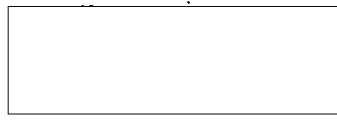


# 1417914

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



JUL 31 2003

Re: Appeals  Retirement Plan for Employees of P\*I\*E Nationwide, Inc.  
("Nationwide Plan")

Dear

The Appeals Board has reviewed your appeal of PBGC's October 9, 2001 corrected determination of your benefit under the Nationwide Plan. As explained below, the Board changed PBGC's determination by finding that your actual retirement date is April 1, 1999, instead of June 1, 1999. As a result, the Board found that you are entitled to a benefit of \$540.86 per month as a Single Life Annuity with no survivor benefit (SLA), beginning April 1, 1999.

PBGC's Determinations and Your Appeals

PBGC's first determination (dated April 17, 1998, sent to the wrong address and remailed March 3, 1999) said that you are entitled to a monthly benefit of \$650.02, if payments begin on April 1, 2001, the first of the month following your 65th birthday, as an SLA, or to a lower amount if payments begin earlier or are in a different form. PBGC included a benefit statement with the information PBGC used to calculate your monthly benefit.

On April 23, 1999, you filed a timely appeal concerning the date of Plan termination, the length of time the Plan was "in effect" and the content of PBGC's benefit statement. On September 30, 1999, I wrote you (copy enclosed) explaining (1) that the Appeals Board has no authority to change an established plan termination date, (2) the statutory "phase-in" limitation under section 4022(b)(1) of the Employee Retirement Income Security Act (ERISA), (3) the statutory rule for determining how long a new plan or plan amendment is "in effect," (4) that PBGC subsequently determined the Nationwide Plan is a "successor plan" under ERISA section 4022(b)(2), and (5) that, as a result of this successor plan determination, PBGC agreed to issue you a new benefit determination.

PBGC's files show that you elected to begin receiving your Nationwide benefit as an SLA, effective April 1, 1999. On June 1, 1999, PBGC began paying you \$611.02 per month on an estimated basis and sent you a check for \$1,229.69 to cover the April and May payments plus interest. PBGC has continued to pay your \$611.02 per month estimated benefit.

# 1417914

PBGC's October 9, 2001 corrected determination said that your actual PBGC-payable benefit is \$548.53 per month. Because this is lower than the estimated benefit of \$611.02 per month you are receiving, PBGC explained that you had a net overpayment balance (then equal to \$3,104.39) that PBGC would recover by reducing your final monthly benefit by \$44.60 until the overpayment without interest is repaid. PBGC also included a benefit statement with this letter.

Your December 1, 2001 appeal of PBGC's 2001 determination raised two issues. First, you said that, if you assume the revised benefit amount is correct, the overpayment amount should be \$1,999.68 (\$62.49 times 32 months), instead of \$3,104. You believe the error may involve the retroactive payment of your first two months' pension. Second, you noted that the former Plan Administrator told you when your employment ended that your age-65 Nationwide benefit would be \$815.52 per month as an SLA. You relied on this information when you elected your prior Ryder/P\*I\*E benefit in a form that significantly reduced the monthly payment, and would not have made this choice had you known the corrected Nationwide benefit amount. Because of these circumstances, the fact that the prior Ryder/P\*I\*E benefit is a fully paid-up annuity and the fact that you have been ill, you asked PBGC to restore your Nationwide benefit amount.

Overpayments

When the estimated benefits a participant has received are more than the amounts the participant is entitled to receive under Title IV of the Employee Retirement Income Security Act (ERISA), PBGC must collect the difference. PBGC does this by reducing future monthly benefits (generally by not more than 10%) until the overpayment, without interest, is repaid. The Appeals Board cannot change this requirement.

Your appeal questioned the calculation of the overpayment amount. PBGC's 2001 benefit determination assumed an actual retirement date of June 1, 1999 (see the Participant Data section of the 2001 benefit statement). PBGC reduced your age-65 Nationwide benefit by the early retirement factor that applies to a participant who retired 22 months early (.9450) instead of the factor for 24 months early (.9400). Similarly, PBGC reduced the age-65 MGB to reflect a June 1, 1999 start date. The MGB reduction factors are prescribed by regulation and differ from the Plan's early retirement factors. As you pointed out, PBGC then computed the overpayment amount assuming you were not entitled to any payments before June 1, 1999.

The Board found, however, that your actual retirement date is April 1, 1999, as you said in your appeal. Thus, the overpayment for April and May of 1999 is the difference between the total amount PBGC paid you for those two months and the final April and May benefit amounts to which you are entitled under ERISA. Because your actual retirement date is two months earlier than the date PBGC used in its 2001 determination, your final benefit amount will be lower (\$540.86 instead of \$548.53, as shown on the new benefit statement enclosed with this letter). Please note also that the total overpayment amount described in PBGC's 2001 letter has grown because you continued to receive your estimated benefit of \$611.02 while we reviewed your appeal.

# 1417914

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Maximum Guaranteed Benefit

PBGC's files show that the Nationwide Plan terminated on March 11, 1991 without sufficient assets to provide all benefits PBGC guarantees under Title IV of ERISA. Because of legal limitations under ERISA and PBGC's regulations, the benefits PBGC can provide may be less than the benefits a pension plan would otherwise pay. PBGC's 1998 benefit statement explained that one of these legal limits, the phase-in limit, applied to you. As a result, PBGC could guarantee only the greater of 80% of your Nationwide Plan benefit or \$80 per month. PBGC later found that the Nationwide Plan is a "successor plan" under ERISA and, consequently, the phase-in limit does not apply.

However, a different legal limit, the "maximum guaranteed benefit" or MGB, now applies to your benefit. For plans that terminated in 1991, the MGB payable as an SLA starting at age 65 is \$2,250.00 per month. Because you began receiving your benefit before age 65, PBGC must reduce the MGB to account for the earlier start date. Your MGB (based on your April 1, 1999 retirement date) is \$1,948.05, as shown on line 8 of the enclosed benefit statement.

PBGC has consistently treated predecessor and successor plans as one plan for purposes of applying the MGB. Because the Nationwide Plan is a successor to the Ryder/P\*I\*E Plan, PBGC applied the MGB to your combined benefit under both Plans. As a result, PBGC determined your *guaranteed benefit* under the Nationwide Plan by subtracting your benefit under the Ryder/P\*I\*E plan (\$1,937.80 per month beginning on the same date and in the same form as your Nationwide benefit) from your MGB. The result, \$20.50 per month, is shown on line 11 of the enclosed benefit statement.

You noted in your appeal that the former Plan Administrator calculated an age-65 SLA benefit for you of \$815.52 per month. Please note that this is the same amount PBGC used before applying the ERISA limits

Monthly Nationwide Plan benefit at age 65  
= [Age-65 Nationwide benefit (line 5) minus age-65 Executive Life offset (from line 10)] ÷ 12  
= [\$34,357.23 minus \$24,606.96] ÷ 12  
= \$9,750.27 ÷ 12  
= \$815.52 per month.

Section 4022(c) Benefit

Section 4022(c) of ERISA authorizes PBGC to pay additional benefits (i.e., unfunded benefits that PBGC could not otherwise legally guarantee), based on amounts that PBGC recovers from sponsors of terminated, underfunded plans. PBGC determined that you are entitled to 70.01% of your unfunded nonguaranteed benefit under section 4022(c), or an additional \$520.36 per month (line items are from the enclosed benefit statement):

# 1417914

CG78D34D-6CBE-4F14-8

Unfunded nonguaranteed Nationwide benefit

- = Total Nationwide benefit (line 7) minus Executive Life offset (line 10) minus Nationwide PBGC-guaranteed benefit (line 11)
- = \$2,691.32 minus \$1,927.55 minus \$20.50
- = \$743.27

Section 4022(c) benefit

- = Unfunded nonguaranteed Nationwide benefit times 70.01 %
- = \$743.27 times 70.01 %
- = \$520.36 (line 13)

Thus, your total monthly PBGC-payable benefit as an SLA beginning April 1, 1999 is \$20.50 plus \$520.36, or \$540.86. (PBGC's 1998 determinations did not address section 4022(c) because at that time PBGC did not have all the information needed to compute 4022(c) benefits.)

Decision

Having applied the law, the provisions of the Plan and PBGC policy to the facts in this case, the Appeals Board changed PBGC's determination by finding that your actual retirement date is April 1, 1999, instead of June 1, 1999. As a result, the Board found that you are entitled to a benefit of \$540.86 per month as an SLA beginning April 1, 1999. This is the Agency's final decision on this matter and you may, if you wish, seek court review.

We will forward a copy of this letter to PBGC's Insurance Operations Department, the organization responsible for determining and paying benefits. They will recompute your overpayment amount using the correct retirement date of April 1, 1999, and contact you directly concerning repayment. Meanwhile, if you have questions, please call PBGC's Customer Service Center at 1-800-400-7242.

Sincerely,

Linda M. Mizzi  
Member, Appeals Board

Enclosures