PBGC
Protecting America's Pensions

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

September 19, 2014

[P]
[Address intentionally left blank]

[AP]
[Address intentionally left blank]

Re: Appeal 2013-0125, [P] (the "Participant")
Appeal 2013-0126, [AP] (the "Alternate Payee" or "AP")
Case No. 205441, Delta Pilots Retirement Plan (the "Pilots Plan" or "Plan")

Dear Mr. and Ms. [redacted]:

We are responding to the appeals you each filed in May 2013 regarding your respective PBGC benefits. Because your appeals arise out of the same factual situation, the Appeals Board has exercised its discretion to consolidate them pursuant to PBGC's regulation (29 C.F.R. 4003.56). This decision by the Board governs both appeals.

Summary of the Appeals Board's Decision

For the reasons explained below, the Board changed PBGC's [redacted], 2012 determinations sent to both [P] and [AP]. The Board determined that:

1. Under PBGC policies, [P] is entitled to retire retroactive to [redacted], 2007, the first of the month following his termination of employment from Delta. To retire retroactive to [redacted], 2007, [P] must submit a retirement application to PBGC within 90 days of this decision. If he elects this (favorable) retroactive retirement date, PBGC will pay him a lump-sum amount to account for missed prior payments, which will include interest.

   Based on his retroactive retirement date of [redacted], 2007, [P] is entitled to a monthly benefit of $1,645.80 decreasing to $1,373.91 at his age 65 (due to the Plan's Social Security Offset), if paid as a Straight Life Annuity ("SLA") with no survivor benefits. [P] may elect a different form of benefit other than a SLA when submitting his retirement application.

2. PBGC made an error in calculating the benefit for [redacted]. Correcting for this error results in [redacted] monthly benefit decreasing from $403.75 to $373.10 (both amounts are before recoupment). [redacted] benefit will not be reduced for an age-65 Social Security Offset.

3. As explained in this decision, PBGC's benefit calculations in this case are greatly impacted by the fact that the QDRO was silent regarding a possible early retirement subsidy for [redacted]. The Appeals Board decided that other than the small change to [redacted] PBGC-payable benefits made by the Board, PBGC otherwise correctly determined [redacted] and [redacted] benefits. Thus, the Appeals Board denies all other matters raised in both appeals.

Each appellant will receive a revised benefit statement and benefit statement worksheet enclosed with his/her copy of this decision.

Background

PBGC and the Plan's Termination

PBGC is the United States government agency that insures pensions in accordance with Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). If a plan sponsor is unable to support its defined benefit pension plan, PBGC becomes the trustee of the plan. PBGC pays pension benefits according to the terms of the Plan, the provisions of ERISA and the Internal Revenue Code ("IRC"), PBGC regulations and policies, and the terms of any applicable QDROs.

The Pilots Plan terminated on September 2, 2006, without sufficient assets to provide all benefits under the Plan, and PBGC subsequently became trustee. When the Plan terminated, [redacted] had already received a $513,531.62 lump-sum distribution of 50% of her benefit, and she was receiving a tax-qualified monthly Plan benefit of $1,279.96. Because of legal limits under ERISA and PBGC's regulations, the benefits PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

Undisputed Facts and Timeline

The Board determined the following facts and timeline are not in dispute:

- [redacted] – [redacted] was born.
- [redacted] – [redacted] was born.
- [redacted] – [redacted] and [redacted] were married.
- [redacted] – [redacted] began his employment with Delta as a pilot.

- **December 31, 2004** – the Pilots Plan froze Credited Service accruals, and participants did not earn any Credited Service after this date.

- [redacted]**, 2005** – Date of divorce for [P] and [AP] was effective.

- [redacted]**, 2005** – A separate interest domestic relations order (the "DRO") was entered in the Superior Court in and for [redacted], Georgia, assigning [AP] (the "AP") a portion of [P] Pilots Plan benefit, determined as follows:

  > 100% of the Participant's Formula Benefit (as defined in the Delta Pilots Retirement Plan) accrued through [redacted] 2005, expressed as a single life annuity, payable at the Participant's Normal Retirement Date (as defined in the Delta Pilots Retirement Plan). The benefit shall be paid over the life expectancy of the Alternate Payee, using for such purpose the Actuarial Equivalent described in the Delta Pilots Retirement Plan and shall commence on the date selected by the Alternate Payee . . .

- [redacted]**, 2005** – Delta determined that the DRO met the criteria to be considered qualified, making it a QDRO (the "[redacted] 2005 QDRO").

- [redacted]**, 2005** – [AP] commenced her Pilots Plan benefit as AP at age [redacted]. Under the terms of the Pilots Plan, a participant or AP could elect to take one-half of the total benefit (the Variable Annuity portion) as a lump-sum distribution. [AP] elected to take a lump-sum distribution of half of her benefit. Her lump-sum distribution was $513,531.62.

  The remaining one-half portion of the AP's benefit (the Fixed Annuity) was only partially tax-qualified and was payable to [AP] in part from the tax-qualified Plan and in part from the non-tax-qualified Delta Supplemental Annuity Plan ("SAP").[1] Under the Plan's QDRO procedures, however, non-tax-qualified benefits are not payable "until the time the employee terminates his employment and commences a benefit from the non-qualified plan(s)." **After receiving the lump-sum distribution, [AP] tax-qualified monthly Plan benefit was $1,279.96.**

- **September 2, 2006** – The Plan terminated.

- [redacted]**, 2006** – Delta reduced [AP] benefit to an "estimated benefit" of $1,197.68 per month (before federal tax withholding).

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[1] The SAP was a non-qualified Plan used by Delta to pay benefits above the IRC § 401(a)(17) limit. Because the SAP was a non-tax-qualified pension plan, [AP] benefit under from the SAP was never insured by PBGC.

- **[redacted], 2007 –** [P] terminated employment [redacted].

- **[redacted], 2008** – PBGC reduced [AP] benefit to a new "estimated benefit" of $0.00.

- **[redacted], 2012** – PBGC issued both [P] and [AP] their initial (formal) benefit determinations.

- **[redacted], 2012** – PBGC began paying [AP] the $403.75 benefit listed in her [redacted] 2012 determination with no recoupment yet applied.

- **[redacted], 2013 –** [P] timely appealed PBGC's determination.

- **[redacted], 2013 –** [AP] timely appealed PBGC's determination.

<u>PBGC's Benefit Determination for [AP] and her Appeal</u>

PBGC's [redacted], 2012 determination letter stated that [AP] was entitled to a monthly benefit of $403.75 in the form of a SLA. The letter also explained that because PBGC had paid her an estimated monthly benefit of $1,197.68 from [redacted] 2006 through [redacted] 2008 and an estimated monthly benefit of $0.00 from [redacted] 2008 through [redacted] 2012, she had a net overpayment of $1,665.93. Thus, PBGC would reduce her benefit to $393.82 per month until her overpayment is recouped. The [redacted], 2012 determination included a Benefit Statement dated [redacted], 2012 further explaining [AP] benefit.

After several approved extension requests, [AP] submitted a timely-filed appeal on [redacted], 2013, objecting to PBGC's determination of her PBGC-payable benefit. The appeal stated, in pertinent part:

> Upon review of the calculations and exhibits, it is evident that the calculated PBGC PC-3 benefit to the Alternate Payee should be at least the original amount calculated by Delta Air Lines of $1,279.96, after taking into effect the Lump Sum offset. As you can see from the exhibits, there is no reference to, or calculation for, additional PC-3 reductions for early retirement by the Alternate Payee.

To support her appeal, [AP] included several exhibits to her appeal, including PBGC correspondence, PBGC's [redacted], 2012 Benefit Statement Worksheet, Delta's Administrative Procedures for Processing Domestic Relations Orders, Delta's [redacted], 2005 letter qualifying her domestic relations order, and benefit estimates by both PBGC and Delta.

PBGC's Benefit Determination for [P] and his Appeal

PBGC's [redacted], 2012 determination letter stated that [P] was entitled to a monthly benefit of $69.42 as a SLA based on the Earliest Benefit Starting Date of [redacted], 2012, and that his monthly benefit would be reduced to $0.00 effective [redacted], 2017 [due to the Plan's Social Security offset]. The determination letter included a Benefit Statement dated [redacted], 2013, which showed his monthly benefit was $69.42 based on an [redacted], 2012 start date, and $64.82 based on a [redacted], 2012 start date. It appears that PBGC's actuary revised his benefit on [redacted], 2012, and PBGC mailed him a Benefit Statement Recalculation Worksheet dated [redacted], 2012. This Worksheet shows [P] benefit as $194.91 starting [redacted], 2012, reduced to $0.00 effective [redacted], 2017 due to the Plan's Social Security offset. We note that [P] has not yet applied for his PBGC-payable benefit.

After several approved extension requests, [P] submitted a timely-filed appeal on [redacted], 2013, objecting to PBGC's determination of his PBGC-payable benefit. His appeal raised four specific issues, which are summarized below:

(1) He chose not to apply for his benefit before his benefit determination was issued on [redacted], 2012 because PBGC had previously provided inconsistent benefit estimates and he "did not want to take a benefit that appeared to be in error and to which [he] were not entitled." [P], therefore, seeks to establish a retroactive retirement date of [redacted], 2007 and receive back-payments for the benefits that should have been paid over the past 6 years.

(2) [P] asserts that PBGC's delay in issuing its BD "kept [his] PBGC retirement income at zero . . . prevent[ing him] from attaining a Health Care Tax Credit (HCTC)." We note the Board has no authority to grant relief on this issue and will not further address it in this decision.

(3) [P] believes that [AP] (the Alternate Payee under a Qualified Domestic Relations Order applicable to [P] benefit) is entitled to a greater benefit than PBGC has determined, according to a "Comparison of Earnings, Actual Payments vs. Retirement" document provided by Delta [redacted] (Exhibit #7 to the Participant's appeal).

(4) [P] asks the Appeals Board to recalculate his PBGC-payable benefit and provide a new BD and Benefit Statement Worksheet.

To support his appeal, [P] included several exhibits to his appeal, including: benefit estimates produced by Delta based on retirement dates of [redacted], 2004, [redacted], 2004, and [redacted], 2005; PBGC correspondence; and portions of Delta's exhibits [redacted]

Discussion

Summary of the PBGC Methodology Used
in Determining Each Person's PBGC-Payable Benefit

PBGC determined each PBGC-payable benefit in three basic steps, using the same general method PBGC uses for all participants, alternate payees, and beneficiaries of PBGC-trusteed plans:

1. PBGC first reviewed each party's Plan benefit as calculated by Delta. Neither party appealed his/her respective Plan benefit calculation. PBGC confirmed that Delta's calculations were correct, and the Board found no errors in the Plan benefit calculations for either appellant.

2. PBGC then calculated each party's PBGC-payable guaranteed benefit. PBGC's Maximum Guaranteed Benefit for any participant (the "MGB") is a published dollar amount that changes annually and is adjusted for the participant's age at Plan termination.[2]

   In cases where a benefit is assigned by a separate interest QDRO, the MGB is divided between the participant and alternate payee in proportion to the ratio of their normal retirement Plan benefits based on Plan provisions in effect on the later of 5 years before DOPT and the QDRO division date. PBGC then adjusts each party's portion of the MGB for his or her age.

   In this case, [P] Plan benefit after reducing for the AP's Plan benefit (i.e., 100% of the accrued benefit through [redacted], 2005) was less than 1% (0.9035%) of the entire pre-QDRO benefit. Thus, [P] is entitled to 0.9035% of the MGB, resulting in a PBGC-payable guaranteed benefit of $17.62 before his Social Security Offset effective [redacted], 2017 and $15.33 thereafter. (See lines (7) to (11) of the [P] [redacted] 2014 Benefit Statement).

   The AP is entitled to the remaining 99.0965% of the MGB, which is $1,685.66 per month (see lines (1) to (7) of [AP] [redacted] 2014 Benefit Statement Worksheet). In addition, PBGC must account for the $513,531.62 lump-sum distribution that [AP] received when she commenced her benefit. Because the monthly benefit equivalent of her lump-sum distribution ($2,673.95) far exceeds her MGB ($1,685.66), she effectively has already received her full PBGC-payable guaranteed benefit from the Plan. Thus, her PBGC-payable guaranteed amount is now $0.00.

3. Finally, PBGC determined each party's benefit based on an allocation of Plan assets under ERISA § 4044. Because each party's benefit based on the allocation

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[2] The MGB for plans that terminated in 2006 is $3,971.59 per month based on an age-65 retirement date.

of Plan assets is greater than each party's PBGC-payable guaranteed benefit, each party is receiving the greater benefit (i.e., the benefit resulting from an allocation of the Plan's assets). Finally, each party receives an additional ERISA § 4022(c) benefit amount based on PBGC's recoveries from Delta.

The Participant and AP are Each Eligible for an Allocation of Assets under ERISA § 4044

As previously stated, both the Participant and AP are eligible for a benefit based on the allocation of Plan assets under ERISA § 4044. The six-tier asset allocation structure under ERISA § 4044 determines how a terminated pension plan's assets are distributed among various categories of benefits when the assets are insufficient to pay all promised benefits. The six priority categories are referred to as "PC1," "PC2," "PC3," etc. The Pilots Plan has no benefits in the first two categories (PC1 and PC2), which relate to benefits derived from a participant's own contributions. The next priority category, PC3, covers a participant's or beneficiary's benefits that were "in pay status" (i.e., were being paid) three or more years before the plan's termination date ("DOPT-3"), or that would have been in pay status three years before termination if the participant had retired. PC4 generally covers benefits guaranteed by PBGC. PC5 covers other nonforfeitable benefits (generally, benefits that are not in PC3 and are not guaranteed due to the limits described above). PC6 covers all other benefits under the plan (i.e., non-vested benefits).

As stated above, the Pilots Plan has no benefits in PC1 and PC2, but has benefits in PC3. PC3 benefits are defined under ERISA § 4044(a)(3)(B), which provides as follows:

> (3) Third, in the case of benefits payable as an annuity-
>
> . . .
>
> (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.

PBGC treats separate interest QDRO benefits as separate benefits for the purpose of allocation of Plan assets and PBGC recoveries under ERISA §§ 4022(c) and 4044.[3] In an October 4, 2013 decision (the "October 2013 decision"),[4] the Appeals Board upheld PBGC's interpretation of ERISA § 4044(a)(3)(B) as requiring the participant's PC3 benefit and the AP's

[3] Under ERISA § 206(d)(3)(J), an Alternate Payee is considered a "beneficiary" for all purposes of ERISA. Further, the PC3 requirements in ERISA § 4044(a)(3) apply "to each such benefit" of a participant or a beneficiary (including an AP) who was in pay status (retired) or could have been in pay status at DOPT-3.

[4] A redacted copy of the October 4, 2013 decision is available on PBGC's website, at http://pbgc.gov/documents/apbletter/Decision--Delta-Pilots-Retirement-Plan-2013-10-04.pdf.

PC3 benefit to be determined separately by applying the PC3 rules to each individual's Plan benefit. Page 7 of the Appeals Board's decision stated:

> Under ERISA§ 206(d)(3)(J), an Alternate Payee is considered a "beneficiary" for all purposes of ERISA. Further, the PC3 requirements in ERISA § 4044(a)(3) apply "to each such benefit" of a participant or a beneficiary (including an AP) who was in pay status (retired) or could have been in pay status at DOPT-3. Both you and the AP were in pay status at DOPT-3. Thus, your PC3 benefit and the AP's PC3 benefit are determined separately by applying the PC3 rules to each individual's Plan benefit.

The October 2013 decision involved a 1995 QDRO that assigned a portion of a participant's Pilots Plan benefit to the AP. We note that your case is slightly different from the facts of the October 2013 decision, because your divorce and subsequent QDRO were not effective until [redacted] 2005, after DOPT-3.

PBGC policy, however, does not require that the QDRO be issued on or before DOPT-3 in order for an AP with a separate interest benefit to be eligible for a PC3 benefit. Rather, PBGC interprets ERISA § 4044(a)(3) as requiring that *either* (1) an AP was in pay status on DOPT-3, *or* (2) the Participant's earliest PBGC retirement date ("EPRD") was before DOPT-3.[5]

Under the Pilots Plan, the EPRD is the participant's age 50; [P] 50th birthday was [redacted], which is before DOPT-3 (September 2, 2003). Thus, because the Participant's earliest retirement age was before DOPT-3, each of the Participant's and the AP's benefits is properly assigned to PC3 under the governing PBGC policy.

The Pilots Plan's assets funded 93.03847% of benefit liabilities in PC3. Additionally, under ERISA § 4022(c) PBGC pays additional benefits based on PBGC's recoveries from the plan sponsor. For the Pilots Plan, the ERISA § 4022(c) amount funds all remaining benefit liabilities in PC3. With all PC3 benefit liabilities satisfied, the remaining ERISA § 4022(c) amount funds a portion of the benefit liabilities in PC5a also.

[P] and [AP] are also each eligible for benefits based on an allocation of assets to PC5 Subcategory (a) ("PC5a") benefit provided under ERISA § 4044(a)(5), (b)(4)(A). Priority Category 5 covers any nonforfeitable benefits that are not assigned to PC3 (benefits payable at DOPT-3 or PC4 (PBGC-guaranteed benefits). PC5a benefits include any remaining nonforfeitable benefits on the basis of the Plan's provisions in effect at the beginning of the 5-year period ending on the date of plan termination.

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[5] Section E.3 of PBGC Policy 4.2-1, *Allocation of Assets – Priority Category 3.*

How PC3 and PC5a Benefits Are Calculated

The benefit formula provided by the Pilots Plan is:

Monthly Normal Retirement Benefit = 60% of Final Average Earnings × (Years of Credited Service ÷ 25)

The PC3 benefit is calculated differently from the Plan benefit because the PC3 benefit is based on: (1) an assumed benefit start date of October 1, 2003, and (2) Plan provisions in effect for the entire five-year period prior to the Plan's termination resulting in the smallest benefit. Each party's PC3 benefit is calculated separately but in the same manner, based on the assumed October 1, 2003 benefit start date (rather than the actual benefit start date).

Specifically, the PC3 benefit is less than the Plan benefit because:

(1) The PC3 benefit is based on **fewer years of Credited Service**. Credited Service is only calculated up to DOPT-3 (September 2, 2003) for purposes of the PC3 calculation, instead of the Plan's actual credited service freeze date of December 31, 2004.

(2) The **early retirement factor is less generous**, due to the earlier, assumed PC3 benefit start date of October 1, 2003. The difference is discussed in more detail in the next section of this decision.

(3) **Plan provisions that increased the Plan benefit *within the 5-year period prior to* DOPT are not included**. In particular, an increase in the IRC § 401(a)(17) limit occurred between DOPT-5 and DOPT that raised the amount of Final Average Earnings that could be taken into account in the Plan's benefit formula. This increase in the IRC § 401(a)(17) limit, however, is not included in either the Participant or Alternate Payee's PC3 benefit. Thus, the Final Average Earnings used is lower for the PC3 benefit than it is for the Plan benefit.

Similarly, the PC5a benefit is based on Plan provisions in effect at the start of DOPT-5, resulting in the smallest benefit; it is larger than the PC3 benefit, however, because it is based on the actual benefit start date. PBGC's allocation of recoveries under ERISA § 4022(c) funded only 51.95696% of the PC5a benefit liabilities, and the Participant and Alternate Payee are each receiving a benefit in PC5a based on the funded percentage.

The Early Retirement Factors Applicable to Each Party and Their Impact on Benefits

Most defined benefit pension plans permit participants to retire before the participant's normal retirement age (as defined by the plan) and receive a reduced benefit. ERISA requires that the early retirement benefit be at least the actuarial equivalent of the normal retirement benefit. Many plans, however, provide participants incentives to retire early by providing an early retirement "subsidy." When one form of benefit has a greater actuarial value than another form, the difference in value is often called a subsidy. The Pilots Plan provides its participants an early retirement subsidy by applying an early retirement factor ("ERF") that is more favorable than the actuarially equivalent factor.

Below is a table comparing the subsidized ERF to the actuarially equivalent factors for the assumed PC3 retirement date of October 1, 2003 (DOPT-3), for the AP's benefit commencement date, and for the participant's retroactive benefit commencement date. The DOPT-3 retirement date requires a lower early retirement factor, which is one reason why the Participant and Alternate Payee's PC3 benefits are lower than the Plan benefit. (PC5a benefits, in contrast, are calculated based on the actual Benefit Commencement Date ("BCD").

Subsidized vs. Actuarially Equivalent ERFs			
	PC3-Presumed Retirement Date of DOPT-3 (10/01/03) [redacted]	AP's BCD Date [redacted]	P's BCD [redacted]
Subsidized Plan ERF	0.74250	0.79750	0.85750
Actuarial Equivalent Factor	0.44569	0.52453	0.63009

An early retirement subsidy is payable only to the participant who retires before his normal retirement age. If a participant delays retirement until his normal retirement age, the entire pension will be considered a "normal retirement pension" and no early retirement subsidy will become payable.

The AP in this case is not entitled to any portion of the early retirement subsidy because the [redacted] 2005 QDRO does not assign her any portion of the subsidy. Under Delta's written QDRO procedures, "the alternate payee will not be entitled to any portion of the [early retirement] subsidy unless the QDRO clearly states that the alternate payee has a right to receive such an amount." Likewise, longstanding PBGC policy states: "If a separate interest QDRO is silent about early retirement subsidies, PBGC generally will not pay any portion of the subsidy to the alternate payee."[6]

Because the AP is not entitled to the subsidized ERF, the early retirement benefit payable to her is the actuarial equivalent of her normal retirement benefit. Accordingly, when [AP] [redacted] elected to commence her benefit, Delta determined her monthly benefit using an actuarially equivalent factor, which was less favorable than the subsidized ERF [P] would have been entitled to if he retired at the same date.

[6] Section E.2 of PBGC Policy 6.6-3, *Qualified Domestic Relations Orders*.

The participant had not started his benefit when the Plan terminated, and PBGC was not notified of the participant's termination of employment. Thus, PBGC's [redacted], 2012 benefit determination showed his benefit payable as of [redacted], 2012. After obtaining the participant's date of termination of employment from Delta, the Appeals Board is changing the participant's date of termination of employment to [redacted], 2007, which permits the participant to begin his benefit retroactively as of [redacted], 2007.[7]

The impact of the subsidized ERF (that is available only to [redacted] and only if he retired before his normal retirement age) is substantial. [redacted] Plan benefit is very small at age 60, his normal retirement age under the Pilots Plan. Due to the impact of the subsidized ERF, [redacted] Plan benefit becomes larger and larger, the earlier [redacted] retires. Likewise, his PBGC-payable benefit becomes larger the earlier he retires. The date that [redacted] retires has no impact on [redacted] Plan or PBGC-payable benefit.

The Error Found by the Appeals Board in [redacted] *Benefit*

The Appeals Board discovered that PBGC made an error in calculating [redacted] PC5a benefit by using an incorrect number of years of credited service.

The QDRO assigns the AP 100% of the accrued benefit through [redacted], 2005. PBGC calculated the AP's benefit based on the credited service accrued through [redacted], 2005. [redacted] date of hire and date of seniority is [redacted], 1986. The total accrued service from [redacted], 1986 through [redacted], 2005, is [redacted], or [redacted]. PBGC, however, initially used a credited service of [redacted] rather than [redacted]. The Appeals Board has corrected this error; as a result, [redacted] PBGC-payable benefit is changed from $403.75 per month (per [redacted], 2012 benefit determination) to $373.10. A new benefit statement worksheet reflecting this correction is provided at Enclosure 2 (provided to [redacted] only).

This error accounts for the sole change to the AP's PBGC-payable monthly benefit as a result of this decision. PBGC, in its [redacted], 2012 determination, informed [redacted] that she had a net overpayment of $1,665.93, and her future benefit would be reduced to collect (recoup) the overpayment. Because she filed a timely appeal, no recoupment action was initiated and [redacted] has continued to receive a PBGC monthly benefit of $403.75. Because the Appeals Board is correcting [redacted] benefit to $373.10, her net overpayment balance has increased. When implementing the Board's decision, PBGC will notify [redacted] of the recoupment terms required under PBGC's regulation. The recoupment amount will not exceed 10% of her monthly benefit, and no interest is charged.

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7 Section D.5 of PBGC Policy 5.2-4, *Annuity Starting Dates*, permits a participant to elect a retroactive annuity starting dating only in specific circumstances enumerated in its policy. [redacted] is permitted to elect a retroactive annuity starting date (as early as the first of the month following the date of termination of employment) because he is receiving a benefit under an allocation of Plan assets under ERISA § 4044 and recoveries from the Plan sponsor under ERISA § 4022, and this benefit is substantially the same (i.e., does not increase with deferral) for a period of twelve months or more.

Decision

Having applied the terms of the Plan, the provisions of ERISA and PBGC's regulations to the facts in this case, the Appeals Board is: (1) granting [redacted] request to elect a retroactive benefit commencement date of [redacted], 2007, (2) changing [redacted] monthly benefit from $403.75 to $373.10 (before recoupment) to correct an error in PBGC's initial determination, and (3) denying both appeals with respect to all other issues raised.

To retire retroactive to [redacted], 2007, [redacted] must submit a retirement application to PBGC within 90 days of this decision. If he elects this (favorable) retroactive retirement date, PBGC will pay him a lump-sum amount to account for missed prior payments, which will include interest.

If [redacted] elects a retroactive retirement date of [redacted], 2007, he is entitled to a monthly benefit of $1,645.80 decreasing to $1,373.91 at his age 65 (due to the Plan's Social Security Offset), if paid as a Straight Life Annuity ("SLA") with no survivor benefits. [redacted] may elect a different form of benefit other than a SLA when submitting his retirement application.

This decision is PBGC's final action regarding PBGC's [redacted], 2012 determination of your PBGC-payable benefits under the Pilots Plan. Either of you may, if you wish, seek review of this decision in an appropriate U.S. District Court. If either of you have other questions about your PBGC benefit, you may call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the Pilots Plan.

Sincerely,

William F. Condron, Jr.
Member, Appeals Board

Enclosure 1 (provided to [redacted] only):
(a) Benefit Statement dated 06/26/2014 (4 pages)
(b) Benefit Statement Recalculation Worksheet dated 06/26/2014 (15 pages)

Enclosure 2 (provided to [redacted] only):
(a) Benefit Statement dated 06/09/2014 (3 pages)
(b) Benefit Statement Recalculation Worksheet dated 06/09/2014 (14 pages)