



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

January 10, 2012

[Redacted]

Re: Appeal [Redacted] Case 203572; Retirement Plan for Flight Attendants in the Service of US Airways, Inc. (the "FA Plan" or the "Plan")

Dear [Redacted]

This Appeals Board decision responds to your appeal of PBGC's December 10, 2009 determination of your benefit under the FA Plan. As we explain below, the Appeals Board changed PBGC's determination by increasing your PBGC benefits. The following table summarizes the Board's changes:

	Full Plan Benefit	PBGC Benefit under the 12/10/2009 Determination Letter	PBGC Benefit Calculated by the Appeals Board
Benefit Before Attainment of Age 62	\$2,381.73	\$2,181.08	\$2,245.40
Benefit After Attainment of Age 62	\$1,155.63	\$954.98	\$1,155.63
Total Overpayment through 2/1/2012	N/A	\$17,055.25	\$2,453.94
Present Value of Termination Benefit as of the Plan's Termination Date	N/A	\$221,366	\$230,229
Recoupment Percentage (Based on 3/1/2012 Target Adjustment Date)	N/A	7.70%	1.07%
Monthly Recoupment Reduction Amount	N/A	\$73.53	\$12.37
Reduced Benefit Amount	N/A	\$881.45	\$1,143.26
First Date of Reduced Benefit	N/A	03/01/2012	03/01/2012
Last Date of Reduced Benefit	N/A	05/01/2031	08/01/2028
Benefit Amount After Last Month of Reduced Benefit	N/A	\$954.98	\$1,155.63

PBGC's Determination and Your Appeal

PBGC's December 10, 2009 letter and accompanying Benefit Statement indicated that you were entitled to a PBGC benefit of \$2,181.08 per month from [redacted] 2005 until age 62 and \$954.98 per month after age 62. The letter said that PBGC first determined the benefit to which you were entitled under the FA Plan, and then, applied the limits under the law. The Benefit Statement said that the limitations under the law affecting your benefit were the Accrued-at-Normal and Phase-In limits.

PBGC's determination letter also noted that your benefit is payable under the FA Plan's Level Income Option ("LIO"). It explained that, under the LIO, at age 62, your monthly benefit was reduced by an estimate of your Social Security benefit payable at that age 62.

PBGC also determined that, as you received estimated monthly benefits larger than your PBGC benefit amount, PBGC had paid you \$12,239.65 too much as of the Target Adjustment Date (March 1, 2010). Thus, if the Board had not changed your PBGC benefit, your total overpayment would have risen to \$17,055.25 as of the new Target Adjustment Date of March 1, 2012. The letter explained that PBGC would reduce your future monthly payments by a small percentage until the total overpayment is repaid, without interest.

In your January 5, 2010 appeal letter, you said:

When I was advised of my current benefit of \$1155.63, I questioned why the amount was not a greater sum based upon my period of employment and pay scale. I was assured that the current amount was a minimum figure which very likely be adjusted upwards because I had chosen to not name my husband to receive any of my benefits at my death. . . . I was at any time told that the sum of \$1155.63 was an "estimate" except to the extent the amount might be increased-not decreased in the future. PBGC's decision is both arbitrary and devastating. . . . It appears that I am being now punished financially for PBGC's administrative error, an error which apparently took them nearly five years to discover. I would think that there are rules and regulations – including statutes of limitations – which would protect innocent persons such as myself who fall victim to this sort of administrative lack of competence.

Discussion

1. Background

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

Records available to the Appeals Board show that the FA Plan terminated on January 10, 2005 and PBGC became the FA Plan's trustee on February 1, 2005.

When PBGC becomes trustee of a terminated plan, PBGC collects participant data and plan documents, and audits that data. The information comes from a variety of sources, such as the plan's former administrator, the plan's former actuary, and the plan's former paying agent. PBGC necessarily relies on the information it receives from these sources unless (1) PBGC's audit of that information shows that it is wrong, or (2) a participant supplies PBGC with documents showing that the information is wrong. Furthermore, if a plan's provisions are ambiguous, PBGC reviews "plan practice" to determine how the plan's former administrator interpreted the ambiguous provisions. PBGC usually accepts the former administrator's interpretation of ambiguous provisions if that interpretation is reasonable and if it is consistently applied to all participants.

The records PBGC received from US Airways, Inc. ("US Airways") show that (1) you were born on July [] 1944; (2) you were hired on June [] 1970; (3) your employment status changed to LFV on [] 2002 because you elected a voluntary furlough under the VF2 program; (3) you terminated your employment with US Airways on May [] 2004; (4) you elected to start receiving your benefit effective [] 2004; and (6) you were married when you started receiving your benefit. You did not disagree with any of this information in your appeal letter.

Other records available to the Appeals Board indicate that your date of hire corresponds with your employment commencement date as a Flight Attendant with [] and that you were covered as a Flight Attendant under the [] Plan before the [] Plan merged into the FA Plan on September 1, 1989.

2. Your Estimated PBGC Benefit

When PBGC becomes trustee of a terminated plan, PBGC generally continues to pay retired participants the same benefit amounts they were receiving from the plan's former administrator on an estimated basis while PBGC begins its audit of the plan. Thus, while PBGC accepted the benefits calculated by US Airways for participants like you as the correct amount of the full Plan benefit, that full Plan benefit became the estimated PBGC benefit when the Plan terminated because ERISA's limitations on PBGC benefits go into effect when a plan terminates.

Due to the length of time it generally takes PBGC to complete the audit process, however, PBGC requires its actuaries to create estimation programs or procedures to determine whether any benefits in pay status are likely to be affected by the legal limits on PBGC benefits. If a participant's benefits are likely to be affected by legal limits, PBGC's actuaries calculate a new estimated PBGC benefit, and PBGC reduces the old estimated benefit the participant was receiving to avoid the hardship that might otherwise be caused by the need to repay an even larger overpayment amount. In your

case, PBGC's initial review of your benefit in pay status did not result in a finding that an ERISA limitation would likely cause a significant reduction in your final PBGC benefit.

The Appeals Board has reason to believe that, in most cases, the estimation programs and procedures developed by PBGC's actuaries result in estimated benefit amounts that are very close to final PBGC benefit amounts. Nevertheless, errors do sometimes occur.

It is because errors do sometimes occur that PBGC generally does not issue formal determination letters until after it has completed its audits of a plan's records. Thus, when PBGC sent you and most other Flight Attendants a letter on February 14, 2005, telling you that PBGC had become trustee of the FA Plan, it forewarned retired Flight Attendants that the benefits they would receive during PBGC's review of the FA Plan's records were only estimated benefits, as follows:

First, we want to assure you that you will continue to receive benefits without interruption while we review your plan's records. These payments will be an estimate of the benefits that we can pay you under the law. Once we finish our review, we will tell you in writing what your pension amount will be and what rights you have to appeal our decision.

The Appeals Board certainly regrets any hardship that may result from the fact that PBGC's initial review did not identify a need to reduce your estimated benefit. As we explain later in this letter, however, Congress has limited the amount of a plan's benefits that PBGC may pay.

3. Your Full Plan Benefit

Enclosure 1 shows that US Airways calculated your full FA Plan benefit payable under the Plan's Level Income Option ("LIO") to be \$2,381.73 per month from June 2004 through July 2006, and \$1,155.63 thereafter. PBGC's actuaries reviewed US Airways' calculation of your full Plan benefit amounts and accepted those amounts. The Appeals Board also accepted US Airways' calculation of your full Plan benefit.

4. Your Guaranteed Benefit

Your PBGC-guaranteed benefit payable under the Plan's LIO form is less than your *full* FA Plan benefit because your benefit is affected by one of the legal limitations on PBGC benefits.¹ The legal limit that affects your benefit is called the Accrued-at-Normal-Retirement limit (the "AAN limit").

The AAN limit is described in PBGC's regulations. PBGC's regulation on Benefits Payable in Single-Employer Plans (29 Code of Federal

¹ PBGC's determination letter said that your benefit was also affected by the Five-Year Phase-In limit. After a close review of the Phase-In calculations, however, the Appeals Board decided that your benefit is not affected by the Phase-In limit.

Regulations § 4022.21(a) states that PBGC may not guarantee any portion of an early-retirement supplement that, when added to your regular monthly benefit, exceeds the benefit that you would otherwise receive under the Plan at your normal retirement age in the form of a Straight Life Annuity ("SLA").

We determined that, if you had waited until your Normal Retirement Age (age 65) to start receiving your benefit and had elected to receive your benefit in the form of a SLA, your benefit would have been \$1,391.78 because $\$1,391.78 = \$594.89 + \$796.89$, where $\$594.89$ is the US Airways part of your accrued benefit that would be payable at age 65 calculated under the formula that provides the higher benefit (see line 2 on the fourth page of Enclosure 1); and $\$796.89^2$ is your [] net accrued benefit that would be payable at age 65. This $\$1,391.78$ amount is what PBGC generally calls your AAN limit amount.

As shown on the second page of Enclosure 1, if you had elected to receive your benefit in the form of a SLA starting on June [] 2004, your Plan-defined benefit payable before you attained age 62 would have been \$1,768.23 and your Plan-defined benefit payable after you attained age 62 would have been \$1,281.58. The difference between these amounts ($\$486.65$) is your early-retirement supplement.

In your case, because an early-retirement factor was applied in calculating your benefits under the Plan, a portion of your $\$486.65$ early-retirement supplement is guaranteed by PBGC. The portion of your early-retirement supplement that is not guaranteed is equal to $\$1,768.23$ minus $\$1,391.78 = \underline{\$376.45}$. Therefore, the portion of your $\$486.65$ early-retirement supplement that is is guaranteed by PBGC is \$110.20, where $\$110.20 = \486.65 minus $\$376.45$.

Although you did not elect to receive your benefit in the form of a SLA, the portion of your early-retirement supplement that is not guaranteed by PBGC is the same because the Plan's LIO form of benefit is actuarially equivalent³ to the Plan's SLA form of benefit. Therefore, your final guaranteed benefit payable under the Plan's LIO form of benefit is \$2,005.28 before age 62 and \$1,155.63 after age 62, where $\$2,005.28 = \$2,381.73$ minus $\$376.45$.

² We note that $\$1,283.54$ is your gross accrued benefit under the [] Plan, where $\$1,283.54 = 2\% \times \$3,348.36 \times 19.1667$, and $\$486.65$ is equal to one-half of your estimated Social Security benefit as defined in the [] Plan (see line 3 on the fourth page of Enclosure 1). Thus, if you had waited until age 65 to retire, the [] part of your accrued benefit payable as a SLA would have been $\$1,283.54$ minus $\$486.65$, which equals $\$796.89$.

³ PBGC's regulation (29 Code of Federal Regulations § 4022.21(b)) provides an explicit exception to the Accrued-at-Normal-Retirement limit for "early-retirement supplements" that result from a participant's election of an LIO form of benefit if the LIO form is the actuarial equivalent of the plan's SLA form of benefit.

5. Allocation of the Plan's Assets, Your Category 3 Benefit and Your Final PBGC Monthly Benefit

When PBGC becomes trustee of a terminated plan, the assets remaining in the plan's trust are transferred to PBGC. If a plan has no assets at all, PBGC generally pays most participants only their guaranteed benefits. If a plan has some assets, PBGC must sometimes pay benefits in addition to guaranteed benefits.

ERISA requires PBGC to categorize a plan's benefits among six priority Categories. PBGC then allocates the plan's assets to the value of the plan's benefits in order of priority. The **Appendix** is a standard PBGC information sheet. It describes the Categories that PBGC uses to allocate a plan's assets.

After deciding that your Plan had neither Category 1 nor Category 2 benefits, PBGC estimated the value of all participants' Category 3 benefits, and found that the Plan's assets were sufficient to pay for 100% of the Plan's Category 3 benefits (but insufficient to pay for all Category 4 benefits).

PBGC determined that a portion of your full FA Plan benefit is a Category 3 benefit because you were eligible to start receiving a benefit from the Plan at the beginning of the three-year period that ended on the Plan's termination date. In other words, as of January 2002, you met the eligibility requirements under the FA Plan to start receiving an immediate benefit because the Plan's earliest Early Retirement Age is 55 for those participants who have at least 10 years of Credited Service and, as of January 2002, you had already attained age 55.

The amount of your monthly Category 3 benefit is calculated based on an annuity starting date of 2002, because that was the last date you could have retired under the Plan to be in pay status on January 2002, except that the provisions used to calculate your Category 3 benefit are the provisions of the Plan that were in effect as of January 2000. Thus, changes in the Plan's provisions that were adopted during the last five years before the Plan terminated are ignored (unless the changes would result in a lower benefit).

The Appeals Board calculated your Category 3 benefit to be \$1,631.90 before age 62 and \$1,036.03 after age 62, if paid in the form of a SLA. **Enclosure 2** shows how the Appeals Board calculated your Category 3 benefit. Thus, the amount of your early-retirement supplement if you had started receiving your benefit on January 1, 2002 would have been \$595.87. The portion of this supplement that could not have been guaranteed (if you had started receiving your Plan benefit as of January 1, 2002) is equal to \$1,631.90 minus \$1,391.78 = \$240.12, where \$1,391.93 is the AAN limit amount that we calculated on page 5 above.

The Appeals Board also calculated your full Category 3 benefit in the form of an LIO to be \$1,969.94 before age 62 and \$847.94 after age 62. Thus, the portion of your

full Category 3 benefit that could have been guaranteed is \$1,729.82 before age 62 and \$847.94 after age 62, where $\$1,729.82 = \$1,969.94$ minus $\$240.12$.

In general terms, when a participant's guaranteed benefit is larger than the portion of the participant's funded Category 3 benefit that could be guaranteed, PBGC pays the guaranteed benefit because it is the larger of the two benefits. In your case, your guaranteed monthly benefit (\$2,005.28 before age 62 and \$1,155.63 after age 62) is larger than the portion of your full Category 3 benefit that could be guaranteed (\$1,729.82 before age 62 and \$847.94 after age 62). Therefore, you are entitled to your guaranteed benefit of \$2,005.28 before age 62 and \$1,155.63 after age 62.

As noted above, however, for the FA Plan, PBGC determined that the full Category 3 benefits of every Flight Attendant who meets the eligibility requirements for a Category 3 benefit are covered completely by the Plan's final asset amount. As a result, PBGC will also pay you the portion of your Category 3 supplement that could not have been guaranteed, namely the $\$240.12$ amount that we calculated on page 6 above.

Based on the above, the Appeals Board found that your full PBGC benefit is \$2,245.40 before age 62 and \$1,155.63 after age 62, where $\$2,245.40 = \$2,005.28 + \$240.12$. **Enclosure 3** is your Corrected Benefit Statement.

6. Recoupment of Your Total Overpayment

As we explained above, Congress has set limitations on the benefits that are payable from a plan's trust fund when a plan terminates. The legal limitations become effective on the plan's termination date. Once PBGC became trustee of the Plan on February 1, 2005, PBGC became responsible not only for making up any underpayments to FA Plan participants that occurred before and after PBGC became trustee, but also for collecting any overpayments made by the Plan before and after PBGC became trustee. Regardless of the cause of your overpayments (in this case, an inaccurate estimate of your guaranteed benefit), it is clear that you have received payments that are higher than your guaranteed benefit amounts.

Although PBGC could ask for repayment in a single payment with interest, PBGC's regulations⁴ provide for the recoupment of previous overpayments through small reductions in PBGC's benefit payments. The regulations generally limit the reductions to no more than ten percent of the final PBGC monthly benefits. If you and your spouse die before PBGC has collected your total overpayment amount, PBGC will not seek any repayment from your estate or your spouse's estate. Finally, PBGC does not charge any interest on the overpayments. All of these limitations on PBGC's recoupment of overpayments are designed to mitigate the potential hardship on PBGC's retired participants resulting from the need to repay large overpayment amounts.

⁴ 29 Code of Federal Regulations § 4022.81.

While we regret any hardship that the recoupment reduction may cause, Congress has not authorized PBGC to pay you benefits that are larger than the benefits payable to you under the terms of the Plan and the provisions of ERISA.

Decision

Having applied the terms of the FA Plan and the law to the facts in this case, the Appeals Board changed PBGC's determination by increasing your PBGC benefits. The table on the first page of this decision letter summarizes the Board's changes. This decision is PBGC's final action regarding the issues raised by your appeal. If you wish, you may seek review of this decision in an appropriate federal district court.

We regret the delay in responding to your appeal and appreciate your patience while we completed our review. If you need other information about your PBGC benefit, you may call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the FA Plan (Case 203572).

Sincerely,



Michel Louis
Appeals Board Member

