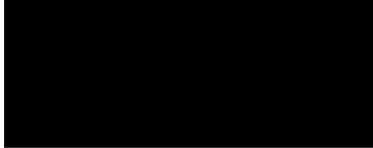




Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

September 30, 2014



Re: Consolidated Appeal; Case No. 199627, United Airlines, Inc. Pilots Fixed Benefit Income Plan

Dear :

The Appeals Board of the Pension Benefit Guaranty Corporation (“PBGC”) reviewed your appeal on behalf of certain participants and beneficiaries (“the appellants”) of the United Airlines, Inc. Pilots Fixed Benefit Income Plan (the “Pilots Plan” or the “Plan”). Enclosure 1 to this decision lists the 554 individuals represented by you who have timely-filed appeals.<sup>1</sup>

Your appeal filing (“the Appeal”) lists four issues concerning the benefits that the appellants are entitled to receive from PBGC. We granted the Appeal on two of the four issues you raised. As explained in this decision:

- The Appeals Board increased the PBGC-payable benefits of 146 appellants who (1) had elected the Plan’s Level Income Option (“LIO”) and (2) are entitled to a benefit based on an allocation of the Plan’s assets and PBGC recoveries that is larger than the PBGC-guaranteed benefit. The 146 appellants are listed in Enclosure 3.
- The Appeals Board decided that PBGC incorrectly determined PBGC-payable benefit amounts for 58 appellants who received Plan benefit increases following the repeal of section 415(e) of the Internal Revenue Code (“IRC § 415(e”). PBGC’s Benefits Administration and Payment Department (“BAPD”) will take appropriate action to implement the Board’s decision for those 58 appellants, who we list in Enclosure 4. BAPD will issue a new benefit determination to each of the 58 appellants, which will state the amount of the revised PBGC-payable benefit and will provide a new 45-day appeal right; and
- The Appeals Board denied the Appeal with respect to the other two issues you raised.

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<sup>1</sup> In Enclosure 2, we list 152 individuals represented by you who do not have timely-filed appeals or extension requests.

## INTRODUCTION

PBGC is the United States government agency that provides pension insurance in accordance with the Employee Retirement Income Security Act of 1974, *as amended* (“ERISA”).<sup>2</sup> If a plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays pension benefits provided by the plan, subject to legal limitations set by Congress under ERISA.

On December 30, 2004, the Plan terminated without sufficient assets to pay all benefits. PBGC became trustee of the Plan on October 26, 2005.<sup>3</sup>

PBGC sent initial (formal) Benefit Determination letters to most of the appellants in 2010 and 2011.<sup>4</sup> In March 2011, you requested an extension of time to file the Appeal on behalf of the individuals you represented.<sup>5</sup> On March 4, 2011, the Appeals Board granted your extension request and established July 8, 2011 as the Appeal filing date.<sup>6</sup> Through subsequent correspondence between you and the Appeals Board, the Appeal filing date was extended until May 29, 2013.

During the time period when the Appeal filing date was extended, PBGC completed a re-valuation of the Plan’s assets to correct certain deficiencies in the initial plan asset audit.<sup>7</sup> PBGC’s re-valuation resulted in PBGC-payable benefit increases for some individuals – including a substantial number of the appellants – who were entitled to benefits from the Plan, as well as for some participants in three other PBGC-terminated pension plans that had been sponsored by United Air Lines, Inc. (“UAL”). PBGC issued revised Benefit Determination letters to individuals who were entitled to benefit increases based on the asset re-valuation. PBGC issued most of these revised Benefit Determinations between July and September 2012.

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<sup>2</sup> 29 United States Code (“U.S.C.”) §§ 1301-1461 (2012). This decision generally cites the applicable sections of ERISA without providing the parallel U.S.C. citations.

<sup>3</sup> The names *United Airlines Pilot Defined Benefit Pension Plan* and *United Airlines Inc. Pilots’ Fixed Benefit Income Plan* are used interchangeably throughout the Plan documents; both names identify the Pilots Plan.

<sup>4</sup> Part 4003 of PBGC’s regulations establishes the rules governing PBGC’s issuance of initial Benefit Determinations and the procedures for requesting and obtaining administrative review. *See* 29 Code of Federal Regulations (“C.F.R.”) § 4003 (titled “Rules for Administrative Review of Agency Decisions”). An initial (formal) Benefit Determination is the letter PBGC issues to communicate the Agency’s determination of an individual’s benefit. *See* 29 C.F.R. § 4003.21. If the individual desires Appeals Board review of his or her benefit, the individual or his or her representative must file an appeal of the Agency’s determination, or request an extension of time to file an appeal, within 45 days from the date of issuance of the Benefit Determination. *See* 29 C.F.R. §§ 4003.4, 4003.52.

<sup>5</sup> You also requested and received certain documents from PBGC’s Disclosure Officer on behalf of your clients.

<sup>6</sup> The Board also informed you that your extension of the filing date did not apply to individuals who did not file an appeal or extension request within the 45-day period stated in PBGC’s Administrative Review regulation. *See* 29 C.F.R. §§ 4003.4, 4003.5, and 4003.52.

<sup>7</sup> *See generally* FAQ: UAL Asset Audit Review and Changes to Participants’ Benefits at <http://www.pbgc.gov/wr/bulletin/info/unitedfaq.html>.

You filed a 44-page appeal brief with exhibits on May 28, 2013, which listed seven issues. On January 21, 2014, you filed a supplemental 29-page appeal brief with exhibits. You stated that your supplemental brief, which lists four issues, “is intended to replace the original Consolidated Appeal in all respects.” Unless otherwise indicated, all citations to the Appeal in this decision refer to the supplemental 29-page appeal brief (cited as “AB”) you filed on January 21, 2014.

The Appeals Board found that the Appeal was timely filed for the 554 individuals listed in Enclosure 1. Each of those individuals received a PBGC Benefit Determination regarding his or her Plan benefit and had either an appeal or extension request that was timely filed in accordance with PBGC’s Administrative Review regulation.

This Appeals Board decision does not apply to the 152 individuals listed in Enclosure 2 who are your clients but do not have timely-filed appeals or extension requests. If PBGC determines that an individual listed in Enclosure 2 is similarly situated to appellants who are entitled to benefit increases based on this decision, PBGC, in its discretion, may increase that individual’s benefit.

The Appeals Board concluded that the appeals of the 554 Plan participants and beneficiaries you represent arise out of the same or similar facts and seek the same or similar relief. The Board exercised its discretion under PBGC regulation 29 C.F.R. § 4003.56 to consolidate the appeals of these 554 individuals.

## **ISSUES RAISED IN THE APPEAL**

The Appeal raises four issues that relate to three different aspects of PBGC’s benefit calculations. Each issue addresses PBGC-payable benefit amounts in Priority Category 3 (“PC3”) under the asset allocation provisions in ERISA § 4044. PC3 benefits are discussed in detail in this decision.

The Appeals Board addresses the four issues in the same order that they are presented in the Appeal. The three aspects of PBGC’s benefit calculations and the four issues are as follows:

### **I. LEVEL INCOME OPTION AMOUNTS IN PC3**

**Issue 1:** Did PBGC correctly calculate PC3 amounts for appellants with Level Income Option (“LIO”) benefits? AB at 7-9.

### **II. PC3 AMOUNTS FOR APPELLANTS WITH PLSA DISTRIBUTIONS**

**Issue 2:** Did PBGC improperly change the Plan’s offset formula when it calculated PC3 benefits for appellants who elected Partial Lump Sum Amount (“PLSA”) distributions? AB at 9-15.

**Issue 3:** Did PBGC incorrectly apply both a “PLSA Offset Factor” and the Plan’s early retirement factor when it calculated PC3 benefits for appellants who elected PLSA distributions? AB at 15-25.

### **III. PC3 AMOUNTS FOR APPELLANTS WITH IRC § 415(e) REPEAL INCREASES**

**Issue 4:** Did PBGC correctly conclude that PC3 benefits do not include Plan benefit increases that were permitted following the legislative repeal of the Internal Revenue Code (“IRC”) § 415(e) limits? AB at 25-28.

### **IMPACT OF THE APPEAL’S ISSUES UPON INDIVIDUAL APPELLANTS**

As explained in more detail later, a Plan participant is eligible for a PC3 benefit if he or she either was in pay status (retired) or eligible to enter pay status (eligible to retire) three years before the Plan terminated.<sup>8</sup> This decision refers to the Plan’s termination date as “DOPT,” which is shorthand for “Date of Plan Termination.” We also use the term “DOPT-3” to refer to the start date of the 3-year period before DOPT.

Based on retirement or eligibility for retirement at DOPT-3 under the Plan’s terms, almost all appellants have PC3 benefits under the asset allocation provisions in ERISA § 4044.<sup>9</sup> For many appellants, PBGC is paying more than the PBGC-guaranteed benefit based on the allocation of the Plan’s assets and the allocation of PBGC’s recoveries to benefit amounts assigned to PC3. For some appellants, however, PBGC determined that the PBGC-guaranteed benefit is larger than the benefit funded by Plan assets and PBGC’s recoveries. PBGC is paying these appellants the larger guaranteed amount.

The four issues raised in the Appeal address different aspects of PBGC’s PC3 calculations. None of the issues, by itself, affects all 554 appellants. The impact of the four issues is as follows:

***Issue #1: PC3 amounts for appellants who elected the Plan’s Level Income Option.*** The Appeals Board identified 163 appellants who either elected the Plan’s “Level Income Option” (“LIO”) or are the beneficiaries of a participant who elected an LIO. As explained in this decision, the LIO is designed to provide a retiree with “level income” through the combination of the Plan’s benefit payments and an (estimated) Social Security benefit.

The Appeals Board increased the PBGC-payable benefits of 146 appellants with LIOs. The Board did not increase the PBGC-payable benefits of the remaining 17 appellants with LIOs, for

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<sup>8</sup> Additionally, a beneficiary under the Plan generally is eligible for a PC3 benefit if (1) he or she was in pay status three years before the Plan terminated, or (2) the participant upon whom the benefit is based was retired or eligible to retire three years before the Plan terminated.

<sup>9</sup> PBGC’s electronic pension data show that 11 appellants are not eligible for PC3 benefits because the participant upon whom the Plan benefit is based was not retired or eligible to retire three years before the Plan terminated.

the reasons explained in this decision.

**Issues #2 and #3: PC3 amounts for appellants with partial lump sum amount distributions.** Under the Plan's terms, a participant who retires or terminates employment may elect to receive a portion of his or her accrued benefit in the form of a lump-sum distribution. The term "Partial Lump Sum Amount" ("PLSA") refers to the amount the participant could receive under this benefit payment option.

Issues #2 and #3 address PBGC's PC3 benefit calculations for appellants who received PLSA distributions or are the beneficiaries of participants who received PLSA distributions. The Appeals Board identified 374 appellants with PLSA distributions. The Appeals Board denied the Appeal's Issue #2 and Issue #3 claims for all 374 appellants with PLSA distributions.

After PBGC became trustee of the Plan, PBGC did not allow retiring participants to elect the PLSA payment option.<sup>10</sup> Thus, Issues #2 and #3 do not affect appellants who did not receive PLSA distributions because they retired after PBGC became trustee. Additionally, Issues #2 and #3 do not affect those appellants who retired before DOPT and elected to receive their entire Plan benefit in an annuity form.

The 374 appellants with PLSA distributions fall into the following two groups: (1) 344 appellants who received PLSA distributions before DOPT (*i.e.*, before December, 30, 2004); and (2) 30 appellants who retired and received PLSA distributions in the approximately 10-month period between DOPT and PBGC's trusteeship (which occurred on October 26, 2005).

The primary focus of the Appeal is upon PBGC's calculations for participants who received PLSA distributions before DOPT, rather than the calculations for participants who received PLSA distributions after DOPT and before PBGC's trusteeship. However, one of your clients, Captain ██████████, filed an individual appeal that disagrees with how PBGC determined the offset for his post-DOPT PLSA distribution. The Appeals Board will decide Captain ██████████ PLSA issue in a separate decision that will be issued in the near future.<sup>11</sup>

**Issue #4: PC3 amounts for appellants who received increased Plan benefits after the Internal Revenue Code § 415(e) repeal.** Prior to its repeal, IRC § 415(e) capped the combined pension benefits that a participant could receive from (1) all of the employer's tax-qualified "defined benefit" pension plans and (2) all of the employer's tax-qualified "defined contribution" pension plans. Under the Plan's provisions, the IRC § 415(e) limit applied to benefit payments prior to January 1, 2000. Issue #4, which concerns PBGC's decision to apply the IRC § 415(e)

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<sup>10</sup> PBGC's decision not to make PLSA distributions to post-trusteeship retirees is based on PBGC regulation 29 C.F.R. § 4022.7-.8.

<sup>11</sup> PBGC, in allocating (as of DOPT) the Plan's assets and PBGC's recoveries to benefit liabilities, applies the PLSA offset in a different calculation step for participants who received their PLSA distribution prior to DOPT than for participants who retired and received a PLSA distribution after DOPT. The Appeals Board will address this difference when it decides Captain ██████████ individual appeal.

limit to PC3 benefit calculations, affects 58 appellants. The Appeals Board decided that the Plan benefit increase that was permitted following the IRC § 415(e) limit repeal should be included in PC3. As stated on the first page of this decision, BAPD will issue a new benefit determination to each of the 58 appellants.

## **BACKGROUND**

***The Plan's History and Its Formal Documents.*** A predecessor to UAL established the "Group Annuity Program" to provide benefits for eligible employees and beneficiaries effective January 1, 1941. The Group Annuity Program, as it applied to certain eligible pilots, was amended effective January 1, 1976, and named the "United Air Lines, Inc. Pilots' Fixed Benefit Retirement Income Plan." Following numerous amendments to the 1976 Plan document, the Plan was amended, restated, and renamed as the United Airlines Pilot Defined Benefit Pension Plan (effective beginning January 1, 1999).

The last formal plan document that restated all of the Plan's terms is the *United Airlines Pilot Defined Benefit Pension Plan, 1999 Amendment and Restatement, Effective as of January 1, 1999* (the "1999 Restatement").<sup>12</sup> UAL, as Plan sponsor, adopted the 1999 Restatement on December 21, 2001. UAL later adopted four Plan amendments. In Enclosure 5, we provide a copy of the 1999 Restatement and its four amendments.

In this decision, when we use the term "Plan" with respect to a particular Plan provision, we are referring (unless stated otherwise) to the provision in effect when the Plan terminated, *i.e.*, the provision in the 1999 Restatement as modified by later Plan amendments.

***The Plan's Termination and Trusteeship.*** On December 9, 2002, UAL and twenty-seven affiliated corporations simultaneously filed Voluntary Petitions for Relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court, Northern District of Illinois, Eastern Division (the "Bankruptcy Court"). The Pilots Plan was one of four PBGC-covered pension plans that were sponsored by UAL when it filed for relief under Chapter 11 bankruptcy.

In a Notice of Determination ("NOD") issued to UAL on December 29, 2004, PBGC determined, under ERISA § 4042(a), "that the United Airlines Pilot Defined Benefit Pension Plan ('Plan') must be terminated because the possible long-run loss of the corporation with respect to the Plan may reasonably be expected to increase unreasonably if the Plan is not terminated." PBGC proposed a Plan termination date of December 30, 2004.

The Air Line Pilots Association, International ("ALPA") and a group representing retired pilots challenged PBGC's proposed DOPT in judicial proceedings. On October 26, 2005, Judge Eugene R. Wedoff entered judgment in favor of PBGC's request to terminate the Pilots Plan as

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<sup>12</sup> Appendix A of the 1999 Restatement (provided in Enclosure 5) contains a detailed explanation of the Plan's history.

of December 30, 2004. PBGC became trustee of the Pilots Plan on October 26, 2005. UAL exited bankruptcy in February 2006.

**PBGC's Guarantee and Its Limits.** The pension benefit a retiree receives from PBGC initially depends on the plan's provisions; PBGC does not pay more than the plan would have paid (except in limited situations where the plan failed to follow ERISA's requirements). Moreover, PBGC does not guarantee all benefits provided by a pension plan. To be guaranteed, a benefit must, first, be "nonforfeitable," which means that the participant must have satisfied the pension plan's requirements to be eligible for the benefit by the date on which the plan terminates.<sup>13</sup> Not all nonforfeitable benefits are guaranteed; as explained below, there are statutory and regulatory limits on PBGC's guarantee.

PBGC is unable to pay all Plan benefits primarily because ERISA places a cap, known as the Maximum Guaranteed Benefit ("MGB") limit, upon the amounts that PBGC guarantees.<sup>14</sup> The amount of an individual's MGB depends on a number of factors, including the year in which the pension plan terminated, the participant's age at the later of DOPT or date of benefit commencement, the form in which the benefit is paid, and the age of the participant's spouse if the benefit form includes a surviving spouse benefit.<sup>15</sup> For plans terminating in 2004, as the Plan did, the MGB is \$3,698.86 per month (\$44,386.32 per year) for a participant who begins receiving PBGC-payable benefits at age 65 in the form of a straight life annuity ("SLA") with no survivor benefit. If the person is younger than 65 and/or if a survivor benefit will be paid (for example, to a spouse), the MGB is lower.<sup>16</sup>

Another limit on PBGC's guarantee is the phase-in limit, which provides that PBGC's guarantee of a benefit increase is phased in over five years from the later of the adoption or effective date of the increase.<sup>17</sup> Because PBGC applies the MGB limit before applying the phase-in limit, the number of Plan participants whose guaranteed benefit is decreased by the phase-in limit is substantially less than the number of participants affected only by the MGB.

In many cases, whether a participant receives his or her full plan benefit depends principally on the statutory and regulatory limits on PBGC's guarantee. But, if a plan has enough assets, some participants may receive more than the guaranteed amount. As is explained below, many appellants are entitled to receive more than the PBGC-guaranteed monthly amount based on the allocation of Plan assets and PBGC's recoveries.

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<sup>13</sup> See ERISA § 4001(a)(8); 29 C.F.R. § 4022.3(a)(1).

<sup>14</sup> See ERISA § 4022(b)(3).

<sup>15</sup> See 29 C.F.R. § 4022.23.

<sup>16</sup> See 29 C.F.R. §§ 4022.22-.23.

<sup>17</sup> See ERISA § 4022(b)(1), (7); 29 C.F.R. § 4022.2, .24-.25. To determine the phase-in limit, PBGC must scrutinize all plan amendments made during the five years before a plan terminates.

**Allocating a Pension Plan's Assets and PBGC's Recoveries under ERISA.** ERISA's six-tier asset allocation structure 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 Plan has no benefits in the first two priority categories (PC1 and PC2), which relate to benefits derived from a participant's own contributions. The next priority category, PC3, applies to 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, 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).

Because PC3 benefits come ahead of PBGC-guaranteed benefits (PC4) in the allocation structure, a participant or beneficiary who went into pay status (or could have gone into pay status) three or more years before plan termination potentially may receive his or her full plan benefit amount, even if it is not all guaranteed by PBGC. This would occur if all of a participant's benefit is in PC3 and the plan's assets are sufficient to cover all benefits in PC3.

If a plan's assets do not cover all benefits in PC3, each participant or beneficiary with a PC3 benefit generally will receive a pro rata share of the assets.<sup>18</sup> PBGC determined that the Plan's assets as of DOPT (\$2,878,128,788) covered 82.0617% of the Plan's benefits in PC3.<sup>19</sup>

As provided under ERISA § 4022(c), PBGC pays some participants and beneficiaries additional benefits based on PBGC's recoveries for Unfunded Benefit Liabilities ("UBL"). Essentially, the UBL is the shortfall between a plan's assets and its liabilities for all benefits.<sup>20</sup> As provided under ERISA § 4022(c), PBGC allocated a portion of its UBL recoveries from UAL to Plan benefits that are neither guaranteed by PBGC nor funded by the Plan's assets.<sup>21</sup>

For the Pilots Plan, the ERISA § 4022(c) amount of \$179,571,087 covers 58.4630% of all UNGB in PC3.<sup>22</sup> Thus, for a participant whose PC3 benefit is greater than his PBGC-guaranteed

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<sup>18</sup> See ERISA § 4044(b)(2); 29 C.F.R. § 4044.10(d).

<sup>19</sup> See PBGC's *Actuarial Case Memo for United Airlines Pilot Defined Benefit Pension Plans Retirement Plan* ("Actuarial Case Memo"), at 1, 30, and PBGC's August 15, 2012 revision to the *Actuarial Case Memo* ("Revised Case Memo"), at 1-4. Exhibit 2 of the Appeal is a copy of the *Actuarial Case Memo*, without its appendices and enclosures. Exhibit 3 of the Appeal is a copy of the *Revised Case Memo*.

<sup>20</sup> See ERISA § 4001(a)(18) (definition of UBL) and § 4062(b) (liability of a plan sponsor and its controlled group to PBGC for UBL).

<sup>21</sup> For pension plans like the Plan, in which the outstanding amount of Unfunded Non-Guaranteed Benefits ("UNGB") exceeds \$20 million, the ERISA § 4022(c) amounts payable to participants and beneficiaries are determined based on PBGC's actual recoveries on its claims against the plan sponsor.

<sup>22</sup> PBGC used the entire § 4022(c) amount to increase benefits of participants with UNGB in PC3.



benefit, the ERISA § 4022(c) amount covers 58.4630% of the difference between the full PC3 amount (*i.e.*, the PC3 benefit amount if PC3 was 100% funded) and the funded PC3 amount (*i.e.*, the 82.0617% funded PC3 benefit). Overall, through the allocation of the Plan's assets and PBGC's recoveries, Plan participants and beneficiaries entitled to PC3 benefits (including many appellants) are receiving at least 92.5489% of their benefit amounts in PC3.<sup>23</sup> Some Plan participants and beneficiaries who are eligible for PC3 benefits are entitled to larger PBGC-payable amounts due to PBGC's guarantee.<sup>24</sup>

**Determining Benefit Amounts in PC3.** The Appeal's four issues assert that PBGC incorrectly determined appellants' PBGC-payable benefits in PC3. PBGC's determination of PC3 amounts has a significant impact upon many appellants because: (1) PBGC is unable to guarantee all Plan benefits, primarily due to the MGB limit; and (2) the Plan's assets and the Plan's ERISA § 4022(c) amount are insufficient to fund the amounts that ERISA assigns to lower priority categories.

ERISA provides that there are three requirements for a benefit amount to be in PC3. The first is that the participant must have either retired or been eligible to retire at least three years before DOPT.<sup>25</sup> The second requirement is that the benefit in PC3 is the benefit in pay status at DOPT-3 or that would have been in pay status at DOPT-3 if the participant had retired. The third requirement is that the PC3 amount is determined based on the plan provisions "in effect" during the five years before the plan's termination date "under which such benefit would be the least." This decision refers to the start date of this 5-year period as "DOPT-5." The Appeals Board, in deciding the four issues raised in the Appeal, applied these three PC3 requirements.

## **I. LEVEL INCOME OPTION AMOUNTS IN PC3**

**Issue 1: Did PBGC correctly calculate PC3 amounts for appellants with Level Income Option ("LIO") benefits? AB at 7-9.**

### **The Appeal**

The Plan's LIO is designed to provide a retiree with a "level income" through the combination of a pension plan benefit and an (estimated) Social Security benefit. The Appeal claims that PBGC incorrectly calculated PC3 benefits for participants who elected an LIO because PBGC "broke PBGC actuarial equivalence" between an SLA benefit without the LIO feature and an LIO benefit. AB at 7-9.

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<sup>23</sup> This percentage, 92.5489%, is calculated as follows:  $82.0617\% \text{ (funded PC3 \%)} + 58.4630\% \times (100\% - 82.0617\%) \text{ (\% of participant's PC3 benefit funded by § 4022(c) amount)} = 82.0617\% + 10.4872\% = 92.5489\% \text{ (\% of PC3 benefit funded by plan assets and § 4022(c) amount)}$ .

<sup>24</sup> The Pilots Plan participants who are receiving more than 92.5489% of their PC3 benefit amounts have PBGC-guaranteed benefits that exceed their funded PC3 benefit amounts.

<sup>25</sup> ERISA § 4044(a)(3).

As the Appeal states, a December 11, 2013 decision issued by the Appeals Board corrected PBGC's PC3 calculations for a participant with an LIO who had appealed his PBGC benefit determination.<sup>26</sup> The Appeal further notes that the Board later made similar corrections for three appellants who filed individual appeals. The Appeal, at AB 9, requests that the Appeals Board take the same action for all other affected appellants by:

- Increasing the monthly annuity amount in PC3 for each appellant “whose resulting LIO benefit increase in PC3 is greater than their MGB under ERISA;” and
- Issuing a lump-sum back payment to each affected appellant, with interest, “in an amount that reflects the entire increased annuity benefit that PBGC improperly withheld from each such Appellant because of its erroneous LIO benefit calculations.”

The Appeal recognizes, at AB 8-9, that an appellant is not entitled to a benefit increase if his or her guaranteed benefit exceeds the benefit in PC3 that is funded by Plan assets and the ERISA § 4022(c) amount.

### **Our Conclusions**

The Appeals Board granted the relief you requested in Issue # 1 of the Appeal.

Accordingly, the Appeals Board applied the reasoning in its December 11, 2013 decision to all eligible appellants and recalculated their PBGC-payable benefit amounts. As previously stated, the Appeals Board increased the PBGC-payable benefits of 146 appellants who (1) had elected the Plan's Level Income Option (“LIO”) and (2) are entitled to a benefit based on an allocation of the Plan's assets and PBGC recoveries that is larger than the PBGC-guaranteed benefit.

The Appeals Board also applied its December 11, 2013 decision to an additional 17 appellants with LIOs, but their PBGC-payable benefits did not increase, as is discussed later. The 17 appellants are listed in Enclosure 3.

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<sup>26</sup> The Board's December 11, 2013 decision addressed the benefits of a Plan participant who is not represented by you. Enclosure 6 is a copy of the December 11, 2013 decision, with the personal information concerning the appellant redacted. A redacted copy of this Appeals Board decision also is available on PBGC's website at:

<http://www.pbgc.gov/Documents/apbletter/Decision--United-Airlines-Inc.-Pilots-2013-12-11.pdf>

## **Explanation of Board's Decision on Issue #1**

### **Discussion of Issue #1**

Under the LIO, a participant's payments from the Plan do not remain the same throughout his or her lifetime. Instead, the participant's payments: (1) are larger from his retirement date until a Social Security eligibility date; and (2) thereafter are reduced by an estimated Social Security amount ("SSA Amount").<sup>27</sup> Under the Plan's calculations, the sum of the Plan benefit that is payable after the Social Security eligibility date and the participant's estimated Social Security benefit equals the (larger) Plan benefit before the reduction.<sup>28</sup>

The Plan's LIO calculation is based on two components: the participant's estimated SSA Amount and an actuarial adjustment factor (the "LIO Factor"). The LIO Factor is used to convert the participant's benefit payable without the LIO feature to a benefit with the LIO feature. The LIO Factor ensures that the benefit amounts calculated as an LIO are actuarially equivalent, as of the participant's Annuity Starting Date ("ASD") and under the Plan's assumptions, to the benefit payable without an LIO.

PBGC used the same LIO Factor and SSA Amount as UAL when it determined Plan benefit amounts. In determining PC3 amounts for participants who retired after DOPT-3, however, PBGC: (1) used an assumed benefit start date for LIO purposes that was earlier than the actual benefit start date; and (2) used a different SSA Amount. The overall impact of PBGC's PC3 calculations is that PC3 amounts are materially lower than if PBGC had applied the LIO Factor and SSA Amount based on the participant's actual benefit start date (*i.e.*, his ASD).

In our December 11, 2013 decision, the Appeals Board decided that PBGC should calculate the LIO benefit assigned to PC3 as follows:

- first determine the participant's PC3 benefit in the Plan's normal form (*i.e.*, without the LIO); and
- then convert the normal form PC3 amount to an LIO using the LIO factor and SSA Amount that the Plan had applied as of the participant's actual benefit commencement date (*i.e.*, his ASD).

As stated above, the Appeals Board applied the reasoning in its December 11, 2013 decision and recalculated benefit amounts for all affected appellants with LIOs.

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<sup>27</sup> As provided in section 8.5 of the 1999 Restatement, 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."

<sup>28</sup> The participant's Plan benefit amounts do not increase or decrease, however, if his actual Social Security benefit is different.

## Implementation of Board's Decision on Issue #1

Enclosure 3 lists the 146 appellants whose PBGC-payable benefits increased based on the Appeals Board's recalculation of LIO amounts assigned to PC3. We note that the Appeals Board previously recalculated and increased benefits for three of the 146 appellants when the Board issued individual appeal decisions to them.<sup>29</sup>

Enclosure 3 also lists 17 appellants whose PBGC-payable benefits did not increase based on the Board's recalculation of LIO amounts assigned to PC3.<sup>30</sup> Thirteen appellants with LIOs are not entitled to increased PBGC-payable benefits because: (1) PBGC correctly calculated the PBGC-guaranteed benefit; and (2) the guaranteed benefit amount is larger than the benefit based on an allocation of the Plan's assets and PBGC recoveries (even after the Board's corrections). An additional three appellants with LIOs are not entitled to benefit increases based on the Board's December 11, 2013 decision because: (1) they retired more than 5 years before DOPT; and (2) PBGC correctly computed their PC3 benefits using the same LIO Factors and SSA Amounts that UAL had used when it computed their Plan benefits. One appellant with a LIO is not entitled to a benefit increase because he is not eligible for a benefit in PC3.

The Appeals Board separately will provide you with new Benefit Statement Worksheets for (1) appellants whose benefits increased based on their LIO amounts in PC3, and (2) appellants whose LIO amounts in PC3 were recalculated but did not result in a change to the PBGC-payable amount. In coordination with you, we also will provide these appellants with copies of their new Benefit Statement Worksheets.

PBGC's Benefits Administration and Payment Department ("BAPD") will implement the Board's decision for appellants with LIOs. Some appellants will be entitled to reimbursement for prior underpayments (with interest). For many appellants, however, the Board's decision on Issue #1 will reduce, but not eliminate, their overpayment balance. Many appellants have net overpayments because monthly payments generally were not reduced for PBGC guarantee limits during the first 14 months after the Plan terminated. If an appellant has a net underpayment, PBGC will: (1) adjust future benefit payments to the correct amount; and (2) issue a lump-sum back payment, which will include interest. If the appellant has a net overpayment, PBGC will adjust future monthly benefit payments in accordance with PBGC's recoupment regulation.<sup>31</sup>

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<sup>29</sup> The names of the three individuals with prior Appeals Board decisions are shown in Enclosure 3.

<sup>30</sup> [REDACTED], who is one of the appellants whose LIO amounts were not changed based on the December 11, 2013 decision, will receive a new Benefit Determination based on the Board's decision regarding IRC § 415(e) repeal increases.

<sup>31</sup> See 29 C.F.R. § 4022.81-.82. To mitigate financial hardship, PBGC does not charge interest and generally recoups any overpayment by reducing future monthly benefit payments by no more than 10% until the overpayment balance is repaid.

## **II. PC3 AMOUNTS FOR APPELLANTS WITH PLSA DISTRIBUTIONS**

**Issue 2: Did PBGC improperly change the Plan’s offset formula when it calculated PC3 benefits for appellants who elected Partial Lump Sum Amount (“PLSA”) distributions? AB at 9-15.**

### **The Appeal**

Under the Plan’s terms, a participant who retires or terminates employment may elect to receive a portion of his or her accrued Plan benefit as a Partial Lump Sum Amount (“PLSA”) distribution. If a PLSA distribution is elected, the benefit amount the Plan pays as a monthly annuity is reduced.

The Appeal challenges PBGC’s treatment of the PLSA distributions that many appellants received prior to PBGC’s trusteeship. AB at 9-15. Although the Appeal recognizes that PBGC must account for PLSA distributions, it contends that PBGC’s PC3 determinations are incorrect. The Appeal asserts that PBGC incorrectly computed PLSA offsets to PC3 amounts by: (1) “[ignoring] the Plan-derived Offset Factor that was actuarially created by the Prior Plan Administrator” and (2) using a “PBGC-created offset formula that bears little, if any, relationship to the Plan.” AB at 9-10.

The Appeal requests that the Appeals Board “recalculate Appellants’ benefits using the Plan’s actuarially-correct PLSA Offset Factor based on Each Appellant’s actual age at DOPT-3, rather than the artificial offset factor used by PBGC.” AB at 10.

### **Our Conclusions**

PBGC correctly determined PC3 benefit amounts for the appellants who had received PLSA distributions. For such participants, PBGC: (1) first calculated the PC3 amount for an annuity without a PLSA offset; and (2) then deducted the annuity equivalent of the participant’s actual PLSA distribution.<sup>32</sup>

The PLSA offset that PBGC applies equals the actual reduction to the participant’s monthly Plan benefit that resulted from the participant’s election of a PLSA distribution.<sup>33</sup> Thus, contrary to the Appeal’s contentions, PBGC does not use a “PBGC-created offset formula” that differed

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<sup>32</sup> Under PBGC’s calculations, the annuity equivalent of the participant’s PLSA distribution equals the difference, as of the participant’s Annuity Starting Date, between (i) the monthly Plan benefit that would be payable without a PLSA distribution and (ii) the monthly Plan benefit that is payable after the PLSA distribution is taken into account.

<sup>33</sup> As explained later, there are slight differences in the calculations by the Plan’s administrator (UAL) and by PBGC due to mathematical rounding.

We note that, if a participant elected both a PLSA distribution and an LIO, UAL applied the PLSA offset before making the payment adjustments for the LIO. PBGC’s PC3 calculations similarly determined the PLSA offset amount before adjusting for the LIO.

from the Plan's provisions. The Board further concluded that PBGC's PC3 calculations maintain equivalence, based on the Plan's actuarial assumptions, between participants who elected a PLSA distribution and those who elected to receive their entire Plan benefit as an annuity.

## **Explanation of Board's Decision on Issue #2**

### **Background**

We discuss below how the Plan calculated benefits for participants who elected PLSA distributions. We also discuss how PBGC determined PLSA offsets for PC3-eligible participants. This background information applies to both Issue #2 and Issue #3, which overlap in certain respects. Both issues address PBGC's PC3 benefit calculations for appellants who received PLSA distributions or are the beneficiaries of participants who received PLSA distributions.

To illustrate the Plan's and PBGC's benefit calculations, we use the benefits of Captain [REDACTED], a timely-filed appellant, as an example. Also, in Enclosure 7 to this decision, we explain the Plan's and PBGC's benefit calculations for Captain [REDACTED] in greater detail and provide copies of his relevant benefit calculation documents. Although the Appeal contends, at AB 17, that Captain [REDACTED] PBGC-payable benefit was calculated incorrectly, the Board did not find any error in his benefit calculation.

The Appeal identifies by name four other appellants with allegedly incorrect PLSA offsets: Captain [REDACTED], Captain [REDACTED], Captain [REDACTED], and Captain [REDACTED]. AB at 17-18. As with Captain [REDACTED], the Board did not find any errors in PBGC's benefit calculations with respect to the PLSA offsets for these four appellants.<sup>34</sup> Enclosures 8 through 11 provide detailed explanations of the benefit calculations for Captain [REDACTED], Captain [REDACTED], Captain [REDACTED], and Captain [REDACTED] as well as copies of their relevant benefit calculation documents. We also discuss certain aspects of the benefit calculations for Captain [REDACTED] and the other four appellants in our explanation of the Board's findings and conclusions for Issue #2 and Issue #3.

#### **A. Plan benefit amounts for participants with PLSA distributions**

***The Plan's accrued benefit.*** The Plan's accrued benefit is the annual benefit the participant is entitled to receive if payments start on the Normal Retirement Date ("NRD"), *i.e.*, at age 60, in the form of a single life annuity ("SLA").<sup>35</sup> Generally, the Plan's accrued benefit equals a percentage of the participant's Final Average Eligible Earnings ("FAE") multiplied by the

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<sup>34</sup> The Appeals Board increased Captain [REDACTED] PBGC-payable benefit based on the Board's recalculation of his LIO amounts in PC3.

<sup>35</sup> Plan § 1.4.

participant's Years of Participation under the Plan.<sup>36</sup>

As an example, Captain ██████ had 34.1667 years of Participation Service and FAE of \$183,714.36 when he retired on ██████, 2003 (at age 59 and 1 month). If he had elected to receive his entire benefit as an SLA that started on his Normal Retirement Date ("NRD") (*i.e.*, on ██████, 2004), he would receive a monthly benefit of \$7,846.14, which is calculated as follows:

$$\begin{aligned} & \$183,714.36 \text{ (FAE)} \times 34.1667 \text{ (Service)} \times 0.015 \text{ (benefit multiplier)} = \\ & \$94,153.70 \text{ (annual benefit)} \div 12 = \$7,846.14 \text{ (monthly benefit at NRD)}. \end{aligned}$$

PBGC did not change the accrued benefit that the former Plan administrator (UAL) calculated for Captain ██████.

**Adjustment of the Plan benefit amount for early retirement and benefit form.** The Plan's formal document provides that, for retirements on or after April 12, 2000, a participant's accrued Plan benefit is decreased by 3% per year (0.25% per month) for each year of benefit commencement before his or her NRD.<sup>37</sup> The Plan provisions in effect before April 12, 2000 provided for greater early retirement reductions – 6.0% for each year of early retirement after age 55 and a 3.6% annual early commencement reduction for ages 50 through 55.<sup>38</sup>

For participants who retire early, the accrued benefit amount is multiplied by the Plan's Early Retirement Factor ("ERF") and by a benefit form conversion factor (if the participant elects a benefit form that is not an SLA). For Captain ██████, the ERF for his retirement effective

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<sup>36</sup> Plan § 5.1. Through Plan amendments, the "multiplier" for this calculation changed as follows:

- Between January 1, 1976 and April 1, 1988, the multiplier increased from an initial 1.2% of FAE to 1.39% of FAE;
- Effective April 1, 1988, the multiplier increased to 1.41% of FAE; and
- Effective April 12, 2000, the multiplier increased to 1.5% of FAE.

The Plan adopted a new benefit formula effective June 1, 2003, which is based on a benefit multiplier of 1.35% with Participation Service limited to 30 years. The participant's accrued benefit, however, cannot be less than the benefit amount accrued as of May 31, 2003.

Plan § 5.2 states that the accrued benefit stated under Plan § 5.1 is subject to benefit adjustments under certain circumstances. The circumstances covered under Plan § 5.2, which generally involve re-employment and the Plan's purchase of insurance annuities, do not apply to most appellants.

<sup>37</sup> The First Amendment to the 1999 Plan ("First Amendment," which we provide in Enclosure 5) changed the early retirement reduction to 3% per year (0.25% per month) effective for retirements on or after April 12, 2000.

<sup>38</sup> Table 4 of Appendix B of the 1999 Plan describes the Plan's Early Retirement Adjustment Factors ("ERFs") that were in effect before April 12, 2000. In Enclosure 12, we provide a table that illustrates the monthly Plan's ERFs that were in effect before April 12, 2000.

██████████, 2003 (11 months before his NRD) is 0.973.<sup>39</sup> Because Captain ██████████ elected an SLA, his payments are not reduced by a benefit form conversion factor. If Captain ██████████ had not elected a PLSA distribution, his monthly Plan benefit would be \$7,634.29, as shown by the following calculation:

$$\$7,846.14 \text{ (accrued benefit at NRD)} \times 0.973 \text{ (ERF)} = \$7,634.29 \text{ (early retirement benefit)}$$

***The Plan's PLSA option.*** Plan § 8.5(f)(i) provides that a participant may elect, before his or her Annuity Starting Date (“ASD”), “to have a portion of his or her Accrued Benefit equal to his or her Partial Lump Sum Amount distributed to him or her in a lump sum.” The PLSA distribution is to be made “as soon as practicable after the later of the date the Participant terminates employment with the Company and all Affiliates and the date his or her election is filed.”<sup>40</sup>

The PLSA is defined as: (1) the participant’s “Contribution Account” (if any) under the Group Annuity Program that was in effect before January 1, 1976; plus (2) 4-2/3% of the participant’s Eligible Earnings for each calendar month commencing on or after January 1, 1976, plus (3) “Annual Adjustments.”<sup>41</sup> Each Annual Adjustment generally equals 3% of the PLSA balance as of the immediately preceding January 1.<sup>42</sup>

Accordingly, a participant’s PLSA balance increases each year until he or she terminates employment. Enclosures 7 through 11 illustrate how PLSA balances are determined for the five appellants that are named on pages 17-18 of the Appeal.

***The Plan's offset for the PLSA.*** The Plan provides that, for purposes of determining benefit payments, the participant’s accrued benefit at Normal Retirement is adjusted for the election of a PLSA distribution.<sup>43</sup> The PLSA distribution adjustment equals “the annuity equivalent” of the lump sum based on the assumption the annuity commenced on the participant’s NRD (*i.e.*, at age 60) in the form of an SLA.<sup>44</sup> The annuity equivalent of the PLSA distribution is determined

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<sup>39</sup> The 0.973 ERF for Captain ██████████, which is based on an early retirement reduction of 3% per year (*i.e.*, 0.25% reduction per month), is calculated as follows:

$$1.0 - [0.0025 \text{ (monthly reduction)} \times 11 \text{ (months before age 60)}] = 0.973 \text{ (ERF)}.$$

<sup>40</sup> *Id.*

<sup>41</sup> Plan § 8.5(f)(ii).

<sup>42</sup> Plan § 8.5(f)(iii).

<sup>43</sup> Plan § 5.4(d).

<sup>44</sup> Plan § 16.3(a)(ii).



using the interest rate and mortality factors required for lump-sum distributions under IRC § 417(e).<sup>45</sup>

Consistent with the Plan's provisions, UAL used a "PLSA Offset Factor" as of the participant's ASD to calculate the participant's PLSA offset.<sup>46</sup> The purpose of the PLSA Offset Factor is to convert the participant's actual PLSA distribution on the participant's ASD to its monthly annuity equivalent as of his or her NRD and in the form of an SLA. This monthly annuity equivalent then is deducted from the participant's monthly accrued benefit, which also is determined as of NRD and in the form of an SLA. Afterwards, the "residual annuity" (*i.e.*, the monthly annuity after the deduction for the PLSA) is adjusted for early retirement and benefit form.

As an example, UAL first determined that Captain ██████ "Total Partial Lump Sum Amount" is \$204,090.24 – which is the amount he was paid on his ██████, 2003 ASD. UAL then determined the annuity equivalent at NRD of his PLSA distribution by dividing his PLSA amount (\$204,090.24) by his "Annuity Conversion Factor at age 59.083," which is 152.693.<sup>47</sup> Consequently, UAL determined that the monthly offset at NRD for his PLSA distribution is \$1,336.60, which is computed as follows:

$$\begin{aligned} & \$204,090.24 \text{ (PLSA amount)} \div 152.693 \text{ (PLSA Offset Factor)} = \\ & \quad \$1,336.60 \text{ (monthly PLSA offset at NRD)} \end{aligned}$$

UAL then reduced Captain ██████ monthly accrued benefit of \$7,846.14 by his PLSA offset (at NRD) of \$1,336.60, which resulted in a residual annuity at NRD of \$6,509.54. Finally, UAL adjusted the residual annuity at NRD for early retirement and benefit form, which resulted in an ARD monthly benefit of \$6,333.78. Captain ██████ was receiving this monthly benefit of \$6,333.78 when the Plan terminated.<sup>48</sup>

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<sup>45</sup> Plan § 16.3(a)(i). The "applicable interest rate" for determining the annuity equivalent of the PLSA distribution is the interest rate in effect under IRC § 417(e) "on the first day of the third month immediately preceding the month in which the Annuity Starting Date occurs." Plan §§ 16.3(i), 16.3(ii).

Plan § 1.4 defines "Annuity Starting Date" as "the first day of the first calendar month for which a payment of an Accrued Benefit is first made as an annuity, or in any other form, under the Plan to a Participant or his or her beneficiary." In communications with participants, PBGC generally uses the term "Actual Retirement Date" ("ARD") to refer to the participant's benefit commencement date, *i.e.*, his or her ASD. With respect to the issues raised in the Appeal, ASD and ARD have the same meaning.

<sup>46</sup> In the Appeal and in this decision, the terms "Annuity Conversion Factor" and "PLSA Offset Factor" both are used and have the same meaning.

<sup>47</sup> Later in this decision, we discuss the actuarial assumptions upon which the PLSA Offset Factor is based.

<sup>48</sup> As previously stated: (1) an ERF of 0.973 applies to Captain ██████ benefit calculation, and (2) there is no benefit form adjustment because he elected an SLA. The monthly benefit payable to Captain ██████ on his ASD thus is \$6,333.78, as is shown by the following calculation:

As previously explained, Captain █████ would have received a monthly Plan benefit of \$7,634.29 on his ASD if he had not elected a PLSA distribution. His election and receipt of a PLSA distribution caused his monthly Plan benefit to be \$1,300.51 per month less [ $\$7,634.29 - \$6,333.78 = \$1,300.51$ ] as of his █████, 2003 ASD than if he had received his entire Plan benefit as an annuity starting on his ASD. Accordingly, based on the actual reduction to his monthly payments, Captain █████ PLSA offset as of his ASD is \$1,300.51 per month.

## **B. PBGC's calculation of PC3 amounts for participants with PLSA distributions**

**PC3 amounts before deduction for PLSA distributions.** In determining the monthly benefit assigned to PC3 for a participant, PBGC first calculates the monthly benefit that PBGC would assign to PC3 in the absence of any lump-sum distribution.<sup>49</sup> The monthly benefit in PC3 for a participant who was an active UAL employee at DOPT-3 (*i.e.*, on December 30, 2001) often is significantly lower than his or her Plan benefit for some or all of the following reasons:

- (1) The participant had fewer Years of Participation Service at DOPT-3 (*i.e.*, on the date as of which the PC3 benefit is calculated) than on the actual employment termination date;
- (2) The participant's FAE, as determined under the Plan provisions in effect 5 years before DOPT, is less at DOPT-3 than on the actual employment termination date;
- (3) The Plan's early retirement reduction is greater on DOPT-3 (which is the assumed retirement date for the PC3 benefit) than on the participant's (later) actual retirement date. Also, PBGC must apply the ERFs under the Plan provisions that were in effect five years before DOPT (*i.e.*, on December 30, 1999), rather than the more generous ERFs that went in effect on April 12, 2000.
- (4) PBGC, in calculating PC3 benefits, must use the benefit formula that was in effect at the beginning of the five-year period before the Plan terminated.<sup>50</sup> The benefit multiplier in effect five years before DOPT is 1.41%, rather than the later-adopted and more generous benefit multiplier of 1.5%.

The four circumstances listed above reduce the benefit amount in PC3 for some appellants regardless of whether or not the participant received a PLSA distribution.

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$\$6,509.54$  (benefit at NRD after PLSA offset)  $\times$  0.973 (ERF) =  $\$6,333.78$  (benefit at ASD after PLSA offset).

<sup>49</sup> See PBGC's *Operating Policy Manual*, "Allocation of Assets – Priority Category 3," Chapter 4.2-1 at G.3 (Enclosure 13).

<sup>50</sup> Use of the benefit formula in effect at DOPT-5 is necessary because the PC3 amount is based on the plan provisions "in effect" during the five years before the plan's termination date "under which such benefit would be the least."

Captain [REDACTED] is an example of an appellant whose benefit in PC3 is significantly lower than his Plan benefit amount. As is explained in Enclosure 7, his monthly benefit in PC3 (before the PLSA offset) is \$5,428.50, as compared to his monthly Plan benefit (before PLSA offset) of \$7,634.29. Also, as shown in Enclosures 8-11, Captain [REDACTED], Captain [REDACTED], Captain [REDACTED] each have a benefit amount in PC3 that is significantly lower than his Plan benefit amount.

**PBGC's Adjustment of PC3 amounts for PLSA distributions.** In determining monthly benefit amounts assigned to PC3, PBGC adjusts for PLSA distributions before DOPT by offsetting the monthly annuity equivalent of the PLSA. The monthly annuity equivalent of the PLSA equals the actual reduction in monthly payments that resulted from the participant's election of a PLSA distribution.

As an example, Captain [REDACTED] monthly amount in PC3 in the absence of a PLSA distribution is \$5,428.50. Also, Captain [REDACTED] receipt of a PLSA distribution caused his monthly Plan benefit to decrease by \$1,300.51 per month. PBGC used approximately the same monthly PLSA offset, \$1,300.73, when it calculated Captain [REDACTED] monthly amount in PC3. The \$0.22 difference is attributable to differences in mathematical rounding (or "rounding").<sup>51</sup>

Consequently, Captain [REDACTED] monthly amount in PC3, after the adjustment for his PLSA distribution, is \$4,127.77 [*i.e.*, \$5,428.50 (PC3 amount before PLSA offset) - \$1,300.73 (PLSA offset) = \$4,127.77].

**PBGC's Adjustment for the PC3 and ERISA § 4022(c) funding percentages.** PBGC is unable to pay the full monthly PC3 amounts that it calculated because (1) the Plan's assets funded only 82.0617% of the benefit liabilities in PC3, and (2) the ERISA § 4022(c) amount, which is based on PBGC's recoveries, funded some, but not all, of the remaining liabilities in PC3.

PBGC's adjustment of PC3 amounts for the PC3 and ERISA § 4022(c) funding percentages is explained in Enclosure 7, which provides additional detail concerning PBGC's calculations for Captain [REDACTED]. The Appeal does not dispute how PBGC applied the PC3 funding percentage and how it calculated ERISA § 4022(c) benefits.

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<sup>51</sup> In calculating the PLSA offset, UAL used a PLSA Offset Factor that was based on the participant's age mathematically rounded to 4 decimal places. Thus, Captain [REDACTED] age on his ASD – which was 59 years and 1 month – was rounded to 59.0833 years. PBGC rounded ages to 2 decimal places, *i.e.*, 59 years and 1 month was rounded to 59.08. Overall, this difference in the rounding of ages increased the PLSA offset slightly for some participants and decreased the offset slightly for others. The Appeals Board concluded that PBGC's rounding of ages to 2 decimal places is reasonable and did not significantly impact upon PBGC-payable benefit amounts. Accordingly, the Board did not change PBGC's methodology for the rounding of ages.

## Discussion of Issue #2

Issue #2 challenges how PBGC calculated PC3 benefit amounts for appellants who received PLSA distributions. In determining PC3 amounts, PBGC applied a PLSA offset that equaled the actual reduction to the participant's monthly Plan benefit that resulted from the participant's choice of a PLSA distribution (except for slight differences due to mathematical rounding). For the reasons explained below, the Appeals Board found no basis for changing PBGC's calculation method.

### A. PBGC correctly applied the Plan's provisions and actuarial assumptions in determining PC3 amounts for appellants with PLSA distributions

A PLSA distribution provides a participant with a portion of the Plan benefit that otherwise would be payable as an annuity. For this reason, PBGC accounts for the PLSA distribution by first calculating the amount that would be assigned to PC3 without a PLSA distribution. PBGC then deducts the annuity equivalent of the benefit the PLSA replaced.<sup>52</sup>

Chapter 4.2-1 of PBGC's *Operating Policy Manual* provides that PBGC will apply the pension plan's provisions and actuarial assumptions in calculating PC3 benefits for participants who received partial lump-sum distributions before their pension plan terminated.<sup>53</sup> PBGC's PC3 calculations for the appellants with PLSA distributions are consistent with PBGC's *Operating Policy Manual*. As in UAL's calculations of Plan benefit amounts, PBGC calculated PLSA distribution offsets for PC3 using the Applicable Interest Rate and Applicable Mortality Table

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<sup>52</sup> As required under ERISA § 4044, PBGC allocated the Plan's assets and the Plan's § 4022(c) amount as of DOPT to the Plan benefits payable as annuities on or after DOPT. Because a PLSA distribution replaced a portion of the annuity that otherwise would be payable to the participant after DOPT, PBGC appropriately deducted the annuity equivalent of the participant's actual PLSA distribution from the PC3 annuity amount that would be assigned to PC3 in the absence of a PLSA distribution.

<sup>53</sup> Section G.3. of Chapter 4.2-1 of PBGC's *Operating Policy Manual* (Enclosure 13) states that, for a PC3-eligible participant who received a partial lump-sum distribution from the terminated pension plan in the 3-year period before DOPT, "the PC3 Benefit Amount will be the difference of the following two annuity amounts (but not less than \$0):

- The pre-distribution PC3 Benefit Amount—that is, the PC3 Benefit Amount calculated as though no pre-DOPT distribution had occurred, and
- The pre-DOPT distribution amount converted to an annuity commencing on the earlier of (a) the ASD of the residual annuity and (b) the first of the month coincident with or following DOPT."

Section G.3. further states that, to annuitize the pre-DOPT partial lump-sum distribution, PBGC "will follow the plan's conversion rules for converting a lump sum to an annuity (such as the Applicable Interest Rate and Applicable Mortality Table under Code section 417(e)(3), which many pension plans require for converting lump sum distributions to a monthly annuity)."

under IRC § 417(e)(3).<sup>54</sup> Consequently, in determining PLSA offsets, PBGC did not change the Plan’s actuarial assumptions.

Essentially, PBGC concluded that the PLSA offset for PC3 purposes should equal the actual monthly benefit amount the Plan deducted when it paid the participant a PLSA distribution. If, for example, a Plan participant would have received a Plan benefit of \$7,000 per month as an SLA without a PLSA distribution and \$5,500 per month as an SLA with a PLSA distribution, then the PLSA offset is the difference between the two amounts, *i.e.*, \$1,500 per month. The Appeals Board concluded that PBGC’s calculations of PLSA offset amounts are logical because they correspond to the actual benefit choices made by participants.

A major contention in Issues #2 and #3 of the Appeal is that PBGC adjusted PC3 amounts for PLSA distributions in a way that differed from UAL’s Plan benefit calculations. AB at 13-15, 16-20. However, PBGC’s benefit calculations for Captain ██████ illustrate that PBGC did not compute different PLSA offset amounts than UAL.

As discussed in the “Background” section: (1) Captain ██████ election of a PLSA distribution caused his monthly Plan benefit to decrease by \$1,300.51 per month; and (2) PBGC used a monthly PLSA offset of \$1,300.73, when it calculated Captain ██████ monthly PC3 amount, with the \$0.22 difference from the UAL-calculated amount attributable to rounding. PBGC’s calculations for Captain ██████ are shown in the table below.

<b>Comparison of PLSA offsets calculated by UAL and by PBGC for ██████ - See Background and Enclosure 7 for explanation of amounts in lines (3), (6), (8) and (9)</b>		
(1)	Normal Retirement Date	██████ 2004
(2)	Annuity Starting Date (ASD)	██████ 2003
(3)	Accrued benefit (NRD)	\$7,846.14
(4)	ERF at ASD	0.9730
(5)	Plan benefit at ASD without PLSA deduction: (3) × (4)	\$7,634.29
(6)	Plan benefit at ASD with PLSA deduction (as shown in UAL calculations)	\$6,333.78
<b>(7)</b>	<b>Plan benefit reduction due to PLSA offset (UAL calculations): (5) - (6)</b>	<b>\$1,300.51</b>
(8)	PC3 amount before PLSA offset (as shown in PBGC’s calculations)	\$5,428.50
(9)	PC3 amount after PLSA offset (as shown in PBGC’s calculations)	\$4,127.77
<b>(10)</b>	<b>PLSA offset to PC3 benefit: (8) - (9)</b>	<b>\$1,300.73</b>

<sup>54</sup> As discussed in the Background section, the Plan’s PLSA Offset Factor – which is based on the applicable interest rate and applicable mortality table under IRC § 417(e)(3) – is used to convert a PLSA distribution that is paid on the participant’s ASD to an equivalent annuity starting on the participant’s NRD.

In addition to Captain [REDACTED], the Appeal identifies four appellants with allegedly incorrect PLSA offsets: [REDACTED]

[REDACTED]. Enclosures 8 through 11 explain the benefit calculations for those four appellants. As is shown in the table below, PBGC's PC3 calculations for the four appellants used the same PLSA offset (except for rounding differences) that UAL used when it computed their Plan benefit amounts.

<b>Comparison of PLSA offsets calculated by UAL and by PBGC —</b>					
<b>See Enclosures 8 through 11 for explanation of amounts in lines (3), (6), (8) and (9)</b>					
		[REDACTED]			
(1)	Normal Retirement Date	[REDACTED] 2005	[REDACTED] 2004	[REDACTED] 2004	[REDACTED] 2004
(2)	Annuity Starting Date (ASD)	[REDACTED] 2003	[REDACTED] 2004	[REDACTED] 2004	[REDACTED] 2003
(3)	Accrued benefit (NRD)	\$7,980.09	\$7,961.37	\$3,023.64	\$7,554.18
(4)	ERF at ASD	0.9480	0.9950	0.9830	0.9580
(5)	Plan benefit at ASD without PLSA deduction: (3) × (4)	\$7,565.13	\$7,921.56	\$2,972.24	\$7,236.90
(6)	Plan benefit at ASD with PLSA deduction (as shown in UAL calculations)	\$6,148.03	\$6,386.62	\$2,269.03	\$6,038.98
<b>(7)</b>	<b>Plan benefit reduction due to PLSA offset (UAL calculations): (5) - (6)</b>	<b>\$1,417.10</b>	<b>\$1,534.94</b>	<b>\$703.21</b>	<b>\$1,197.92</b>
(8)	PC3 amount before PLSA offset (as shown in PBGC's calculations)	\$5,013.33	\$5,144.16	\$1,778.25	\$4,290.78
(9)	PC3 amount after PLSA offset (as shown in PBGC's calculations)	\$3,596.23	\$3,608.53	\$1,075.17	\$3,101.06
<b>(10)</b>	<b>PLSA offset to PC3 benefit: (8) - (9)</b>	<b>\$1,417.10</b>	<b>\$1,535.63</b>	<b>\$703.08</b>	<b>\$1,189.72*</b>

NOTE: Captain [REDACTED] and Captain [REDACTED] each elected an SLA with LIO. The amounts shown in the table are before the adjustments for the LIO amounts. Captain [REDACTED] and Captain [REDACTED] each elected an SLA without the LIO feature.

\* Captain [REDACTED] received a portion of his PLSA distribution on [REDACTED] 2003, which was approximately [REDACTED] months after his ASD. PBGC computed a smaller (more favorable) PLSA offset for Captain [REDACTED] based on that later PLSA distribution date. The Appeals Board did not change the PLSA offset that PBGC computed for Captain [REDACTED] PC3 benefit.

For the above reasons, the Appeals Board concluded that PBGC correctly applied the Plan's provisions and actuarial assumptions in determining PC3 amounts for appellants with PLSA distributions.

**B. PBGC's PC3 calculations are consistent with ERISA § 4044 and PBGC's asset allocation regulation**

In both Issue #2 and Issue #3, the Appeal refers to UAL's "order of calculations," under which the PLSA offset is applied before the Plan benefit is reduced for early retirement. AB at 13-15, 16-20.

The Appeal correctly states that, for participants with PLSA distributions, PBGC's PC3 calculations apply the early retirement reduction in a different step than UAL's Plan benefit calculations. UAL, however, was not calculating PC3 benefits; therefore, UAL's methodology for calculating Plan benefits does not control how PBGC calculates the statutorily-created PC3 amounts. As discussed below, PBGC's method is in accord with the requirements in ERISA and PBGC regulations and, accordingly, must be upheld.

For participants who were not in pay status at DOPT-3, ERISA and PBGC regulations define the PC3 benefit as the "normal form of annuity."<sup>55</sup> PBGC's PC3 regulation, which is consistent with ERISA § 4044(a), further provide that the PC3 amount "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."

Based on these statutory and regulatory provisions, PBGC's initial step for participants not in pay status at DOPT-3 is to calculate the PC3 amount in the normal annuity form, which includes "any reduction for early retirement." PBGC does not apply a PLSA offset in this initial step because, under the Plan's provisions, the normal form of annuity does not include a PLSA offset. PBGC then reduces the normal form PC3 amount by deducting the annuity equivalent of the actual PLSA distribution the participant received. The amount that PBGC assigns to PC3 accordingly equals the normal form annuity amount less the annuity equivalent of the actual PLSA distribution.

The PLSA offsets that PBGC applies in determining appellants' PC3 amounts does not deprive them of benefits entitled to priority under ERISA § 4044. Rather, the PLSA offset that PBGC applies recognizes that an appellant with a PLSA distribution already received a portion of the Plan benefit amount that, in the absence of a pre-DOPT PLSA distribution, would be assigned to PC3.

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<sup>55</sup> 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). PBGC's PC3 regulation provides 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).

### C. PBGC did not use a “PBGC created offset formula” for PC3 purposes that differed from the Plan’s provisions

The Appeal claims that PBGC “applied its own, ad-hoc calculations to re-value PLSA amounts based entirely on assumptions and factors outside the Plan.” AB at 12. It further alleges that PBGC “improperly confuses the ERISA guaranteed benefit calculations under PC4 and the Plan-derived benefit calculations under PC3” and “confuses, re-labels and re-values the PLSA into something it was never intended to be, and is not now.” AB at 13-14. As explained below, the Appeal did not demonstrate any error in PBGC’s PLSA offset calculations.

The Appeal, in asserting that PBGC used an incorrect formula to determine PLSA offsets to PC3 amounts, refers to the following statement on page 12 of PBGC’s *Actuarial Case Memo*:

PBGC will not guarantee the full account balance as part of the ***post-DOPT lump sum survivor benefit*** for participants not receiving their full plan benefit from PBGC. Instead, their guaranteed PLSA account balance will be equal to their PLSA account balance multiplied by a ratio, where the numerator is the PBGC guaranteed monthly benefit and the denominator is the full plan monthly benefit. The number of months certain . . . remains unchanged. [Emphasis added by Appeals Board.]

The above-quoted language does not apply to PBGC’s treatment of the PLSA distributions that many appellants received when they retired or terminated employment. Rather, this statement in the *Actuarial Case Memo* discusses PBGC’s guarantee of a different Plan benefit – the lump-sum survivor benefit (also referred to as the “Death Benefit”) that sometimes is payable to the beneficiaries of Plan participants.

Specifically, the Death Benefit ensures that, if the PLSA is not fully distributed when the participant retires, the full PLSA amount later will be paid (without post-retirement interest) through the combination of monthly annuity payments to the participant and a lump-sum survivor benefit.<sup>56</sup> Accordingly, the Death Benefit is payable to the participant’s beneficiary only if the participant did not receive his full PLSA. Because the Death Benefit does not affect how PLSA offsets are computed, the Appeal’s reference to PBGC’s Death Benefit calculations does not support the Appeal’s claim that PBGC determined PLSA offsets incorrectly.<sup>57</sup>

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<sup>56</sup> The Death Benefit amount equals the participant’s (undistributed) PLSA as of his retirement date reduced by the benefit payments that the Plan made before the participant’s death. The Plan also permitted waiver of the Death Benefit. If the Death Benefit was waived, the Plan increased benefit payments by multiplying the accrued benefit amount by a form conversion factor (*i.e.*, by a factor greater than 1.0).

<sup>57</sup> The language on page 12 of the *Actuarial Case Memo* essentially provides that, if a participant’s guaranteed benefit amount is less than the Plan benefit amount, the guaranteed Death Benefit amount will be computed using the ratio of the guaranteed monthly annuity amount to the Plan monthly annuity amount. Although it is not specifically mentioned in the *Actuarial Case Memo*, PBGC similarly adjusts Death Benefit amounts if the funded benefit in PC3 is less than the Plan benefit amount. We note that, because PBGC does not make lump-sum payments (except for de minimis amounts), PBGC ordinarily pays the Death Benefit as a certain period annuity.



Aside from the reference to the Death Benefit, the Appeal does not present, or refer to, any specific information that would support its contention that PBGC used a “PBGC created offset formula” for PC3 purposes. Based on our review of PBGC’s calculations and the information provided in the Appeal, the Appeals Board rejected the Appeal’s claim that PBGC incorrectly computed PC3 amounts for appellants that received PLSA distributions.

**D. PBGC’s PC3 calculations treat participants with PLSA distributions comparably to participants who did not elect the PLSA option**

The Appeal states that PBGC’s use of an incorrect PLSA Offset Factor “broke the actuarial equivalence mandated by the Plan.” AB at 12. The Appeals Board found that this claim is without merit. As is demonstrated below, PBGC treated participants with PLSA distributions comparably to participants who did not elect the PLSA option.

For Plan participants with and without PLSA distributions, PBGC allocates the total Plan benefit amounts that are payable after DOPT to one or more of ERISA’s six priority categories.<sup>58</sup> As previously discussed, PC3 covers the benefit a participant would have received under the Plan on the earlier of the participant’s actual retirement date or DOPT-3, but disregarding any benefit increase made within the five years before termination. If all or a portion of a participant’s Plan benefit amount cannot be assigned to PC3, the amount is assigned to PC4 if it is covered by PBGC’s guarantee.<sup>59</sup> A vested Plan benefit amount that cannot be included in PC3 or PC4 is assigned to PC5, which covers “all other nonforfeitable benefits under the plan.”<sup>60</sup> If a benefit amount is non-vested, it is assigned to PC6.

The below table, which shows benefit amounts for Captain [REDACTED], illustrates how PBGC assigned Plan benefits to ERISA’s priority categories depending upon whether or not the participant elected a PLSA distribution. Please note that: (1) PBGC allocated a portion of Captain [REDACTED] Plan benefit to PC3 and the remaining amount to PC5; and (2) PBGC did not assign any of his Plan benefit to PC1, PC2, PC4, or PC6.

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<sup>58</sup> A pre-DOPT PLSA distribution provides a participant with a portion of the Plan benefit that otherwise would be payable as an annuity after DOPT. Accordingly, the benefit liability at DOPT for purposes of the ERISA § 4044 allocation is less for a participant who received a PLSA distribution before DOPT than for a similarly-situated participant who did not receive a distribution.

<sup>59</sup> As previously stated, the Plan did not have any benefit liabilities in PC1 or PC2.

<sup>60</sup> Due to ERISA’s guarantee limits, many appellants have large nonguaranteed benefit amounts in PC5. PBGC is unable to pay any PC5 benefits because the Plan’s assets and ERISA § 4022(c) amount were insufficient to fund them.

<b>Assignment of ██████ monthly benefit to ERISA's priority categories with and without a PLSA distribution</b>		
	If no PLSA distribution	With PLSA distribution
<b><u>Captain ██████ full Plan benefit amounts</u></b>		
Plan benefit before PLSA deduction (at ██████/2003 ASD and in SLA form)	\$7,634.29	\$7,634.29
Plan's deduction for PLSA	\$0	\$1,300.51
Monthly Plan benefit payable (after any PLSA deduction) <b>THIS IS THE AMOUNT PBGC ALLOCATES UNDER ERISA § 4044</b>	\$7,634.29	\$6,333.78
<b><u>Captain ██████ benefit amounts assigned to PC3 (Plan benefit at DOPT-3 under 5-years-old Plan provisions)</u></b>		
PC3 amount before PLSA offset	\$5,428.50	\$5,428.50
PBGC's PC3 deduction for PLSA	\$0	\$1,300.73
Net amount (after any PLSA deduction) assigned to PC3	\$5,428.50	\$4,127.77
<b><u>PBGC's assignment of Captain ██████ benefit to ERISA § 4044 priority categories</u></b>		
Monthly benefit assigned to PC3	\$5,428.50	\$4,127.77
Monthly benefit assigned to PC5 [Plan benefit amount less PC3 amount]	\$2,205.79	\$2,206.01
Total benefit assigned to priority categories [Sum of PC3 and PC5 amounts]	\$7,634.29	\$6,333.78

As shown in the table, Captain ██████ (1) received a PLSA distribution that was equivalent to a monthly annuity of \$1,300.73 and (2) has a monthly benefit of \$4,127.77 assigned to PC3. Added together, these two amounts total \$5,428.50. The sum of the annuity equivalent of his PLSA distribution and his PC3 amount equals the monthly \$5,428.50 amount that PBGC would have assigned to PC3 if Captain ██████ had not received a PLSA distribution. Accordingly, the benefit amounts PBGC assigned to PC3 for Captain ██████ did not place him in a less-favorable position than if he had declined a PLSA distribution.

Furthermore, because the Plan's assets and ERISA § 4022(c) amount do not fund any

amounts in PC5, PBGC is unable to pay Captain [REDACTED] any of the \$2,206.01 monthly benefit that is assigned to PC5. If Captain [REDACTED] had not elected a PLSA distribution, PBGC would have assigned \$2,205.79 of his monthly Plan benefit to PC5. Consequently, the monthly PC5 amount that PBGC is unable to pay due to the insufficiency of the Plan's assets and ERISA § 4022(c) amount is the same (except for a \$0.22 rounding difference) regardless of whether or not Captain [REDACTED] received a PLSA distribution.

In Enclosure 14, we provide tables for Captains [REDACTED], which are similar to the above table for Captain [REDACTED]. We do not provide similar tables for Captains [REDACTED] because, due to their election of the SLA with LIO, the assignment of their benefits to the ERISA 4044 priority categories is more complicated.

**E. PBGC correctly determined PLSA offsets to PC3 amounts based on the participant's age on his Actual Retirement Date, rather than his age at DOPT-3**

The Appeal requests that the Appeals Board "re-calculate benefits payable to Appellants in PC3 based on the Plan's treatment of the PLSA distribution, using Plan-derived Offset Factors as of Appellant's actual age as of the Annuity Start Date (DOPT-3—December 30, 2001) in order to retain actuarial equivalency under the Plan."<sup>61</sup> AB at 14. The Appeals Board declined this request.

PBGC's calculations adjust the normal form PC3 amount to reflect the annuity equivalent of the actual PLSA distribution the participant received, rather than a hypothetical offset based on the participant's age at DOPT-3. As demonstrated above, PBGC's PC3 calculation method is logical because, in assigning benefit amounts to PC3, participants with PLSA distributions are treated comparably to participants who did not elect the PLSA option. The Appeal, in referring to a PLSA offset calculation that is based on the participant's age at DOPT-3, apparently is seeking smaller PLSA offsets than PBGC calculated for participants who retired after DOPT-3. This change would depart from the Appeal's intended goal of actuarial equivalence because it would treat appellants with PLSA distributions more favorably than participants without PLSA distributions.

In its request for PLSA offsets based on the participant's age at DOPT-3, the Appeal asserts that such a change would be consistent with the Board's logic in its December 11, 2013 decision regarding Level Income Option ("LIO") amounts in PC3. AB at 12.

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<sup>61</sup> The Appeal also states: "[S]ince PBGC assumes a Participant retired as of DOPT-3, the PLSA Offset Factor based on Appellant's actual age at DOPT-3 (December 30, 2001) must be used in order to retain actuarial equivalence for benefit payments under the Plan in PC3." AB at 14.

The Appeal does not demonstrate how PC3 benefits would be calculated using a "PLSA Offset Factor based on Appellant's actual age at DOPT-3." As is discussed under Issue #3, the Appeal proposes an (alternative) PC3 calculation method that changes the order in which PBGC's early retirement factor for the PC3 calculation is applied. Under the Appeal's proposed method, however, there is no change to the PLSA offset amounts that PBGC computed, which are based on the Plan's PLSA Offset Factor for a benefit starting on the participant's ASD.

Contrary to the statement in the Appeal, the Board computed LIO adjustments to PC3 amounts based on the participant's age at ASD, even if the participant retired after DOPT-3. Thus, for both this decision and the Board's December 11, 2013 decision, the appropriate initial calculation step is to compute the PC3 amount as of DOPT-3 in the normal annuity form – that is, without a PLSA offset or an LIO adjustment. Afterwards, the normal form PC3 amount is adjusted for the optional form the participant elected, using the Plan's actuarial assumptions that apply to a benefit starting on the participant's ASD.

Accordingly, in determining LIO benefit amounts in PC3, the Board did not change the “temporary period increases” and “age-66 reductions” that the Plan had computed for the participant's monthly annuity as of his or her ASD. Similarly, the PLSA offset that PBGC computes for PC3 purposes reflects the Plan's PLSA offset (*i.e.*, the actual monthly reduction) for the participant's monthly annuity as of his or her ASD.

**Issue 3: Did PBGC incorrectly apply both a “PLSA Offset Factor” and the Plan's early retirement factor when it calculated PC3 benefits for appellants who elected PLSA distributions? AB 15-25.**

### **The Appeal**

Issue #3 of the Appeal asserts that PBGC's PC3 calculations “double penalized Appellants” with PLSA distributions because PBGC applied the Plan's early retirement adjustment factor to the PC3 amount before it “reduced” the PC3 benefit based on the Plan's PLSA Offset Factor. AB at 15-16. The Appeal claims that the reversed order of calculations “violates the Plan and is an arbitrary mistake in ordering calculations.” AB at 18. The Appeal presented an alternative PC3 calculation method, which would increase PC3 amounts for the appellants who had received PLSA distributions after DOPT-3.

### **Our Conclusions**

Contrary to the Appeal's contention, PBGC did not apply “a double reduction against the same benefit” when it calculated PC3 amounts. Rather, in computing the participant's “normal form” PC3 annuity amount, PBGC applied the Plan's early retirement reductions, as is required by ERISA § 4044(a) and PBGC's PC3 regulation. PBGC also used the Plan's PLSA Offset Factor to determine the annuity equivalent of the participant's actual PLSA distribution, which was deducted from the PC3 normal form annuity amount.

The Appeals Board further concluded that the Appeal's suggested calculation method for PLSA offsets is inconsistent with PC3 requirements and does not achieve the Appeal's intended goal of actuarial equivalence. Thus, the Board denied the Appeal's requested relief for Issue #3.

### **Explanation of Board's Decision on Issue #3**

Relevant background for Issue #3 of the Appeal is presented above under Issue #2. We explain below the reasons the Appeals Board is unable to grant the relief sought in Issue #3.

#### **Discussion of Issue # 3**

##### **A. For PC3, PBGC correctly determined PLSA offsets by using the Plan's PLSA Offset Factor and the Plan's Early Retirement Factors**

After we explain the purpose of the Plan's PLSA Offset Factor, we discuss how PBGC applied that factor (as well as the Plan's early retirement factors) in benefit calculations. The Appeals Board concluded that PBGC did not err when it computed PLSA offsets for purposes of PC3.

**The Plan's PLSA Offset Factor.** The PLSA Offset Factor does not affect the PLSA distribution amount the Plan will pay the participant. A change in the PLSA Offset Factor, however, affects the annuity equivalent of the PLSA.

As the Appeal states at AB 10-12, the Plan's PLSA Offset Factor is not the same for all retirees. Rather, under the Plan's terms, the applicable PLSA Offset Factor for a participant who received a PLSA distribution depends upon: (1) the participant's age on his ASD, and (2) the interest rate and mortality table in effect on the participant's ASD.<sup>62</sup> Consequently, the applicable PLSA Offset Factor will be different for two Plan participants if they: (1) retire on the same date but are different ages; or (2) retire at the same age but the applicable interest rate is different on their (different) retirement dates. The Appendix to this decision demonstrates how the PLSA Offset Factor varies based on the participant's age at retirement and retirement date.

Contrary to the implication in the Appeal, the PLSA Offset Factor is not used to compute *early* retirement reductions to the Plan's Normal Retirement benefit. Instead, the PLSA Offset Factor for an early (pre-age 60) retiree converts a lump-sum distribution made on the participant's ASD to its annuity equivalent as of the participant's *later* Normal Retirement Date ("NRD").<sup>63</sup>

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<sup>62</sup> During the 3-year period prior to the Plan's DOPT, the applicable interest rate varied from a low of 4.37% (on June 2003) to a high of 5.71% (on March 2002), while the applicable mortality table did not change. This change in interest rates, for example, caused the applicable PLSA Offset Factor to be different for two participants if they retired on different dates, even if the age at retirement was the same for the two participants. We observe that, if the applicable interest rate increases, the PLSA Factor decreases. A smaller PLSA Factor produces a larger PLSA offset, and this larger PLSA offset will cause the (residual) Plan benefit payable as an annuity to decrease.

<sup>63</sup> The PLSA sometimes is distributed before the participant's ASD. The Plan provides that a participant may receive a PLSA when he or she terminates employment, even if the participant had not then attained early retirement age. The Plan also contains complex provisions that address how Plan benefits are determined if a participant terminates employment, receives a PLSA distribution, and later is re-employed. The Appeal does not address how

UAL's benefit calculation worksheets show, for example, that UAL used an "Annuity Conversion Factor at age 59.083" of 152.693 to determine Captain █████ PLSA offset. See Enclosure 7. Essentially, the 152.693 factor means that a lump sum of \$152.69 and 3/10 of a cent payable to Captain █████ on his █████ 2003 Annuity Starting Date ("ASD") is equivalent to an annuity of \$1 per month that starts 11 months later, *i.e.*, on █████, 2004 (his NRD), and continues for his lifetime.<sup>64</sup>

UAL, using the PLSA Offset Factor of 152.693, determined that the PLSA distribution Captain █████ received is equivalent to a \$1,336.60 monthly annuity starting at his NRD. As previously explained in the "Background" section, UAL then deducted the annuity equivalent at NRD of Captain █████ PLSA distribution from his accrued Plan benefit at NRD, with the Plan's early retirement reduction applied in a later calculation step.

**PBGC's PLSA offset calculations.** If a Plan participant received a PLSA distribution between DOPT-3 and DOPT, PBGC's calculation of the monthly benefit assigned to PC3 consists of the following three steps:

First, PBGC applies the requirements in PBGC's PC3 regulation and, for a participant not in pay status at DOPT-3, calculates the PC3 amount in the "normal form of annuity." As required in PBGC's PC3 regulation, the normal form annuity in PC3 for a Plan participant is the monthly amount the Plan would pay for a benefit (1) starting at DOPT-3, (2) based on the Plan's provisions (including early retirement reductions) in effect during the 5 years prior to DOPT that produce the least benefit, and (3) without a PLSA offset. Thus, PBGC's first calculation step includes the Plan's early retirement reduction, but the Plan's PLSA Offset Factor is not used.

PBGC's second calculation step is to determine the annuity equivalent of the participant's PLSA distribution. To accomplish this, PBGC applies the Plan's provisions and calculates the monthly amounts the participant is entitled to receive at ASD (1) without a PLSA distribution and (2) with a PLSA distribution. The difference between the two amounts is the annuity equivalent of the participant's PLSA distribution.<sup>65</sup> See explanations in Enclosures 7 through 11. Thus, PBGC's second calculation step is consistent with UAL's benefit calculations and produces an offset amount that corresponds to the actual reduction to the participant's monthly benefit for the PLSA distribution.

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PLSA offsets are determined for the two situations described above, so there is no need to discuss them further in this decision.

<sup>64</sup> The "applicable interest rate" that UAL applied in calculating Captain █████ PLSA offset is an annual rate of 4.96%.

<sup>65</sup> To compute the annuity equivalent of the PLSA distribution as of the participant's ASD, PBGC uses the Plan's PLSA Offset Factor to determine the PLSA offset applicable to a benefit starting at Normal Retirement. PBGC then reduces the PLSA offset at NRD by applying the Plan's Early Retirement factors. As shown in Enclosures 7-11, PBGC's calculation method produces the same PLSA offset reductions as of the participant's ASD as UAL's calculations.

In the third and final step, PBGC takes into account that the participant effectively exchanged a portion of the annuity that (otherwise) would be included in PC3 for a PLSA distribution. To adjust for the PLSA distribution, PBGC deducts the PLSA offset computed in the second step from the PC3 amount (without the PLSA offset) that is computed in the first step.

**Conclusion.** Contrary to the Appeal’s contentions, PBGC does not make duplicate PLSA reductions or early retirement reductions in determining Plan benefit amounts assigned to PC3. Rather, PBGC: (1) first calculates the participant’s PC3 amount in the normal form of annuity which, as provided in PBGC’s PC3 regulation, requires a reduction for early retirement; (2) then applies the Plan’s terms (including its PLSA Offset Factor) to determine the annuity equivalent of the PLSA distribution; and (3) in a final step, determines the monthly annuity assigned to PC3 by deducting the annuity equivalent of the PLSA distribution from the participant’s PC3 amount in the normal form. The Board found no error in PBGC’s PC3 calculation method.

**B. The Appeal’s suggested calculation method for PLSA offsets is inconsistent with PC3 requirements and does not achieve actuarial equivalence**

The Appeal proposes a six-step method (“the Appeal’s Method”) for calculating PC3 and ERISA § 4022(c) benefits, which would be applied to the appellants who received PLSA distributions after DOPT-3.<sup>66</sup> AB at 14-15, 23-24.

The differences between PBGC’s method and the Appeal’s Method are:

- PBGC first calculates the PC3 benefit payable in the normal annuity form, *including* the required early retirement adjustment for PC3.<sup>67</sup> PBGC then accounts for the PLSA distribution by subtracting the PLSA offset (which is determined as of the participant’s ASD) from the PC3 amount *with* the PC3 early retirement reduction.

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<sup>66</sup> The Appeal states at AB 23-24 (with the Appeal’s footnotes omitted): “The correct order of calculation should be as follows:

- 1) Calculate the Normal Benefit under [Plan] § 5.1(a), based on:
  - a. Years of Participation as of DOPT-3
  - b. Final Average Earnings as of DOPT-5
- 2) Reduce by the PLSA Offset Factor calculated by United, taking care to apply the Offset at Appellant’s **actual age** as of DOPT-3
- 3) Reduce by the Early Retirement adjustment factor under [Plan] §7.2(c)
- 4) Reduce by other offset factors, if applicable
- 5) Reduce by the PC3 Funding Percentage (.820617)
- 6) Add the 4022(c) Recovery Amount Allocation (Actuarial equivalent of PC3 Benefit + 4022(c) Amount) . . .”

<sup>67</sup> Under ERISA and PBGC regulations, PC3 benefits must be adjusted for early retirement as of the *earlier* of the participant’s actual start date or an assumed DOPT-3 start date, using the Plan’s provisions in effect during the five years before DOPT which produce the lowest benefit. ERISA § 4044(a)(3); 29 C.F.R. § 4044.13(a), (b)(3).

The amount calculated in the second step is the amount that PBGC assigns to PC3.

- The Appeal’s Method subtracts the PLSA offset (as of ASD) from the “accrued” PC3 amount, which is the normal form PC3 annuity *without* the required PC3 early retirement reduction. In the second calculation step, the amount computed in the first step is multiplied by the early retirement factor required for PC3. The amount calculated in the second step is the amount the Appeal would assign to PC3.

The Appeal, referring to PBGC’s Benefit Statement Worksheets, demonstrates how its method would be applied to five appellants – Captain ██████, Captain ██████, Captain ██████, Captain ██████ and Captain ██████. The Appeal’s Method for these five individuals does not change the “accrued” PC3 amount, the PC3 early retirement factor, and the PLSA offset amount that PBGC used in its calculations. Rather, the Appeal’s Method changes the order of PBGC’s PC3 calculations.

The below tables show how PBGC’s method and the Appeal’s Method produce different PC3 amounts for Captain ██████

<b><u>PBGC’s PC3 calculation for ██████</u></b> <b>(as shown on lines (10) to (14) of his Benefit Statement Worksheet)</b>	
(10) Monthly PC3 Amount before Early Retirement Reduction and PLSA Offset: <sup>68</sup>	\$6,204.00
(11) Plan Adjustment Factor for Early Retirement as of DOPT-3: <sup>69</sup>	0.875
(12) Monthly PC3 Amount After Early Retirement Reduction and Before PLSA Offset: <sup>70</sup> \$6,204.00 (line 10) x 0.875 (line 11) =	\$5,428.50
(13) Monthly Benefit Offset for PC3 Attributable to PLSA Paid:	\$1,300.73
(14) Monthly Benefit for PC3 as a Straight Life Annuity: Line (12) - Line (13) =	\$4,127.77

<sup>68</sup> PBGC’s Benefit Statement Worksheet labels this amount as “Monthly Benefit Earned as of 12/30/2001 Under Plan Provisions in Effect Five Years Before Date of Plan Termination.”

<sup>69</sup> As required by ERISA § 4044(a)(3) and PBGC’s PC3 regulation, the Plan Adjustment Factor for Early Retirement is based on the Plan provisions in effect at DOPT-5.

<sup>70</sup> PBGC’s Benefit Statement Worksheet labels this amount as “Monthly Benefit Earned as of 12/30/2001 Under Plan Provisions in Effect Five Years Before Date of Plan Termination.”



**Appeal Method's PC3 calculation for [REDACTED] (using PLSA's equivalent at ASD)**  
**(changing order of operations for lines (10) to (14) of his Benefit Statement Worksheet)**

(10) Monthly PC3 amount before Early Retirement reduction and PLSA offset:	\$6,204.00
(11) Monthly Benefit Offset for PC3 Attributable to PLSA Paid:	\$1,300.73
(12) Monthly PC3 amount after PLSA offset and before PC3 Early Retirement reduction: \$6,204.00 (line 10) - \$1,300.73 (line 11) =	\$4,903.27
(13) Plan Adjustment Factor for Early Retirement as of DOPT-3:	0.875
(14) Monthly PC3 benefit as a Straight Life Annuity: Line (12) × Line (13) =	\$4,290.36

Enclosure 14 repeats the table for Captain [REDACTED] and also shows how PBGC's method and the Appeal's Method produce different PC3 amounts for Captains [REDACTED]

The Appeal asserts, at AB 24, that these six steps yield "a monthly annuity that accounts for PC3 deductions while faithfully applying the Plan's terms and provisions in the same way United applied the Plan—and while retaining actuarial equivalence between a benefit that includes a PLSA distribution and one that does not."

Through what appears to be an inadvertent mistake, the Appeal's Method differs from UAL's calculation method. UAL, in calculating Plan benefit amounts, deducted the annuity equivalent of the participant's PLSA distribution **at NRD** from the participant's accrued benefit. The Appeal's Method, however, deducts the (PBGC-calculated) annuity equivalent of the participant's PLSA distribution **at ASD** from the participant's accrued PC3 amount. Because a PLSA distribution has a smaller annuity equivalent at ASD than at NRD, the Appeal's Method departs from UAL's calculations by using PLSA offsets that are too small – which results in larger PC3 amounts. This impact of using the PLSA's offset equivalent at NRD, as compared to the PLSA's offset equivalent at ASD, is shown in Enclosure 15.

The Board concluded that the Appeal's Method – even if it is modified to use the PLSA offset at NRD – is inconsistent with PC3 requirements and fails to achieve its intended objective of actuarial equivalence, as is discussed below.

**1. The Appeal's suggested calculation method for PLSA offsets is inconsistent with PC3 requirements**

As previously stated, PBGC's method for determining PC3 amounts is consistent with ERISA's provisions and PBGC regulations, which:

- define the PC3 benefit as the “normal form of annuity” for a participant not in pay status at DOPT-3; and
- provide that, if the participant is not in pay status at DOPT-3, the PC3 amount “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” (emphasis added).<sup>71</sup>

The Appeal’s Method changes PBGC’s order of calculations by first applying the PLSA offset to the accrued PC3 amount and then applying the required PC3 early retirement adjustment only to the remaining (non-PLSA) portion of the participant’s benefit. The Appeal’s Method, however, presumably would apply the PC3 early retirement reduction to the participant’s entire PC3 benefit if the participant did not receive a PLSA distribution. The overall impact is that the Appeal’s Method assigns a larger benefit amount to PC3 than PBGC’s calculations, if the participant received a PLSA distribution after DOPT-3.

The Appeal’s Method is inconsistent with the PC3 requirements because, by changing the order of calculations, it does not apply the required PC3 early retirement reduction to the entire PC3 annuity in the normal form. Instead, the Appeal’s Method deducts the PLSA offset, which applies to an optional benefit form, before making the required PC3 early retirement reduction.

**2. The Appeal’s suggested calculation method does not achieve actuarial equivalence for benefit amounts assigned to PC3**

For the benefit assigned to PC3, the Appeal’s Method does not treat a participant who retires after DOPT-3 and elects a PLSA distribution comparably to a similarly-situated participant who declines a PLSA distribution. Rather, under the Appeal’s Method, the sum of the participant’s PC3 amount (after PLSA offset) and the annuity equivalent of his PLSA distribution is larger than the amount that PBGC would assign to PC3 if the participant had not elected a PLSA distribution.

The more favorable treatment for participants with PLSA distributions is demonstrated in the tables below, which show the PC3 amounts with and without PLSA distributions for the five appellants identified on pages 17-18 of the Appeal.<sup>72</sup>

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<sup>71</sup> 29 C.F.R. § 4022.13(b)(3)(ii).

<sup>72</sup> Enclosure 15 demonstrates how the PC3 amounts in the tables are computed under PBGC’s method and under the Appeal’s Method for each of the 5 appellants.

The tables do not change the Appeal’s calculations to use the PLSA offset amounts at NRD. Even if the PLSA offset at NRD is used, however, participants with PLSA distributions would be treated more favorably than participants without PLSA distributions. See tables in Enclosure 15.

<b>Comparison of monthly benefit amounts with and without PLSA distributions under the Appeal's Method for appellants [REDACTED]</b>				
<b>Line</b>	<b>Description</b>	<b>[REDACTED]</b>		
1	PC3 amount (after offset for PLSA) under Appeal's Method	\$3,297.36	\$4,290.36	\$3,879.65
2	Annuity equivalent of PLSA distribution	\$1,189.72	\$1,300.73	\$1,417.10
3	Total value provided by PC3 amount and PLSA distribution: Line (1) + Line (2)	\$4,487.08	\$5,591.09	\$5,296.75
4	PC3 amount without PLSA distribution	\$4,290.78	\$5,428.50	\$5,013.33
5	<b>Greater value provided due to election of PLSA distribution: Line (3) - Line (4)</b>	<b>\$196.30</b>	<b>\$162.59</b>	<b>\$283.42</b>

<b>Comparison of monthly benefit amounts with and without PLSA distributions under the Appeal's Method for appellants [REDACTED]</b>			
<b>Line</b>	<b>Description</b>	<b>[REDACTED]</b>	
1	PC3 amount (after offset for PLSA) under Appeal's Method	\$3,877.26	\$1,212.27
2	Annuity equivalent of PLSA distribution	\$1,535.63	\$703.08
3	Total value provided by PC3 amount and PLSA distribution: Line (1) + Line (2)	\$5,412.89	\$1,915.35
4	PC3 amount without PLSA distribution	\$5,144.16	\$1,778.25
5	<b>Greater value provided due to election of PLSA distribution: Line (3) - Line (4)</b>	<b>\$268.73</b>	<b>\$137.10</b>

In contrast to the Appeal's Method, PBGC's method maintains equivalence between participants with and without PLSA distributions by: (1) applying the required PC3 early retirement reduction to the entire PC3 annuity amount; and (2) afterwards deducting the actual annuity equivalent of any PLSA distribution. The Appeals Board found no basis for changing PBGC's method for computing PC3 benefits for appellants with PLSA distributions.

**C. The PLSA’s alleged resemblance to employee contributions does not exempt PLSA distributions from the required early retirement reductions for PC3**

Referring to the PLSA’s definition in Plan § 5.1, the Appeal asserts that the PLSA “is funded according to an entirely different benefit formula, based on entirely different definitions, than the Normal Retirement Benefit.” AB at 18-19. The Appeal further states that “the definitional history of the Partial Lump Sum Amount (formerly, Contribution Account) benefit” establishes that the PLSA “possessed important characteristics of a contribution account, **wholly-owned** by each Pilot.” AB at 19-20 (emphasis in original).<sup>73</sup> The Appeal contends that “the PLSA distribution should not be applied in such a way as to be reduced by the Plan’s Early Retirement Adjustment Factor.” AB at 23.

The Appeal essentially argues that, because the PLSA resembles employee contributions, it should be treated differently from the residual annuity portion of the Plan benefit for purposes of the early retirement reductions required for PC3. We disagree, for the reasons stated below.

ERISA § 4044(a)(2) accords priority, in PC2, to “that portion of each individual’s accrued benefit amounts that is derived from the participant’s mandatory contributions.” PBGC did not find any data that employee contributions remained in the Plan as of its DOPT, nor did the Appeal provide evidence that appellants had unreturned employee contributions as of DOPT.<sup>74</sup>

The PC2 category is limited to amounts that are “contributed” by the employee, and thus does not include the amounts that the employer directly pays to the plan. *See* definition of mandatory employee contributions in ERISA § 204(c)(2) and IRC § 411(c)(2)(C). Although the Plan’s 1976 Restatement refers to the participant’s “Contribution Account” benefit – which was replaced by the term “Partial Lump Sum Amount” in the 1999 Restatement – the PLSA described in the Plan was funded by employer contributions, rather than by employee contributions. The Appeals Board found that the Appeal provided no basis for including appellants’ PLSAs in PC2.

The Appeals Board further found no basis for according the PLSA special status for PC3 purposes. The PLSA is not a separate “contribution benefit,” even though it apparently was intended to replace the employee contribution benefit in a prior United Airlines pension plan. Rather, as the Appeal acknowledges at AB 18-19, Plan § 5.4 refers to the PLSA as a “Payment Adjustment.” The following PLSA characteristics further indicate that the PLSA

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<sup>73</sup> The Appeal also states that, “in practice, custom and for historic reasons . . . the Partial Lump Sum Amount funds were treated by the Previous Plan Administrator (United) . . . as if each pilot made them for purposes of ‘cash vesting’ or ‘ownership.’ . . . They were, for all intents and purposes, continuation of a long-existing Contribution Account—with only the name of the benefit changed in order to ‘better describe’ it.” AB at 23 (citations omitted).

<sup>74</sup> PBGC Actuarial Case Memo, at page 27. *See also* 2002 Bluebook (Exhibit 7 of the Appeal), at page 79 (“pilot mandatory contributions were eliminated effective January 1, 1965”).

should be treated strictly as a payment option, rather than as a separate benefit entitlement, in relation to the Plan's "normal form" annuity benefit.

- Although most Plan participants elected a PLSA distribution when they retired or terminated employment, the PLSA is not part of the Plan's normal benefit form.<sup>75</sup> Thus, if a PLSA is not elected, the participant's entire benefit is payable as an annuity.
- The Plan states that a participant may elect "to have a portion of his or her Accrued Benefit equal to his or her Partial Lump Sum Amount distributed to him or her in a lump sum."<sup>76</sup> The Plan also provides that the annuity equivalent of the PLSA cannot exceed the participant's accrued benefit.<sup>77</sup> Thus, the PLSA is part of the participant's accrued benefit, rather than a separate benefit entitlement.<sup>78</sup>
- Although the participant's PLSA balance is calculated based on an assumed employer contribution (*i.e.*, 4-2/3% of the participant's Eligible Earnings), the Plan did not maintain separate PLSA accounts. Rather, the contributions that UAL made to the Plan funded all of the Plan's benefit liabilities, *i.e.*, both annuity benefits and PLSA distributions for the participants who elected them.

The Appeals Board, based on its analysis of the Plan's PLSA provisions, disagreed with the Appeal's position that the PLSA is, for purposes of PC3, "a contribution account" that is "wholly-owned by each Pilot."

PBGC correctly adjusted for PLSA distributions by deducting the actual annuity equivalent of the PLSA distribution from the PC3 annuity amount that (in accordance with ERISA § 4044 and PBGC regulation 29 C.F.R. § 4044.13) includes an adjustment for early retirement. For the reasons given above, the Appeals Board found no basis for concluding that PBGC applied incorrect early retirement adjustments in computing PC3 benefits for the appellants with PLSA distributions. The Board accordingly denied the request for relief under Issue #3 of the Appeal.

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<sup>75</sup> See Plan §§ 8.1 - 8.4.

<sup>76</sup> Plan § 8.5(f)(i).

<sup>77</sup> Plan § 8.5(f)(iv)(A).

<sup>78</sup> The Appeal (at AB 19-20) refers to Plan § 3.1(a), which provides that a participant is "at all times...vested in that portion of his or her Accrued Benefit which is the actuarial equivalent, as determined under Section 16, of his or her Partial Lump Sum Amount."

Although the PLSA is given special treatment for vesting purposes, this difference does not impact appellants because all of them are 100% vested in their accrued Plan benefit amounts. The Appeals Board concluded that the PLSA's favorable vesting status under the Plan does not provide a basis for changing how the PLSA is treated for purposes of appellants' PC3 benefits.

### **III. PC3 AMOUNTS FOR APPELLANTS WITH IRC § 415(e) REPEAL INCREASES**

#### **Issue 4: Did PBGC correctly conclude that PC3 benefits do not include Plan benefit increases that were permitted following the legislative repeal of the Internal Revenue Code (“IRC”) § 415(e) limits? AB at 25-28.**

Before its repeal, IRC § 415(e) limited the combined pension benefits that a participant could receive from (1) all of the employer’s tax-qualified “defined benefit” pension plans and (2) all of the employer’s tax-qualified “defined contribution” pension plans. The Small Business Jobs Protection Act of 1996 (“SBJPA”) eliminated this statutory restriction, with the repeal applying to “limitation years beginning after December 31, 1999.”<sup>79</sup>

PBGC determined that the increase to Plan benefits that was permitted following the IRC § 415(e) repeal cannot be included in PC3 because the increase was not effective until January 1, 2000, which is less than five years before the Plan’s December 30, 2004 termination date (“DOPT”). As explained below, the Appeals Board changed PBGC’s determination with respect to the IRC § 415(e) repeal increase.

#### **The Appeal**

The Appeal asserts that the Plan benefit increase permitted by the IRC §415(e) repeal is “an automatic benefit increase under the Plan” that is “fully payable in PC3.”<sup>80</sup> AB at 27. The Appeal states that the IRC §415(e) repeal increase satisfies the PC3 criteria under PBGC’s regulations because the increase was “adopted and effective January 1, 1999 (prior to DOPT-5) and was scheduled to provide benefit increases to retired appellants who were then in pay status, with the benefit increases scheduled to begin after December 31, 1999, the fifth year preceding Plan Termination.”<sup>81</sup>

The Appeal requests that PBGC “properly account for the IRC § 415(e) increase” by recalculating and increasing the “Qualified Benefits” of affected appellants. AB at 28.

#### **Our Conclusions**

The Appeals Board decided that the Plan’s IRC § 415(e) repeal increase should be included in PC3. The Board accordingly granted the Appeal’s requested relief for Issue #4.

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<sup>79</sup> See SBJPA § 1452(a),(d), PL 104–188 (August 20, 1996), 110 Stat 1755.

<sup>80</sup> The Appeal states that United “took advantage of the statutory change” under SBJPA by amending the Plan, effective January 1, 1999, “to automatically conform to the §415(e) repeal.” AB at 26.

<sup>81</sup> *Id.* In making this point, the Appeal (incorrectly) cites PBGC regulation “4044.13(5).” It appears the Appeal intended to cite 29 C.F.R. § 4044.13(b)(5).

The Appeals Board reached this decision based on PBGC regulation 29 C.F.R. § 4044.13(b)(5) (“§ 4044.13(b)(5)”), which allows certain “automatic benefit increases” to be included in PC3 even if the increases were not payable throughout the 5-year period ending on DOPT. As explained below, the benefit increase resulting from the Plan’s IRC § 415(e) repeal amendment satisfied the requirements in § 4044.13(b)(5).

## **Explanation of Board’s Decision on Issue #4**

### **Background**

#### **A. The IRC § 415(e) limits and their repeal**

IRC § 415(e), which was enacted in 1974 as part of the original ERISA legislation, went into effect for limitation years starting in 1976. IRC § 415(e) limited the total amount of benefits and contributions which could be received or accrued by an employee who was a participant in both a defined benefit plan and one or more defined contribution plans sponsored by the same employer.<sup>82</sup>

The SBJPA repealed IRC § 415(e), effective as of the first day of the first limitation year beginning on or after January 1, 2000.<sup>83</sup> Because the Plan’s limitation year coincided with the calendar year, the first date that the Plan could pay benefits without applying the IRC § 415(e) limit was January 1, 2000.

A pension plan’s existing IRC § 415(e) limits generally remained in effect after SBJPA’s January 1, 2000 effective date unless the limits were removed from the pension plan’s governing documents through a plan amendment. A plan amendment was not required, however, if the pension plan’s existing provisions provided for benefits to increase automatically as a result of the IRC § 415(e) repeal.<sup>84</sup>

#### **B. The Plan’s provisions and practice regarding the IRC § 415(e) limits**

Before UAL adopted the 1999 Amendment and Restatement of the Plan (“1999 Restatement”), the terms of the Plan’s formal documents ensured that benefit payments would

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<sup>82</sup> The IRC § 415(e) limits are determined for a participant based on the aggregation of all relevant plan provisions, as provided under IRC § 415(f). The pension plan further is required to compute a defined benefit plan fraction (DBF) and a defined contribution plan fraction (DCF). The relationship between these two fractions identifies the upper limit on combined defined plan benefits and contribution plan benefits that could be paid to a participant.

<sup>83</sup> SBJPA § 1452(a) provided for the repeal of IRC § 415(e). SBJPA § 1452(d) established the statutory effective date for the IRC § 415(e) repeal.

<sup>84</sup> See Q&A 2 of IRS Notice 99-44, 1999-2 C.B. 326 (August 30, 1999).

not exceed the IRC § 415(e) limits.<sup>85</sup> The 1999 Restatement, which was adopted on December 21, 2001, removed the IRC § 415(e) restriction.

Before January 1, 2000, UAL paid benefit amounts in excess of the IRC § 415(e) limits from its “Non-Qualified Plan.”<sup>86</sup> For retirees affected by the IRC § 415(e) limits, UAL increased monthly payments from the Plan starting on January 1, 2000 and made corresponding decreases to payments from the Non-Qualified Plan.

#### **Discussion of Issue #4**

ERISA § 4044(a)(3) provides that the benefit in PC3 is “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’s regulations similarly provide that a participant’s PC3 benefit is the lowest annuity benefit payable under the plan provisions at any time during the 5-year period ending on the termination date. 29 C.F.R. § 4044.13(b)(3)(i), (ii).

The benefit increase provided by the Plan’s IRC § 415(e) repeal amendment was not in effect throughout the 5-year period before the Plan’s termination date. Section 11.3(c) of the 1999 Restatement amended the Plan’s terms to provide that the combined benefit limit under IRC § 415(e) “will cease to apply to any Participant who is or will be receiving a benefit under the Plan in Plan Years starting after December 31, 1999.” The benefit increase thus did not become effective until January 1, 2000, which was the earliest date any participant could receive a higher benefit based on the IRC § 415(e) repeal. Because the 5-year period started on December 31, 1999, the increase went into effect one day after the 5-year period began.<sup>87</sup>

PBGC regulation 29 C.F.R. § 4044.13(b)(5) allows certain “automatic benefit increases” to be included in PC3 even if they were not payable throughout the 5-year period ending on DOPT. Section 4044.13(b)(5) states:

(5) *Automatic benefit increases.* If plan provisions adopted and effective on or before the first day of the 5-year period ending on the termination date provided for automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only, the

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<sup>85</sup> Before the 1999 Restatement, the Plan’s formal documents were the *United Airlines, Inc. Pilots’ Fixed Benefit Retirement Income Plan*, which was effective January 1, 1976 (“1976 Restatement”), and twenty amendments to the 1976 Restatement. In addition to the 1999 Restatement, the IRC § 415(e) limits were addressed in section 15.2 of the 1976 Restatement and in the Thirteenth, Fifteenth, and Eighteenth Amendments to the 1976 Restatement.

<sup>86</sup> The Non-Qualified Plan was a pension plan that did not meet the tax qualification requirements under the IRC. As provided under ERISA § 4021(a), the Non-Qualified Plan is not covered by PBGC.

<sup>87</sup> In this decision, “DOPT-5” refers to the first day of the 5-year period ending on DOPT. See Chapter 4.2-1 of PBGC’s *Operating Policy Manual* at C.4 (definition of “DOPT/BPD-5”). For the Plan, the 5-year period ending on DOPT (December 30, 2004) started on December 31, 1999, so DOPT-5 is December 31, 1999.



lowest annuity benefit payable during the 5-year period ending on the termination date determined under paragraph (b)(3) of this section includes the automatic increases scheduled during the fourth and fifth years preceding termination, subject to the restriction that benefit increases for active participants in excess of the increases for retirees shall not be taken into account.

By its terms, § 4044.13(b)(5) provides that a benefit increase will be included in PC3 if the following five conditions are met:

- A. The applicable plan provision provides for “automatic increases in the benefit formula”;
- B. The plan provision providing for the increase was **adopted** on or before the first day of the 5-year period ending on DOPT;
- C. The plan provision providing for the increase was **effective** on or before the first day of the 5-year period ending on DOPT;
- D. The automatic increase was scheduled to go into effect during the fourth and fifth years preceding plan termination; and
- E. The provision provides for “increases in the benefit formula for both active participants and those in pay status or for participants in pay status only.”

We address these five conditions below.

**A. Was the Plan’s removal of the IRC § 415(e) restrictions an “automatic increase in the benefit formula” within the meaning of § 4044.13(b)(5)?**

PBGC’s PC3 Policy, which was issued on March 27, 2014, identifies but does not resolve the question of whether a one-time benefit increase “that results from a change in law” ever could qualify as an automatic increase in the benefit formula under 29 C.F.R. § 4044.13(b)(5) – even if all of the other conditions for a scheduled automatic increase are met.<sup>88</sup> Historically, PBGC has applied § 4044.13(b)(5) to scheduled cost-of-living adjustments (“COLAs”) and similar types of benefit increases, such as changes to a benefit multiplier in a pension formula.<sup>89</sup> However, a one-time benefit increase permitted by a change in the law, such as the Plan benefit increase permitted by the IRC § 415(e) repeal, could be considered to be outside of the scope of § 4044.13(b)(5).

The Appeals Board decided that the term “automatic increases in the benefit formula” in § 4044.13(b)(5) should not be narrowly interpreted to exclude the Plan benefit increases related

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<sup>88</sup> See section G.2. of Chapter 4.2-1 of PBGC’s *Operating Policy Manual* (Enclosure 13).

<sup>89</sup> PBGC’s conclusion was based in part upon the preamble to PBGC’s final regulation. See 46 Fed. Reg. 9480, 9484 (Jan. 28, 1981). This preamble gives an example of an automatic increase: a plan amendment that provided a flat benefit of \$300 per month with a \$10 increase each year. The annual \$10 increases were described as “automatic” increases under this provision.

to the IRC § 415(e) repeal. Because “automatic increases in the benefit formula” are not defined in PBGC’s PC3 regulation, it is appropriate to examine the context of the regulation. The focus of § 4044.13(b)(5) is upon the date a benefit increase amendment is adopted in relation to the plan termination date, when the increase is scheduled to be paid, and whether retirees would receive the increase. There is nothing in the text of § 4044.13(b)(5) to indicate that the provision is directed at only certain types of benefit increases. Although the preamble to the regulation provides only the single example of increases to a benefit multiplier, the preamble does not suggest that other types of benefit increases are precluded.<sup>90</sup>

The Appeals Board accordingly decided that the Plan provision that removed the IRC § 415(e) restrictions is within the scope of § 4044.13(b)(5) because it provided for “automatic increases in the benefit formula.” Consequently, the Plan’s IRC § 415(e) repeal amendment satisfied the first of the five requirements in § 4044.13(b)(5) that are listed above.

**B. Was the Plan provision that removed the IRC § 415(e) restrictions adopted on or before DOPT-5?**

PBGC regulation 29 C.F.R. § 4044.13(b)(5) requires that a plan provision providing for “automatic benefit increases” be “adopted and effective” on or before the first day of the 5-year period ending on DOPT. We address the “adoption” requirement immediately below and we address the “effective” requirement later in this decision.

The 1999 Restatement, which has a general effective date of January 1, 1999, removed the IRC § 415(e) restrictions from the Plan as of January 1, 2000. Although the 1999 Restatement’s general effective date was before DOPT-5, its adoption date did not meet the 5-year threshold requirement under § 4044.13(b)(5) because the Restatement’s signature date (December 21, 2001) was after DOPT-5 (December 30, 1999).

Plan amendments sometimes are adopted by authorized individuals before formal plan documents are prepared. For this reason, PBGC and the Appeals Board examine evidence outside of the formal plan documents to determine the date when a plan amendment was adopted.

UAL likely delayed the preparation and execution of a formal IRC § 415(e) repeal amendment because the statutory effective date of the repeal (January 1, 2000) was two years before the latest remedial amendment date permitted under IRS guidance (December 31, 2001).<sup>91</sup>

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<sup>90</sup> Although § 4044.13(b)(5) refers to “automatic benefit increases,” we do not interpret the provision as requiring more than one benefit increase.

<sup>91</sup> The IRS, pursuant to IRC § 401(b), granted plan sponsors a remedial amendment period to adopt “GUST plan amendments.” “GUST” is an acronym for: (1) the Uruguay Round Agreements Act, Pub. L. 103-465 (“GATT”); (2) the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 (“USERRA”); (3) the SBJPA; (4) the Taxpayer Relief Act of 1997, Pub. L. 105-34 (“TRA ‘97”); and (5) the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 (“RRA ‘98”). Accordingly, plan sponsors could increase

The IRS had extended the required amendment dates for pension plans several times so that changes permitted or required under recent legislation could be coordinated.<sup>92</sup> The 1999 Restatement, which was adopted within the remedial amendment period, made numerous benefit changes that were required or permitted by the legislation referenced in the IRS guidance.

UAL started paying retirees the increased Plan benefits permitted by the IRC § 415(e) repeal starting on January 1, 2000, which was on the statutory effective date and only one day after DOPT-5. UAL made the necessary preparations for the benefit increase several months in advance of DOPT-5. PBGC was informed, during its audit of the Plan, that UAL had scheduled increases in its “payment database” as early as February 2, 1999 for specific retirees. In a letter dated July 6, 1999, UAL’s Pension Programs Department notified appellant [REDACTED] that his Plan payments would increase starting January 1, 2000 based on the IRC § 415(e) repeal and his Non-Qualified Plan payments would decrease. The Appeals Board also found a similar letter dated July 6, 1999 for an individual who is not an appellant in the Appeal. Additionally, in similar form letters dated December 31, 1999, UAL informed other appellants of changes to their benefit payments based on the IRC § 415(e) repeal.

The Appeals Board concluded that UAL officials with the authority to amend the Plan approved the increase permitted by the IRC § 415(e) repeal before DOPT-5. Approval before DOPT-5 was necessary so that UAL could make arrangements to pay the increased benefits without delay, which occurred on January 1, 2000, and to provide participants with advance notice of the change.<sup>93</sup> Given the magnitude of the change, which affected more than 200 participants, it is unlikely that the increased pension payments would have occurred without proper authorization. Accordingly, the Appeals Board found that a Plan amendment removing the IRC § 415(e) restrictions was adopted before DOPT-5.

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benefit payments as of the SBJPA’s effective date even if the required plan amendments were not in place at that time. *See* IRS Notice 99-44.

<sup>92</sup> The IRS, through the issuance of various Revenue Procedures, extended the deadline for nongovernmental plans to adopt amendments related to the IRC § 415(e) repeal to “the last day of the first plan year beginning on or after January 1, 2001.” *See* Rev. Proc. 2000-27, 2000-26 I.R.B. 1272, 2000-1 C.B. 1272 (June 26, 2000).

<sup>93</sup> We observe that the IRC § 415(e) restrictions largely disappeared from tax-qualified defined-benefit pension plans as of the statutory effective date of the repeal. Furthermore, UAL had a financial incentive to authorize the IRC § 415(e) repeal amendment, because this reduced the payments that UAL had committed to pay from its Non-Qualified Plan. It therefore is unlikely that responsible UAL officials would have delayed making a decision regarding whether the IRC § 415(e) restrictions should be removed.

### **C. Was the Plan provision that removed the IRC § 415(e) restrictions effective on or before DOPT-5?**

Having concluded that the IRC § 415(e) repeal provision was adopted before DOPT-5, we now address whether it was effective on or before that date for purposes of § 4044.13(b)(5) of the regulation.

PBGC interprets the 5-year threshold requirement under ERISA § 4044(a)(3) as establishing a general rule that a benefit increase cannot be “in effect” for purposes of PC3 before the date on which the increase becomes operative or payable, *i.e.*, when the increase first could be applied in determining a participant’s benefit. PBGC applies this rule even if the plan provision that provided for the increase has an earlier stated effective date.

This general rule is stated in 29 C.F.R. § 4044.13(b)(3)(i), which provides that the benefit in PC3 for a participant who is in pay status at DOPT-3 is limited to “the lesser of the lowest annuity benefit in pay status during the 3-year period ending on the termination date and the lowest annuity benefit payable under the plan provisions at any time during the 5-year period ending on the termination date.” With respect to the Plan’s application of the IRC § 415(e) restrictions, the “lesser amount” is the amount that was payable at the start of the 5-year period preceding plan termination, when the Plan’s IRC § 415(e) provision restricted the amounts the Plan could pay. Accordingly, absent the limited exception in § 4044.13(b)(5) of PBGC’s regulation, the Plan benefit increase permitted by the IRC § 415(e) repeal could not be included in PC3.

The limited exception in § 4044.13(b)(5) of PBGC’s PC3 regulation applies to certain “automatic benefit increases” that were “scheduled” during the fourth and fifth years before a plan’s termination date. As is the case with the general rule, the limited exception reflects PBGC’s longstanding interpretation of ERISA § 4044(a)(3), which PBGC explained when it issued its asset allocation regulation in 1981. PBGC, when it issued its regulation in 1981, decided that certain automatic benefit increases that (1) were in place at the beginning of the 5-year period before DOPT and (2) were scheduled during the fourth and fifth years preceding plan termination should be included for purposes of determining the lowest benefit under the plan provisions.<sup>94</sup> Thus, in contrast to the general PC3 rule in 29 C.F.R. § 4044.13(b)(3)(i), an

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<sup>94</sup> The preamble to PBGC’s asset allocation regulation provides the following explanation of § 4044.13(b)(5):

In determining the lowest amount payable under the plan provisions during the 5-year period, consideration was given to the proper treatment of amendments adopted before the 5-year period that provided for automatic benefit increases during the 5-year period. Since the amendment provisions were in place at the beginning of the 5-year period, the PBGC has decided that automatic benefit increases scheduled during the fourth and fifth years preceding plan termination should be included in determining the lowest benefit under the plan provisions. However, automatic increases in the benefit formula during the 3-year period preceding termination are not taken into consideration since priority category 3 benefit rights are fixed no later than the beginning of the 3-year period. Automatic benefit increases are to be disregarded to the extent that the increase is greater for active participants than for those in pay status or if the benefit increase is only for active participants. This is because, by definition, the lowest benefit

automatic benefit increase could be included in PC3 even if the increase did not become operative or payable before DOPT-5 – so long as the scheduled increase occurred during the fifth and fourth year before DOPT and the other conditions in § 4044.13(b)(5) were met.

One of the conditions under § 4044.13(b)(5) is that the plan provision or amendment that provides for scheduled automatic benefit increases was “effective” before DOPT-5. As is the case with “adopted,” the word “effective” within the context of § 4044.13(b)(5) refers to the date of the pension plan provision or amendment providing for the automatic increases. Essentially, this part of the regulation prevents “retroactive” benefit increases that are authorized after DOPT-5 from being included in PC3. If an automatic benefit increase provision is not adopted on or before DOPT-5 and/or is not legally effective on or before DOPT-5, then the increase is not in PC3 even if the other conditions in § 4044.13(b)(5) are met.

The Appeals Board interprets the term “effective” in § 4044.13(b)(5) differently from the term “in effect” in other provisions of PBGC’s PC3 regulation. In other parts of the regulation, the term “in effect” modifies the term “benefit increases.” *See* the third sentence of § 4044.13(a).<sup>95</sup> In § 4044.13(b)(5), however, the word “effective” modifies the term “plan provisions.” In light of this distinction, the Appeals Board concluded that the term “effective” as used in § 4044.13(b)(5) refers to “plan provisions” in effect prior to DOPT-5, rather than benefits “payable” before DOPT-5.

Furthermore, if we interpreted “effective” in the context of § 4044.13(b)(5) to mean operative or payable, then no automatic benefit increase that occurred after DOPT-5 could ever be included in PC3. This is because such increases would always be payable after DOPT-5, even if the plan provision under which the increases are “scheduled” was in the plan before DOPT-5.

The Appeals Board found that UAL’s amendment of the Plan to remove the IRC § 415(e) limit was effective before DOPT-5. As previously discussed, the Board found that responsible UAL officials decided before DOPT-5 to remove the IRC § 415(e) restrictions from the Plan. The 1999 Restatement, which is the formal document that contains the IRC § 415(e) repeal amendment, has a (retroactive) general effective date of January 1, 1999, which is almost a year before DOPT-5. Additionally, the Board found no evidence indicating that UAL ever intended to delay the effective date of the Plan amendment permitted by the IRC § 415(e) repeal. Accordingly, the factual circumstances in this case relevant to Issue #4 of the Appeal establish that the UAL officials with the authority to amend the Plan made the IRC § 415(e) repeal amendment effective before DOPT-5.

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provided by the plan during the 5-year period can be no greater than one based on the benefit formula applicable to participants in pay status. These rules are set forth in § 2608.13(b)(5) of the final regulation.

46 Fed. Reg. 9480, 9484 (Jan. 28, 1981).

<sup>95</sup> The third sentence of 29 C.F.R. § 4044.13(a) states: “Benefit increases, as defined in § 4022.2, that were in effect throughout the 5–year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit.”

**D. Was the Plan benefit increase permitted by the IRC § 415(e) repeal scheduled to go into effect during the fourth and fifth years preceding plan termination?**

PBGC regulation 4044.13(b)(5) applies to automatic increases “scheduled during the fourth and fifth years preceding [plan] termination” but does not apply to automatic increases that are scheduled after DOPT-3. As section 11.3(c) of the 1999 Restatement provides, the combined benefit limit under IRC § 415(e) ceased to apply after December 31, 1999 “to any Participant who is or will be receiving a benefit under the Plan.” Thus, based on the Restatement’s terms, the Plan benefit increase permitted by the IRC § 415(e) repeal was scheduled to go into effect during the fifth year preceding the Plan’s termination. Furthermore, the Plan’s practice was consistent with the 1999 Restatement because the Plan started paying the increase on January 1, 2000.

Accordingly, the requirement in § 4044.13(b)(5) that the automatic benefit increase be scheduled during the fourth and fifth years preceding plan termination is satisfied for the IRC § 415(e) repeal increase.

**E. Does the Plan benefit increase permitted by the IRC § 415(e) repeal apply to participants in pay status?**

PBGC regulation 4044.13(b)(5) applies to “automatic increases in the benefit formula for both active participants and those in pay status or for participants in pay status only.” Furthermore, benefit increases “for active participants in excess of the increases for retirees shall not be taken into account.” These requirements in the PC3 regulation are satisfied with respect to Issue #4 of the Appeal. As provided in Section 11.3(c) of the 1999 Restatement, the Plan’s IRC § 415(e) restriction was removed in the same manner for active participants and for retirees who were in pay status.

The Appeals Board observes, based on its experience with terminated pension plans, that benefit increases under pension plan amendments most commonly apply only to participants who are active employees when the increase becomes payable. Accordingly, for most plan amendments, a benefit increase must be in effect throughout the 5-year period before DOPT in order to be included in PC3. The Plan’s IRC § 415(e) repeal increase, however, involves the less-common situation where a pension plan provides a benefit increase to both participants in pay status and active employees. Thus, unlike the benefit increases under many pension plan amendments, the exception in PBGC regulation 4044.13(b)(5) for automatic benefit increases applies to the Plan’s IRC § 415(e) repeal amendment.

For the reasons explained above, all of the conditions in PBGC regulation 4044.13(b)(5) are satisfied with respect to the Plan benefit increase that were permitted by the IRC § 415(e) repeal.

Based on that regulation, the increases to appellants' benefits based on the IRC § 415(e) repeal amendment must be included in PC3.<sup>96</sup>

#### **Implementation of the Board's decision on Issue #4**

The Appeal claims that 36 appellants are impacted by Issue #4. Exhibit 16 of the Appeal lists these 36 individuals.

The Appeals Board confirmed that 34 of the 36 appellants listed in Exhibit 16 are impacted by Issue #4. Two appellants, [REDACTED] are not impacted by this issue because PBGC did not reduce their PBGC-payable benefits based on the IRC § 415(e) limits. The Board identified 24 appellants, [REDACTED] who are not listed in Exhibit 16 but are impacted by Issue #4.

Accordingly, the Appeals Board found that 58 appellants are affected by Issue #4. These individuals are listed in Enclosure 4 of this decision.

PBGC's BAPD, the office responsible for determining and paying benefits, will take appropriate action to implement the Board's decision on Issue #4 of the Appeal. BAPD will issue a new benefit determination to each of the 58 appellants who are affected by Issue #4. The new benefit determination will state the amount of the revised PBGC-payable benefit and will provide a new 45-day appeal right. BAPD also will notify the affected appellants of amounts they have been underpaid, will reimburse them for benefits owed (including interest), and will make necessary corrections to their future payments.

#### **DECISION**

Having applied the Plan's provisions, the provisions of ERISA, and PBGC's regulations and policies to the facts in this case, the Appeals Board decided as follows regarding the four issues raised in the Appeal:

- The Appeals Board increased the PBGC-payable benefits of 146 appellants, listed in Enclosure 3, who (1) had elected the Plan's Level Income Option ("LIO") and (2) are entitled to a benefit based on an allocation of the Plan's assets and PBGC recoveries that is larger than the PBGC-guaranteed benefit. The benefit increases for these 146 appellants are based on the reasoning in an Appeals Board decision dated December 11, 2013.

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<sup>96</sup> The Appeal states that increases related to the IRC § 415(e) repeal "should have been phased in at 80%." AB at 27. This statement in the Appeal relates to the phase-in limit to PBGC's guarantee under ERISA § 4022(b)(1), 4022(b)(7), rather than to the PC3 requirements under ERISA § 4044(a)(3). The Plan benefit increase based on IRC § 415(e) repeal are fully included in PC3, rather than phased-in at 80%. Appellants with IRC § 415(e) repeal increases will not receive their full Plan benefit amount, however, because PC3 is not 100% funded.

- The Appeals Board decided that PBGC incorrectly determined PBGC-payable benefit amounts for 58 appellants (listed in Enclosure 4) who received Plan benefit increases following the repeal of IRC § 415(e). PBGC's BAPD will take appropriate action to implement the Board's decision for those 58 appellants. BAPD will issue a new Benefit determination to each of them, which will state the amount of the revised PBGC-payable benefit and will provide a new 45-day appeal right; and
- The Appeals Board denied your appeal with respect to the other issues you raised.

This decision is PBGC's final Agency action on the Appeal for the 495 of the 554 appellants in this consolidated appeal. PBGC will make appropriate adjustments to benefit payments for these 495 appellants. Any appellant for whom this decision is PBGC's final Agency action may seek review of this decision in an appropriate U.S. District Court.

This decision is not final PBGC action for the 58 appellants who will receive new Benefit Determinations from PBGC based on this Appeals Board decision. Each of these 58 appellants will have the opportunity to appeal his or her new Benefit Determination after it is issued.

Finally, this decision is not final PBGC action for Captain [REDACTED], who has an open individual appeal.<sup>97</sup> The Appeals Board will issue a separate decision to Captain [REDACTED] concerning his individual appeal issue, and we will provide you with a copy of his decision.

If any appellant needs other information regarding his or her PBGC-payable benefit, he or she may contact PBGC's Authorized Plan Representative at 1-800-400-7242.

Sincerely,



Charles Vernon  
Appeals Board Chair

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<sup>97</sup> The Appeals Board is issuing decisions today for two of your clients who filed individual appeals: Captain [REDACTED] and Captain [REDACTED]. Thus, through the combination of the Board's group appeal and individual appeal decisions, PBGC has completed its final agency action concerning PBGC's determinations of Captain [REDACTED] and Captain [REDACTED] benefits.



## Appendix: Impact of the Plan's PLSA Offset Factor upon Monthly Benefit Amounts

### 15 Enclosures:

- (1) List of 554 timely-filed appellants (12 pages)
- (2) List of 152 of your clients who do not have timely-filed appeals (4 pages)
- (3) Lists of 146 appellants who are entitled to benefit increases due to the Appeals Board's decision regarding LIO amounts and of 17 appellants with LIOs who are not entitled to benefit increases (4 pages)
- (4) List of 58 appellants who will receive new Benefit Determinations due to the Board's decision regarding the IRC § 415(e) repeal (2 pages)
- (5) 1999 Amendment and Restatement of the UAL Pilot Defined Benefit Pension Plan and its 4 amendments (97 pages)
- (6) Appeals Board decision dated December 11, 2013 for another appellant, with Appendix and without Enclosures, with personal information redacted (26 pages)
- (7) Explanation of benefit calculations for Captain [REDACTED] with copies of his Benefit Statement Worksheet and of Plan documents showing his benefit calculations (21 pages)
- (8) Explanation of benefit calculations for Captain [REDACTED] with copies of his Benefit Statement Worksheet and of Plan documents showing his benefit calculations (20 pages)
- (9) Explanation of benefit calculations for Captain [REDACTED] with copies of his Benefit Statement Worksheet and of Plan documents showing his benefit calculations (24 pages)
- (10) Explanation of benefit calculations for Captain [REDACTED] with copies of his Benefit Statement Worksheet and of Plan documents showing his benefit calculations (18 pages)
- (11) Explanation of benefit calculations for Captain [REDACTED] with copies of his Benefit Statement Worksheet and of Plan documents showing his benefit calculations (23 pages)
- (12) PBGC-prepared table showing the Plan's Early retirement adjustment factors in effect before April 12, 2000 (1 page)
- (13) PBGC's *Operating Policy Manual*, Chapter 4.2-1, "Allocation of Assets – Priority Category 3" (17 pages)
- (14) Tables for Captains [REDACTED] showing assignment of monthly benefits with and without a PLSA distributions to ERISA § 4044 priority categories (3 pages)
- (15) Tables comparing PBGC's and Appeals Method for Computing PC3 Amounts (10 pages)

## APPENDIX

### **Impact of the Plan's PLSA Offset Factor upon Monthly Benefit Amounts**

As explained in the decision, the purpose of the PLSA Offset Factor is to convert a lump-sum distribution made on the participant's Annuity Starting Date ("ASD") to its annuity equivalent as of the participant's later Normal Retirement Date ("NRD"). For example, the 152.693 PLSA Offset Factor that UAL used to determine the PLSA offset for appellant [REDACTED] means that a lump sum of \$152.69 and 3/10 of one cent payable to Captain [REDACTED] on his [REDACTED] 2003 ASD is equivalent to an annuity of \$1 per month that starts 11 months later, i.e., on [REDACTED] 2004 (his NRD), and continues until his death.

The applicable PLSA Offset Factor for a participant who received a PLSA distribution depends upon: (1) the participant's age on his ASD, and (2) the interest rate and mortality table in effect on the participant's ASD. Consequently, the applicable PLSA Offset Factor will be different for two Plan participants if they: (1) retire on the same date but are different ages; or (2) retire at the same age but the applicable interest rate is different on their (respective) retirement dates.

The two examples below demonstrate how a change in the PLSA Offset Factor changes the PLSA offset amount. In the examples, we use the PLSA Offset Factors used by PBGC.<sup>1</sup>

#### **Example 1: Two pilots of different ages who retire on the same date**

Pilot #1 and Pilot #2 both retired on January 1, 2004 (i.e., at DOPT-1). Pilot #1, whose Date of Birth ("DOB") is December 2, 1947, is age 57 at retirement. Pilot #2, whose DOB is December 2, 1945, is age 59 at retirement. Each pilot has an accrued monthly Plan benefit of \$6,000, and each pilot received a PLSA distribution of \$150,000 on January 1, 2004. As shown below, Pilot #1, who is two years younger, has a larger PLSA offset and a smaller (residual) monthly annuity.

The annual interest rate for computing the PLSA offset (5.14%) is the same for both pilots because they started their benefits on the same date. Because they are of different ages, however, Pilot #1 and Pilot #2 have different PLSA Offset Factors, which are: (1) 134.995 for Pilot #1; and (2) 149.230 for Pilot #2. The different PLSA Offset Factors for the two pilots produce the following (different) PLSA offset amounts at NRD:

- Pilot #1 (the younger pilot) has a \$1,111.15 PLSA offset at NRD, which is computed as follows:

$$\begin{aligned} \$150,000 \text{ (PLSA distribution)} \div 134.995 \text{ (PLSA Offset Factor)} &= \\ \$1,111.15 \end{aligned}$$

- Pilot #2 (the older pilot) has a \$1,005.16 PLSA offset at NRD, which is computed as follows:

$$\begin{aligned} \$150,000 \text{ (PLSA distribution)} \div 149.230 \text{ (PLSA Offset Factor)} &= \\ \$1,005.16 \end{aligned}$$

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<sup>1</sup> Due to mathematical rounding, PBGC's factors are slightly different than the factors UAL used.

Accordingly, the \$1,111.15 PLSA offset **at NRD** for Pilot #1 (the younger pilot) is \$105.99 more than the \$1,005.16 PLSA offset **at NRD** for Pilot #2.

The reason that the PLSA offsets are different is that: (1) Pilot #1 has a longer interval between the date he received his PLSA distribution and his NRD (3 years) than Pilot #2 (1 year), and (2) during the interval between the PLSA distribution date and NRD, the \$150,000 PLSA distribution that each pilot received is assumed to accumulate with interest at the Plan's rate (5.14%). The impact of accumulated interest on the \$150,000 PLSA distribution is that the annuity equivalent at NRD of the PLSA distribution is larger for Pilot #1 (who retired at a younger age) than for Pilot #2. This difference in the PLSA's annuity equivalent at NRD causes the PLSA Offset Factors to be different for the two pilots.<sup>2</sup>

A smaller PLSA offset is favorable to the participant because it causes a smaller reduction to the participant's benefit. Both Pilot #1 and Pilot #2 have the same accrued benefit (\$6,000), but the PLSA offset for Pilot #1 is \$105.99 more **at NRD** than the PLSA offset for Pilot #2 **at NRD**. As a result:

- The remaining annuity **at NRD** for Pilot #1 (who retired at age 57) is \$4,888.85 [ $\$6,000$  (accrued benefit) -  $\$1,111.15$  (PLSA offset at NRD) =  $\$4,888.85$ ].
- The remaining annuity **at NRD** for Pilot #2 (who retired at age 59) is \$4,994.84 [ $\$6,000$  (accrued benefit) -  $\$1,005.16$  (PLSA offset at NRD) =  $\$4,994.84$ ].

Accordingly, the remaining annuity **at NRD** is \$105.99 less for Pilot #1 (who retired at age 57) than for Pilot #2 (who retired at age 59).

Additionally, because the Plan's early retirement reduction is greater for Pilot #1 (the younger pilot) than for Pilot #2, the difference in their monthly Plan benefit amounts **at ARD** is \$396.14, which is \$290.15 more than the difference **at NRD**, as is shown in the following calculations:

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<sup>2</sup> As explained in the decision, the Plan's PLSA Offset Factor reflects the Plan's actuarial assumptions – that is, the assumptions for interest and mortality – for PLSA distributions.

- *Pilot #1*: The monthly Plan benefit (after PLSA offset) **at ASD** is \$4,448.85, which is computed as follows:

$$\$4,888.85 \text{ (Monthly Plan benefit at NRD)} \times 0.91 \text{ (Early Retirement Factor ("ERF") for age 57)} = \$4,448.85$$

- *Pilot #2*: The monthly Plan benefit (after PLSA offset) **at ASD** is \$4,844.99, which is computed as follows:

$$\$4,994.84 \text{ (Monthly Plan benefit at NRD)} \times 0.97 \text{ (ERF for age 59)} = \$4,844.99$$

- *Monthly benefit difference at ASD between Pilot #1 and Pilot #2:*

$$\$4,844.99 \text{ (monthly annuity at ASD for Pilot #2)} - \$4,448.85 \text{ (monthly annuity at ASD for Pilot #1)} = \$396.14 \text{ (monthly difference at ASD)}$$

We note that Pilot #2 in Example 1 was age 57 at DOPT-3. Thus, if the PLSA offset for Pilot #2 was determined based on his age at DOPT-3, his PLSA offset would be the same as Pilot #1 in the example, if the applicable interest rate is the same.<sup>3</sup> **Accordingly, as demonstrated by Example #1, a PLSA Offset Factor that is based on the participant's age at DOPT-3 (rather than the participant's age at ASD) would decrease the amounts assigned to PC3 for participants who retired after DOPT-3.**

**Example 2: Two pilots with different dates of birth who retire at the same age**

Pilot #3 was born on December 2, 1947 and Pilot #4 was born on December 2, 1945. Both pilots retired at age 57. Thus, Pilot #3, who is the younger pilot, retired on January 1, 2004 (i.e., at DOPT-1) and Pilot #4 retired on January 1, 2002 (i.e., at DOPT-3).

Each pilot has an accrued monthly Plan benefit of \$6,000, and each received a PLSA distribution of \$150,000 on his ASD. The annual interest rate in effect when Pilot #3 retired (5.14%) is smaller than the annual interest rate for Pilot #4 (5.48%).

Because of the different interest rates that were in effect on their ASDs, Pilot #3 and Pilot #4 have the following (different) PLSA Offset Factors: (1) 134.995 for Pilot #3; and (2) 127.518 for Pilot #4. The different PLSA Offset Factors for the two pilots produce the following (different) PLSA offset amounts at NRD:

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<sup>3</sup> At DOPT-3, however, a less-favorable annual interest rate of 5.48% would be used to compute the PLSA offset for Pilot #2, rather than a 5.14% annual interest rate. The effect of different interest rates is demonstrated in the second example of this Appendix.

- Pilot #3 (the pilot who retired on a later date) has a \$1,111.15 PLSA offset at NRD, which computed as follows:

$$\begin{aligned} & \$150,000 \text{ (PLSA distribution)} \div 134.995 \text{ (PLSA Offset Factor)} = \\ & \$1,111.15 \end{aligned}$$

- Pilot #4 (the pilot who retired on an earlier date) has a \$1,176.30 PLSA offset at NRD, which computed as follows:

$$\begin{aligned} & \$150,000 \text{ (PLSA distribution)} \div 127.518 \text{ (PLSA Offset Factor)} = \\ & \$1,176.30 \end{aligned}$$

The reason that the PLSA offsets are different is that the decrease in interest rates between DOPT-3 and DOPT-1 causes the annuity equivalent of the lump sum amount (\$150,000 for each pilot) to be smaller at NRD for Pilot #3 than for Pilot #4. We observe that, in contrast to the two pilots in Example 1, the interval between when the pilot received his PLSA distribution and NRD is the same for Pilot #3 and Pilot #4.

In the example, both pilots have the same accrued benefit (\$6,000), but the PLSA offset **at NRD** for Pilot #3 (\$1,111.15) is \$65.15 less than the PLSA offset **at NRD** for Pilot #4 (\$1,176.30). As a result, the remaining annuity at NRD for Pilot #3 (\$4,888.85) is \$65.15 more than the remaining annuity at NRD for Pilot #4 (\$4,823.70).

Also, since the Early Retirement Factor (0.91) is the same for both pilots, the monthly Plan benefit after the PLSA offset is applied is larger for Pilot #3 (who retired at DOPT-1) than for Pilot #4 (who retired at DOPT-3), as is shown by the following calculations:

- For Pilot #3, the monthly Plan benefit after the PLSA offset is \$4,448.84 [ $\$4,888.85 \text{ (remaining annuity at NRD)} \times 0.91(\text{ERF}) = \$4,448.85$ ].
- For Pilot #4, the monthly Plan benefit after the PLSA offset is \$4,389.57 [ $\$4,823.70 \text{ (remaining annuity at NRD)} \times 0.91(\text{ERF}) = \$4,389.57$ ].

Thus, the monthly Plan benefit **at ARD** after the PLSA offset is applied is \$59.28 larger for Pilot #3 (the pilot who retired on a later date) than for Pilot #4.

### **Conclusions regarding the impact of the Plan's PLSA Offset Factor**

As shown in the above examples, the applicable PLSA Offset Factor will be different for two Plan participants if they: (1) retire on the same date but are different ages; or (2) retire at the same age but the applicable interest rate is different on their (respective) retirement dates.

The PLSA Offset Factor does not affect the PLSA distribution amount the Plan will pay the participant. A change in the PLSA Offset Factor, however, affects the annuity value of the PLSA offset in the following ways:

- A larger PLSA Offset Factor produces a smaller PLSA offset amount for a participant if all other relevant circumstances (including the amount of the PLSA distribution) remain constant. A smaller PLSA offset amount is favorable to the participant because the remaining monthly Plan annuity will be larger if a smaller PLSA offset is applied.
- If a participant with a PLSA distribution retires on an earlier date (and we assume other relevant circumstances remain constant), then the PLSA Offset Factor will decrease due to the interest that is assumed to accumulate between the PLSA distribution date and NRD. The smaller PLSA Offset Factor on an earlier retirement date is not favorable to the participant because it will cause the PLSA offset to increase and the remaining Plan benefit that is payable as an annuity to decrease.
- If the applicable interest rate for the PLSA offset calculation decreases (and we assume other relevant circumstances remain constant), then the PLSA Offset Factor will increase and the remaining Plan benefit that is payable as an annuity will increase. We note that the applicable interest rate generally declined in the months between the Plan's DOPT-3 and DOPT. Thus, Plan participants who retired closer to DOPT and elected PLSA distributions generally have somewhat larger Plan benefits than otherwise similarly-situated participants who retired earlier.