PBGC
Protecting America's Pensions
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

October 4, 2013

[redacted]

Re: [redacted] Case No. 205441, Delta Pilots Retirement Plan (the "Delta Plan" or "Plan")

Dear [redacted]

We have reviewed your individual appeal of PBGC's August 22, 2011 determination that you are not entitled to a PBGC-payable benefit. Your appeal contended that PBGC's calculation of your benefit under your [redacted] 1995 Qualified Domestic Relations Order ("QDRO") was incorrect. For the reasons explained in this decision, we found that PBGC's determination is correct under federal pension law. Thus, we are denying your appeal.[1]

PBGC's Determination and Your Appeal

PBGC's [redacted] 2011 determination letter stated that you are not entitled to a PBGC-payable benefit because you received the variable annuity portion of your Plan benefit as a lump sum when you retired. That lump sum exceeds the maximum benefit PBGC can guarantee; thus, you have received your full guaranteed benefit and no additional benefit is due from PBGC. The letter also explained that since PBGC had been paying you an estimated benefit of $139.46 per month, PBGC must collect the overpayment of $8,507.06 you received over [redacted] months (as of [redacted] 2011). The [redacted] 2011 determination included an enclosed Benefit Statement dated [redacted] 2011 further explaining your benefit. We note that since you appealed your determination, PBGC has continued paying you the estimated monthly benefit of $139.46, and your overpayment balance has increased.

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[1] We note that you were also an appellant in the group appeal filed by the Washington, D.C. law firm of [redacted] on behalf of you and over 1,750 other Delta pilots and beneficiaries (the "Consolidated Appeal"). On January 9, 2013, we notified you by letter that, because the Consolidated Appeal had raised several issues that directly impacted your benefit, the Board would delay its decision of your individual appeal until after it decided the Consolidated Appeal. On September 27, 2013, the Appeals Board issued its decision on the Consolidated Appeal; a copy of the Board's "Consolidated Appeal Decision" (with minor redactions to protect personal privacy) can be found http://www.pbgc.gov/documents/apbletter/Decision--Delta-Pilots-Retirement-Plan-2013-27-09.pdf.

You submitted an appeal on April 23, 2012 objecting to PBGC's determination of your benefit and the Alternate Payee's ("AP's") benefit under a Qualified Domestic Relations Order ("QDRO) applicable to your benefit. You supplemented your appeal on May 16, 2012.[2] Your appeal correspondence raised two distinct issues.

Appeal Issue #1- Whether PBGC's Methodology for Calculating Your Benefit is Flawed

The primary concern raised by your appeal is the manner in which PBGC has determined your benefit and the AP's benefit. You assert that PBGC's reduction of your total tax-qualified monthly benefit by 15%, from $9,600 to $8,160, should be applied equally to your benefit and the AP's benefit. You contend that PBGC improperly applied the entire reduction to your benefit.

To support your arguments, you asserted that your QDRO is a "fixed percentage" QDRO that PBGC is implementing as a "fixed-dollar" QDRO. You also asserted that PBGC's manner of determining the maximum guaranteed benefit in a pro-rata manner (43% to AP and 57% to participant) reflects that PBGC already accepts your QDRO as a "fixed percentage" QDRO. You believe PBGC should follow this method and apply the reduction as a percentage to both you and the AP.

You also cite the "PBGC Guidelines" you obtained from the "QDRO booklet" on PBGC's website to support your argument. You are concerned in particular with the following excerpt from the QDRO booklet:

> In general, if a QDRO awards a fixed percentage of the participant's benefit payment to the alternate payee and provides no guidance on apportioning between the participant and alternate payee any benefit adjustments made by PBGC, PBGC will adjust their benefits pro rata.

In summary, you contend in your appeal submissions of April 23, 2012 and May 16, 2012 that PBGC's methodology for calculating your benefit is flawed, and PBGC has erroneously favored the AP, inconsistent with terms of the QDRO and PBGC's own QDRO guidelines. We have identified this claim as Appeal Issue #1.

Appeal Issue #2 – Whether the AP's Lump-Sum Distribution Was Incorrectly Calculated by Delta

Your first submission on April 23, 2012 also raised a separate, distinct issue:

> The PBGC should not have accepted the lump sum distribution amount awarded the AP by Delta prior to the bankruptcy in their calculations. I believe that this sum was incorrectly calculated by Delta and is an overly inflated figure, which has contributed significantly to the reduction by the PBGC of my own fixed benefit to $0.

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[2] The Board considered your individual appeal timely-filed because it was submitted while the timely-filed Consolidated Appeal was still under the Board's review.

We have identified this issue as Appeal Issue #2.

In the "Background" section of this decision we discuss the Plan's termination and the undisputed facts in your case. In the "Discussion" section, we address the methodology PBGC used to calculate your PBGC-payable benefit and the two issues raised in your appeal.

Background

PBGC and the Plan's Termination

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

The Delta Plan terminated on September 2, 2006, without sufficient assets to provide all benefits under the Plan, and PBGC subsequently became trustee. When the Plan terminated, you had already received a lump-sum distribution of 50% of your benefit, and you were receiving a tax-qualified monthly Plan benefit of $1,295.07. Because of legal limits under ERISA and PBGC's regulations, the benefits PBGC guarantees may be less than the benefits the Delta Plan would otherwise pay.

Undisputed Facts and Timeline

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

- [redacted] **1944** – You were born.
- [redacted] **1966** – You married [redacted] the AP.
- [redacted] **1972** – You were hired by Delta. (Your pilot seniority date was [redacted], 1972).
- **January 1, 1995** – Your divorce from [redacted] was effective.
    - Your accrued Plan benefit as of January 1, 1995 was $7,274; your Plan benefit was 100% tax-qualified because it did not exceed any IRC legal limits.
- [redacted] **1995** – A separate interest QDRO[3] was entered in the District Court of [redacted] assigning the AP a 50% interest in your Delta Retirement Plan age-60 benefit accrued through January 1, 1995. (The QDRO stated that your accrued Plan benefit as of January 1, 1995 was $7,274.)
- [redacted] **2003** – You retired and commenced your Plan benefit. The AP also elected to commence her benefit on the same date.
    - Your tax-qualified Plan benefit was $9,600 before reducing for the AP's separate interest.

[3] A further discussion of why your QDRO is a "separate interest" QDRO is at Enclosure 1.

- o Under the terms of the Delta Plan, a participant or AP could elect to take one-half of the total benefit (the Variable Annuity portion) as a lump-sum distribution. Both you and the AP elected to take a lump-sum distribution of half of your respective benefits.
  - The AP's lump-sum distribution was $265,413.61.
  - Your lump-sum distribution was $853,687.34.
- o The AP's remaining one-half portion of her benefit (the Fixed Annuity portion) was 100% tax-qualified.
- o Your remaining one-half portion of your benefit (the Fixed Annuity) was only partially tax-qualified and was payable to you as follows:
  - $1,295.07 payable from the Plan as a tax-qualified monthly benefit; and
  - $3,825.72 payable from the non-tax-qualified Delta Supplemental Annuity Plan ("SAP").[4]

- **September 2005** – Delta entered bankruptcy and payments under the SAP stopped.
- **September 2, 2006** – The Plan terminated. You were age 61 and [redacted] months old.
  - o Your tax-qualified monthly Plan benefit at Plan termination was the same $1,295.07 benefit you had received since retiring in 2003.
- **May 1, 2007** – PBGC reduced your benefit to an "estimated benefit" of $139.46 per month.
- **August 22, 2011** – PBGC issued you its initial (formal) determination that your PBGC-payable benefit was $0.00.
- **January 9, 2013** – the Appeals Board informed you that your individual appeal would be decided after the Board's Consolidated Appeal Decision, which was issued on September 27, 2013.

Discussion

Summary of the PBGC Methodology Used
in Determining Your PBGC-Payable Benefit

PBGC determined your PBGC-payable benefit in three basic steps, using the same general method PBGC uses for all participants of PBGC-trusteed plans:

1. PBGC first reviewed your Plan benefit as calculated by Delta and confirmed that Delta's calculation was correct. You did not appeal your Plan benefit calculation.

2. PBGC then calculated your PBGC-payable guaranteed benefit. PBGC's Maximum Guaranteed Benefit for any participant (the "MGB") depends on the year the Plan terminated and is adjusted for the participant's age at Plan termination. In calculating your PBGC-payable guaranteed benefit, PBGC must account for the $853,687.34 lump-sum distribution that you received when you retired. Because your lump-sum distribution exceeded your MGB, you effectively

[4] The SAP was a non-qualified Plan used by Delta to pay benefits above the IRC § 401(a)(17) limit. Because the SAP was a non-qualified pension plan, your benefit under from the SAP was never insured by PBGC. The SAP is further discussed in the Consolidated Appeal Decision.

have already received your full PBGC guaranteed benefit from the Plan; thus, your PBGC-payable guaranteed amount is now $0.00. You did not appeal your PBGC-payable guaranteed benefit.

3. Finally, PBGC calculated your PBGC-payable benefit based on an allocation of Plan assets under ERISA section 4044. In your case, PBGC determined that you were eligible to have assets allocated to you in Priority Categories 3 and 5. After taking into account your lump-sum distribution, the reduction for your AP's separate interest, and the assets available in the Plan for allocation in Priority Categories 3 and 5, PBGC determined your PBGC-payable benefit under ERISA section 4044 was $0.00.

PBGC Determined Your PBGC-Payable Guaranteed Benefit is $0.00

The legal limits on PBGC's guarantee are explained on pages 7-8 of the Consolidated Appeal Decision. As explained below, the one-half portion of your Plan benefit you received in a lump-sum payment at retirement in 2003 exceeds the amount of your Plan benefit that PBGC can guarantee.

As explained in the Consolidated Appeal Decision, ERISA § 4022(b)(3) provides that PBGC's guarantee of a participant's plan benefit cannot exceed a specified dollar amount payable in the form of a Straight Life Annuity at age 65. For plans that terminated in 2006, the MGB limit is $3,971.59 at age 65 in the form of a Straight Life Annuity. The $3,971.59 MGB limit is reduced because you were under age 65 as of the Plan's September 2, 2006 termination date. (You were 61 years and [redacted] months old when the Plan terminated.)

In cases of QDROs, the MGB limit applies to the pre-QDRO Plan benefit, because PBGC cannot guarantee a benefit greater than what it would pay if the QDRO did not exist. If the PBGC guaranteed benefit is less than the pre-QDRO Plan benefit due to the MGB limit, the Participant and the AP will each receive a proportionate share of the PBGC guaranteed benefit. For separate interest QDROs like your QDRO, the portion of the PBGC guaranteed benefit payable to the AP is determined based on the "AP%."[5] The remaining portion is your portion of the PBGC guaranteed benefit.

We note that your appeal indicates you believe dividing the MGB limit based on the AP% shows that PBGC interprets your QDRO as a "fixed percentage" QDRO. In fact, the MGB limit is divided for all QDRO cases and concerns the division of the PBGC guaranteed benefit, not the QDRO benefit itself. Thus, using the AP% to determine the AP's portion of the PBGC guaranteed benefit is irrelevant to whether your QDRO is divided according to a "fixed percentage."

It is undisputed that you received one-half of your Plan benefit as an $853,687.34 lump-sum

[5] Under PBGC policies, the AP% is the alternate payee's monthly plan benefit as a Straight Life Annuity at your NRD (without adjusting for payment over her lifetime) divided by your total level plan benefit (ignoring the QDRO), as of DOPT-5 (unless the QDRO split occurred after DOPT-5).

distribution when you retired, and the monthly benefit equivalent of this lump-sum amount is $5,120.80. The $5,120.80 monthly benefit equivalent you already received exceeds ERISA's MGB limit even before reducing the MGB limit for your age and the AP's portion. Thus, your PBGC-payable guaranteed benefit is $0.00.

You did not appeal PBGC's determination that your guaranteed benefit is $0.00. Instead, your appeal focuses on the method in which PBGC calculated your PC3 benefit, which is discussed next.

You and the AP are Each Eligible for a PC3 Benefit

You retired on 2003 [redacted] and the AP started her separate interest benefit on the same day. Because you and the AP were both receiving a monthly Plan benefit ("in pay status") three years before the Plan terminated, you are both eligible for a benefit based on the allocation of Plan assets under ERISA § 4044, as explained below. ERISA § 4044 benefits are explained in pages 8-9 of the Consolidated Appeal Decision.

The six-tier asset allocation scheme under ERISA section 4044 determines how a pension plan's assets are distributed among various categories of benefits when the assets are insufficient to pay all promised benefits. You and the AP are eligible for a Priority Category 3 ("PC3") benefit provided under ERISA § 4044(a)(3)(A), which provides as follows:

> (3) Third, in the case of benefits payable as an annuity-
>
> > (A) in the case of the benefit of a participant or beneficiary which was in pay status as of the beginning of the 3-year period ending on the termination date of the plan, to each such benefit, based on the provisions of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least,
>
> [. . .]

Both you and the AP are eligible for a PC3 benefit under ERISA § 4044(a)(3)(A) because both of you were in pay status (i.e. receiving your benefit) on September 2, 2003 (3 years before the Plan's September 2, 2006 termination date). Your PC3 benefit is calculated based on your actual retirement date [redacted] 2003), using Plan provisions in effect for the entire five-year period prior to the Plan's termination.

The AP's PC3 benefit is calculated separately, but in the same way, based on her benefit commencement date (in this case, the same [redacted] 2003 date you retired).

PBGC Determined Your PBGC-payable PC3 Benefit is $0.00

In applying its asset allocation rules, PBGC determined that your gross PC3 benefit (before applying the QDRO offset) was $8,160.00. This $8,160 amount is your lowest tax-qualified Plan benefit under Plan provisions in effect during the five-year period prior to the Plan termination. Your PC3 benefit is less than your Plan benefit specifically because your Plan benefit increased within the 5-year period prior to DOPT due to an increase in the IRC § 401(a)(17) limit.

Your PC3 benefit, after the QDRO offset ($3,184.13), is $4,975.87. You have, however, already received a $853,687.34 lump-sum distribution of your Plan benefit, equivalent to a monthly benefit of $5,120.80. Thus, you have already received more than a full distribution of your PC3 benefit, and your PBGC-payable PC3 benefit is $0.00.

You are Correct that the AP's PBGC-payable PC3 Benefit is the Same as her Benefit at Plan Termination

In contrast to your benefit, the AP's separate interest benefit did not increase under changes to Plan provisions and IRC limits in the five-year period prior to Plan termination. The AP's benefit was established (and effectively frozen) on January 1, 1995 because her benefit was assigned to her under a separate interest QDRO that provided her a 50% interest in your age-60 benefit accrued through January 1, 1995, or 50% of $7,274.[6] Your separate interest portion of the Plan benefit, however, continued to increase due to your employment with Delta following January 1, 1995. Your full Plan benefit is not in PC3 because changes to IRC limits in the 5-year period prior to Plan termination increased your tax-qualified Plan benefit.

Thus, like other retired pilots, beneficiaries, and APs whose benefits did not increase in the 5 years before Plan termination, the AP's entire Plan benefit was funded in PC3. Like your PBGC-payable PC3 benefit, the AP's PBGC-payable PC3 benefit is also reduced for the lump-sum distribution of her Plan benefit she received when she commenced her separate interest benefit.

Issue #1—Whether PBGC Correctly Calculated Your PC3 Benefit

The Appeals Board rejects your argument that PBGC incorrectly calculated your PC3 benefit. We find that PBGC's treatment of separate interest QDRO benefits as separate benefits for the purpose of allocation of Plan assets under ERISA § 4044 is consistent with the terms of ERISA. Under ERISA § 206(d)(3)(J), an Alternate Payee is considered a "beneficiary" for all purposes of ERISA.[7] Further, the PC3 requirements in ERISA § 4044(a)(3) apply "to each such benefit" of a participant or a beneficiary (including an AP) who was in pay status (retired) or could have been in pay status at DOPT-3. Both you and the AP were in pay status at DOPT-3. Thus, your PC3 benefit and the AP's PC3 benefit are determined separately by applying the PC3 rules to each individual's Plan benefit.

Your appeal asks PBGC to disregard the lump-sum distribution you have already been paid and redistribute the AP's benefit between you and the AP. PBGC must follow the terms of the QDRO; thus, the Board declines to reduce the AP's benefit for the purpose of providing that benefit to you.

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[6] Because your entire accrued benefit as of January 1, 1995 was qualified and payable from the qualified Plan, the AP's 50% portion was also qualified and payable from the qualified Plan.

[7] ERISA § 206(d)(3)(J) states, in pertinent part, "A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this Act a beneficiary under the plan."

Finally, we note that your appeal cites PBGC's "QDRO booklet" (available to the public on the PBGC's website at http://www.pbgc.gov/documents/qdro.pdf) as a reason why you believe PBGC is violating its own guidelines in determining your benefit. The Appeals Board rejects your reliance on PBGC's QDRO booklet as a basis for changing your determination for two reasons.

First, the "pro-rata" language in the QDRO booklet language applies to benefit adjustments due to ERISA's § 4022 legal limits on PBGC's guarantee. There is no guidance in the QDRO booklet on how PBGC allocates Plan assets and legal recoveries under ERISA §§ 4044 and 4022(c). These two ERISA provisions sometimes permit PBGC to pay benefits above the guarantee and are key ERISA provisions applicable to your case. We agree with you that the QDRO booklet does state a general rule that benefit adjustments will be made "pro-rata" between the participant and the AP, unless the QDRO specifies otherwise. This general rule, however, does not apply to the complex statutory scheme that governs how PBGC allocates Plan assets and legal recoveries under ERISA §§ 4044 and 4022(c). [8]

Second, PBGC provides the QDRO booklet as guidance for practitioners, participants and APs who intend to submit a DRO to PBGC for qualification. As the preface in the QDRO booklet makes clear, nothing in the booklet "takes precedence over legislation, regulations, or specific interpretations or rulings." The Board finds that the statutory language in ERISA § 4044 requires PBGC to calculate your PC3 benefit and the AP's PC3 benefit in the manner explained in this decision. We find no conflict with the PBGC methodology for calculating your PC3 benefit and our examination of the general guidance in the QDRO booklet.

In summary, PBGC must follow the terms of ERISA, PBGC's regulations, and the QDRO in paying benefits to participants and APs. In your case, the QDRO provided no instructions on how benefits should be adjusted in the event the Plan terminated and PBGC became trustee of the Plan. You and the AP are eligible for PC3 benefits because you were both in pay status three years before the Plan's termination. Because you have a separate interest QDRO, PBGC properly treated your benefit and the AP's benefit as separate benefits in calculating your respective PC3 benefits, as required by the plain language in ERISA § 4044.

For the reasons discussed above, the Appeals Board has concluded that PBGC's methodology in calculating separate PC3 benefits for you and the AP was proper and required under ERISA. Thus, your Appeal Issue #1 is denied.

Issue #2 – Whether the AP's Lump-Sum Distribution Amount is Correct

Your Appeal Issue #2 alleges that the $265,413.61 lump sum distribution of the AP's variable benefit annuity is incorrect. This claim is based on the estimates of her lump sum you received from Delta from 1995 to 2003. You believe "that this sum was incorrectly calculated by Delta

[8] Appendix B of the QDRO booklet specifically addresses DROs qualified before a plan terminated, such as your QDRO. Appendix B states that where a QDRO assigns a fixed percentage of the benefit to an AP, benefits will be reduced to both parties to reflect PBGC *guarantee* limitations (emphasis added). Nothing in Appendix B or elsewhere in the QDRO booklet addresses how PBGC will allocate Plan assets and legal recoveries under ERISA §§ 4044 and 4022(c).

and is an overly inflated figure, which has contributed significantly to the reduction by the PBGC of [your] own fixed benefit to $0." You provided no evidence to support your claim that the AP's lump-sum distribution was wrong.

Both you and the AP elected to take the Variable Annuity portion (one-half) of your benefit as a lump-sum payment when you commenced benefits. The Board's Actuary was able to match Delta's calculation of the AP's lump-sum amount exactly. Likewise, we found no error (nor did you claim an error) in your lump-sum amount. Thus, your Appeal Issue #2 is denied.

The Two Appendices Included with this Decision

We have included two appendices as part of this decision to assist you in understanding how PBGC calculated your PC3 benefit and how Delta and PBGC calculated your Plan benefit.

Decision

Having applied the terms of the Plan, the provisions of ERISA and PBGC's regulations to the facts in this case, the Appeals Board found that your appeal did not provide a sufficient basis for changing PBGC's determination. We must, therefore, deny your appeal.

Under its policies, PBGC has continued to pay you your estimated monthly benefit amount because you filed an appeal. Accordingly, your overpayment balance has grown. As a result of this decision, PBGC will recalculate your total overpayment amount and inform you how you may repay PBGC.

This decision is PBGC's final agency action regarding PBGC's August 22, 2011 determination of your benefit under the Delta Plan. If you wish, you may seek court review of this decision in an appropriate federal district court. If you have other questions about your PBGC benefit, you may call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the Delta Plan (Case 205441).

Sincerely,

William F. Condron, Jr.

William F. Condron, Jr.
Member, Appeals Board

cc: [redacted]

Appendix A: Your PC3 Benefit Calculation Under ERISA § 4044 (1 page)
Appendix B: Delta's Calculation of Your Plan Benefit (4 pages)

APPENDIX A: Your PC3 Benefit Calculation Under ERISA § 4044

	Pension Calculation Data	Plan Benefit (using Plan provisions in effect at Plan termination)	PC3 Benefit (using Plan provisions in effect **5 years prior to** Plan Termination)
A	Retirement Date	[redacted] 2003	[redacted] 2003
B	Years of Credited Service	30.41667	30.41667
C	FAE (capped by IRC § 401(a)(17))[1]	$16,666.67	$14,166.67
D	Tax-Qualified Benefit at NRD (0.6 × C × (B ÷ 25, no greater than 1.0))	$10,000.00	$8,500.00
E	Early Retirement Factor	0.9600	0.9600
F	Tax-Qualified Benefit at Retirement Date (D × E)	$9,600.00	$8,160.00
G	Reduction for AP's Benefit	$3,184.13	$3,184.13
H	Your Remaining Qualified Benefit After the QDRO (F – G)	$6,415.87	$4,975.87
I	Your Tax-Qualified Variable Annuity, Paid as a Lump Sum at Retirement (50% of Total Formula Benefit at Retirement Date)[2]	$5,120.80	$5,120.80
J	Your Remaining Tax-Qualified Fixed Annuity: (H – I, no less than $0)	$1,295.07	$0.00

[1] See discussion of the IRC §401(a)(17) limit in the Consolidated Appeal Decision at pages12-22.

[2] See Appendix B for the calculation of your Total Formula Benefit and your Tax-Qualified Variable Annuity that was paid as a lump-sum distribution.

APPENDIX B: Delta's Calculation of Your Plan Benefit

Your Formula Benefit and Your Tax-Qualified Benefit at Your Retirement Date Before the QDRO Offset

Your Formula Benefit is "the ratio of [your] Credited Service to 25, with a maximum ratio of 1.0 times 60% of [your] Final Average Earnings ['FAE']" and is reduced for early benefit commencement. See Section 1.18 of the Plan. You earned 30.41667 years of service, your FAE was $23,308.55, and your tax-qualified FAE (using your earnings up to the IRC § 401(a)(17) limit in effect on your retirement date) was $16,666.67. Your Formula Benefit and your tax-qualified benefit are then reduced by an early retirement factor of 0.9600 because you retired 16 months early, on [redacted], 2003.[11]

How Your Plan Benefit is Calculated (Part 1 of 3)

	Type of Benefit	**Formula Benefit** (earnings not capped by IRC § 401(a)(17) limits)	**Tax-Qualified Plan Benefit** (earnings capped by IRC § 401(a)(17) limits)
A	FAE	$23,308.55	$16,666.67
B	Monthly Benefit: [0.6 × A × (CS ÷ 25, no greater than 1.0)]	$13,985.13	$10,000.00
C	Adjusted for Early Benefit Commencement: (B × 0.9600)	$13,425.72	$9,600.00

The QDRO Offsets to Your Formula Benefit and Your Tax-Qualified Plan Benefit

According to the QDRO, the Plan benefit payable to the AP is a benefit equal to 50% of the value of the participant's age-60 benefit as of January 1, 1995 (assuming AP benefits commence at the participant's age-60). The QDRO also states that 100% of said benefit is $7,274.

Delta determined that your age-60 Formula Benefit as of January 1, 1995 was $7,274.68 and that it was 100% tax-qualified because it did not exceed the IRC §§ 401(a)(17) and 415(b) limits. The QDRO assigns 50% of the January 1, 1995 Formula Benefit to the AP starting on her elected benefit start date, actuarially adjusted for her early retirement and the age difference between you and the AP. Your QDRO offset is calculated as her 50% portion of the Formula Benefit, actuarially reduced to your [redacted] 2003 retirement date.

The Board reviewed your benefit accrued as of the January 1, 1995 division date using Delta's data for you at the division date. Delta determined your highest 36-month period of earnings was between April 1, 1991 and March 1, 1994, and calculated your Final Average

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[11] You retired on [redacted] 2003, 16 months before your [age 60] [redacted] NRD. Plan § 5.02 provides for a participant's monthly benefit to be decreased by 0.25% for each complete month by which the date of actual retirement precedes NRD at age 60, for a total of 4%. Thus, the Plan's early retirement factor of 0.9600 applies to your benefit.

Earnings ("FAE") as \$13,673.70. Delta also determined that you had earned 22 years and 2 whole months of service at the division date. Your January 1, 1995 benefit is calculated under the same formula as your Plan benefit at retirement, using an FAE of \$13,673.70 and 22.1667 years of credited service. As shown in the table below, your Formula Benefit as of January 1, 1995 is \$7,274.68.

How the AP's Plan Benefit is Calculated Under the QDRO

Total age-60 monthly benefit (a.k.a. Formula Benefit)	= 0.60 × Final Average Earnings ("FAE") × ratio of years of service to 25 (up to 1.0)
Data as of January 1, 1995	FAE: \$13,673.70 (April 1991 through March 1994) Years of service : 22 years and 2 whole months (22.1667 years)
Formula Benefit as of January 1, 1995	= 0.60 × \$13,673.70 × (22.1667 ÷ 25) = 0.60 × \$13,673.70 × (0.8867) = \$7,274.68
AP's portion	= 50% of Formula Benefit as of January 1, 1995 = 0.50 × \$7,274.68 = \$3,637.34

It appears that the QDRO rounded down your Formula Benefit as of January 1, 1995 from \$7,274.68 to \$7,274.00. In calculating your benefit, however, Delta used your actual January 1, 1995 Formula Benefit of \$7,274.68. Thus, the value of the AP's monthly benefit is \$3,637.34 (50% of \$7,274.68). Your QDRO offset at your Normal Retirement Date ("NRD") is this \$3,637.34 amount. Based on the above calculations, the Board is accepting as correct the \$3,637.34 amount (50% of \$7,264.68) assigned to the AP.

The AP's monthly benefit payment is actuarially reduced if she commences benefits prior to your NRD, and it is actuarially further adjusted to be payable over her lifetime.[12] Her monthly benefit payable over your lifetime beginning at your attainment of age 60, however, is fixed at \$3,637.34. The AP is not entitled to any benefit increases after January 1, 1995, even though you remained an active pilot and continued to accrue pension benefits with Delta.

How Your Plan Benefit is Calculated (Part 2 of 3)

	Type of Benefit	**Formula Benefit** (earnings not capped by IRC § 401(a)(17) limits)	**Tax-Qualified Plan Benefit** (earnings capped by IRC § 401(a)(17) limits)
D	Your NRD Benefit Accrued as of January 1, 1995	\$7,274.68	\$7,274.68
E	AP's Portion: (50% of D)	\$3,637.34	\$3,637.34
F	Actuarial Equivalent Factor to Account for Your Early Retirement	0.87540	0.87540
G	The QDRO Offset at Your Retirement Date (E × F)	\$3,184.13	\$3,184.13
H	Your Benefit at Your Retirement Date After QDRO Offset: (C – G)	\$10,241.59	\$6,415.87

[12] These adjustments, because they are actuarial in nature, do not affect the QDRO offset to your benefit.

You and the AP Elected to Receive Lump-Sum Distributions of Your Variable Annuity Benefits

The Formula Benefit is payable in two components, with one-half payable as a variable annuity, and one-half payable as a fixed annuity. Participants and APs could elect to receive the entire variable annuity portion of their Formula Benefit as a single lump-sum distribution. As required by Plan terms, these variable annuity lump-sum distributions necessarily consisted entirely of tax-qualified funds.

Both you and the AP each elected to receive tax-qualified lump-sum distributions of your variable annuity benefits. You received the entire value of your $5,120.80 variable annuity monthly benefit (50% of $10,241.59) as a tax-qualified lump-sum distribution in the amount of $853,687.34. The AP received the entire value of her variable annuity benefit as a lump-sum distribution in the amount of $265,413.61.

The remaining one-half of the Formula Benefit after your lump-sum distribution is the fixed annuity benefit. In contrast to the variable annuity benefit that was paid entirely from the tax-qualified Plan, the fixed annuity benefit was paid from both the tax-qualified Plan and the non-tax-qualified Supplemental Annuity Plan ("SAP").

Your Fixed Annuity Benefit Payable from the SAP

The portion of your fixed annuity benefit that results from earnings exceeding the IRC § 401(a)(17) limits is non-tax-qualified and payable from the SAP. Your SAP benefit is simply the difference between your total fixed annuity and your tax-qualified fixed annuity, as shown in the table below. The AP is not entitled to any SAP benefits. Delta stopped paying all SAP benefits to retirees after September 14, 2005 due to its bankruptcy. The SAP terminated on September 2, 2006, the same day as the Plan, but PBGC does not guarantee any benefits payable from the SAP.

How Your Plan Benefit is Calculated (Part 3 of 3)

	Type of Benefit (after QDRO offsets)	
I	Total Variable Annuity, 100% Tax-Qualified: [50% of (Formula Benefit in H)]	$5,120.80
J	Total Fixed Annuity: [(Formula Benefit in H) – I]	$5,120.79
K	Tax-Qualified Fixed Annuity: [(Tax-Qualified Plan benefit in H) – I)]	$1,295.07
L	Non-Tax-Qualified Fixed Annuity/SAP benefit: (J – K)	$3,825.72

Your MPPP Offset is Applied Against Your SAP Benefit

When you retired, you received a lump-sum distribution of your Money Purchase Pension Plan ("MPPP") benefit in the amount of $76,907.94. Delta provided PBGC with the MPPP account balances distributed at retirement. PBGC calculated the monthly annuity equivalent of the MPPP account balance distributions to be used as an offset in the calculation of your SAP and Delta Plan benefits. The monthly annuity equivalent of your MPPP distribution is $497.92. Your MPPP offset is applied in full against your non-tax-qualified SAP benefit. No MPPP offset remains to be applied against your tax-qualified benefit, as shown in the summary of your plan benefit on the following page.

Summary of Your Plan Benefit

	Type of Benefit	Total Plan Benefit Prior to QDRO Offset	QDRO Offset	Benefit Payable to You
A	Gross Formula Benefit (Earnings not capped by IRC § 401(a)(17) limit)	$13,425.72	$3,184.13	$10,241.59
B	Tax-Qualified Formula Benefit (using Earnings capped by IRC § 401(a)(17) limit)	$9,600.00	$3,184.13	$6,415.87
C	Tax-Qualified Variable Annuity: (50% of A)	$6,712.86	$1,592.06	$5,120.80
D	Lump Sum of Variable Annuity in (C)	$1,119,100.95	$265,413.61	$853,687.34
E	Fixed Annuity: (A – C)	$6,712.86	$1,592.07	$5,120.79
F	Tax-Qualified Fixed Annuity: (B – C)	$2,887.14	$1,592.07	$1,295.07
G	Non-Tax-Qualified Fixed Annuity = SAP Fixed Annuity: (E – F)	$3,825.72	$0.00	$3,825.72
H	MPPP Lump Sum (as a Monthly Benefit Equivalent)	$497.92	$0.00	$497.92
I	Remaining SAP Fixed Annuity after MPPP Offset: (G – H)	$3,327.80	$0.00	$3,327.80
J	*Total Tax-Qualified Monthly Benefit: (C + F)*	$9,600.00	$3,184.13	$6,415.87
K	*Total MPPP and SAP Benefits: (H + I)*	$3,825.72	$0.00	$3,825.72
L	*Gross Monthly Benefit: (J + K), also equal to (A)*	$13,425.72	$3,184.13	$10,241.59