PBGC Pension Benefit Guaranty Corporation

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May 5, 2023

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Re: Appeal 2022-*[xxxx]* *[Appellant]*; Case No. 199224; United Airlines Ground Employees' Retirement Plan (the "UAL Ground Employees' Plan" or the "Plan")

Dear *[Attorney]*:

I. INTRODUCTION

The Appeals Board is responding to your appeal of PBGC's determination dated March 9, 2022, on behalf of your client, *[Appellant]*. Under California law, *[Appellant]* was the domestic partner of *[Participant]*, a participant under the UAL Ground Employees' Plan. PBGC had previously determined that *[Participant]* was entitled to a monthly benefit of $1,001.51 in the form of a Straight Life Annuity with No Survivor Benefits. *[Participant]* died on December 12, 2019, before retiring, and *[Appellant]* claimed a survivor benefit as *[Participant's]* domestic partner.

PBGC determined *[Appellant]* is not entitled to a PBGC-guaranteed Qualified Preretirement Survivor Annuity ("QPSA") benefit under the UAL Ground Employees' Plan. PBGC explained that PBGC guarantees QPSA benefits under the Employee Retirement Income Security Act of 1974, *as amended* ("ERISA") only for the surviving spouses of married participants. Because a domestic partnership is not a marriage, *[Appellant]* is not eligible for a QPSA.

PBGC further determined that the UAL Ground Employees' Plan also provided a non-guaranteed pre-retirement survivor annuity to non-spouse beneficiaries. Because there were insufficient assets on Plan termination and from subsequent recoveries to fund this benefit, PBGC informed *[Appellant]* that it could not pay her the non-guaranteed pre-retirement survivor benefit.

In your appeal dated June 24, 2022, you claim that *[Appellant]* is eligible, as the surviving domestic partner of *[Participant]*, for a PBGC-guaranteed QPSA benefit and that PBGC's denial

of the benefit is contrary to California law and other authorities.[1] The PBGC Participant and Plan Sponsor Advocate has also submitted a Memorandum of Support of your appeal dated June 30, 2022.[2] The Advocate similarly claims that *[Appellant]* is entitled to a PBGC-guaranteed QPSA benefit, contending that domestic partnerships and marriages "are the same under California law."[3]

A. Summary of Decision

We find that *[Appellant]* was the registered domestic partner of *[Participant]* in a domestic partnership under California law. Because PBGC guarantees QPSA benefits under ERISA for the surviving spouses of married participants in PBGC-insured pension plans only, *[Appellant]* is not eligible for a PBGC-guaranteed surviving spouse's benefit. We must therefore deny your appeal.

B. Background

PBGC is the United States government agency that insures pensions in accordance with Title IV of ERISA. If a plan sponsor is unable to support its defined benefit pension plan and the plan terminates, PBGC becomes the statutory trustee of the plan and pays guaranteed pension benefits according to the plan provisions, subject to legal limits set by Congress under ERISA.

When the UAL Ground Employees' Plan terminated on March 11, 2005, it did not have sufficient assets to pay all benefits provided under the Plan, and PBGC became the Plan's statutory trustee on May 23, 2005. PBGC pays benefits based on the terms of the Plan, the provisions of ERISA, and PBGC's regulations and policies.

When PBGC becomes statutory trustee of a terminated plan, PBGC collects participant information and copies of the plan's governing documents from the plan's administrator and audits that data. PBGC relies on the information it receives from a plan administrator unless PBGC's audit of that information shows that it is incorrect, or a participant supplies PBGC with documents showing that the information is incorrect.

PBGC records contain the following information relevant to your appeal:

- *[Appellant]* was born on *[date of birth]*;
- Beginning *[date of hire]*, *[Participant]* was an employee of UAL and a participant in the UAL Ground Employees' Plan;

[1] A copy of the appeal by *[Entity]* ("Appeal") dated June 24, 2022, is provided as Enclosure 1.

[2] The PBGC Participant and Plan Sponsor Advocate, among other duties, "advocate[s] for the full attainment of the rights of participants in plans trusteed by [PBGC]." *See* ERISA § 4004(b)(2).

[3] Memorandum of Support in the Matter of *[Appellant's]* Benefit Appeal ("Advocate's Memo of Support"), dated June 30, 2022, submitted by Constance Donovan, PBGC Participant and Plan Sponsor Advocate, at 8, Enclosure 2.

- *[Participant]* was actively employed with UAL when the Plan terminated on March 11, 2005;

- *[Appellant]* entered into a domestic partnership with [*Participant]* under the California Family Code on *[date of domestic partnership]*; and

- *[Participant]* died on *[date of death]*, before retiring.

C. Issue Presented by Your Appeal of PBGC's Determination

According to its benefit determination letter of March 9, 2022, PBGC determined that *[Appellant]* is not entitled to a PBGC-guaranteed QPSA benefit under the Plan. PBGC explained that PBGC guarantees QPSA benefits only for spouses of married participants. Because *[Participant]* and *[Appellant]* had entered into a domestic partnership, not a marriage, PBGC determined that *[Appellant]* was not eligible for a PBGC-guaranteed QPSA benefit consistent with guidance issued by the Treasury and Labor Departments.

PBGC also discussed the Plan's "non-QPSA pre-retirement survivor annuity" for non-spouse beneficiaries. PBGC determined that this benefit was a non-guaranteed benefit under ERISA and that the Plan's assets and recoveries were insufficient to pay this category of benefit under the asset allocation scheme of Title IV of ERISA. PBGC did not, however, expressly determine that *[Appellant]* was eligible for this benefit under the Plan.

After receiving PBGC's determination, you submitted two Freedom of Information Act ("FOIA") requests, seeking copies of PBGC's operating policies and information regarding PBGC's receipt of "domestic partnership cases." You also requested extensions of time to file an appeal pending your receipt and review of relevant documents from PBGC's Disclosure Division. The Appeals Division granted an extension for filing an appeal through June 30, 2022.

You filed a timely appeal of PBGC's determination on behalf of *[Appellant]* in a letter dated June 24, 2022. The appeal claims that PBGC's determination is "inconsistent with California law, established caselaw, and PBGC's policies" and states in relevant part:

> Under PBGC Policy 5.7-4, PBGC will "recognize as marriages only those arrangements specifically denominated as marriages by state law – PBGC will not recognize other arrangements such as civil unions, domestic partnerships, etc., as marriages unless they are explicitly denominated as marriages by state law." *[Appellant]* and *[Participant]*, as registered domestic partners in California, are considered spouses under California Family Code § 297.5(a). PBGC failed to address California state law in its decision, despite PBGC policy stating it will recognize arrangements other than marriage if they are considered marriages by state law.
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> California law clearly states that domestic partners have the same rights, protections, and benefits as spouses. California case law . . . demonstrate[s] the intent of the legislature to grant domestic

> partners the same rights, protections, and benefits as those granted to married persons.
>
> As PBGC records note, *[Participant*'s*]* death certificate lists him as *married* to *[Appellant]*. PBGC's policy recognizes marriages under state law. California state law recognizes *[Participant's]* and *[Appellant's]* rights as spouses equal to that of married individuals. California went to great lengths to equate Domestic Partnerships with marriage to provide all spouses with the same protections under the law. PBGC's decision to deny *[Appellant]* a qualified pre-retirement survivor annuity as the surviving domestic partner of United Airlines Ground Employees' Retirement Plan participant *[Participant]* undermines California law.
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> * * *
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> It is unclear from the letter what provisions PBGC relied on in issuing its determination. PBGC did not cite to or appear to include PBGC's internal policies, specifically PBGC Policy 5.7-4, in rendering its denial. It is further unclear why PBGC has relied on guidance from the Departments of Treasury and Labor, rather than the laws of California, in which the Domestic Partnership was entered into. . . .

(Emphasis in original.)

Your appeal also claims that PBGC's determination of March 9, 2022, does not constitute "an adequate denial of benefits" because the determination did not "include citations upon which it relied to issue its decision." As a preliminary matter, the Appeals Board notes that PBGC regulations address the form and content of initial determinations. Under section 4003.21 of PBGC regulations, initial determinations "will be in writing, will state the reason for the determination," "contain notice of the right to request review of the initial determination" and "a brief description of the procedures for requesting review."[4] The Board finds that PBGC's determination complied with the applicable regulation regarding its content, even though it did not include citations to the authorities upon which it relied.

As stated in your appeal, you included copies of the following documents: PBGC's January 31, 2020 letter to *[Appellant]*; a Continental Retirement Plan Beneficiary Pension Election Authorization Form; PBGC's FOIA letters dated April 25, 2022, and May 16, 2022; and a letter dated August 7, 2020, from the Social Security Administration to *[Appellant]*.[5]

[4] 29 Code of Federal Regulations ("CFR") § 4003.21.

[5] The letter states: "You do not qualify for widow's benefits because you are entitled to an equal or larger benefit on another Social Security record." *See* Exhibit E to the Appeal, Enclosure 1.

The issue presented by your appeal is whether PBGC guarantees, under section 4022(a) of Title IV of ERISA, a QPSA benefit under section 205(e) of ERISA for the surviving registered domestic partner of a participant in a PBGC-insured defined benefit pension plan.

II. DISCUSSION

A. Relevant Law

1. The Respect for Marriage Act

On December 13, 2022, President Biden signed into law the Respect for Marriage Act ("RMA").[6] By enacting the RMA, Congress repealed the Defense of Marriage Act ("DOMA") and amended the Dictionary Act, 1 U.S.C. § 7, to define "marriage" as follows:

> (a) For the purposes of any Federal law, rule, or regulation in which marital status is a factor, an individual shall be considered married if that individual's marriage is between 2 individuals and is valid in the State where the marriage was entered into * * *
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> (b) * * *
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> (c) For purposes of subsection (a), in determining whether a marriage is valid in a State or the place where entered into, if outside of any State, only the law of the jurisdiction applicable at the time the marriage was entered into may be considered.

Thus, the Dictionary Act, as amended by the RMA, now defines "marriage" for purposes of federal law according to the law of the state in which the marriage was entered.

The RMA also declares, under section 7(a), that there is no impact on "status and benefits not arising from a marriage," as follows:

> Nothing in this Act, or any amendment made by this Act, shall be construed to deny or alter any benefit, status, or right of an otherwise eligible entity or person which does not arise from a marriage, including tax-exempt status, tax treatment, educational funding, or a grant, contract, agreement, guarantee, loan, scholarship, license, certification, accreditation, claim or defense.

As a historical matter, Section 3 of the DOMA had previously amended the definition of "marriage" and the definition of "spouse" under the Dictionary Act. Section 3 of DOMA defined

[6] Pub. L. No. 117-228, § 5, 136 Stat. 2305 (Dec. 13, 2022), provided at Enclosure 3. Under the RMA, Congress made the following finding: "(1) No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family." *Id.* at § 2, 136 Stat. 2305.

marriage as a union between one man and one woman.[7] In 2013, the Supreme Court in *United States v. Windsor* held that DOMA was an unconstitutional deprivation of the liberty of persons in lawful same-sex marriages protected by the equal protection clause of the Fifth Amendment of the Constitution.[8] The Court reasoned that DOMA had the effect of depriving same-sex couples the right to marry under state law, which traditionally established the definition of marriage for purposes of federal law.

2. ERISA and Relevant Administrative Guidance

PBGC guarantees benefits under the terms of a PBGC-insured pension plan, subject to the provisions of ERISA and PBGC's regulations. Under section 4022(a) of ERISA, PBGC guarantees the payment of nonforfeitable benefits under terminated PBGC-insured pension plans, subject to limitations under Title IV of ERISA.[9] A "nonforfeitable benefit" is defined generally as a benefit for which a participant has satisfied the conditions of entitlement under the plan and the requirements of ERISA.[10]

In general, ERISA requires all defined benefit pension plans to provide the accrued benefit of a vested participant who does not die before the annuity starting date in the form of a qualified joint and survivor annuity ("QJSA").[11] It further requires all defined benefit pension plans to provide the surviving spouse of a participant who dies before the annuity starting date with a QPSA.[12] If, however, the participant and spouse are not *married* throughout the one-year period ending on the earlier of the participant's annuity starting date or the participant's death, a plan is not required under ERISA to provide either the QJSA or the QPSA.[13]

A QJSA is an annuity for the life of the participant and a survivor annuity for "the life of the [participant's] *spouse*" that is at least 50 percent of the amount of the annuity payable for the joint lives of the participant and *spouse*.[14] A QPSA is a survivor annuity for the life of the

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[7] The DOMA defined the term "marriage" and referred to the term "spouse" as follows: "In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife."

[8] 570 U.S. 744, 774 (2013).

[9] ERISA §§ 4022(a) and (b), 4001(a)(8) (defining "nonforfeitable benefit") and 4061 (amounts payable by PBGC); 29 U.S.C. §§ 1322, 1301(a)(8), and 1361. For convenience, the Board will hereinafter cite to ERISA but not the United States Code.

[10] ERISA § 4001(a)(8).

[11] ERISA §§ 205(a)(1) and 205(d)(1). ERISA defines "annuity starting date" for benefits payable as an annuity as "the first day of the first period for which an amount is payable as an annuity." ERISA § 205(h)(2)(A)(i).

[12] ERISA § 205(a)(2). "If the participant is not alive on the annuity starting date, the surviving spouse must receive a QPSA." *See* 26 CFR § 1.401(a)-20 Q&A 10(a).

[13] ERISA § 205(f)(1) (". . . a plan may provide that a . . . [QPSA] will not be provided unless the *participant* and *spouse* had been *married* throughout the 1-year period ending on the earlier of—(A) the participant's annuity starting date, or (B) the date of the participant's death.") (Emphasis added); *see also* Internal Revenue Code § 417(d)(1).

[14] ERISA § 205(d)(1) (emphasis added).

participant's surviving spouse in an amount not less than the QJSA depending on whether the participant dies on, before, or after, the participant attained the earliest retirement age. [15]

A QPSA under section 205(e)(1) of ERISA Title I is not forfeitable under section 4022(a) of ERISA Title IV solely because the participant has not died as of the plan's termination date. [16] In other words, a participant's death before pension plan termination is not a condition of entitlement for a PBGC-guaranteed QPSA benefit under Title IV of ERISA.

After the Court issued its opinion in *United States v. Windsor*, both the IRS and the Department of Labor ("DOL") issued guidance interpreting the terms "**marriage**" and "**spouse**" under the Internal Revenue Code ("Code") and ERISA, limiting "marriage" to its definition under applicable state law, and limiting "spouse" to persons in a "marriage." For example, IRS regulations state the following: [17]

> **(a)** In general. For federal tax purposes, the terms "*spouse*," "husband," and "wife" mean an individual lawfully *married* to another individual. The term "husband and wife" means two individuals lawfully *married* to each other.
>
> **(b)** Persons who are lawfully *married* for federal tax purposes—
>
> (1) In general. * * * a *marriage* of two individuals is recognized for federal tax purposes if the marriage is recognized by the state . . . in which the *marriage* is entered into, regardless of domicile.
>
> (2) * * *

(Emphasis added.)

Similarly, the DOL's guidance states that to the extent of its authority in its regulations, rulings, and opinions, and exemptions in Title I of ERISA and the Code, including Chapter XXV of Title 29 of the CFR: [18]

> [T]he term '*spouse*' will be read to refer to any individuals who are lawfully married under any state law . . . Similarly, the term '*marriage*' will be read to include a same-sex marriage that is legally recognized as a *marriage* under any state law.

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[15] *See* ERISA § 205(e)(1); 26 CFR § 1.401(a)-20 Q&A 18. Under ERISA, "earliest retirement age" means "the earliest date on which, under the plan, the participant could elect to receive retirement benefits." *See* ERISA § 205(h)(3).

[16] *See* ERISA § 4022(e)(5).

[17] *See* 26 CFR § 301.7701-18(a) and (b).

[18] *See* DOL Technical Release 2013-04 (September 18, 2013) (Guidance to Employee Benefit Plans on Definition of "Spouse" and "Marriage" under ERISA and the Supreme Court's decision in *United States v. Windsor*).

(Emphasis added.)

Under both the DOL's and IRS's administrative guidance, the terms "spouse" and "marriage" do not include a domestic partner or a domestic partnership that is not denominated as marriage under state law. For example, DOL guidance states: [19]

> The terms 'spouse' and 'marriage,' however do not include individuals in a formal relationship recognized by a state that is not denominated a marriage under state law, such as a **domestic partnership** or a civil union regardless of whether the individuals who are in these relationships have the same rights and responsibilities as those individuals who are married under state law.

(Emphasis added.)

3. Marriage and Domestic Partnership under the California Family Code

The California Family Code defines "marriage" as follows: [20]

> Marriage is a personal relation arising out of a civil contract between two persons, to which the consent of the parties capable of making that contract is necessary. Consent alone does not constitute marriage. Consent must be followed by the issuance of a license and solemnization as authorized by this division. . . .

A marriage license is defined as "the document issued by the county clerk until it is registered with the county recorder, at which time the license becomes a marriage certificate." [21] Solemnization occurs as the parties declare in the "physical presence of the person solemnizing the marriage and necessary witnesses, that they take each other as spouses." [22] No specific form of ceremony is required.

By contrast, the California Family Code defines "domestic partners" and "domestic partnership" as "two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring." [23] A domestic partnership is established in California

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[19] *See Id.*; *see also* IRS Notice 2014-19, 2014-1 C.B. 979 (April 4, 2014): "For Federal tax purposes, the terms 'spouse,' 'husband and wife,' 'husband,' and 'wife' do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term 'marriage' does not include such formal relationships." *See also* 26 CFR § 301.7701-18(c).

[20] *See* California Family Code at § 300(a).

[21] *See* California Family Code at § 300(b).

[22] *See* California Family Code § 420.

[23] *See* California Family Code § 297(a).

when both partners file a notarized Declaration of Domestic Partnership with the California Secretary of State and satisfy four statutory requirements.[24]

Under the California Family Code, "registered domestic partners" are granted the "same rights, protections, and benefits," as those "granted to . . . spouses."[25] What's more, effective January 1, 2017, the California Family Code declared that the term "'spouse' includes 'registered domestic partner,' as required by Section 297.5 [of the California Family Code]."[26]

California created its domestic partnership statute in 1999, for same-sex couples where both persons were at least 18 years old and for opposite-sex couples, where both persons were age 62 or older and eligible for Social Security benefits.[27] Effective in 2002, California expanded the class of eligible couples to those who are either same sex or where "*one or both* of the persons are over 62 years of age . . . and one or both . . . meet the eligibility criteria" for Social Security benefits.[28] Thus, California law "authorized domestic partnerships on the part of couples whose Social Security or Supplemental Social Security Income benefits might be reduced or eliminated if they were to marry.[29] Effective in 2020, California eliminated the age 62 and eligibility for Social Security requirements for opposite sex couples, expanding domestic partnership registration to all couples in which both individuals are at least 18 years of age, with some restrictions.[30]

B. Relevant Plan Provisions

The Appeals Board reviewed the provisions of the Plan in effect on March 11, 2005, when the Plan terminated. The United Airlines Ground Employees' Retirement Plan effective January 1, 2001, as amended and restated, was in effect at this time.[31] The UAL Ground Employees' Plan consists of two parts—an administrative part and a separate benefits part for different

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[24] *See* California Family Code § 297(b)(1)-(4), § 298(a)(1), § 298.5(a). To meet the requirements of establishing a domestic partnership, a domestic partner must not be married to someone else or be a member of another domestic partnership, not be related by blood, be at least 18 years of age, and be capable of consenting to the domestic partnership.

[25] *See* California Family Code § 297.5(a).

[26] *See* California Family Code § 143.

[27] *See Burnham v. Cal. Pub. Empl. Ret. Sys.,* 208 Cal. Rptr. 3d 607, 610-611 (Cal. Ct. App. 2012).

[28] *See* California Family Code § 297 (2018) (emphasis added) and 2001 Cal. Legis. Serv. Ch. 893 (A.B. 25).

[29] *See Holguin v. Flores*, 18 Cal. Rptr. 3d 749, 751 (Cal. Ct. App. 2004); *Burnham v. Public Employees' Retirement System*, 208 Cal. Rptr. 3d at 610-611 (California legislature made eligible for domestic partnerships elderly opposite-sex couples because "'many would not, or could not, marry due to restrictions on social security or other pension benefits that would affect their incomes.'") (Citation omitted); *see generally* Brady, Heidi and Wilson, Robin Fretwell, The Precarious Status of Domestic Partnerships for the Elderly in a Post-Obergefell World, 24 Elder Law Journal 49 (2016).

[30] *See* California Family Code § 297, amended by Stats. 2019, Ch. 135, Sec. 1 (SB 30), effective Jan. 1, 2020.

[31] Relevant excerpts of the United Airlines Ground Employees' Retirement Plan are provided at Enclosure 4. Under Section 1, subsection 1.1 (History, Purpose and Interpretation), the Plan states the following: "[T]he Plan is intended to conform to the requirements of Code Secs. 401(a) and 501(a) of ERISA and must be interpreted in furtherance of that intent."

classifications of employees.[32] The Plan has three subplans based on employment classification. *[Participant]* was part of the mechanic employee group; thus his subplan is the United Airlines Mechanic and Ramp, Stores, Food Service and Related Employee Defined Benefit Plan ("Mechanic DB Subplan").

Section 9 of the Mechanic DB Subplan provides a Pre-Retirement Survivor Benefit to a Participant's "Eligible Spouse." Consistent with section 205(e)(1) of ERISA, previously discussed, Section 9.1 provides an "eligible spouse" the pre-retirement survivor benefit based on the amount payable under the Plan's QJSA as of the day preceding the participant's death:

> The Pre-Retirement Survivor Benefit is an annuity paid to the Participant's Eligible Spouse, as provided in this Section 9, in a monthly amount equal to the monthly payment to the Participant's Spouse under a Qualified Joint and Survivor Annuity. . . .

(Emphasis added.)

"QPSA" is defined under section 1.4 of the Mechanic DB Subplan as "the survivor annuity for the life of the Participant's surviving Eligible Spouse required under Code Section 417(c)" and consistent with section 205(e)(1) of ERISA. Accordingly, the Board finds that this is the survivor benefit that PBGC guarantees under section 4022(a) of Title IV.[33]

"Eligible spouse" is defined under section 1.4 as the spouse to whom the Participant had been legally married throughout the one-year period ending on the date of the Participant's death. "Spouse" is defined under section 1.4 as an individual to whom the Participant is legally married under the Defense of Marriage Act, or DOMA.[34]

Domestic partners are separately referred to and defined in Supplement E of the UAL Ground Employees' Plan.[35] Section E-1 recites that the purpose of Supplement E "is to modify, supersede and supplement the provisions of the Plan, as applied to certain Participants who have filed Proof of Domestic Partnership with the Company."[36] It applies to "any Participant who is an Active Participant on or after May 1, 2000, or (b) is an Inactive participant who is eligible to

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[32] *See* Enclosure 4.

[33] The Appeal claims that UAL, as the administrator of the Continental Airlines Retirement Plan, is paying *[Appellant]* "survivor benefits" as *[Participant's]* "surviving domestic partner." *See* Appeal at 6 and Exhibit B, Enclosure 1. PBGC is not, however, the statutory trustee of the Continental Plan, and the Appeals Board cannot determine without the relevant plan provisions whether Exhibit B evidences a one-time death benefit of $70.42 or a monthly benefit of $70.42 payable to a non-spousal beneficiary. For the reasons discussed below, the Board finds that the Plan's pre-retirement survivor benefit for *unmarried couples* is not a QPSA benefit under ERISA.

[34] As discussed above, in 2013, after the Plan terminated, the U.S. Supreme Court ruled in *United States v. Windsor* that section 3 of DOMA is unconstitutional.

[35] *See* Enclosure 4, Supplement E.

[36] *See Id.* at Section E-1, Enclosure 4.

commence receiving an Early, Normal or Late Retirement Benefit and has an Annuity Starting Date on or after May 1, 2000."[37]

Supplement E provides for a Pre-Retirement Survivor Benefit under section E-6 for "**eligible domestic partners**." Section E-2(b) defines "Eligible Domestic Partner" as the "Individual who has been the Participant's Qualified Domestic Partner throughout the one-year period beginning on the relationship beginning date and ending on the date of the Participant's death."[38] Section E-6 provides:

> With respect to a Participant who has elected Pre-Retirement Survivor Benefit coverage on behalf of his or her Eligible Domestic Partner, the provisions of Section 9 of the Plan will not apply and the provisions of this Section E-6 will govern the eligibility for and payment of a Pre-Retirement Survivor Benefit.

Thus, the Mechanic DB Subplan provides that qualified domestic partners are not eligible for QPSAs under section 9 but are otherwise eligible for pre-retirement survivor benefits. Supplement E defines "Qualified domestic partner" as the Participant's Domestic Partner whose gender is the same as the Participant's. Thus, the Mechanic DB Subplan appears to have expressly excluded participants in domestic partnerships with opposite sex partners from being eligible for pre-retirement survivor benefits.[39]

C. Analysis of the Appeal

1. PBGC cannot interpret "marriage" under ERISA to include a California "domestic partnership" because such an interpretation would be contrary to California law.

As discussed above, in 2013, the Supreme Court in *United States v. Windsor* held that section 3 of DOMA was unconstitutional under the Equal Protection Clause of the United States Constitution. In so ruling, the Court discussed "the extent of state power and authority over marriage as a matter of history and tradition."[40] The Court noted that "the definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations"

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[37] *See* Section E-1 of Supplement E, Enclosure 4.

[38] The Plan's definition of "Eligible Domestic Partner" is undoubtedly designed to mimic the one-year marriage requirement under section 205(f) of ERISA, even if the undefined term "relationship beginning date" might extend the period beyond one year under certain circumstances.

[39] Solely for purposes of this decision, the Appeals Board presumes that the Plan administrator (or PBGC) would have extended eligibility for the Pre-Retirement Survivor Benefit to *[Appellant]*, even though the Plan limited the benefit to same-sex couples. *See Bostock v. Clayton Cty*, 140 S. Ct. 1731, 1742-1743 (2019) (discrimination based on an individual's sex violates Title VII of the Civil Rights Act of 1964). PBGC determined that the Plan's assets and PBGC recoveries were insufficient to fund this category of benefit under ERISA § 4044(a). Neither the Appeal nor the Advocate challenges this aspect of the determination of March 9, 2022.

[40] *United States v. Windsor*, 570 U.S. at 766.

and that the "State's power in defining the marital relation is of central relevance."[41] The Court observed that DOMA "depart[ed] from this history and tradition of reliance on state law to define marriage" to deprive same-sex couples the recognition of valid state law marriages for purposes of federal law.[42]

In contrast with DOMA, the recently enacted RMA expressly recognizes that State law defines "marriage" for purposes of federal statutes like ERISA. Under the RMA's amendment to the Dictionary Act, for the purpose of any federal law in which "marital status is a factor," an individual is deemed to be married if that individual's marriage is valid in the State where the marriage was entered. Marital status is a factor under ERISA because ERISA provides QJSA and QPSA benefits solely for the surviving spouses of married participants. It is these benefits that PBGC guarantees.

As the Court stated in *United States v. Windsor*: "By history and tradition the definition . . . of *marriage* . . . is treated as being within the authority and realm of the separate States."[43] The Court's statement in *United States v. Windsor* is thus consistent with the recently enacted RMA under which individuals are deemed married for purposes of federal law if the *marriage* is valid in the State in which the marriage occurred. Thus, the Appeals Board cannot interpret "marriage" under ERISA to include "domestic partnership" because a domestic partnership is not a valid marriage under California law. A decision by the Appeals Board that interprets "marriage" under ERISA to include domestic partnership would be contrary to California law.

There is no question that, under the California Family Code, *[Appellant]* was not married to *[Participant]* before he died in December 2019. According to the Declaration of Domestic Partnership filed January 11, 2017, with the California Secretary of State, *[Appellant]* and *[Participant]* entered into a domestic partnership, as evidenced by their notarized signatures, and were registered domestic partners under California law.[44] The Appeal has not asserted that *[Appellant]* and *[Participant]* were married when he died.[45] Accordingly, the Appeals Board finds that *[Appellant]* was not married to *[Participant]*.

The Appeal asserts that "California [l]aw [c]onsiders Marriage and Domestic Partnerships to be [e]qual," making *[Appellant]* "[e]ligible for a [s]urvivor [b]enefit [u]nder PBGC's Policies."[46]

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[41] *Id.*

[42] *United States v. Windsor*, 570 U.S. at 768.

[43] *See United States v. Windsor*, 570 U.S. at 764 (emphasis added).

[44] We provide a copy of the Declaration of Domestic Partnership, File No. *[File Number]*, filed with the Secretary of State of California, *[date]*, at Enclosure 5.

[45] The Appeal (at page 5) refers to *[Participant's]* death certificate, issued *[date]*, which lists *[Participant's]* status at time of death as "Married," and *[Appellant]* as "Surviving Spouse/Civil Union Partner's Maiden Name." *See* Enclosure 1. Because the Appeal does not provide any evidence of a subsequent marriage of *[Appellant]* and *[Participant]* or contend that they married under California law, the Appeals Board presumes that the notation on *[Participant's]* death certificate was a clerical error.

[46] *See* Appeal at 5, Enclosure 1. *Cf. In re Domestic P'ship of Ellis*, 76 Cal. Rptr. 3d 401, 404-06 (Cal. Ct. App. 2008) ("To summarize, the Domestic Partner Act provides: (1) it must be construed liberally to give registered domestic partners the same rights and obligations as married couples, *to the extent permissible by law*; and (2) the same rights,

But even though California has attempted to equalize the rights of domestic partners and spouses, marriages and domestic partnerships are not "one and the same."[47] As one California court has noted, "the [California] legislature has not created a 'marriage' by another name or granted domestic partners a status equivalent to married spouses."[48] Thus, while California law provides many of the same rights and privileges to domestic partners in domestic partnerships as are enjoyed by spouses in a marriage, "the language of other provisions of the California Family Code nevertheless reinforce[] the point that domestic partners and spouses, or domestic partnerships and marriages, are distinguishable concepts."[49] In other words, "[a] domestic partnership is not a marriage."[50]

Moreover, as quoted above, the RMA prevents the conflation of marriage with other relationships such as domestic partnerships. It specifically protects "any benefit, status, or right of an otherwise eligible entity or person *which does not arise from a marriage*, including tax-exempt status, tax treatment, educational funding, or a grant, contract, agreement, guarantee, loan, scholarship, license, certification, accreditation, claim or defense."[51] The RMA thus protects the status of individuals and the concomitant benefits arising under non-marital relationships such as domestic partnerships in which individuals have legitimate expectations of preserving such benefits, e.g., Social Security benefits, and the status of those other arrangements. PBGC cannot therefore treat a non-marital relationship under California law as a marriage under ERISA.

As the Appeal recognizes, PBGC's Policy 5.7-4 states that PBGC will "recognize as marriages only those arrangements specifically denominated as marriages by state law." As shown above, the California Family Code defines "marriage" differently than it defines a "domestic partnership." Whether registered domestic partners are considered "spouses" under *California law* or have the same rights and privileges as spouses under *California law*, solemnizing a marriage and filing a domestic partnership are two separate and distinct legal

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protections, and benefits are to be granted to registered partners dissolving their domestic partnership as are granted to spouses dissolving their marriage." (Emphasis added)).

[47] *See In re Villaverde*, 540 B.R. 431, 435 (Bankr., C.D. Cal. 2015); *see also Perry v. Brown*, 671 F.3d 1052, 1078 (9th Cir. 2012).

[48] *See Knight v. Superior Court*, 128 Cal. App. 4th 14, 30 (Cal. Ct. App. 2005); *see also Velez v. Smith*, 142 Cal. App. 4th 1154, 1173 (Cal Ct. App. 2006), *review denied*, 2006 Cal. LEXIS 14191 (Cal. 2006).

[49] *In re Villaverde*, 540 B.R. at 435.

[50] *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921, 994 (N.D. Cal. 2010), *aff'd Perry v. Brown*, 671 F.3d 1052 (9th Cir. 2012). Contrary to the Advocate's memo (and the Appeal), *In re Rabin,* 336 B.R. 459 (Bankr. N.D. Cal. 2005), does *not* support a claim that a "domestic partnership is a marriage for federal bankruptcy purposes" or that California law "denominates domestic partnerships as marriages." *See* Advocate's Memo of Support at 11, and at 7, note 14; Appeal at 4. Rather, the court held that, under California law, registered domestic partners are entitled to a single homestead exemption, rather than two such exemptions, consistent with the Domestic Partners Act of 2003. *See* 326 B.R. at 460-461 (noting existing differences in treatment of registered domestic partners and spouses under *state law*.).

[51] Respect for Marriage Act, Pub. L. No. 117-228, § 7(a), 136 Stat. 2306 (Dec. 13, 2022), Enclosure 3.

acts.[52] The issue on appeal is whether the California Family Code denominates a domestic partnership as a marriage. We find that it does not. To find that *[Appellant]* had a valid "marriage" to *[Participant]* for purposes of section 205 of ERISA would be contrary to California law.[53]

The Advocate spends considerable effort in questioning and analyzing the meaning of the term "*denominate*" under PBGC Policy 5.7-4, yet seems to overlook the very definition of "denominate" that she herself provides under *Black's Law Dictionary*, i.e., "To formally give a name or epithet to."[54] As shown above, the California Family Code *names* a personal relation arising out of civil contract between two consenting persons with the capacity to consent who fulfill the state's licensing and solemnization requirements a "***marriage***." The California Family Code *names* an arrangement consisting of two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring and who file a Declaration of Domestic Partnership with the California Secretary of State and meet the four statutory requirements a "***domestic partnership***." Contrary to the Advocate's claim, the two arrangements are not "the same under California law."[55]

2. PBGC must interpret the relevant provisions of Titles I and II of ERISA in accordance with IRS and DOL guidance.

In general, the DOL administers Title I of ERISA. But under Title III of ERISA and the Reorganization Plan No. 4 of 1978, the IRS has interpretive authority over most provisions of Part 2 of Subtitle B of Title I of ERISA, which includes section 205(e) of ERISA, as well as section 417(c) of the Code.[56] Even so, the Department of Labor continues to have some authority over certain provisions. Under section 205(l) of ERISA, Congress expressly directed the Secretary of the Treasury to consult with the Secretary of Labor in prescribing regulations under section 205 of ERISA.

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[52] *Burnham v. Cal. Pub. Empl. Ret. Sys.,* 208 Cal. Rptr. 3d 607 (Cal. Ct. App. 2012) (". . . it is the necessary step of solemnizing a marriage or filing in the case of a domestic partnership that makes each of these unions valid. What these acts have in common is they symbolize the irrevocable decision to go through with the union.").

[53] Whether registered domestic partners are considered spouses under the Social Security Act is beside the point. *See* Appeal at 6 ("In addition, the Social Security Administration (SSA) recognizes *[Appellant]* as *[Participant's]* surviving spouse.") and Exhibit E, Enclosure 1. The Advocate similarly opines that the SSA "conducts a state-by-state analysis to determine whether it can provide those [persons] in a non-marital legal relationship, such as a domestic partnership, with the same rights as those in a marriage." Advocate's Memo of Support at 5, note 7, Enclosure 2. The Appeals Board has no authority to interpret the provisions of Title 42, Chapter 7 of the United States Code regarding SSA benefits or decide that SSA policies or rules should apply under ERISA, an unrelated and separate federal statute.

[54] *See* Advocate's Memo of Support at 4-6, Enclosure 2.

[55] *See* Advocate's Memo of Support at 8, Enclosure 2.

[56] ERISA § 3004(a); Reorganization Plan No. 4 of 1978, 43 Fed. Reg. 44713, 92 Stat. 3790 ("Except as otherwise provided . . . all authority of the Secretary of Labor to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Treasury: (a) regulations, rulings, opinions, variances and waivers under Parts 2 [29 U.S.C.A. § 1051 et seq.] . . . .")

PBGC administers Title IV of ERISA. Section 4002(b) of ERISA limits PBGC's interpretive authority to issuing "bylaws, rules and regulations as may be necessary to carry out the purposes of [Title IV]." PBGC has issued regulations under 29 CFR Chapter XL that interpret certain statutory provisions under Title IV of ERISA.

To be sure, PBGC issues policies on benefits administration in the PBGC Operating Policy Manual ("OPM"). PBGC follows its policies in the OPM "in performing its mission and responsibilities, primarily in its calculation, valuation, determination, and payment of pension benefits."[57] The OPM states that the policies in the OPM "reflect the provisions of ERISA, the IRC, PBGC regulations in 29 CFR, and other pension-related legislation and regulations. . . . "[58] Hence PBGC's policies under the OPM are intended to be consistent with Title I of ERISA and the Code and the regulations duly promulgated thereunder.

Neither ERISA nor the Code defines "marriage" or "spouse." Before the Supreme Court decided *United States v. Windsor*, DOMA defined "marriage" and "spouse" for purposes of federal law to exclude same-sex couples. After the Supreme Court decided *United States v. Windsor* holding DOMA to be unconstitutional, both the IRS and the DOL issued administrative guidance interpreting the terms "marriage" and "spouse" under the relevant provisions of the Code and ERISA.

On December 13, 2022, the RMA became law, as previously discussed. Neither the IRS nor the DOL has issued any statement regarding whether each agency's post-*Windsor* guidance will be modified or affirmed. The RMA states that for the purposes of any federal law in which "marital status is a factor," such as ERISA, an individual will be deemed married if the individual's marriage is valid in the State in which the marriage occurred. Both the IRS and DOL guidance discussed above similarly hold that, as used in the Code and ERISA, the term "marriage" means a marriage recognized as such under state law, and the term "spouse" refers to a married individual.[59] The Appeals Board finds that the IRS and DOL guidance discussed above is consistent with the RMA for purposes of this appeal.[60]

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[57] PBGC OPM, Chapter 1, Section 1.1-1 A. (4th Ed. March 10, 2022) (Benefits Administration Policy Governance and Review), provided as Enclosure 6.

[58] *Id.*, Enclosure 6.

[59] *See* 26 CFR § 301.7701-18; IRS Notice 2014-19; DOL Technical Release 2013-04. Because the RMA establishes that the meaning of "marriage" under ERISA is governed by state law, and because "marriage" and "domestic partnership" are distinct statutory relationships under the California Family Code, the Appeals Board finds that the close association of the terms "marriage" and "spouse" in section 205 of ERISA, e.g., section 205(f)(1), means that "spouse" must be interpreted to be a married individual, consistent with IRS and DOL guidance. *See Yates v. United States,* 574 U.S. 528, 543 (2015) (The Supreme Court relies "on the principle of *noscitur a sociis*—a word is known by the company it keeps—to 'avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress.'") (*quoting Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995)); *see also United States v. Williams*, 553 U.S. 285, 294 (2008) ("a word is given more precise content by neighboring words with which it is associated").

[60] Both the Appeal and the Advocate cite the Ninth Circuit's opinion in *Reed v. KRON/IBEW Local 45 Pension Plan*, 770 Fed. Appx. 374 (9th Cir. 2019), as support for *[Appellant's]* claim that domestic partners under California law should be treated as spouses under ERISA. In this non-precedential decision, the court ruled that the plan's

PBGC's existing policy of recognizing as marriages only those arrangements that are specifically denominated as marriages under state law is consistent with IRS and DOL guidance. Under IRS and DOL guidance and its own internal policies, PBGC must interpret ERISA's guarantee of QPSA benefits under sections 4022(a) and 4022(e)(5) to apply only to the surviving spouses of participants to whom they were married. PBGC does not therefore guarantee QPSA benefits to registered domestic partners of California domestic partnerships.

The Appeal asserts that "PBGC's adherence to guidance from [IRS and DOL] is unfounded and inaccurate" because the terminated Plan was not a qualified plan.[61] The Advocate similarly notes that the "Plan in this case is not a tax qualified plan as it is terminated and has been trusteed by PBGC for years."[62] The Advocate further observes that IRS's guidance "applies only 'for federal tax purposes,'" concluding that the "external guidance does not seem relevant, particularly since PBGC has its own policies which include similar language to the IRS and DOL guidance."[63]

Both the Appeal and the Advocate are mistaken. Title IV of ERISA covers only plans that have been determined to meet the requirements under section 401(a) of the Code or plans that, in practice, have met such requirements for the five preceding years.[64] Under section 4042(a) of ERISA, PBGC is "authorized to pool assets of terminated plans for purposes of administration, investment, payment of liabilities of all such terminated plans, and such other purposes as it determines to be appropriate in the administration of this title." In 1986, PBGC asked the IRS whether it could invest the assets of terminated plans in a group trust without causing the group trust to lose its tax-exempt status under section 501(a) of the Code.[65]

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administrator abused its discretion by denying a same-sex domestic partner a surviving spouse's benefit based on the pension plan's choice of law provision, which required the plan's provisions to be interpreted in accordance with California law but "consistent with the requirements of the [Code] and ERISA." *Id.* at 375. While registered domestic partners are treated as spouses under California law, the court erroneously concluded that "neither ERISA nor the Code provided binding guidance inconsistent with" that treatment in 2009 and 2016, but the court overlooked: (1) DOMA, which applied to federal laws like ERISA in 2009; (2) DOL's post-*Windsor* Technical Release 2013-04; (3) IRS Notice 2014-19 (citing IRS Commissioner's authority to prescribe the extent of retroactive treatment of judicial decisions like *Windsor* under 26 U.S.C. § 7805(b)(8) and permitting amendment of plans to recognize same-sex marriages before June 26, 2013, for purposes of QJSAs and QPSAs, but which the pension plan in *Reed* did not do); and (4) Prop. Treas. Reg. § 301-7701-18, 80 Fed. Reg. 64378 (Oct. 23, 2015). Moreover, contrary to the Advocate's claim, the court did *not* determine that "registered domestic partners were 'married' under California and federal law." Advocate's Memo of Support at 11. The Board finds therefore that the Ninth Circuit opinion is both distinguishable based on the Plan's provisions and inconsistent with ERISA and the Code.

[61] *See* Appeal at 6, Enclosure 1.

[62] *See* Advocate's Memo of Support at 3, note 5, Enclosure 2. Both the Appeal and the Advocate are referring to a "qualified trust" under section 401(a) of the Code that forms part of a pension plan for the exclusive benefit of an employer's employees.

[63] *See Id.* at 3-4, Enclosure 2.

[64] *See* section 4021(a) of ERISA.

[65] *See Formal Request from PBGC Concerning New Investments in a Group Trust,* IRS Gen. Couns. Mem. ("GCM") 39712 (June 17, 1986).

In resolving PBGC's request, the IRS determined that "[i]f a plan is terminated in a manner that does not adversely affect its qualified status, and if former plan assets are held in the two PBGC commingled trust funds, these assets are subject to the statutory and regulatory constraints equivalent in all relevant respects to those applicable to assets of ongoing plans."[66] After considering the requirements for tax-exempt group trusts and the constraints on the assets held by PBGC, the IRS concluded that the "unique statutory and regulatory framework governing the operations of and payments of benefits under the PBGC commingled trust funds makes the PBGC commingled trust funds equivalent to the qualified plans considered in Rev. Rul. 81-100" that may invest in a group trust without endangering the tax-exempt status of the group trust under section 501(a) of the Code.[67] Thus, contrary to the Appeal and the Advocate, PBGC payments to participants are "tax qualified."

In administering terminated defined benefit plans under Title IV of ERISA, PBGC, as the statutory trustee, must comply with ERISA Title I, the Code, and the regulations and administrative guidance promulgated under both statutes. As shown above, Title III of ERISA and the Reorganization Plan No. 4 of 1978 vest the IRS with the interpretive jurisdiction over section 205 of ERISA. PBGC does not issue interpretive regulations under provisions of either ERISA or the Code; but PBGC's benefits administration policies under the OPM are consistent with the provisions of Title I, the Code, and the associated regulations. Thus, the so-called "external guidance" referenced by the Advocate is incorporated into and made part of the OPM's policies governing PBGC's benefits administration.

The Advocate also expresses confusion regarding why PBGC's benefit determination of March 9, 2022, did not reflect a review of OPM sections 5.7-4 (Marriage Requirements) and 5.7-2 (Payment of QPSAs in Plans Terminating on or after August 23, 1984).[68] The Advocate does not explain why she believes that PBGC did not consider these policies in issuing *[Appellant's]* determination. As discussed above, PBGC regulations require PBGC to state the reason for a determination. PBGC determined that the agency guarantees QPSAs "only for the spouse of a married participant." The Appeals Board finds that PBGC's determination is consistent with relevant law and regulations, as well as consistent with PBGC OPM sections 5.7-4 and 5.7-2.

III. CONCLUSION

The Appeals Board upholds PBGC's determination of March 9, 2022, and denies the appeal. This is the agency's final decision on this matter, and the appellant has exhausted her administrative remedies. Appellant may now, if she wishes, seek review of this decision in an appropriate United States District Court.

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[66] *See Id.; see also* GCM 39873 (April 15, 1992). The Board notes that PBGC's Trusteeship Working Group determines in advance of any PBGC-initiated plan termination under section 4042 of ERISA that the plan is tax-qualified under section 401(a) of the Code and therefore covered under Title IV of ERISA.

[67] *See* GCM 39712 (noting that participation in such group trusts "must be limited to qualified plans."); GCM 39873; *see also* Rev. Rul. 2011-1, 2011-1 CB 251 (establishing the conditions under which assets of qualified plans may be pooled in groups trusts without affecting any participant's tax status and holding that such group trusts may hold assets from PBGC commingled trust funds).

[68] *See* Advocate's Memo of Support at 4, Enclosure 2. Copies of OPM, Chapter 5, sections 5.7-4 and 5.7-2 are provided in Enclosure 6.

If you have questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

James L. Eggeman
Member, Appeals Board

Enclosures (6):

1. Appeal by *[Entity]* dated June 24, 2022, redacted for privacy (16 pages)
2. Memorandum of Support in the Matter of *[Appellant's]* Benefit Appeal, dated June 30, 2022, submitted by Constance Donovan, PBGC Participant and Plan Sponsor Advocate (11 pages)
3. Respect for Marriage Act, Pub. L. No. 117-228, § 5, 136 Stat. 2306 (Dec. 13, 2022) (3 pages)
4. Excerpts of the United Airlines Ground Employees' Retirement Plan, including Mechanic and Ramp, Stores, Food Service and Related Employee Defined Benefit (Sub) Plan (19 pages)
5. Declaration of Domestic Partnership, File No. *[File Number]*, filed with the Secretary of State of California, *[date]* (2 pages)
6. Excerpts from PBGC's Operating Policy Manual (16 pages).