by the Appeals Board ("AB Worksheet") that shows the data we used and how we calculated your PBGC benefit.

Background

Procedural history

Your appeal has a detailed procedural history, which is summarized below:

- PBGC issued its benefit determination letter to you on December 14, 2010. PBGC's letter and enclosed Benefit Statement showed that you are entitled to a monthly PBGC benefit of (1) $2,503.86 from January 1, 2005 to [redacted] 2009, and (2) $1,684.03 starting on [redacted] 2009. PBGC also determined that your monthly payments must be reduced to account for $36,099.48 in overpayments that you received between January 1, 2005 and February 1, 2006.

- In December 2010, PBGC provided you with a Benefit Statement Worksheet dated December 27, 2010, which explained PBGC's benefit calculation in more detail.
- On January 7, 2011, you requested an extension of time to file an appeal. You stated that you were waiting for a PBGC representative to explain certain aspects of your benefit calculation.
- At the Appeals Board's request, a representative of PBGC's Benefits Administration and Payment Department sent you a letter dated February 16, 2011 (Enclosure 2), which responded to the inquiries you had made by telephone and in your January 7 letter. PBGC's letter stated that, if you still disagreed with PBGC's explanation, you may submit a written statement to the Appeals Board within 45 days.
- You filed an appeal on March 29, 2011.
- On August 30, 2012, PBGC sent you a letter stating that your monthly benefit will increase to $1,688.22 based on a revised audit of the Plan's assets (Enclosure 3). PBGC also calculated your monthly benefit payable from January 1, 2005 to [redacted] 2009 as $2,510.09 (although this increase is not mentioned in the August 30, 2012 letter).[1] We note: (1) on September 1, 2012, PBGC increased your monthly payments to $1,688.22, and (2) PBGC has not yet adjusted your monthly payments for the recoupment of your overpayments.
- In a letter dated September 6, 2012, the Appeals Board provided you with an opportunity to respond to PBGC's August 30, 2012 letter.[2]
- You supplemented your appeal in a September 13, 2012 letter to the Appeals Board.

Issues raised in your appeal

In your appeal letters dated March 29, 2011 and September 13, 2012, you raise the following issues and make the following requests:

- You contend that the Early Retirement Adjustment Factors that PBGC used are incorrect. These factors relate to PBGC's calculations of your Maximum Guaranteed Benefit ("MGB") and your funded benefit in Priority Category 3 ("PC3").
- You assert that the Final Average Earnings of $160,000.00, which PBGC used in calculating your PC3 benefit, is incorrect.
- You contend that you earned 20.0506 Years of Participation Service, rather than the 19.5000 Years of Participation Service that PBGC used to calculate your PC3 benefit.

---

[1] We also include in Enclosure 3 a copy of PBGC's Benefit Statement Worksheet dated October 12, 2012 ("PBGC Worksheet"), which shows PBGC's calculation of the $1,688.22 benefit amount stated in PBGC's August 30, 2012 letter and of the $2,510.09 monthly benefit payable from January 1, 2005 to [redacted] 2009.

[2] The Board's September 6, 2012 letter also explained that, because a new PBGC benefit amount replaces the one you appealed, the Board administratively closed your March 29, 2011 appeal (Appeal 2011[redacted] and assigned you a new appeal number (Appeal 2012-[redacted].

- You claim that PBGC incorrectly calculated your monthly benefit based on a 1983 Group Annuity Mortality Table.
- You request that PBGC correct your monthly benefit amount. You further ask PBGC to "forgive the purported $36,099.48 payback that it is requiring of me." You state in your September 13, 2012 letter that you are a [redacted] military veteran and "any decrease of my monthly pension or having to repay monies owed from overpayment by the PBGC would be a huge burden on me and my family."

The Plan's termination and trusteeship by PBGC

PBGC provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). If a plan sponsor of a tax-qualified defined benefit pension plan is unable to support its plan, PBGC becomes trustee of the plan and pays benefits pursuant to the terms of the plan, subject to limitations and requirements set by Congress under ERISA.

The Plan terminated, effective December 30, 2004, without sufficient assets to provide all benefits, and PBGC became the Plan trustee on October 26, 2005. When PBGC becomes trustee of a terminated plan, PBGC collects participant information and copies of the plan's governing documents from the plan's former administrator and audits that data. PBGC necessarily relies on the data it receives from a former plan administrator unless: (1) PBGC's audit of that data shows that it is wrong; or (2) a participant supplies PBGC with documents showing that the data is wrong.

The benefits that PBGC pays

Because of legal limits under ERISA and PBGC regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay. One of ERISA's limitations, the MGB (also referred to as the "maximum insurance limit"), affects the benefit amount that PBGC may pay you. A participant may receive a larger PBGC benefit, however, if the pension plan had sufficient assets when it terminated to pay more than PBGC's guaranteed amount.

The six-tier asset allocation scheme under ERISA section 4044 determines how a pension plan's assets are distributed among various categories of benefits when the assets are insufficient to pay all promised benefits. The highest priority categories (Priority Categories 1 and 2) are reserved for benefits derived from a participant's own contributions. In this decision, we refer to these priority categories as PC1, PC2, PC3, etc.

PC3, which is the most significant category with respect to the issues in your appeal, covers a participant's benefits that were "in pay status" (i.e., were being paid) three or more years before the plan's termination date, or that would have been in pay status three years before the termination date if the participant had retired. PC4 generally is for benefits guaranteed by PBGC. PC5 is for other nonforfeitable benefits (generally, benefits that would be guaranteed but for the limits described above). PC6 covers all other benefits under the plan (i.e., non-vested benefits).

Also, PBGC may pay an eligible participant an additional amount, known as the "ERISA § 4022(c) benefit," based on PBGC's recoveries from employers that maintained underfunded pension plans.

The definition of PC3 benefits in ERISA and PBGC regulations

Several of the issues you raise involve PBGC's calculation of your PC3 benefit. Under ERISA's definition of PC3, there are two requirements for a benefit to be in PC3.[3] The first is that the participant must have either retired or been eligible to retire at least three years before the plan's termination date.[4] We refer to the termination date as "DOPT," which is shorthand for "Date of Plan Termination." The second requirement is that a benefit in PC3 is the benefit that is in pay status, or could have been in pay status, as of three years before DOPT based on the plan provisions "in effect" during the five years before DOPT "under which such benefit would be the least."[5] PBGC issued a regulation, published at 29 Code of Federal Regulations ("C.F.R.") section 4044.13, which further addresses how PC3 benefits are determined.

As provided in ERISA and PBGC regulations, your benefit in PC3 is based on the assumption that you had retired as of the beginning of the three-year period ending on DOPT

---

[3] ERISA § 4044(a) defines PC3 as follows:

> In the case of the termination of a single-employer plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:
>
> * * * *
>
> (3) Third, in the case of benefits payable as an annuity—
>
> (A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least,
>
> (B) in the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.
>
> For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

[4] ERISA § 4044(a)(3).

[5] *Id.*

(i.e., as of December 30, 2001). We refer to the date three years before plan termination as "DOPT-3." PBGC therefore must determine your PC3 benefit based on your age, your service, and your Final Average Earnings as of DOPT-3. PBGC also must use the Plan's early retirement factor for a benefit starting on DOPT-3.

Summary of Appeals Board's Findings

As stated at the beginning of this decision, the Appeals Board increased your PBGC benefit from the amount PBGC determined. Specifically, the Board decided:

- If the Plan had been fully funded when it terminated, your monthly benefit in the form you selected, a Straight Life Annuity with a Level Income Option ("SLA with LIO"), is $5,644.02 per month through [redacted] 2009, and $3,796.02 starting [redacted] 2009. These are the same amounts that were calculated by the Prior Plan Administrator.
- Due to the MGB limit, your guaranteed benefit, when converted to an SLA with LIO, is $2,368.06 per month through [redacted] 2009 and $1,592.70 starting [redacted] 2009.
- As of the Plan's termination date, the Plan's assets covered only 82.0617% of the benefits in PC3. Your funded benefit in PC3 is $2,425.04 per month from the Plan's termination date through [redacted] 2009 and $1,631.02 per month starting [redacted] 2009. Thus, because your funded PC3 benefit exceeds your MGB, PBGC pays the larger PC3 amount.
- Your monthly PBGC benefit, which is the sum of your funded PC3 benefit and the additional amount provided under ERISA section 4022(c), is **$2,734.95** through [redacted] 2009 and **$1,839.46** starting [redacted] 2009.

Discussion

We respond below to the specific issues and requests presented in your appeal. We also provide a more-detailed explanation of the Appeals Board's calculation of your PBGC benefit in the Appendix to this decision and in the AB Worksheet.

A. Early Retirement Factors for your MGB and your PC3 benefit

Your appeal states that the Early Retirement Adjustment Factors ("ERFs") shown on the Benefit Statement Worksheets you received from PBGC are incorrect. These factors relate to PBGC's calculations of your MGB and your funded benefit in PC3.

The age reduction in PBGC's MGB calculation. ERISA's MGB provision provides that PBGC's guarantee of a participant's benefit cannot exceed a specified dollar amount payable in the form of an SLA at age 65.[6] For pension plans with termination dates in 2004, such as the Plan, the MGB is $3,698.86 per month ($44,386.32 annually) for a participant who begins receiving PBGC benefits at age 65 in the form of an SLA.

[6] ERISA § 4022(b)(3).

A PBGC regulation establishes the MGB age reduction factors for benefits that start before age 65. Based on this regulation, the MGB for a participant who begins receiving a benefit before age 65 must be reduced to reflect the number of whole months between: (1) the later of the plan's termination date and the participant's retirement date, and (2) the date the participant attains age 65. In your case, the December 30, 2004 Plan termination date is later than your retirement date. PBGC's regulation provides that the age reduction to the MGB is 7/12 of 1% for each of the first 60 months before age 65. The monthly reduction of 7/12 of 1% results in a [redacted]% reduction from your age 65 amount (*see* calculation in Appendix).

Your appeal contends that your MGB should not be adjusted for your age at retirement because your retirement at age 60 was mandatory.[7] ERISA expressly defines the MGB based on "the actuarial value of a monthly benefit in the form of a straight-life annuity commencing at age 65 . . . ." ERISA section 4022(b)(3). Because of this language, the MGB is less for participants who begin receiving their PBGC benefit at ages younger than 65 years because the cost of providing a benefit for their expected life is larger. PBGC's regulation at 29 C.F.R. § 4022.23(c) implements this ERISA requirement.

ERISA contains no special exemption to the MGB reduction for pilots or for any other occupational group. The Appeals Board does not have the authority to change the factors that were established by a PBGC regulation. Accordingly, even though you were required to retire from employment as a pilot at age 60 based on federal law, PBGC is unable to provide you with a more favorable MGB.

<u>*The early retirement adjustment in PBGC's PC3 calculation*</u>. The Plan provisions in effect at the beginning of the five-year period before the Plan terminated provided that the Normal Retirement benefit amount is reduced by 6.0% for each year of early retirement before age 60 (i.e., a reduction of 1/2 of 1% per month).[8] On your PC3 calculation date of December 30, 2001 (i.e., DOPT-3), you were [redacted] years and [redacted] months old. Because DOPT-3 was [redacted] months before you attained age 60, an ERF of [redacted] applies to the calculation of your PC3 benefit, as is shown by the following computation:

1.0 – [0.5% (monthly reduction) × [redacted] (months before age 60)] = [redacted] (ERF)

---

[7] The Fair Treatment for Experienced Pilots Act, P.L. 110-135, signed on December 13, 2007, changed airline pilots' mandatory retirement age from 60 to 65. Unfortunately for you, this legislation was enacted after you attained age 60 and retired from UAL.

[8] The formal Plan documents that apply to your benefits are the 1999 Amendment and Restatement of the United Airlines Pilot Defined Benefit Pension Plan ("1999 Plan") and the amendments to the 1999 Plan that were in effect when you terminated UAL employment. Appendix B of the 1999 Plan shows that the early retirement reduction for retirement during the first 5 years before age 60 is 6% per year (0.500% per month). In Enclosure 4 we provide a copy of relevant 1999 Plan provisions. In Enclosure 5, we provide a table that shows the ERF's that PBGC used to calculate PC3 benefits. The First Amendment to the 1999 Plan ("First Amendment," which we provide as Enclosure 6) changed the early retirement reduction to 3% per year (0.25% per month) effective for retirements on or after April 11, 2000.

You object to PBGC's use of an early retirement factor in its calculation of your PC3 benefit for the same reasons that you object to the age reduction to your MGB. Under ERISA's priority scheme for allocating plan assets to benefits, participants (like you) who could have retired on DOPT-3 are treated for PC3 purposes as if they actually had retired on that date and had their benefit computed under the Plan provision in effect at the beginning of the 5-year period before the Plan's DOPT. As is the case with the MGB factor, the Appeals Board is unable to change the early retirement factor PBGC used to compute your PC3 benefit.

B. Final Average Earnings for your PC3 benefit

The Plan document applicable to you defines "Final Earnings Period" as the "36 consecutive Months of Participation, in the calendar order of occurrence, which are included in the Earnings Period and for which the Participant has been credited with the greatest total Earnings."[9] Additionally, your "Eligible Earnings" for any Plan Year, which are used to calculate your Final Average Earnings ("FAE"), cannot exceed the $150,000 limit stated under section 401(a)(17)(A) of the Internal Revenue Code ("IRC"), as increased by the applicable Cost of Living Adjustments ("COLAs") provided in IRC § 401(a)(17)(B).[10]

Due to the IRC § 401(a)(17) limit COLAs, the IRC § 401(a)(17) compensation cap increased during the 5-year period before DOPT. The increased IRC § 401(a)(17) limits (which are shown in the table you provided as an exhibit to your appeal) are as follows:

YEAR	AMOUNT
1999	$160,000
2000	$170,000
2001	$170,000
2002	$200,000
2003	$200,000
2004	$205,000

[9] This provision (provided in Enclosure 4) is located in section 1.4 of the 1999 Plan, which is titled "Defined Terms." Section 1.4 also includes a special rule that applies if there are fewer than 36 Months of Participation in the Final Earnings Period.

[10] The definition of "Eligible Earnings" in Section 1.4 of the 1999 Plan states:

> "Eligible Earnings" means that portion of a Participant's Earnings for any Plan Year that do not exceed (i) $200,000 for Plan Years beginning after December 31, 1988 and before January 1, 1995, (ii) $150,000 for Plan Years beginning after December 31, 1994, or (iii) in either case (i) or (ii), such larger amounts as are in effect as of the first day of any such Plan Year under Code Sec. 401(a)(17). If Earnings for a period of less than 12 months is used for a Plan Year, then the otherwise applicable annual compensation limit is reduced in the same proportion as the reduction in the 12-month period.

See also definition of "Final Average Eligible Earnings" in Section 1.4.

IRC § 401(a)(17) provides, generally, that a trust which is part of a pension plan shall not constitute a qualified trust unless the annual compensation of each employee taken into account under the plan for any year does not exceed a specified amount.

As provided in the Plan's definition of "Eligible Earnings," the Plan's compensation cap increases whenever an IRC § 401(a)(17) limit COLA goes into effect. Accordingly, each of the COLA increases to the IRC § 401(a)(17) limit is a separate benefit increase under the Plan's provisions.

ERISA limits a participant's benefit in PC3 to the benefit "based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least."[11] The PBGC regulation that implements this statutory provision provides that the benefit assigned to PC3 is limited to "the lowest annuity benefit *payable* under the plan provisions, including any reduction for early retirement, *at any time* during the 5-year period ending on the termination date."[12] Based on this regulation, PBGC applied the lower IRC § 401(a)(17) limit that was in effect five years before the Plan's termination when it calculated your benefit in PC3. We refer to the date five years before plan termination as "DOPT-5."

As shown in the above table, the annual IRC § 401(a)(17) compensation limit in effect at DOPT-5 was $160,000. Although the annual limit increased to $170,000 effective January 1, 2000 due to a COLA, PBGC cannot use the $170,000 limit in your PC3 benefit calculation because this increase was not in effect at DOPT-5. Instead, PBGC used a Final Average Earnings limit of $160,000 for your earnings in 1999, 2000, and 2001, since that limit produces the lowest benefit payable to you as of DOPT-3.

You claim your FAE for purposes of calculating your PC3 benefit should be $166,666.66, which is the average of the IRC § 401(a)(17) limits for 1999 ($160,000), 2000 ($170,000), and 2001 ($170,000). You enclosed a benefits worksheet, which you state was prepared by UAL. You view this document as supporting "an average cap of $166,666.66."

If PBGC applied the IRC § 401(a)(17) limits in effect at DOPT-3, your FAE would be $166,666.66, as you claim. Based on ERISA and PBGC's regulation, however, PBGC must calculate your PC3 benefit using the lower IRC § 401(a)(17) limit that was in effect at DOPT-5, which results in an FAE of $160,000. For this reason, we are unable to increase the FAE that PBGC used to calculate your PC3 benefit.

C. <u>Participation Service for your PC3 benefit</u>

Based on the Plan's provisions, you began accruing Participation Service on [redacted] 1980. Thus, if your UAL employment had been continuous, you would have earned 21 years and 11 months (21.9167 years) of Participation Service as of DOPT-3 (December 30, 2001).

---

[11] ERISA § 4044(a)(3). In this provision, the words "such date" refer to the pension plan's termination date.

[12] 29 C.F.R. § 4044.13(b)(3)(ii) (emphasis added). PBGC's regulation further states that "[b]enefit increases that were effective throughout the 5-year period" are included in PC3. 29 C.F.R. § 4044.13(b)(2)(i).

For your PC3 benefit calculation, however, your Participation Service must be adjusted for your period of furlough between [redacted] 1980 and [redacted] 1984. Under the Plan provision that applies to your PC3 benefit: (1) a pilot with a furlough greater than 12 months is credited with Participation Service for only one-third of the months he was on furlough; and (2) if this calculation results in a partial month, the Participation Service is rounded up to the next full number.[13]

You were on furlough for 3 years and 8 months (3.6667 years, which is 44 months). If your furlough period is not included in your Participation Service at all, you would have earned 18.25 Years of Participation Service at DOPT-3 [21.9167 (Participation Service if employment was continuous) – 3.6667 (furlough period) = 18.25 Years of Participation Service]. Under the "1/3 rule" discussed above, you are entitled to credit for 15 of the 44 months you were on furlough, which equals 1.25 years. This additional 1.25 years of Participation Service provided by the "1/3 rule" increases your Participation Service at DOPT-3 from 18.25 years to 19.5 years.

Your appeal asserts that you should be credited with 20.0506 years of Participation Service.[14] Your calculation differs from the 19.5 years that PBGC computed for PC3 benefit purposes because: (1) you (incorrectly) counted Participation Service that you accrued after DOPT-3; and (2) you did not include the 1.25 years of furlough service based on the "1/3 rule" discussed above. The Appeals Board decided that PBGC correctly used 19.5 years of Participation Service when it calculated your PC3 benefit.

D. Your SLA with LIO amounts in PC3

Your appeal disagrees with the "present value" actuarial assumptions that PBGC used in determining the MGB and PC3 amounts that PBGC may pay you as an SLA with LIO. In responding to this issue, we first explain the SLA with LIO amounts that UAL calculated. Afterwards, we discuss: (1) PBGC's calculations of your SLA with LIO amounts in PC3; and (2) the Appeals Board's changes to your SLA with LIO amounts in PC3.

---

[13] This "1/3 rule" for credited service during a furlough is set forth in Letter 91-11, which is a letter of agreement between UAL and the Air Lines Pilot Association ("ALPA") dated May 9, 1991 (Enclosure 7).

We note that, under the First Amendment (Enclosure 6), full credited service is given for time spent on furlough if the pilot returns to work. Because the First Amendment was adopted on December 21, 2001, which is within five years of DOPT, your PC3 benefit must be calculated using the Plan's earlier provision, which results in a lower benefit.

[14] You calculated 20.0506 years of Participation Service as follows: 23.75 years of Participation Service if your employment with UAL was continuous less a "total furlough time" of 3.6994 years. The 23.75 years you computed equals the time period between your Date of Participation [redacted] 1980) and your employment termination date [redacted] 2003).

Your furlough period calculation of 3.6994 years includes an adjustment for a "one-day" furlough you experienced on [redacted] 1980. UAL's, PBGC's, and the Appeals Board's computations of your service do not include this one-day furlough period.

1. UAL's calculation of your SLA with LIO amounts

Prior to your [redacted] 2003 retirement date, UAL calculated your Plan benefit under various benefit options. In Enclosure 8, we provide a copy of UAL's benefit calculations dated [redacted] 2003. In Enclosure 9, we provide a copy of the benefit election form that you and your wife signed on [redacted] 2003.[15] Enclosure 9 shows that you elected the "Single Life Annuity with Level Income Feature" (i.e., the SLA with LIO) starting on an actual retirement date ("ARD") of [redacted] 2003 (at age 60).

The Plan's "Level Income Feature" is designed to provide a retiree with a "level income" through the combination of a pension plan benefit and an (estimated) Social Security benefit.[16] Thus, under the SLA with LIO form you elected, your payments do not remain the same throughout your lifetime. Instead, your monthly payments: (1) are larger during the six-year period from your retirement date [redacted] 2003) until your unreduced Social Security eligibility date (at age 66); and (2) are reduced by an estimated Social Security amount starting [redacted] 2009. Under the Plan's calculations, the sum of your post-age-66 Plan benefit and your estimated Social Security benefit equals the (larger) pre-age-66 Plan benefit. In this decision, we use the term "temporary period" to refer to the time period when the participant is entitled to larger payments under a LIO.

When you retired effective [redacted] 2003, UAL calculated a "qualified" SLA amount of $4,503.80. The $4,503.80 amount is after the deduction of $854.53 for your Partial Lump Sum Amount ("PLSA") distribution. UAL then made actuarial adjustments to your $4,503.80 SLA amount to determine the monthly amounts you would receive as an SLA with LIO. For this calculation, UAL estimated your monthly Social Security benefit (which we refer to as the "SSA Amount") as $1,848.00. UAL determined your monthly SLA with LIO amounts as: (1) $5,644.02 from [redacted] 2003 through [redacted] 2009; and (2) $3,796.02 starting [redacted] 2009.[17] UAL's calculation of your SLA with LIO amounts is explained in the Appendix.

The overall impact of UAL's calculations is: (1) your monthly pre-age-66 benefit is

---

[15] PBGC records do not contain page 2-3 of the benefit election form in Enclosure 9. Please also note that the benefit amounts shown on pages 6 and 7 of Enclosure 9 are somewhat greater than the benefit amounts in Enclosure 8 because they include both the "qualified" benefits payable under the Plan and the "non-qualified" amounts payable by a separate UAL pension plan that was not tax-qualified ("non-qualified plan"). PBGC does not guarantee benefits under the non-qualified plan because that plan was not covered by PBGC's insurance program.

[16] As provided in section 8.5 of the 1999 Plan, a participant may elect the LIO in combination with several annuity forms, including the SLA, a Joint and Survivor Annuity, and a Ten Year Certain Annuity. The participant may also select the date on which his benefit "steps down" to a smaller amount, so long as it is between age 62 and the participant's "Social Security Normal Retirement Age" (age 66 in your case). You selected the first of the month after you attained age 66 as your step-down date.

[17] Thus, under UAL's calculations, the $1,848.00 decrease in your monthly payments starting on [redacted] 2009 [i.e., $5,644.02 - $3,796.02 = $1,848.00] equals your (estimated) SSA Amount. Your Plan benefit amounts do not increase or decrease, however, if your actual Social Security benefit is different.

$1,140.22 more than the benefit you would have received if you had elected an SLA without an LIO; and (2) your monthly benefit starting at age 66 is $707.78 less than if you had elected an SLA without an LIO. Those two amounts are actuarially equivalent to a (level) Plan benefit of $4,503.80 in the SLA form starting on your ARD of [redacted] 2003 (at age 60). PBGC accepted the Plan benefit amounts that UAL calculated for you.

2. PBGC's calculation of your SLA with LIO amounts in PC3

PBGC determines your PC3 amount as of DOPT-3 based on the Plan's provisions in effect on DOPT-5. *See* discussion on pages 4-5 above. For this reason, your monthly benefit in PC3 before the adjustment for the LIO ($2,408.21) is less than your monthly Plan benefit amount before the adjustment for the LIO ($4,503.80). The $2,408.21 amount in PC3 (before LIO adjustment) is shown on line (16) of PBGC's Benefit Statement in Enclosure 3. The calculation of the $2,408.21 amount, which the Appeals Board did not change, is explained in the Appendix.

PBGC calculated your monthly SLA with LIO amounts in PC3 as $3,189.55 per month from [redacted] 2003 through [redacted] 2009 and $1,476.08 per month starting [redacted] 2009. These monthly PC3 amounts are shown on lines (18) and (19) of the PBGC Worksheet (Enclosure 3).

Please note that the amounts shown on lines (18) and (19) are not the PC3 amounts that are payable to you. Rather, PBGC adjusts the amounts in lines (18) and (19) to: (1) take into account that the Plan's assets covered only 82.0617% of the Plan's benefit liabilities in PC3; and (2) change your monthly PC3 amounts to "percentages" of your Plan benefit amounts. We discuss these two adjustments later in this decision.

In calculating your PC3 amounts for an SLA with LIO, PBGC used the same LIO calculation method that UAL used. Essentially, the Plan's LIO calculation method uses the SSA Amount (which is the participant's estimated Social Security benefit) and an actuarial adjustment factor for the LIO ("LIO Factor") to convert the benefit payable as an SLA to the benefit payable as an SLA with LIO. The LIO Factor ensures that the benefit amounts calculated in the LIO form are actuarially equivalent, as of the participant's benefit start date (i.e., ARD) and under the Plan's assumptions, to the benefit payable as an SLA. The LIO calculation method is explained in more detail in the Appendix.

To adjust your monthly SLA amount to your monthly amounts in the SLA with LIO form, PBGC used a different benefit start date for your PC3 benefit than for your Plan benefit. PBGC concluded that your PC3 benefit payable as an SLA with LIO must be calculated based on the assumption that you started receiving payments under that option as of DOPT-3 (i.e., starting January 1, 2002), with a step down to a smaller monthly amount at age 66. Thus, PBGC calculated your PC3 benefit using the Plan's LIO Factor for a benefit starting at age [redacted] and [redacted] months (your age at DOPT-3) and an (assumed) temporary period of seven years and [redacted] months. PBGC use of a LIO Factor for an earlier start date and a longer assumed temporary period benefit resulted in materially lower PC3 amounts than if PBGC had used the Plan's LIO Factor for your actual age 60 start date and the 6-year temporary period you elected.[18]

For your PC3 calculation, PBGC also used the SSA Amount ($1,713.47) that the Plan would have used if you started your LIO benefit on January 1, 2002, which impacted your PC3 amounts slightly. PBGC's calculations of your monthly PC3 amounts are shown in the PBGC Worksheet (Enclosure 3).

3. Appeals Board's calculation of your SLA with LIO amounts in PC3

As previously stated, the Appeals Board changed PBGC's calculation of your LIO benefit amounts in PC3. Specifically, the Board decided that the SSA Amount ($1,848.00) and LIO Factor that UAL used in calculating your LIO benefit as of your ARD of [redacted] 2003 should also be used for your PC3 benefit calculation.

These changes caused your monthly benefit in PC3 to increase to: (1) $3,548.43 (rather than $3,189.55) through [redacted] 2009; and (2) $1,700.43 (rather than $1,476.08) starting on [redacted] 2009. The $3,189.55 and $1,700.43 amounts are prior to the adjustments the Board made to: (1) take into account that the Plan's assets covered only 82.0617% of the Plan's benefit liabilities in PC3; and (2) change your monthly PC3 amounts to "percentages" of your Plan benefit amounts. *See* discussion on pages 15-16.

The reason for the Appeals Board's change is explained below.

a. Applicable provisions in ERISA and PBGC regulations

In analyzing how to calculate your PC3 benefit in your SLA with LIO form, we start with the applicable statutory and regulatory provisions. For a participant, such as you, who was not in

[18] PBGC also concluded that ERISA § 4044 required it to compute your PC3 benefit based on the Plan's actuarial assumptions for LIO benefits that were in effect five years before the Plan's termination date (i.e., on December 30, 1999). UAL had amended the assumptions, effective January 1, 2000, to provide that the Plan's LIO benefit would not be less than the amounts determined by using the interest rate and mortality factors required for lump sum distributions under Internal Revenue Code ("IRC") section 417(e). *Compare* 1999 Plan § 16.1 (Enclosure 4) (Plan's earlier LIO actuarial assumptions) *with* First Amendment to the 1999 Plan ¶7 (Enclosure 6) (amended LIO assumptions). PBGC's use of the pre-2000 LIO actuarial assumptions had the effect of decreasing your PC3 benefit amounts.

UAL's adoption of the amended assumptions ensured that the Plan's LIO would comply with ERISA § 205(g) and IRC § 417(e). *See Treas. Reg.* § 1.417(e)-1(d) (issued August 22, 1988); T.D. 9256, 71 Fed. Reg. 14,798, 14,800 (March 24, 2006) (applicability of *Treas. Reg.* § 1.417(e)-1(d) to LIOs). Because the Plan's amended LIO assumptions ensured that the Plan complied with ERISA, the Appeals Board did not apply the earlier LIO assumptions in calculating your PC3 amounts.

The Board decision to use the Plan's amended LIO assumptions to calculate your PC3 benefit is consistent with PBGC's decision, made in 2009, not to apply ERISA's phase-in limit to benefit increases resulting from the Plan's amended LIO assumptions. The phase-in limit applies to PBGC's guarantee of benefit increases under plan amendments that are adopted or become effective within five years of a pension plan's termination date. *See* ERISA § 4022(b)(1), (7); 29 C.F.R. § 4022.2, 4022.24, 4022.25.

pay status at DOPT-3, ERISA and PBGC regulations define the PC3 benefit in terms of the "normal form of annuity."[19] This definition is different from the definition of a PC3 benefit for a participant who is in pay status at DOPT-3. PBGC's PC3 regulation provides that, for a participant in pay status at DOPT-3, "the form of annuity elected by a retiree is considered the normal form of annuity for that participant."[20]

ERISA does not address how to calculate the PC3 amount for a participant, such as you, who retires after DOPT-3 and elects an optional form of benefit (instead of receiving the benefit in the normal form).

Although not directly on point, a subsection of PBGC's PC3 regulation addresses a situation that is analogous to your LIO issue. When PBGC issued its PC3 regulation, the agency was aware that differences could exist "between the normal form of annuity in effect at the beginning of the 3-year period and the normal form at that point in the 5-year period when the lowest benefit was in effect."[21] The PC3 regulation provides that, if the annuity form that appears to produce the lowest benefit in the 5-year period before DOPT differs from the normal form, "the benefits shall be compared after the differing form is converted to the normal annuity form, using plan factors."[22] 29 C.F.R. § 4044.13(b)(3)(ii).

This subsection of the regulation indicates that PBGC appropriately may use "plan factors" of actuarial equivalence to convert the PC3 amount payable in the normal annuity form to the PC3 amount payable in the optional annuity form elected by the participant.

b. The Board's change to your LIO benefit in PC3

As stated above, PBGC calculated your PC3 benefit based on the assumption that you started receiving payments under the SLA with LIO form as of DOPT-3 with a step down to a smaller monthly amount at age 66. PBGC, in calculating PC3 amounts under those assumptions, essentially concluded that your SSA Amount and LIO Factor should be treated similarly to the other "relevant facts" in your PC3 calculation, such as your age, service, and compensation. As

---

19 ERISA states that, if the participant is not in pay status at DOPT-3, the PC3 benefit is the annuity that would be payable if the participant's "benefits had commenced (*in the normal form of annuity under the plan*) as of the beginning of the 3-year period." ERISA § 4044(a)(3)(B) (emphasis added). Similarly, PBGC's PC3 regulations provide that, for a participant who is not in pay status at DOPT-3, "the priority category 3 benefit and the normal form of annuity shall be determined according to plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date as if the benefit had commenced at that time." 29 C.F.R. § 4044.13(b)(2)(ii).

20 29 C.F.R. § 4044.13(b)(2)(i). We do not address in this decision how LIO amounts should be determined for participants who retired before DOPT-3.

21 *See* preamble to PBGC's final Allocation of Assets, 46 Fed. Reg. 9480, 9484 (Jan. 28, 1981).

22 This subsection of PBGC's PC3 regulation further provides that, in the absence of plan factors, the PBGC factors in 29 C.F.R. § 4022 shall be used.

stated above, PBGC uses your age, service, and compensation at DOPT-3 in computing your PC3 benefit in the normal form.[23]

The SSA Amount and LIO Factor, however, pertain only to the conversion of the Plan's normal annuity amount to the Plan's optional LIO amounts. As previously explained: (1) ERISA does not address how to calculate the PC3 amount for a participant who retires after DOPT-3 and elects an optional form of benefit; and (2) PBGC's regulation at 29 C.F.R. § 4044.13(b)(3)(ii) indicates that PBGC appropriately may use "plan factors" of actuarial equivalence to convert the PC3 amount payable in the normal annuity form to the PC3 amount payable in the optional annuity form that was elected by a participant who retired after DOPT-3. The Appeals Board accordingly concluded that the longer temporary period assumption that PBGC used to compute your PC3 benefit – which does not maintain actuarial equivalence between the normal form PC3 benefit and the LIO form PC3 benefit – is not required by ERISA or by PBGC regulations.

The Appeals Board also concluded that PBGC's computation of your PC3 benefit must be changed because PBGC's temporary period assumption essentially changed the characteristics of your elected benefit form. When UAL presented you with the opportunity to choose an LIO, you could select the date when your benefit steps down to a smaller amount, so long as it is between age 62 and your Social Security Normal Retirement Age (age 66). Using the 6-year temporary period you elected, UAL calculated an SLA with LIO benefit that was actuarially equivalent (under the Plan's factors) to the Plan's normal form of a level SLA. Under PBGC's calculation of your PC3 benefit as an SLA with LIO, however, this optional form became significantly less valuable than a level SLA because of the (larger) assumed temporary period.

The Appeals Board further calculated your monthly benefit in PC3 using the same "temporary benefit" and "reduced benefit" adjustments that UAL computed for your elected benefit form.[24] To compute the SLA with LIO benefit you elected, UAL actuarially adjusted your monthly SLA amount ($4,503.80 for your lifetime) by (1) paying an additional $1,140.22 per month for 6 years starting at age 60 and (2) paying $707.78 per month less than your SLA after you attained age 66 (with the reduction continuing for your lifetime). These adjustments – that is, a temporary period increase of $1,140.22 and an age-66 reduction of $707.78 – provided you with an SLA with LIO as of your ARD that is equivalent to a level SLA as of your ARD based on the Plan's actuarial assumptions.

The Appeals Board, using the same LIO adjustments as UAL, accordingly computed the following PC3 amounts: (1) your benefit payable until [redacted] 2009 is $3,548.43, which

[23] PBGC's PC3 regulation provides for such treatment, since it states that the PC3 benefit amount for a participant who is not in pay status on DOPT-3 generally is determined based on "the participant's age, service, actual or expected retirement age, and *other relevant facts*" as of DOPT-3. 29 C.F.R. § 4044.13(b)(2) (emphasis added).

[24] PBGC has not issued a formal policy that addresses how LIO benefits in PC3 are to be calculated for participants who retire after DOPT-3. In the absence of a formal policy, the Appeals Board calculated your PC3 benefit in a way that, in the Board's view, is consistent with ERISA and PBGC regulations.

The Appeals Board does not establish generally-applicable rules concerning how PBGC benefits are calculated. Accordingly, PBGC could adopt a regulation or policy that establishes a different PC3 calculation method for participants who retire after DOPT-3 with LIO benefits.

equals the sum of your SLA PC3 amount of $2,408.21 and an addition for your LIO of $1,140.22; and (2) your benefit payable starting at age 66 equals $1,700.43, which is your SLA PC3 amount of $2,408.21 less the reduction for the LIO of $707.78. The Board found that its calculation of these PC3 amounts maintains the actuarial equivalence between your PC3 benefit as an SLA and your PC3 benefit as an SLA with LIO. *See* further discussion in the Appendix.

E. Appeals Board's calculation of your PBGC-payable benefit amounts

The PC3 amounts computed by the Appeals Board – $3,548.43 through [redacted] 2009 and $1,700.43 starting [redacted] 2009 – do not reflect the PBGC benefit amount that you are entitled to receive. The following three additional adjustments are required: (1) your monthly PC3 amounts must be reduced because the Plan's assets funded only 82.0617% of the benefit liabilities in PC3; (2) an actuarial adjustment must be made because PBGC pays non-level PC3 amounts as a "percentage" of the participant's non-level Plan benefit amounts; and (3) your additional benefit under ERISA section 4022(c) must be added to your funded PC3 benefit amount. These three adjustments, which are complex, are explained in the Appendix.

Your appeal challenges the second of the adjustments listed above, which is the actuarial calculation PBGC performs to determine the "percentage" of your Plan benefit amounts that PBGC may pay in PC3. As shown in lines (21) through (23) of the AB Worksheet, the Appeals Board concluded that your funded PC3 benefit equals 42.9665% of your Plan benefit amount. As discussed below, the 42.9665% is based on PBGC's actuarial assumptions. Your appeal claims that PBGC should use "more up-to-date" actuarial assumptions to determine the "present value" of monthly benefit amounts.

As PBGC informed you in its February 16, 2011 letter, the interest and mortality assumptions that PBGC used to calculate your PBGC-payable PC3 benefit are the same mortality and interest assumptions that PBGC uses to calculate the Plan's benefit liabilities under PBGC regulations.[25] Based on the Plan's termination date of December 30, 2004, the applicable actuarial assumptions under PBGC regulations are: (1) the 1983 Group Annuity Mortality Table for participants and the same table with a 6-year setback for beneficiaries; and (2) an interest rate of 3.8% for the first 20 years of payments and 5% thereafter. The Appeals Board concluded that PBGC appropriately applied the actuarial assumptions in its regulation when it calculated present values for purposes of determining your PC3 benefit.

For the reasons stated above and as further explained in the Appendix, the Appeals Board decided that your PBGC-payable benefit in PC3 is $2,425.04 per month from January 1, 2005 (the first month after DOPT) through [redacted] 2009 and $1,631.02 per month starting [redacted] 2009. The Board also computed your benefit under ERISA section 4022(c) as $309.91 per month through [redacted] 2009 and $208.44 per month starting [redacted] 2009.

---

[25] *See* 29 C.F.R. § 4044.51 - 4044.53 and Appendices B and C. We note that, in December 2005, PBGC published a final valuation regulation under which a version of the GAM–83 Tables was replaced with a version of the GAM-94 Tables. 70 *Federal Register* 72,205 (December 2, 2005). The effective date of this change was January 1, 2006, which was after the Plan terminated.

Thus, your monthly PBGC benefit, which is the sum of your PBGC-payable PC3 amounts and your ERISA section 4022(c) amounts, is $2,734.95 through [redacted] 2009 and $1,839.46 starting [redacted] 2009.

F. Recoupment of your benefit overpayments

When PBGC becomes the trustee of a terminated plan, PBGC pays benefits on an estimated basis until PBGC can collect plan records, audit plan data, and determine guaranteed benefit amounts. If the estimated amounts are too high, PBGC must recover the overpayments.[26] To mitigate financial hardship, PBGC does not charge interest and generally recoups any overpayment by reducing future benefit payments by no more than 10% until the overpayment is repaid.

PBGC initially paid you a monthly benefit of $5,644.02, which is the amount you previously received from the former Plan administrator. To limit any overpayment and keep any amount you may have to repay to a minimum, PBGC estimated the effect of ERISA's limits on your benefit and reduced your payments starting on March 1, 2006. However, because PBGC did not reduce your payments to the estimated amounts until March 1, 2006, you were paid significantly more than you were entitled to receive from January 1, 2005 through February 1, 2006. Therefore, PBGC must temporarily reduce your future payments to recover the overpayments you received.

As stated earlier in this decision, PBGC has not yet adjusted your monthly payments for the recoupment of your overpayments. PBGC's Benefits Administration and Payment Department will notify you of the net overpayment amount, which we expect will differ from the amount stated in your December 14, 2010 determination letter.

The Appeals Board is sympathetic to the hardship caused by PBGC's application of ERISA's benefit limits. We also regret that it is necessary to reduce your future payments for the recoupment of your overpayments. PBGC is required, however, to pay the correct benefit based on applicable Plan terms, ERISA, and PBGC regulations. The Appeals Board is unable to make any changes to your PBGC-payable benefit amount based on hardship.

Decision

Having applied the terms of the Plan, the provisions of ERISA and PBGC regulations and policies to the facts in this case, the Appeals Board increased your monthly PBGC benefit to: (1) $2,734.95 from January 1, 2005 through [redacted] 2009, and (2) $1,839.46 starting on [redacted] 2009. These amounts are before the deduction for PBGC's recoupment of benefit overpayments. In all other respects, your appeal is denied.

[26] See 29 C.F.R. §§ 4022.81 and 4022.82.

This is PBGC's final decision on the issues raised in your appeal and you may, if you wish, seek court review of this decision. If you have any questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

Charles Vernon

Charles Vernon
Chair, Appeals Board

Appendix

9 Enclosures:

(1) Benefit Statement Worksheet dated December 3, 2013 showing Appeals Board's amounts (4 pages)
(2) PBGC's February 16, 2011 letter explaining benefit calculations (2 pages)
(3) PBGC's August 30, 2012 determination letter with Benefit Statement Worksheet dated October 12, 2012 (7 pages)
(4) Excerpts of the UAL Pilot Defined Benefit Pension Plan 1999 Amendment and Restatement (26 pages)
(5) PBGC table showing Early retirement adjustment factors effective before April 12, 2000 (1 page)
(6) First Amendment to the 1999 Plan (4 pages)
(7) Letter 91-11, agreement between UAL and ALPA dated May 9, 1991 (3 pages)
(8) UAL's benefit calculations dated November 26, 2003 (9 pages)
(9) Benefit Election form dated October 7, 2003 (7 pages)

APPENDIX

The Benefit Statement Worksheet in Enclosure 1 ("AB Worksheet"), which is dated December 3, 2013, shows the Appeals Board's calculation of your PBGC benefit. This Appendix explains the Board's benefit calculation in more detail.

A. Your pension data

PBGC records contain the following information that applies to your benefit calculation:

- You were born on [redacted]
- You began working for United Airlines, Inc. ("UAL") on [redacted] 1979;
- Your Date of Participation is [redacted] 1980;
- You terminated employment on [redacted], 2003;
- You started receiving your Plan benefit on [redacted] 2003; and
- On [redacted] 2003, you received $136,795.81 as a distribution of your Partial Lump Sum Amount ("PLSA") under the Plan.

B. Your Plan benefit amount

Before your [redacted] 2003 retirement date, UAL calculated your Plan benefit under various benefit form options. UAL's calculations show that your accrued benefit as an SLA is $5,358.33 per month if you did not elect a PLSA and $4,503.80 if you elected a PLSA. Thus, UAL determined that election of a PLSA would reduce your accrued benefit by $854.53 per month. Enclosure 7 shows the benefit amounts that UAL calculated.

As is shown in your benefit election form (Enclosure 8), you elected the "Single Life Annuity with Level Income Feature" ("SLA with LIO") and decided to receive a "Partial Lump Sum Amount distribution." UAL computed your SLA with LIO amounts as follows:

- *Benefit payable from [redacted] 2003 through [redacted] 2009.* UAL started with your "qualified" SLA amount of $4,503.80.[1] To calculate the additional monthly income the Plan will pay you before age 66, UAL multiplied your estimated Social Security amount ("SSA Amount") of $1,848.00 by a Level Income Option Factor ("LIO Factor") of 0.617,[2] which equals $1,140.22. UAL then added the $1,140.22 amount to your SLA amount of $4,503.80, which results in a pre-age-66 monthly benefit of $5,644.02. Thus, the pre-age-66 benefit calculation is:

---

[1] The "qualified" SLA amount is shown on page 1 of Enclosure 8.

[2] The "Estimated Social Security Amount" and the "Level Income Option Factor" that UAL used are shown on page 2 of Enclosure 8. The Level Income Option Factor of 0.617 is based on the actuarial assumptions stated in the Plan's governing documents.

$4,503.80 (SLA amount) + [$1,848.00 (SSA Amount) x 0.617 (LIO factor)] = $5,644.02

- *Benefit payable starting* [redacted] *2009*. To calculate this amount, UAL subtracted your SSA Amount of $1,848.00 from your pre-age-66 amount of $5,644.02. This calculation results in a $3,796.02 monthly benefit starting at age 66.

Enclosure 3, which is a PBGC-prepared Benefit Statement Worksheet dated October 12, 2012 ("PBGC Worksheet"), shows PBGC's calculation of your PBGC-payable benefit before the Appeals Board's changes. As is shown on lines (1) and (2) of the PBGC Worksheet, PBGC accepted Plan benefit amounts – $5,644.02 before age 66 and $3,796.02 afterwards – that UAL calculated for your SLA with LIO benefit. As shown on lines (1) and (2) of the AB Worksheet, the Appeals Board also accepted UAL's calculation of your Plan benefit amounts.

We observe that the Plan's LIO Factor is an important component of this benefit calculation. The LIO Factor ensures that, as of the participant's retirement date, the amounts calculated for an SLA with LIO benefit are actuarially equivalent (under the Plan's assumptions) to the Plan's normal single life form, which is an SLA without an LIO. For this reason, the size of the LIO Factor depends upon (1) the age that the participant starts his payments and (2) the age he selects for his benefits to step down to smaller amounts. Thus, for example, your LIO Factor would have been smaller if you had started your payments at a younger age with an age-66 step down. Your LIO Factor would have been larger if you had started your payments at age 60 and had selected an earlier step-down age.

C. Your guaranteed benefit

1. Your guaranteed benefit if you had elected an SLA without the LIO.

ERISA's maximum guaranteed benefit limit ("MGB") provides that PBGC's guarantee of a participant's benefit cannot exceed a specified dollar amount payable in the form of a Straight Life Annuity ("SLA") at age 65. For pension plans with termination dates in 2004, such as the Plan, the MGB is $3,698.86 per month ($44,386.32 annually) for a participant who begins receiving PBGC benefits at age 65 in the form of an SLA. As explained below, the $3,698.86 amount must be reduced because you were younger than age 65 and in pay status when the Plan terminated. Also, because you received a PLSA distribution, PBGC must adjust your MGB for the value of the PLSA. Accordingly, we made the following adjustments in computing your MGB:

- Age Adjustment. As provided in PBGC regulations, the MGB for a participant who begins receiving a benefit before age 65 is reduced to reflect the number of whole months between: (1) the later of the plan's termination date ("DOPT") and the participant's retirement date, and (2) the date the participant attains age 65. In your case, the December 30, 2004 plan termination date is later than your retirement date. As is also provided in PBGC's regulation, the age reduction to the MGB is 7/12 of 1% for each of the first 60 months before age 65.

PBGC and Plan records show your date of birth as [redacted] You had [redacted] whole months between DOPT and when you reached age 65. Thus, your age adjustment factor of [redacted] is calculated as follows:

1.0 – (7/12 × 0.01 × [redacted] = [redacted]

- Adjustment for your PLSA distribution. Because the PLSA distribution you received provided you with a portion of your Plan benefit, PBGC must reduce your MGB based on the annuity value of the PLSA. Under PBGC's procedures, which you did not challenge in your appeal, the reduction to the MGB for a PLSA distribution equals the PLSA's monthly annuity value under the pension plan's terms. UAL deducted $854.53 from your monthly Plan benefit for the PLSA, and PBGC did not change that offset amount. Accordingly, PBGC deducted $854.53 from your MGB.

- Your MGB after adjustment for your age and the PLSA. Your MGB after adjusting for your age on the Plan's termination date and the PLSA offset is $1,873.38. That amount is calculated as follows:

$3,698.86 (age 65 MGB) × [redacted] (age factor) – $854.53 (PLSA) = $1,873.38

This guaranteed benefit calculation also is shown on lines (4) through (9) of the AB Worksheet.

2. *Your guaranteed benefit based on your election of the LIO.*

If PBGC were paying you a level benefit, your monthly guaranteed benefit would be $1,873.38 per month starting on January 1, 2005 (the first month after the Plan terminated). PBGC, however, continues to pay benefits in non-level amounts after plan termination if the participant entered pay status with a non-level plan benefit.

To determine your guaranteed non-level benefit amounts, PBGC first converts your Plan benefit amounts under your SLA with LIO to an equivalent level amount. This makes it possible to compare the value of your MGB (which was calculated above as a level amount) to the value of your Plan benefit. A PBGC regulation, 29 C.F.R. § 4022.23(f), specifies the factors to be used in converting the "temporary additional benefit" under a step-down life annuity to a level life annuity.

In your case, your Plan benefit as of the Plan's termination date is $5,644.02 per month from January 1, 2005 through [redacted] 2009 and $3,796.02 per month afterwards. Based on the factors in 29 C.F.R. § 4022.23(f), PBGC converted your non-level amounts of $5,644.02 and $3,796.02 to a level-life Plan benefit of $4,465.00 starting at DOPT. The $4,465.00 amount is shown on line (3) of the AB Worksheet, as well as on line (3) of the PBGC Worksheet.

PBGC's regulation further provides that, if the level-life monthly Plan benefit exceeds the MGB, the monthly non-level amounts that PBGC guarantees equals the non-level Plan amounts multiplied by the "ratio" of the level MGB to the level-life Plan benefit.[3] PBGC, applying its regulation, computed the percentage of your Plan monthly benefit guaranteed by PBGC as 41.9570%. This percentage, which is shown on line (11) of both the AB Worksheet and PBGC Worksheet, is calculated as follows:

$1,873.38 (MGB) ÷ $4,465.00 (Plan Level-Life benefit at Plan termination) = 41.9570%

PBGC then uses this guaranteed percentage (41.9570%) to determine your monthly guaranteed benefit amounts, as shown by the following computation:

$5,644.02 (Plan benefit) × 41.9570% (PBGC guaranteed percentage) = $2,368.06
PBGC benefit from January 1, 2005 through [redacted] 2009; and

$3,796.02 (Plan benefit) × 41.9570% (PBGC guaranteed percentage) = $1,592.70
PBGC benefit starting on [redacted] 2009

Your MGB amounts of $2,368.06 (through [redacted] 2009) and $ 1,592.70 (starting [redacted] 2009) are less than the PBGC-payable PC3 amounts that the Appeals Board calculated. *See* explanation below.

D. <u>Your PC3 benefit based on the allocation of the Plan's assets.</u>

As is explained in the decision, the six-tier asset allocation scheme under ERISA section 4044 determines how a pension plan's assets are distributed among various categories of benefits when the assets are insufficient to pay all promised benefits. Priority Category 3 ("PC3") covers a participant's benefits that were "in pay status" (i.e. were being paid) three or more years before the plan's termination date, or that would have been in pay status three years before DOPT if the participant had retired. You have a benefit in PC3 because you could have retired and started receiving a benefit from the Plan at the beginning of the three-year period that ended on the Plan's termination date.

Because your PC3 amount is greater than your MGB, you are entitled to receive the greater PC3 amount. The Plan's assets and PBGC's recoveries on its claims against UAL are insufficient to pay you any benefit amounts in the lowest two priority categories, PC5 and PC6. For this reason, your PBGC benefit is less than your benefit amount under the Plan's terms.

1. <u>Your PC3 benefit if you had elected an SLA without the LIO.</u>

Your PC3 benefit is based on the assumption that you had retired as of the beginning of the three-year period ending on Plan's Date of Plan Termination (i.e., December 30, 2001, which we refer to as "DOPT-3"). Thus, to determine your PC3 benefit, PBGC must use your age, your service, and your Final Average Earnings as of DOPT-3.

[3] 29 C.F.R. § 4022.23(f)(2).

PBGC also must use the early retirement factor for a benefit starting on DOPT-3. Finally, PBGC must calculate your PC3 benefit using the benefit formula and other pension terms that were in effect during the five-year period ending on the Plan's termination date that provide the lowest benefit.

In your case, PBGC made the following four adjustments in calculating your PC3 benefit:

(1) You had 19.50 Years of Participation Service for purposes of computing your PC3 benefit (as compared with 23.75 Years of Participation Service when your UAL employment ended on [redacted] 2003).

The calculation of your 19.50 years of Participation Service is explained on pages 8- 9 of the decision.

(2) Your Final Average Earnings ("FAE") for purposes of computing your PC3 benefit as of DOPT-3 were $160,000.00 (as compared with your FAE of $183,714.36 on your employment termination date).

The calculation of your FAE of $160,000 is explained on pages 7-8 of the decision.

(3) Because you were [redacted] years and [redacted] months old on December 30, 2001 [redacted] months before age 60), PBGC must apply the Plan's Early Retirement Factor ("ERF") to calculate your PC3 benefit as of DOPT-3.

The reason why PBGC applies this reduction and the calculation of the [redacted] ERF that is used in the calculation of your PC3 benefit is explained on pages 6-7 of the decision.

(4) PBGC, in calculating your PC3 benefit, must use the benefit formula that was in effect at the beginning of the five-year period before the Plan terminated.

The benefit formula that was in effect five years before the Plan's termination date provided for a benefit multiplier of 1.41%, as compared to a later-adopted benefit multiplier of 1.5%.

Based on your pension data and the four adjustments discussed above, your benefit in PC3 is $3,262.74, if you received your benefit as an SLA without the LIO and before the deduction for your PLSA distribution. The $3,262.74 amount is calculated as follows:

$160,000 (FAE) × 1.41% (multiplier) × 19.50 (service to 12/30/2001) × [redacted] (ERF) ÷ 12 = $3,262.74 (PC3 benefit before Partial Lump Sum ("PLSA") offset

The Appeals Board (and PBGC) deducted the same PLSA amount ($854.53) in determining your PC3 benefit that UAL deducted in determining your Plan benefit. Thus, your benefit in PC3 after the offset for your PLSA distribution is $2,408.21 [$3,262.74 (PC3 benefit before PLSA offset) - $854.53 (PLSA amount) = $2,408.21(PC3 amount after PLSA offset).

The above PC3 calculation is shown on lines (12) through (16) of the AB Worksheet. As is shown on line (16), the \$2,408.21 amount represents your "Monthly Benefit for Priority Category Three as a Straight Life Annuity Before Adjustment for Level Income Option."

2. *Your monthly PC3 amounts as an SLA with LIO.*

As is explained on pages 12-16 of the Board's decision, the Board decided that PBGC should calculate your SLA with LIO benefit in PC3 as follows: (1) first determine the SLA amount (without an LIO) of your PC3 benefit as of DOPT-3; and (2) then convert your PC3 amount as an SLA *without* LIO to the amounts as an SLA *with* LIO using the LIO Factor and SSA Amount as of your Actual Retirement Date ("ARD"). As is shown on lines (17) through (19) of the AB Worksheet, this results in the following calculation of your monthly LIO amounts in PC3:

- *Monthly PC3 benefit amount from the Plan's termination date through* [redacted] *2009.* We start with your PC3 benefit amount of \$2,408.21 as an SLA. To calculate the additional PC3 amount before age 66, we multiply your SSA Amount of \$1,848.00 by the LIO Factor of 0.617, which equals \$1,140.22. We then add the \$1,140.22 amount to your SLA amount of \$2,408.21, which results in a pre-age-66 PC3 amount of \$3,548.43.
- *Monthly PC3 benefit amount starting* [redacted] *2009.* To calculate this amount, we subtract your SSA Amount of \$1,848.00 from you pre-age-66 amount of \$3,548.43. This results in a \$1,700.43 monthly benefit starting at age 66.

The Appeals Board found that its calculation of these PC3 amounts maintains the actuarial equivalence between your PC3 benefit amount as an SLA and your PC3 benefit amount as an SLA with LIO. The Board reached this conclusion because: (1) the Board did not change the \$2,408.21 monthly PC3 amount that PBGC calculated as a (level) SLA; and (2) the \$1,140.22 per month temporary increase (until age 66) to your benefit payable as a level SLA is actuarially equivalent (as of your ARD and under the Plan's factors) to the post-age-66 deduction of \$707.78 per month to your benefit payable as a level SLA.[4]

[4] The \$1,140.22 monthly temporary amount determined by the Appeals Board: (1) was paid by the Plan during the time period between your ARD and DOPT; and (2) is added to your PC3 amount for purposes of determining your PBGC-payable benefit (i.e., the monthly benefit you are entitled to receive after DOPT). Thus, between your ARD and DOPT, the Plan paid you a \$1,140.22 monthly temporary amount in addition to your monthly SLA amount of \$4,503.80, for a total monthly benefit of \$5,644.02. For your PC3 benefit, which starts at DOPT, the Appeals Board added the \$1,140.22 temporary amount to your PC3 SLA amount of \$2,408.21, which equals a pre-age-66 monthly PC3 amount of \$3,548.43.

The post-age-66 deduction of \$707.78 per month to your PC3 benefit payable as a level SLA is the difference between your PC3 amount of \$2,408.21 as a level SLA and the \$1,700.43 monthly PC3 amount calculated by the Appeals Board [\$2,408.21 - \$707.78 = \$1,700.43].

We observe that, although your SSA Amount as of DOPT-3 (\$1,713.47) is less than the SSA Amount as of your ARD (\$1,848.00), the size of the SSA Amount does not impact upon actuarial equivalence. Rather, actuarial equivalence is controlled solely by the LIO Factor. If your SSA Amount is increased, however, the temporary benefit payable before age 66 becomes greater and the (reduced) benefit payable starting at age 66 becomes smaller.

3. *Your PBGC-payable PC3 benefit as an SLA with LIO.*

As is the case with your guaranteed benefit amounts (see explanation above), PBGC calculates your PC3 benefit as a "percentage" of the Plan benefit amount you would receive as an SLA with LIO. Additionally, PBGC must adjust your non-level PC3 amounts to take into account that the Plan was not fully funded for benefits in PC3. PBGC determined that the Plan's assets covered 82.0617% of the benefit liabilities in PC3.

We computed the non-level benefit amounts that you are entitled to receive from PBGC as your PC3 benefit using the following five steps:

(1) We first determined the present value ("PV"), based on PBGC's actuarial assumptions, of the monthly benefit amounts payable to you after DOPT if the Plan was fully funded, which are: (1) $5,644.02 per month from January 1, 2005 through [redacted] 2009; and (2) $3,796.02 per month afterwards. The PV of those non-level Plan amounts as of DOPT is $702,805 (which is the same PV that PBGC computed).

(2) We then determined the PV, based on PBGC's actuarial assumptions, for the Board-calculated monthly PC3 amounts that are explained above: (1) $3,548.43 per month from January 1, 2005 through [redacted] 2009; and (2) $1,700.43 per month afterwards. The PV of those non-level PC3 amounts as of DOPT (after a rounding adjustment) is $367,980.

Thus, if your PC3 benefit had been 100% funded by Plan assets, it would equal 52.3588% of your Plan benefit amount.[5]

(3) We then multiplied the PV of your PC3 amounts, $367,980, by the Plan's PC3 funding percentage of 82.0617%, which equals $301,971. This is the PV of your funded PC3 benefit as of DOPT.

(4) We then computed, as of DOPT, the ratio of your funded PC3 benefit to your total Plan benefit. To calculate this ratio, we divided the PV of your funded PC3 benefit ($301,971) by the the PV of your Plan benefit ($702,805), which equals 42.9665%.

(5) Finally, we used this percentage, 42.9665%, to determine your PBGC-payable monthly benefits in PC3, as shown by the following computation:

- $5,644.02 (Plan benefit) × 42.9665% (funded PC3 benefit percentage) = **$2,425.04** PC3 benefit from January 1, 2005 through [redacted] 2009; and
- $3,796.02 (Plan benefit) × 42.9665% (funded PC3 benefit percentage) = **$1,631.02** PC3 benefit starting on [redacted] 2009.

[5] $367,980 (PV of 100% funded PC3 benefit) ÷ $702,805 (PV of Plan benefit) = 52.3588%.

4. *Your PBGC benefit amounts after the addition of the ERISA section 4022(c) amounts*

Section 4022(c) of ERISA authorizes PBGC to pay additional benefits based on the amounts that PBGC recovers from employers that maintained under-funded pension plans. PBGC allocates this additional money (the "section 4022(c) amount") to pay otherwise unfunded benefits in excess of guaranteed benefits. For a pension plan like the Plan, in which the outstanding amount of unfunded non-guaranteed benefit liabilities exceeds $20 million, the section 4022(c) amount is based on PBGC's actual recovery on its claims against the plan sponsor.

a. Your section 4022(c) benefit calculation

For the Plan, PBGC determined that the Plan's section 4022(c) amount covers 58.4630% of all unfunded nonguaranteed benefits in PC3. The Appeals Board computed your section 4022(c) benefit as $309.91 per month through [redacted] 2009 and $208.44 per month beginning [redacted] 2009. The Board's calculation is:

- *Monthly section 4022(c) amount from DOPT through [redacted] 2009:*

  $2,955.14 (PC3 benefit if 100% funded)[6] - $2,425.04 (82.0617% funded PC3 benefit) = $530.10 (unfunded PC3 benefit)

  $530.10 (unfunded PC3 benefit) × 58.4630% (section 4022(c) funding % for PC3) = $309.91 (section 4022(c) amount payable by PBGC)

- *Monthly PC3 benefit amount starting [redacted] 2009:*

  $1,987.55 (PC3 benefit if 100% funded)[7] - $1,631.02 (82.0617% funded PC3 benefit) = $356.53 (unfunded PC3 benefit)

  $356.53 (unfunded PC3 benefit) × 58.4630% (section 4022(c) funding % for PC3) = $208.44 (section 4022(c) amount payable by PBGC)

b. Your PBGC-payable benefit

When your section 4022(c) amounts are added to your PC3 amounts, your monthly PBGC benefit is $2,734.95 through [redacted] 2009 and $1,839.46 beginning [redacted] 2009. These amounts are computed as follows:

---

[6] The $2,955.14 amount we computed for your 100% funded PC3 benefit through [redacted] 2009 equals your Plan benefit for that time period ($5,644.02) multiplied by 52.3588%. As stated above, the PV of your PC3 benefit (if it was 100% funded) is 52.3588% of the PV of your Plan benefit.

[7] The $1,987.55 amount we computed for your 100% funded PC3 benefit starting [redacted] 2009 equals your Plan benefit for that time period ($3,796.02) multiplied by 52.3588%.

- *Monthly PBGC benefit from DOPT through [redacted] 2009:*

  $2,425.04 (PC3 benefit) + $309.91 (section 4022(c) benefit) = **$2,734.95 (PBGC benefit)**

- *Monthly PC3 benefit amount starting [redacted] 2009:*

  $1,631.02 (PC3 benefit) + $208.44 (section 4022(c) benefit) = **$1,839.46 (PBGC benefit)**

The Appeals Board's calculation of your monthly PBGC benefit is shown on lines (24) through (27) of the AB Worksheet.