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

February 29, 2008

[redacted]

Re: Consolidated Appeal; Case No. 199334; Retirement Income Plan for Pilots of US Airways, Inc.

Dear Mr. [redacted]:

The Appeals Board of the Pension Benefit Guaranty Corporation ("PBGC") has reviewed your appeal on behalf of 769 participants of the Retirement Income Plan for Pilots of US Airways, Inc. ("Plan"). As is discussed on pages 3-4 below, you raised eleven issues in your appeal. For the reasons stated below:

- In response to your issue alleging that PBGC's calculations for some participants who retired under US Airways' Early Retirement Incentive Program ("ERIP") contained errors, we decided that each of the 85 appellants listed at Enclosure 1 will receive a new Benefit Determination with a new 45-day appeal right;[1]

- We deferred deciding the disability issue you raised, which potentially impacts the benefits of 30 timely-filed appellants (also listed on Enclosure 1).[2] We later will issue a supplemental decision or decisions on the disability issue, which will respond to your claims and address these appellants' individual circumstances; and

[1] As discussed in more detail in pages 22-26 of this decision, these 85 appellants had elected either the 50% Lump Sum option or the 75% Lump Sum option under the ERIP. PBGC will issue new Benefit Determinations because PBGC is changing its method for computing the remaining monthly benefit amounts payable to them.

Although PBGC will recalculate PBGC benefits for all 85 of these appellants, in some cases the participant's PBGC benefit amount may not change, or the benefit increase may be only a small percentage of the total PBGC benefit amount. We also note that, in addition to these 85 appellants who will receive new Benefit Determinations, PBGC thus far has identified 12 similarly-situated participants (not appellants in this appeal) who also will be receiving new Benefit Determinations.

[2] Eight of the 30 appellants who are potentially affected by the disability issue also are in the group of 85 ERIP appellants who will receive new Benefit Determinations. We further note that, for the remaining 22 appellants potentially affected by the disability issue, we are denying your appeal on all of the non-disability issues you raised.

- For the remaining appellants, we denied your appeal with respect to all issues you raised.[3]

INTRODUCTION.

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

On March 31, 2003, the Plan terminated without sufficient assets to provide benefits guaranteed by PBGC under Title IV of ERISA, and PBGC became trustee of the Plan. PBGC sent initial (formal) Benefit Determination letters to appellants in 2006 and 2007.[4]

On March 23, 2007, you filed a 41-page appeal brief with exhibits ("Appeal Brief" or "AB") on behalf of 751 individuals. For the reasons outlined in the acknowledgment letter at Enclosure 2, the Appeals Board concluded that your appeal was timely filed for 737 of these individuals. In each case, the individual was a participant or a beneficiary under the Plan who had received a Benefit Determination letter from PBGC. Between May 23 and November 14, 2007, you filed appeals for an additional 39 individuals by e-mail, asking us to "include them in the appeal currently pending." The Appeals Board accepted 32 of these appeals as timely filed. *See* Enclosure 3.

The Appeals Board exercised its discretion under section 4003.56 of PBGC's regulations and consolidated the appeals that you filed on behalf of these 769 individuals. The Board

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[3] Accordingly, in summary, the Appeals Board decided as follows for the 769 appellants: (1) 8 appellants will receive both a new Benefit Determination and a supplemental decision on the disability issue; (2) an additional 77 appellants will receive a new Benefit Determination; (3) an additional 22 appellants will receive a supplemental decision on the disability issue; and (4) your appeal is denied in full for the remaining 662 appellants.

We further note that, as you indicate throughout your appeal, different issues affect different appellants. Thus, some of the issues we have decided do not apply to all of your appellants.

Finally, eight of the 769 appellants (also listed on Enclosure 1) have submitted correspondence directly to the Appeals Board raising different issues than those raised by you. We recently sent you copies of the correspondence we received from these eight appellants. While this decision applies to these appellants, later we will issue supplemental decisions for each of them that will respond to the unique issues they raised. For each of these eight individuals, the Appeals Board will keep the appeal open until the individual's supplemental decision is issued.

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

concluded that the respective appeals arise out of the same or similar facts and that they seek the same or similar relief.

SUMMARY OF ISSUES RAISED IN YOUR APPEAL.

In your March 23, 2007 appeal, you raised eleven issues. As indicated above, we have deferred a decision on the issue you raised, at AB 16-23, concerning whether PBGC correctly had calculated PBGC benefits for totally and permanently disabled pilots. We grouped the remaining ten issues into three separate categories, A-C, as listed below.

A. Claims involving PBGC's interpretation of ERISA's "Priority Category 3" provisions.

1. PBGC should include in "Priority Category 3" the benefit increase under the ERIP applicable to 326 pilots, because the effective date of the ERIP was more than five years before the Plan terminated. AB at 2-7.

2. PBGC should increase benefits in Priority Category 3 for participants who did not retire three or more years before plan termination to make up for the "lost value" of the benefits they did not receive. AB at 8-9.

3. PBGC's reduction to benefits in Priority Category 3 based on the Plan's early retirement reductions factors, in combination with the other Priority Category 3 benefit reductions made by PBGC, resulted in an improper "double penalty" to participants who did not retire prior to the Plan's termination date. AB at 11-12.

4. PBGC applied the "wrong Internal Revenue Code ("IRC") section 415(b) limit" in determining benefits in Priority Category 3. AB at 9-11.

B. Claims that PBGC incorrectly calculated Plan and PBGC benefits.

5. PBGC "clearly erred" in the case of 65 ERIP retirees by not providing them with enhanced benefits; you also questioned whether PBGC correctly calculated benefits for these participants. AB at 14-16.

6. PBGC's Priority Category 3 benefit calculations did not provide former Piedmont pilots with the full value of Cost of Living Adjustments ("COLAs") for the years 1999 and 2000. AB at 7-8.

7. PBGC has continued the "errors" that US Airways had made in calculating the Plan's "minimum benefit," which applies to pilots who were on the Allegheny Airlines' seniority list as of December 1, 1972. AB at 23-37.

8. PBGC improperly calculated Plan benefits when it applied an offset for benefits payable under US Airways' Target Benefit Plan. AB at 38-39.

C. Other claims for relief.

9. PBGC's published retirement age tables in Part 4044 of PBGC's regulations have serious flaws that resulted in an over-estimation of the benefit liabilities of the Plan. AB at 12-14.

10. PBGC or the Department of Labor should seek recovery of money lost to the Plan due to fiduciary breaches by prior Plan Administrators, with the recoveries on the claims used to increase benefits for Plan participants. AB at 39-41.

BACKGROUND.

The Plan's Termination and Trusteeship.

On August 11, 2002, US Airways Inc. ("US Airways") filed a Chapter 11 reorganization petition in the United States Bankruptcy Court for the Eastern District of Virginia. In January 2003, US Airways initiated proceedings with the bankruptcy court and with PBGC to terminate the Plan in a distress termination, proposing a termination date of March 31, 2003. Later, after certain issues involving this proposed termination were resolved, PBGC and US Airways executed an agreement dated March 28, 2003. This agreement terminated the Plan, established March 31, 2003, as the date of plan termination ("DOPT"), and appointed PBGC as statutory trustee.

PBGC's Guarantee and Its Limits.

PBGC does not guarantee all benefits provided by an insured plan. To be guaranteed, a benefit must, first, be "nonforfeitable," 29 U.S.C. § 1322(a), which means that the participant must have satisfied the pension plan's requirements to be eligible for the benefit by the date on which the plan terminates. 29 U.S.C. § 1301(a)(8); 29 C.F.R. § 4022.3(a). Not all nonforfeitable benefits are guaranteed; there are a number of statutory and regulatory limits on PBGC's guarantee. These include the maximum guaranteed benefit ("MGB") limit and the phase-in limit, each of which is discussed briefly below.

The MGB is a statutory cap on the amount of PBGC's guarantee. 29 U.S.C. § 1322(b)(3). The amount of an individual's MGB depends on a number of factors, including the year in which the pension plan terminated, the age of the participant at the later of DOPT or when benefits begin, the form in which the benefit is paid, and the age of the participant's spouse if the benefit will provide surviving spouse benefits. 29 C.F.R. § 4022.23. For plans terminating in 2003, as the Plan did, the MGB is $3,664.77 per month for a participant who begins receiving PBGC benefits at age 65 in the form of a straight life annuity with no survivor benefit. If the person is younger than 65 and if survivor benefits will be paid (for example, to a spouse), the MGB limit is lower. *See* 29 C.F.R. §§ 4022.22 - .23 and Appendix D to Part 4022.

The phase-in limit provides that PBGC's guarantee of benefit increases is phased in over five years from the later of the adopted or effective date. 29 U.S.C. § 1322(b)(1), (7); 29 C.F.R. §§ 4022.2, 4022.24, 4022.25. The phase-in limit protects the insurance program from abuse by

employers who might be tempted to "increase benefits irresponsibly" just before a plan terminates. *See Report of the Committee on Finance on S. 1179*, S. Rep. No. 93-383 at 82 (1973). To determine the phase-in limit, PBGC must scrutinize all plan amendments made during the five years before a plan terminates.

Thus, the pension benefit a retiree receives from PBGC depends, in the first place, on the plan's provisions; PBGC does not pay more than the plan would have paid (except in limited situations where the plan has failed to follow ERISA's requirements). PBGC may, however, pay less than the full plan benefit for several reasons. In most cases, whether a participant receives his or her full plan benefit depends principally on the statutory and regulatory limits on PBGC's guarantee. But, if a plan has enough assets, some participants may receive more than the guaranteed amount. The statutory asset allocation process is very important for this Plan and is discussed next.

The Statutory Scheme for Allocating a Pension Plan's Assets.

ERISA's six-tier asset allocation scheme determines how a pension plan's assets are distributed among various categories of benefits when the assets are insufficient to pay all promised benefits. The highest priority categories (Priority Categories 1 and 2) are reserved for benefits derived from a participant's own contributions. The next priority category (Priority Category 3) covers a participant's benefits that were "in pay status" (i.e., were being paid) three or more years before the plan's termination date, or that would have been in pay status three years before termination if the participant had retired. Priority Category 4 generally is for benefits guaranteed by PBGC. Priority Category 5 is for other nonforfeitable benefits (generally, benefits that would be guaranteed but for the limits described above). And Priority Category 6 covers all other benefits under the plan (i.e., non-vested benefits). We refer below to each of the priority categories as "PC1," "PC2," "PC3," etc.

Thus, some benefits come ahead of PBGC-guaranteed benefits (PC4) in the allocation scheme and some come behind PBGC-guaranteed benefits. Because only a very small portion of benefits in the Plan fall into PC1 and PC2, the relevant benefits that come ahead of guaranteed benefits in this case are those in PC3. Section 4044(a)(3) of ERISA, which defines PC3, states:

> (3) Third, in the case of benefits payable as an annuity-
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> > (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,
> >
> > (B) in the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, 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.

29 U.S.C. § 1344(a)(3). Thus, a participant who retired (or could have retired) three or more years before plan termination may receive his or her full plan benefit, even if it is not all guaranteed by PBGC, if (1) all of the benefit is in PC3, and (2) the plan assets are sufficient to cover all benefits in PC3.

As is explained in greater detail below, often not all of a participant's plan benefit is in PC3. This is because PC3 is limited to the amount earned as of three years before the Plan's DOPT based on the plan provisions in effect five years before DOPT. *See* 29 U.S.C. § 1344(a)(3); 29 C.F.R. § 4044.13. In addition, if plan assets do not cover all benefits in PC3, each participant generally will receive a pro rata share of the assets. 29 U.S.C. § 1344(b)(2); 29 C.F.R. § 4044.10(d).[5]

PBGC determined that the value of the Plan's assets as of DOPT ($1,193,118,694) covered 100% of the Plan's benefits through PC3 ($1,153,957,540). Accordingly, PBGC is paying Plan participants 100% of their benefits in PC3.

I. CLAIMS INVOLVING PBGC's INTERPRETATION OF ERISA's PC3 PROVISIONS.

Issue 1: PBGC's Exclusion of the ERIP Benefit Increase from PC3.

Your Appeal. Benefits in PC3 are based on pension plan provisions "as in effect during the 5-year period" ending on the plan's termination date.[6] PBGC found that the benefit increase under the Early Retirement Incentive Program ("ERIP") became effective – for purposes of determining whether the increase could be included in PC3 – on May 1, 1998. Because this date is less than five years before the March 31, 2003 DOPT, PBGC determined that the ERIP benefit increase was not in PC3; instead, the ERIP benefit increase was in lower priority categories (i.e., in PC4 and PC5).[7]

You assert that PBGC erred in concluding that the ERIP benefit increase occurred less than five years before DOPT. You contend that PBGC should, instead, accept the effective date agreed to by the collective bargaining parties (January 1, 1998) and recalculate benefits in PC3 to reflect the ERIP benefit increase. AB at 2-7.

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[5] PBGC pays participants additional benefits under 29 U.S.C. § 1322(c) based on its recoveries against the terminated plan's sponsor for the "unfunded benefit liabilities" – essentially, the shortfall between the plan's assets and its liabilities for benefits. *See also* 29 U.S.C. §§ 1362(b), 1301(a)(18).

[6] 29 U.S.C. § 1344(a)(3).

[7] PBGC concluded that the increase in benefits under the ERIP is assigned to PC4 to the extent ERISA's limits do not exclude the increase from PBGC's guarantee. In almost all instances, however, the ERIP retirees had accrued Plan benefits that, even without the ERIP improvements, exceeded ERISA's MGB limit. Accordingly, PBGC assigned most of the increase in benefits under the ERIP to PC5 (rather than to PC4) because of the guarantee limits.

Our Conclusion. A pilot could not, under the terms of the ERIP, terminate employment prior to May 1, 1998 and receive the ERIP benefit increase. Thus, as discussed in more detail below, we uphold PBGC's decision, based on its interpretation of ERISA and PBGC regulations, that the benefit increase created by the ERIP is not included in PC3.

Background on the ERIP. US Airways, Inc. and the Air Line Pilots Association ("ALPA") adopted the ERIP on December 4, 1997. *See* Letter of Agreement 46 (hereinafter "LOA 46") (Enclosure 4).[8] LOA 46 provided that the terms of the ERIP were effective "as of the effective date of the new collective bargaining agreement." LOA 46, p. 1. The bargaining agreement became effective on January 1, 1998.

The ERIP created a benefit increase for eligible pilots who retired early, which LOA 46 refers to as the "Magic Five enhancement." LOA 46, Pt. II, § A. The Magic Five enhancement allowed eligible participants to, among other things, have their Plan benefits (in combination with their benefits under US Airways' Target Benefit Plan for Pilots of US Airways, Inc. ("Target Plan") and its nonqualified "Top Hat" retirement plan)[9] calculated under whichever of the following three methods produced the highest amount:

(a) Age Option. The amount of a Participating Pilot's retirement benefits will be calculated by adding, at the Participating Pilot's Retirement Date, up to five years of age (measured in full years and twelfths of years).

(b) Credited Service Option. The amount of a Participating Pilot's retirement benefits will be calculated by adding, at the Participating Pilot's Retirement Date, up to five Years of Credited Service (as defined in the Retirement Plan, measured in full Years of Credited Service and twelfths of Years of Credited Service).

(c) Age and Credited Service Option. The amount of a Participating Pilot's retirement benefits will be calculated by adding, at the Participating Pilot's Retirement Date, up to five, as a combination of years of age (measured in full years and twelfths of years) and Years of Credited Service (measured in full Years of Credit Service and twelfths of Years of Credited Service).

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[8] LOA 46 amended the formal Plan document. The formal Plan document previously had been amended and restated effective January 1, 1994. Also, the formal Plan document later was amended and restated effective January 1, 2001. In this decision, when we use the term "Plan" in citing to provisions in the formal document, we are referring to the January 1, 2001 Restatement, unless we indicate otherwise.

[9] The non-qualified plan (which we refer to as the "Top Hat Plan") was "designed to pay benefits which cannot be paid from the Retirement Plan due to the limitations of Internal Revenue Code sections 401(a)(17) and 415." LOA 46, Pt.2, § A.1. PBGC does not insure benefits under either the Target Plan or the Top Hat Plan, as neither plan is a qualified defined benefit pension plan under Title IV of ERISA. The provisions of those two plans, as they relate to the calculation of benefits under the Plan, are discussed in more detail later in this decision.

LOA 46, Pt. II, § A.1 (a)-(c). A pilot retiring under the ERIP further could choose one of the following three forms of payment (which applied to the combined benefits under the three plans): (1) an annuity form; (2) a 75% Lump Sum option with the balance in an annuity form; or (3) a 50% Lump Sum option with the balance in an annuity form. *See* LOA 46, Pt. II, § A.5.

The opportunity to apply for retirement under the ERIP provisions was available to "any pilot on the Pilot System Seniority List who is or will be at least age 45 on or before May 1, 2000." LOA 46, Pt. I, § B. Interested pilots had to file an election form during a designated "Window Period," which ran from March 1, 1998 through April 30, 1998. LOA 46, Pt. I, § A. An election became binding and irrevocable on the eighth day after the election, and only those pilots who were not accepted into the program due to over-subscription could be released from the commitment. LOA 46, Pt. I, § C. Participation in the ERIP was limited to a maximum of 325 (later increased by agreement to 326) pilots. LOA 46, Pt. I, § D.

US Airways, not the participants, selected retirement dates for the participants. Retirement dates were determined by US Airways based on its operational needs and scheduled to occur "as soon as possible after the close of the Window Period [April 30, 1998], but not later than May 1, 2000." *See* LOA 46, Pt. 1, § E.2.

Discussion. It is undisputed that the ERIP amended the Plan's provisions and increased the Plan's benefits. PBGC regulations define a "benefit increase" as "any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan." 29 C.F.R. § 4022.2. The ERIP's Magic Five enhancement is a benefit increase within the meaning of section 4022.2 of the regulations because it constitutes "an increase in the value of benefits" that arose from an amendment to an existing plan.

What is in dispute, however, is whether the ERIP benefit increase is in PC3. In deciding this issue, PBGC applied the rule in its regulations which states that, for PC3 benefit purposes, a plan amendment is "in effect" on the later of the adoption or effective date. 29 C.F.R. § 4044.13(b)(6). In doing so, PBGC concluded that the ordinary meaning of "effective date" is the date on which something takes effect or becomes operative. PBGC, therefore, concluded that May 1, 1998 was the effective date of the ERIP benefit increase because, before that date, no participant could retire and receive the ERIP enhancement. PBGC noted that, for example, a participant who retired on April 1, 1998, would never get the ERIP enhancement even if he or she met all other conditions, including the condition of having filed the paperwork required to elect the window benefit. Accordingly, PBGC concluded that since the effective date of the ERIP (May 1, 1998) was less than five years before the termination date, the benefit increase created by that program was not included in PC3.[10]

(1) *The "operative" date the ERIP benefit increase occurred.* As a threshold matter, your appeal disagrees with PBGC's conclusion that the ERIP benefit increase became operative

[10] PBGC provided you with its interpretation of the effective date of the ERIP's benefit increase in a letter dated July 15, 2004 from PBGC Assistant General Counsel Susan E. Birenbaum to [redacted] (Enclosure 5). PBGC's *Actuarial Case Memo for Retirement Income Plan for Pilots of U.S. Airways, Inc.* (August 3, 2006) ("Actuarial Case Memo") also documents PBGC's decision that the ERIP benefit increase is not in PC3. *See* page 6-7 of Actuarial Case Memo.

on May 1, 1998. You state in your appeal: "Even if one were to accept PBGC's unsupportable premise that a so-called 'operative' date takes precedence of the clear language of the statute, the May 1, 1998 date would still be wrong on the facts." AB at 4. You further assert that the "factually correct operative date" of the ERIP would be March 1, 1998, because those who participated in the ERIP program "were locked in to participating in the program and retiring on a date of the company's choosing." AB at 4. [11]

We disagree with your interpretation as to when the benefit increase set forth in LOA 46 became operative. As noted above, LOA 46 provided that the retirement dates of the ERIP participants would be "assigned by the Company" and would occur "as soon as possible after the close of the Window Period, but not later than May 1, 2000." *See* LOA 46, Pt. 1, § E.2. Furthermore, Pt. 1, § E.3(b) of LOA 46 states: "If a Participating Pilot separates from service on a voluntary basis or is terminated for just cause prior to his or her assigned Retirement Date, such Participating Pilot shall forfeit all additional benefits under the [ERIP]." Thus, while the ERIP election window ran from March 1, 1998 through April 30, 1998, a participant could not, under the terms of the ERIP, separate from service or retire before May 1, 1998 and receive the ERIP benefit increase. Moreover, the Plan's practice with respect to ERIP retirement dates is consistent with this interpretation. That is, each of the 326 ERIP participants had an actual retirement date of May 1, 1998 or later. Accordingly, the Appeals Board agreed with PBGC that the operative date for the ERIP benefit increase was no earlier than May 1, 1998.

(2) *The "effective date" of the ERIP benefit increase*. As discussed above, ERISA section 4044(a)(3)[12] requires that PC3 benefit amounts be determined based on "the provisions of the plan (as in effect during the 5-year period ending on [the termination] date)." Based on this statutory provision and the corresponding provision in PBGC's regulations (29 C.F.R. § 4044.13), PBGC determined that the ERIP benefit increase was "in effect" no earlier than May 1, 1998, because, before that date, no participant could retire and receive the ERIP benefit increase. Your appeal contends that the 5-year period should be measured from the effective date specified in the plan amendment (which, for the ERIP, was January 1, 1998), rather than from when the benefit increase occurred.

By asserting that PBGC "should defer" to the stated effective date in the ERIP document, you essentially are asking us to reject PBGC's interpretation of ERISA section 4044 and section 4044.13(b)(6) of the regulations in favor of your own. It is well settled, however, that PBGC is entitled to deference when interpreting ERISA and its own regulations. *See, e.g., Beck v. PACE Int'l Union*, 127 S. Ct. 2310 (2007) (stating that "We have traditionally deferred to PBGC when interpreting ERISA..."); *Mead v. Tilley*, 490 U.S. 714, 722 (1989); *PBGC v. LTV Corp.*, 496 U.S. 633, 648 (1990); *Boivin v. U.S. Airways*, 446 F.3d 148, 154 (D.C. Cir. 2006) (court owes "substantial deference" to PBGC's interpretation of its own regulations); *Belland v. PBGC*, 726 F.2d 839, 843-45 (D.C. Cir. 1984) (noting that the "PBGC's interpretation of ERISA is entitled to great deference").

[11] While March 1, 1998 was the first date of the window period for ERIP elections, the window period did not close until April 30, 1998 (which was less than 5 years before DOPT). Thus, eligible pilots were not required to make irrevocable elections more than 5 years before DOPT; rather, they could have delayed their decisions as to whether to elect the ERIP until the closing date of the window period.

[12] 29 U.S.C. § 1344(a)(3).

As noted above, section 4044.13(b)(6) of PBGC's regulations states that a "plan or amendment is 'in effect' on the later of the date on which it is adopted or the date it becomes effective." Similar, but not identical, language is contained in section 4022.24(e) of PBGC's regulations.[13] Section 4022.24(e) provides that, for purposes of applying the phase-in rule, a *benefit increase* is deemed to be "in effect" commencing on the later of its adoption date or its effective date (emphasis added). Consistent with the ordinary meaning of the term "effective," PBGC interpreted the terms "effective" and "effective date" to mean the date on which the ERIP *benefit increase* became operative. *See, e.g.,* Webster's Third New International Dictionary of the English Language (1993) (defining the term "effective" as, among other things, taking effect, valid, and operative). Applied here, PBGC determined that the ERIP benefit increase became effective on May 1, 1998, since that is the earliest date a participant could retire and receive the ERIP benefit increase.

This interpretation is consistent with, and supported by, the treatment of multiple benefit increases in part 4022 of PBGC's regulations. *See* 29 C.F.R. § 4022.24(d)(2). Section 4022.24(d)(2) provides that, for purposes of determining the phase-in date of PBGC's guarantee when multiple benefit increases have occurred, each benefit increase is to be treated separately. This regulation, therefore, requires that each benefit increase—i.e., each increase in value of benefits resulting from a plan amendment—be measured separately for purposes of applying the phase-in rule. If, for example, the ERIP provided for cost-of-living adjustments (which it did not), section 4022.24(d)(2) would require that PBGC treat the COLAs as benefit increases "in effect" as of the periodic adjustment date, rather than the ERIP's stated effective date. PBGC utilized a similar approach in this case when it determined that the ERIP benefit increase became effective on May 1, 1998. This approach is also consistent with the definition of PC3 benefits in PBGC's regulations, which provides that a benefit increase must be "effective throughout the 5-year period ending on the termination date" to be included in PC3. 29 C.F.R. § 4044.13(a).

(3) *The "lowest annuity benefit payable" in the 5-year period before DOPT.* The Appeals Board further identified a second and independent basis for concluding that the ERIP benefit increase is not in PC3. ERISA section 4044(a)(3) provides that the benefit in PC3 is determined based on "the provisions of the plan (as in effect during the 5-year period ending on [the termination] date) *under which such benefit would be the least.*" 29 U.S.C. §§ 1344(a)(3)(A), (B) (emphasis added). *See also* PBGC's regulation at 29 C.F.R. § 4044.13(a)(3)(i), (ii). For the reasons explained below, we concluded that, for purposes of

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[13] The PBGC regulation at 29 C.F.R. § 4022.24 addresses the phase-in of PBGC's guarantee, rather than benefits assigned to PC3. As you acknowledge on page 6 of your Appeal Brief, however, the language in PBGC's PC3 regulation at 29 C.F.R. section 4044.13(b)(6) "mirrors" that of the phase-in provisions with respect to the date a plan amendment "became effective." You further state that "any analysis regarding the effective date of an amendment in context of ERISA § 4022(b) should be applicable" to the analysis of the effective date question with respect to benefit amounts assigned to PC3.

We agree with you that the language in the statutory and regulatory provisions governing benefit amounts assigned to PC3 parallels that in the phase-in provisions, and therefore the provisions should be interpreted consistently. We also conclude, however, that the statutory and regulatory provisions governing phase-in support PBGC's position (rather than your position) as to how "effective date" should be interpreted.

PC3, the "lowest annuity benefit" that is payable to a pilot during the 5-year period ending on the termination date does not include the ERIP benefit increase.

While your appeal focuses primarily on section 4044.13(b)(6) of PBGC's regulations—which specifies when a plan or amendment is "in effect"—the regulations also establish, in section 4044.13(b)(3), the "general benefit limitations" that apply to PC3 benefits. These provisions implement the language in ERISA section 4044(a)(3) that the PC3 benefit is the "least" benefit payable under the 5-year-old plan provisions.[14]

For retirees in pay status three years before the termination date, PBGC's regulations specifically provide that the PC3 benefit must be "the *lowest annuity benefit payable* under the plan provisions *at any time during the 5-year period* ending on the termination date."[15] Similarly, for participants who could have been in pay status three years before plan termination but were not, the PC3 benefit is the "*lowest annuity benefit payable* under the plan provisions, including any reduction for early retirement, *at any time during the 5-year period* ending on the termination date."[16]

We further note that the preamble to PBGC's final "Allocation of Assets" regulation (Enclosure 6) explains that, "by definition, the lowest benefit provided by the plan during the 5-year period can be no greater than one based on the benefit formula applicable for participants in pay status." 46 Fed. Reg. 9480, 9484 (Jan. 28, 1981). *See also* PBGC Opinion Letter 79-8 (Enclosure 7), which provides specific examples of PC3 calculations. Thus, PBGC's regulation, its preamble, and a PBGC opinion letter establish that the "lowest annuity benefit payable" is to be determined based on the plan provisions that, "at any time during the 5-year period," would provide the lowest benefit for a participant in pay status.

In the case of a pilot who had elected to retire under the ERIP, the earliest possible assigned ERIP retirement date was May 1, 1998. Thus, for an ERIP retiree, the longest the ERIP benefit increase could have been in effect before DOPT was four years and eleven months (i.e., from May 1, 1998 to March 31, 2003). If a pilot elected the ERIP, but ended employment before May 1, 1998, he or she would not be entitled to receive any increase under the ERIP benefit formula. *See* discussion on pages 7-9 above. Thus, for the first month of the 5-year period

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[14] PBGC's regulations also contain a special rule for "automatic benefit increases" in the situation where such increases are in effect throughout the 5-year period ending on the termination date. 29 C.F.R. § 4044.13(b)(5). This special rule provides that "automatic increases" scheduled during the fourth and fifth years before plan termination are included in PC3 if the increases are payable "for both active participants and those in pay status or for participants in pay status only." This rule further provides that "benefit increases for active participants in excess of the increases for retirees shall not be taken into account."

The ERIP did not provide an "automatic benefit increase" because, among other things, the ERIP benefit increase was limited to a group of 326 pilots who were active employees of US Airways at the time the ERIP was adopted. Accordingly, all of the ERIP increase is subject to the general benefit limitations in section 4044.13(b)(3), rather than to the "automatic benefit increases" rule in section 4044.13(b)(5).

[15] 29 C.F.R. § 4044.13(a)(3)(i) (emphasis added).

[16] 29 C.F.R. § 4044.13(a)(3)(ii) (emphasis added).

before DOPT (i.e., April 1998), the applicable Plan benefit formulas did not include the ERIP benefit increase. [17]

We therefore concluded, for the group of 326 ERIP retirees, the "lowest annuity benefit payable" for PC3 purposes is determined by comparing the benefit calculated under Plan's benefit formulas in effect between April 1 and April 30, 1998 (i.e., the formulas in effect at the start of the 5-year period without the ERIP increases) with the benefit calculated under the Plan's benefit formulas with the ERIP benefit increases. Since for each appellant the benefit calculated without the ERIP increase is equal to or less than the benefit with the ERIP increase, the benefit in PC3 does not contain any of the ERIP benefit increase.

(4) *Additional assertions in your appeal*. Based on the foregoing, we found no basis for concluding that PBGC's determination that the ERIP benefit increase became effective—for purposes of determining PC3 benefits—on May 1, 1998, was "arbitrary and capricious in light of the plain language of the document, the statute, and the regulations . . . ." AB at 7. Moreover, we found that the prior Appeals Board decisions and PBGC opinion letters cited in your appeal (*see* AB at 4-5) do not change this conclusion. As is discussed below, the decisions and opinion letters cited in your appeal do not specifically address the situation at issue here—that is, how to treat a benefit increase that became operative after the adoption and stated effective date of the amendment that created the benefit increase.

In PBGC Opinion Letter 77-135, for example, the General Counsel addressed an amendment that vested all participants in the amount of their accrued benefits to the extent funded as of December 31, 1974 (on which date accruals ceased by reason of an earlier plan amendment). That Opinion Letter states that the vesting amendment was adopted on March 31, 1976 and effective on December 31, 1974. There, the General Counsel opined:

> The phase-in of a benefit increase commences on the later of its effective date or adoption date. Here the amendment was adopted on March 31, 1976 and effective on December 31, 1974. Thus, the phase-in of any increase attributable to the amendment commences on March 31, 1976.

PBGC Op. Ltr. 77-135 (March 9, 1977).

Accordingly, PBGC concluded in Opinion Letter 77-135 that the phase-in commenced on the adoption date—March 31, 1976—because it constituted the later of the two dates. Under the facts set out in this opinion letter, however, the operative date of the benefit increase coincided with the stated effective date of the amendment that created the benefit increase (December 31, 1974). In contrast, the benefit increase at issue here—the Magic Five enhancement—first

[17] We note that, under Plan provisions that were in effect throughout the 5-year period before DOPT, a pilot potentially could be entitled to have his or retirement benefit calculated under more than one benefit formula. *See* Plan section 4.1. For example, some pilots were entitled to receive (as of any retirement date within the 5-year period) the greater of the amount calculated under the Plan's "Basic Formula" or the amount calculated under the special formula applicable to pilots who were on the Allegheny Airlines System Seniority List as of December 1, 1972 (which is discussed under Issue #7). Plan § 4.1. In such instances, PBGC calculated the benefit in PC3 under both formulas (but without the ERIP increase) and then assigned to PC3 the larger of the two amounts.

became operative *after* the adoption and stated effective date of the amendment that created the benefit increase. Consequently, the instant situation is distinguishable from the situation considered in Opinion Letter 77-135.

PBGC Opinion Letter 77-166 dealt with a benefit increase that was effectuated by the execution of collective bargaining agreements, rather than by specific action by the Plan's board of trustees. There, the General Counsel opined that PBGC would "look to the adoption and effective dates of the collective bargaining agreements for purpose of applying the phase-in rule under section 4022(b)(8) of ERISA." PBGC Op. Ltr. 77-166. That opinion letter did not note, however, whether the benefit increases went into effect on the stated effective dates of the collective bargaining agreements, or on later dates. As such, we found that Opinion Letter 77-166 does not address the specific factual situation at issue in your appeal.

As you correctly note, the Appeals Board decisions involving PBGC Case Numbers 017852, 161810, 194313, and 194605 merely recite the language from section 4022.24(e) of PBGC's regulations that a benefit increase is considered to be "in effect" as of the later of its effective date and its adoption date. As a result, they do not analyze the specific issue raised in your appeal concerning when a benefit increase is "in effect" for purposes of PC3.

Finally, you state: "To the extent that PBGC was trying to further some kind of purpose of preventing last minute benefit increases that will be borne by PBGC that purpose is not met here." AB at 6. You also assert that the ERIP resulted from good faith collective bargaining between ALPA and US Airways and that no purpose would be served by excluding the ERIP benefit increase from PC3. AB at 7.

PBGC, in determining benefits in PC3, applies the rules in ERISA section 4044 and PBGC's regulation at 29 C.F.R. § 4044 without examining the motives of the plan sponsor or other parties, or the cost impact to PBGC. This ensures that these statutory and regulatory provisions for allocating plan assets to benefits are applied consistently to participants in terminated pension plans.[18] For all the reasons discussed above, we must deny your appeal on this issue.

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[18] The inclusion of additional benefit amounts in PC3 does not always favor plan participants as a group. For example, the overall amount of PBGC payments for nonguaranteed benefits in PC3 could decrease for a pension plan if: (1) the additional liabilities added to PC3 are primarily (or entirely) guaranteed amounts, and (2) PC3 is less than 100% funded. In such a case, the additional liabilities would result in the plan's assets covering a smaller percentage of benefits in PC3, which would have the effect of decreasing the overall nonguaranteed benefits in PC3 that PBGC would pay to participants in that pension plan.

Also, in some instances, increasing benefit liabilities in PC3 would have the effect of increasing benefit payments for some participants while decreasing payments to others. *See* preamble to PBGC's "Benefit Payments" regulation, 67 Fed. Reg. 16950 (Apr. 8, 2002) (for "Earliest PBGC Retirement Date" provision, PBGC rejects an approach that would have effect of "significantly diluting priority 3 protection for those persons Congress intended to protect").

Issue 2: PBGC's PC3 Calculations for Participants Who Did Not Retire Three or More Years before Plan Termination.

Your Appeal. You contend that PBGC improperly calculated PC3 benefit amounts for participants who were not in pay status three years prior to the date of plan termination ("DOPT-3"). Under ERISA and PBGC regulations, the PC3 benefit is determined as if the benefit had commenced at DOPT-3. While you agree that PBGC calculates the PC3 benefit as if it had commenced at DOPT-3, you assert that PBGC "does not pay it as if it had commenced three years prior to plan termination." AB at 8-9.

You further state that pilots who did not retire, and thus did not receive any benefits during the 3-year time period before DOPT, are entitled to the value of their "lost payments" during that 3-year period. AB at 9. Consequently, you request that PBGC either make back payments to these participants for the months between DOPT-3 and their date of actual retirement, or (alternatively) that PBGC adjust their monthly payments commencing at actual retirement "to reflect the value they lost by not having their benefits commence" at DOPT-3. AB at 9.

Our Conclusion. For the reasons discussed in more detail below, we concluded that PBGC properly applied the rules in ERISA and PBGC regulations in calculating PC3 benefit amounts for participants who were not in pay status at DOPT-3.

ERISA and PBGC Regulations. For a participant in pay status at DOPT-3, ERISA defines the benefit amount in PC3 as the benefit "payable as an annuity . . . as of the beginning of the 3-year period ending on the termination date of the plan." 29 U.S.C. § 1344(a)(3)(A). Similarly, for a participant who could have but did not retire at DOPT-3, ERISA defines the benefit amount in PC3 as the benefit "payable as an annuity . . . if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such [3-year] period . . . ." 29 U.S.C. § 1344(a)(3)(B).

PBGC's regulations define the benefit amount in PC3 as the "annuity benefit" that is in pay status, or that could have been in pay status, at the "beginning of the 3-year period ending on the termination date." 29 C.F.R. § 4044.13(a). For participants not in pay status at DOPT-3, the regulation further states that the benefit in PC3 "shall be determined according to plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date as if the benefit had commenced at that time." 29 C.F.R. § 4044.13(b)(2)(ii).[19] The factors considered in determining the benefit amount assigned to PC3 include "the participant's age, service, actual or expected retirement age, and other relevant facts as of [DOPT-3]." 29 C.F.R. § 4044.13(b)(2).

As noted in the preamble to the regulation, "priority category 3 benefit rights are fixed no later than the beginning of the 3-year period" before plan termination. 46 Fed. Reg. 9480, 9484

[19] As discussed above at pp. 10-12, the PC3 benefit amount further is limited to "the lowest annuity benefit payable under the plan provisions, including any reduction for early retirement, at any time during the 5-year period ending on the termination date." 29 C.F.R. § 4044.13(b)(3)(ii).

(Jan. 28, 1981). Consistent with this view of ERISA § 4044, PBGC regulations do not provide for the benefit amount in PC3 to be changed based upon when the participant retires or enters pay status.

We further observe that PBGC briefly considered calculating the benefits in PC3 for active participants as of DOPT, rather than as of DOPT-3.[20] After notice and comment, however, PBGC issued a final regulation which provided "that the age and service of the participant and any other relevant factors which existed three years prior to, instead of on, the date of plan termination will be used to determine the amount of the benefit which could have been in pay status." *Interim Regulation on Allocation of Assets*, 41 Fed. Reg. 48,480 (Nov. 3, 1976) (Enclosure 9). In the preamble to this regulation, PBGC stated that making this change "more accurately implements the explicit language of section 4044(a)(3)(B) of the Act." *Id.*

PBGC Policies, Procedures, and Practice. PBGC's operating policies and procedures also reflect the statutory and regulatory requirements that the benefit amounts in PC3 payable to participants are fixed at DOPT-3. A PBGC Policy Bulletin addressing PC3 eligibility states that where a participant "satisfied all substantive conditions for entitlement before the date beginning the 3-year period ending on DOPT, [the participant's benefit] is a priority category 3 benefit if the benefit is or could have been payable before that date or on the next following date that the plan would make annuity payments." *PBGC Operating Policy Manual*, "Eligibility for Benefits in Priority Category 3," IOD Policy Bulletin 00-8 (Sept. 25, 2000) (Enclosure 10). PBGC's actuarial guidelines also require that benefits be calculated as of three years prior to DOPT and specify that: with regard to service calculations, "Benefit Service, Vesting Service, etc. are to be calculated as of DOPT-3"; with regard to salary, "Average Annual Earnings, Social Security Offsets, etc. are to be calculated as of DOPT-3"; and with regard to retirement, "Early and Late Retirement Factors, Form Conversion Factors, etc. are to be calculated as of DOPT-3." *ASD Procedures Manual*, PC3 Calculations: General Parameters for Valuing Benefits "Payable" Three Years Ago, p. 537 (June 21, 1993) (Enclosure 11). Finally, throughout its more than 30-year history of determining benefits in PC3 for participants in terminated plans, PBGC consistently has fixed the benefit in PC3 based on the amount that was paid or payable at DOPT-3, without any adjustment if the participant actually retired at a later date.

Discussion. Your appeal seeks a radical change in the way that PBGC calculates benefits in PC3. As discussed above, PBGC regulations provide that a benefit amount in PC3 is determined using a number of factors as of three years prior to the date of plan termination. *See* 29 C.F.R. § 4044.13(a), § 4044.13(b)(2). PBGC regulations thus provide that the methods of calculating benefits in PC3 for a participant who retired at DOPT-3 and for one who worked past that date are identical. Consequently, PBGC's calculation results in a fixed PC3 amount, which is not dependent on the decision by a particular participant whether to retire when he or she has the option to do so.

[20] In its initial proposed rule, PBGC stated that in calculating a participant's PC3 benefit "the participant's age, service, salary and any other factors relevant under the plan formula to compute the amount of the annuity are determined as of the date of termination." *Proposed Determination of Payable Benefits*, 40 Fed. Reg. 51,368, 51,369 (Nov. 4, 1975) (Enclosure 8).

The notion that the monthly benefit assigned to PC3 is fixed is central to understanding the PC3 benefit amounts that PBGC calculates and pays. The first step in PBGC's asset allocation process (after allocation of assets to PC1 and PC2) is to calculate the monthly benefit amounts for each of the plan participants as of DOPT-3, based on plan provisions that have been in effect for 5 years. PBGC then converts these monthly benefit amounts into "present values," determined as of DOPT, so that the aggregate value of all of the participants' benefits in PC3 can be matched with the value of the plan's assets. This makes it possible for PBGC to determine the percentage of the plan's benefits in PC3 that are funded. This process of matching the value of plan assets to the value of plan benefits, however, does not increase the monthly PC3 benefit amounts above the amounts PBGC had calculated for each participant at DOPT-3, even if the plan's benefits in PC3 are funded at 100%.[21]

Contrary to the assertions in your appeal, PBGC's regulatory language is fully consistent with ERISA's definition of PC3 benefit amounts. In the case of a participant who has not retired at DOPT-3, ERISA provides that the benefit amount assigned to PC3 is to be determined "as if his benefits had commenced" at DOPT-3. 29 U.S.C. § 1344(a)(3)(B). Thus, ERISA defines the PC3 benefit amount for such a participant based on the assumption that he or she actually retired on DOPT-3. Under PBGC regulations, the benefit amount assigned to PC3 is calculated based on this same retirement date assumption. 29 C.F.R. § 4044.13(b)(2)(ii).

Furthermore, ERISA does not define the PC3 benefit amount in terms of a "present value," nor does ERISA provide for the PC3 amount determined at DOPT-3 to be changed (in the case where payments start later) based on the "value" of the payments to the retiree. ERISA's definition of the benefit assigned to PC3 in terms of an "annuity" payable as of a specific date also is in stark contrast to ERISA's MGB provision, which defines the amount payable as the "actuarial value of a monthly benefit in the form of a life annuity commencing at age 65." 29 U.S.C. 1322(b)(2)(3). Thus, when ERISA's drafters intended to define a benefit amount based on an actuarial value (rather than a fixed annuity amount), they used specific language to that effect. Accordingly, we concluded that you are advancing an interpretation of PC3 benefits that is not supported by the express language of section 4044 of ERISA nor by PBGC's consistent policy and practice for over 30 years.

We also disagree with your suggestion that the participants who did not choose to retire at DOPT-3 are entitled to compensation for the "value of lost payments." AB at 9. First, participants who worked past DOPT-3 earned salary after that date and likely accrued additional Plan benefits. While benefits that accrue during the 3-year period before plan termination are not included in PC3, they are included in one of the lower priority categories.

Moreover, because the benefits a pension plan provides are retirement benefits, participants generally are not entitled to receive a pension for the period of time when they are still employed. Indeed, if participants were to receive their retirement benefits while they were still employed, such payments ordinarily would constitute impermissible in-service distributions under the IRC. As a general rule, the IRC and Internal Revenue Service ("IRS") regulations only permit participants of pension plans to receive a distribution of their interest in their retirement

[21] If the plan's assets cover less than 100% of the plan's total benefits in PC3, PBGC will pay "net" benefits in PC3 that reflect the percentage by which they are funded. 29 U.S.C. § 1344(b)(2); 29 C.F.R. § 4044.10(d).

plan after they have actually retired.[22] *See* 26 C.F.R. § 1.401-1 (defining a pension plan as providing a benefit to employees "upon retirement or over a period of years after retirement"). At its core, your request that participants be compensated for "lost payments" is an attempt to obtain additional PBGC payments for a period of time in which the participants (prior to their normal retirement age) continued to receive their salary.

Simply put, the 3-year period preceding DOPT is not a window for determining whether participants have "lost benefits" because they were not yet in pay status. Rather, the 3-year period is part of ERISA's definition of how benefit amounts in PC3 are to be determined. Your argument to the contrary is not supported by statute, regulation, or PBGC policy, procedure, or practice.

Issue 3: PBGC's Use of the Plan's Early Retirement Factors.

Your Appeal. You argue, at AB 11-12, that PBGC's PC3 benefit calculations improperly impose a "double penalty" on participants who had not yet begun to receive benefits at DOPT-3. You note that the Plan provides for a reduction in the benefits of pilots who choose to retire early "by decreasing the monthly benefit by one quarter of one percent for each month after age 55 that retirement precedes the participant's 60th birthday and one half of one percent for each month that retirement precedes the participant's 55th birthday." AB at 11. You assert that the double penalty works in the following way:

1. PBGC imposes an initial "penalty" because it calculates PC3 benefit amounts based on each participant's service, age, and earnings as of DOPT-3 (which you refer to as a "3-year look back"); and

2. PBGC then applies a second "penalty" by calculating PC3 benefit amounts using the Plan's early retirement reduction factors applicable to pilots who chose to retire early.

AB at 10-11. You argue that because PBGC has assessed the first "penalty" upon these participants by "disregarding" three years of service, age, and earnings, PBGC should not then assess a second "penalty" by applying the early retirement factor described in the Plan to "an income stream they did not actually receive." AB at 11.

Our Conclusion. We disagree with your basic contention that PBGC's PC3 benefit calculation method should be viewed as a "double," or even as a "single," penalty. Despite your characterization, PBGC did not take any discretionary action in calculating PC3 benefit amounts for Plan participants. Rather, as discussed below, PBGC has carried out the requirements of ERISA and PBGC regulations when calculating benefits assigned to PC3.

Discussion. The first alleged "penalty" involves the "3-year look back" period for the calculation of benefit amounts assigned to PC3. Here, you appear to be referring to PBGC's PC3

[22] IRC § 401(a)(36), which was enacted by the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780 (2006), modified this general rule by providing that, for plan years beginning in 2007, a tax-qualified pension plan may offer in-service distributions to an employee who has attained age 62. *See* IRS Notice 2007-8 (Jan. 16, 2007) (requesting comments on issues presented by IRC § 401(a)(36)).

calculations based on each participant's service, age, and earnings at DOPT-3 (but not to PBGC's application of the Plan's early retirement factors). This 3-year look back period with respect to the participant's service, age, earnings, etc., however, is central to how ERISA defines PC3 benefit calculations, and therefore PBGC cannot ignore it. Specifically, ERISA provides that, for participants who are not in pay status at DOPT-3, the PC3 benefit amount is determined as if the benefit "had commenced" at DOPT-3. 29 U.S.C. § 1344(a)(3)(B). Thus, as required by ERISA, PBGC's method of calculating the PC3 benefit amount for a pilot who retired at DOPT-3 and for a pilot who worked beyond that date will be the same. Since a pilot who retired at DOPT-3 would have his benefit calculated based on his or her service, age and earnings at DOPT-3, the benefit in PC3 for a pilot who worked beyond that date must also be based upon service, age and earnings at DOPT-3.

With respect to the second alleged "penalty," PBGC simply is applying the provisions in the Plan with respect to the early retirement factors. The Plan states that the retirement income of a participant who is retiring early will be "reduced by .25% for each month after his 55th birthday" by which his benefit start date precedes his normal retirement date and "by .50% for each month by which his Benefit Commencement Date precedes his 55th birthday."[23] The use of early retirement factors is not discretionary; the factors are in provisions of the Plan that PBGC is required to apply. Moreover, despite your reference to a "double penalty," PBGC applies the Plan's early retirement factors only once in determining the amount of a participant's benefit in PC3.

You do not question the validity of the early retirement factors, but dispute only PBGC's use of the factors in calculating benefits in PC3. As discussed above with respect to the first alleged "penalty," however, benefit amounts in PC3 are calculated based on the pension plan provisions that apply to benefits commencing at DOPT-3 – which in the case of the Plan includes the early retirement factors. Furthermore, PBGC regulations clearly require reductions to benefits in PC3 based on the Plan's early retirement factors. 29 C.F.R. § 4044.13(b)(3)(ii). For participants who could have but did not retire at DOPT-3, the PC3 benefit amount is limited to "the lowest annuity benefit payable under the plan provisions, *including any reduction for early retirement,* at any time during the 5-year period ending on the termination date." *Id.* (emphasis added). Accordingly, neither ERISA nor PBGC regulations provide for an early retirement exception to the rule that PBGC is to apply all applicable plan provisions in determining PC3 benefit amounts.

Finally, this "double penalty" contention is based, in part, on your claim that pilots who did not elect to retire at DOPT-3 should receive compensation for the "lost value" of the pension payments they did not receive. Since we rejected this contention in our discussion of Issue #2, we need not address it again here.

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[23] Plan § 5.2 (amount of early retirement income) and Plan § 6.2 (amount of vested retirement income). Benefit Commencement Date is defined in the Plan as "the date as of which a Participant's retirement income is to commence..." Plan, § 2.1(G). We also note that different early retirement factors apply to "pre-merger service" with Pacific Southwest Airlines, Piedmont Aviation, Inc., and Shuttle, Inc. Plan §§ 16-18.

Issue 4: PBGC's Application of the Internal Revenue Code Section 415(b) Limits.

Your Appeal. You claim, at AB 9-10, that PBGC incorrectly determined the benefit amounts assigned to PC3 because it is applying the benefit limits required by IRC section 415(b) as in effect on April 1, 2000 "to all benefit payments." Instead, you assert that the section 415(b) limits are not Plan provisions, and therefore they should not be viewed as limitations on the benefits that PBGC pays. More specifically, you state at AB 9-10:

> Section 415(b) simply serves as a legal requirement that does not define the entire benefit, but determines what portion of the benefit may be paid from the Plan and what portions of the total benefit must come from the Target Benefit Plan or the Top Hat Plan. The total benefit accrued under the terms of the Plan remains static (with the exception of COLAs) while the qualified pension may change depending on changes to the 415(b) limit.

For this reason, you disagree with PBGC's decision to apply the section 415(b) limit in effect as of April 1, 2000, for purposes of determining PC3 benefit amounts. You advocate that PBGC calculate the Plan benefit in PC3 based on the Plan's benefit formula (without application of the section 415 limits), and then, when benefit payments begin, apply the section 415(b) limit that is in effect "at the time of each participant's retirement or the date of plan termination, whichever is later." AB at 10.

Our Conclusion. We found that the Plan had incorporated the IRC section 415(b) limits into its formal plan documents. For the reasons discussed below, we concluded that PBGC, in applying the section 415(b) limit in its PC3 calculations, properly followed ERISA, PBGC's regulations, and the Plan provisions that limit a pilot's Plan benefit to the section 415(b) amount.

The IRC 415(b) Limits. Section 415(a) of the IRC provides, generally, that a trust which is part of a pension plan shall not constitute a qualified trust if "in the case of a defined-benefit plan, the plan provides for the payment of benefits with respect to a participant which exceeds the limitation of subsection (b)." Section 415(b), as in effect in 2001, provided that the highest annual benefit payable under a defined benefit plan was the *lesser* of $90,000 or 100% of the participant's compensation. IRC § 415(b).

Section 415(d) further provides for "Cost-of-Living Adjustments" to the 415(b)(1)(A) amounts. The $90,000 amount cited above reflected a "base period" of the calendar quarter beginning October 1, 1986, and in years after 1986 that amount increased significantly because of the COLAs.[24] Additionally, legislation enacted in 2001 prospectively increased the $90,000 limit to $160,000, with the $160,000 amount reflecting a "base period" of the calendar quarter

[24] As set forth in IRC section 415(d)(2)(B), the amount of the COLA adjustment is determined annually based on procedures "similar to the procedures used to adjust benefit amounts under § 215(i)(2)(A) of the Social Security Act." IRC § 415(d)(4) further establishes a "rounding rule," which provides that COLA increase "shall be rounded to the next lowest multiple of $5,000."

beginning July 1, 2001, and with adjustments based on COLAs to occur thereafter.[25] The section 415(b)(1) limits in effect for the years 1998 through 2003 are as follows:

YEAR	AMOUNT
1998	$130,000
1999	$130,000
2000	$135,000
2001	$140,000
2002	$160,000
2003	$160,000

The Plan's Provisions. Section 7.1 of the Plan ("Maximum Defined Benefit Limitation") states: "As required by ERISA, the maximum amount of yearly retirement income which may be paid to a Participant under this Plan may not exceed the limitations contained in section 415(b) of the Internal Revenue Code of 1986 taking into account the special rule contained in section 415(b)(9)." Plan § 7.1. Section 7.2 ("Adjustments to Maximum Benefit Limitations"), in turn, provides:

> In the event that the yearly retirement income payable to a retired Participant absent the limitations of Section 7.1 would be greater than his yearly retirement income after application of such limitations, the yearly retirement income otherwise payable following his retirement shall be increased for each such limitation year following his retirement to reflect, as appropriate with respect to him, any increase in such limitation.

Plan § 7.2.

PBGC's Determination Concerning the IRC Section 415(b) Limits. PBGC concluded that the Plan, by adopting plan provisions that incorporated the IRC section 415(b) limits by reference, provided that Plan benefits would increase for some highly compensated participants whenever the statutory 415(b) limits increased. PBGC determined that such increases to the section 415(b) limits would be treated as benefit increases that are effective – both for PC3 and phase-in purposes[26] – from the date the statutory increase takes effect.

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[25] Additionally, IRC section 415(b)(2), which defines the term "annual benefit," contains a number of rules for determining the section 415(b) amount (with those rules also being changed several times through legislation). These include requirements that the section 415(b)(1)(A) limit be actuarially adjusted: (1) for benefit forms payable other than as a straight life annuity; and (2) when benefit payments begin before age 62, or after age 65. Sections 415(b)(3) through (b)(11) contain additional rules for determining the 415 limits for defined benefit plans, including (in IRC § 415(b)(9)) a special rule for commercial airline pilots. *See also* Treasury Decision 9319, 72 Fed. Reg. 16,878 (April 5, 2007) (final IRS regulation concerning 415 limits).

[26] Although you reference the phase-in provisions in ERISA and PBGC regulations, your appeal on this issue focuses upon how PBGC has calculated PC3 benefits, rather than upon its phase-in calculations. We note in this regard that PBGC found only one pre-DOPT retiree (whose name is not on your client list) whose benefits are affected by the phase-in of increases to the IRC limits. Actuarial Case Memo at page 14.

PBGC also recognized, however, that its regulation at 29 C.F.R. § 4044.13(b)(5) provides that "automatic increases in the benefit formula" in the 5th and 4th year before DOPT are included in PC3 if they: (1) arise pursuant to provisions that are adopted and effective before the first day of the 5-year period ending on DOPT, and (2) are provided to retirees as well as to active participants. PBGC therefore decided that, because the automatic increases to the section 415(b) limits as provided in sections 7.1 and 7.2 of the Plan satisfied these two conditions, increases payable to participants in the 5th and 4th year before DOPT are payable in PC3.

PBGC also decided, however, that increases to the 415(b) limits that went into effect in the last three years before DOPT (i.e., between April 1, 2000 and March 31, 2003) are: (1) not included in PC3 benefit amounts; (2) are guaranteeable (and hence in PC4) to the extent that ERISA's guarantee limits do not exclude them;[27] and (3) are in PC5, if the increases are not in PC4 because of the guarantee limits.

Discussion. ERISA section 4044(a)(3) states that PC3 covers the benefit that was (or could have been) in pay status "as of the beginning of the 3-year period ending on the termination date of the plan . . . 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 . . . ." 29 U.S.C. § 1344(a)(3).

We disagree with your position that the section 415(b) limits should not be treated as "plan provisions." IRS regulations provide: "Although no specific plan provision is required under section 415 in order for a plan to establish or maintain its qualification, the plan provisions must preclude the possibility that the limitations imposed by section 415 will be exceeded." IRS Regulation § 1.414-1(d)(1). Thus, the Plan's adoption of specific language (in sections 7.1 and 7.2) that address the section 415 limits was not gratuitous or a mere formality, but rather was part of the process by which the Plan complied with the tax-qualification requirements under the IRC.

We further observe that an employer's decision to pay benefits at a level that meets the section 415(b) limits – rather than to pay less – is not mandated by law, nor is an employer required to increase payments to retirees as the section 415(b) limits increase. Thus, US Airways' "maximum benefit" provision represents just one way of complying with the section 415(b) limits. Accordingly, we concluded that, even though the section 415(b) limits are legal provisions, US Airways' adoption of provisions that incorporated the limits into its formal pension plan documents made the incorporated limits "provisions of the plan" within the meaning of the PC3 definition in section 4044(a)(3) of ERISA.

Additionally, PBGC applies the section 415(b) limit in effect as of April 1, 2000 in its PC3 benefit calculations because that is the maximum amount that a retiree could receive from the Plan if he or she was in pay status on that date. As discussed above with respect to Issue #2, we reject your argument that PBGC should increase the PC3 benefit amount for participants who are not in pay status three years before the plan termination date. We do not see a reason to

[27] To the extent that the section 415(b) increases involve benefit amounts above the MGB limit, they are not guaranteed and, thus, are not included in PC4. For benefit amounts below the MGB, PBGC's guarantee of each section 415(b) limit increase is phased in by the number of full years the increase has been in effect, not to exceed five, multiplied by the greater of (1) 20% of the amount of the increase, or (2) $20 per month. 29 U.S.C. § 1322(b)(1), (7) and 29 C.F.R. § 4022.26.

create an exception for participants whose benefits are capped by the section 415 limits. *See* 29 U.S.C. § 1344(a)(3) (in determining PC3 benefit amounts for participants in pay status at DOPT-3, "the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period").

Finally, as discussed above, PBGC's PC3 regulation has a specific provision for "automatic benefit" increases, which PBGC has applied to the Plan with respect to the section 415(b) limits. 29 C.F.R. § 4044.13(b)(5); *see also* footnote 12 of this decision. Thus, based on its regulation, PBGC is paying PC3 benefits that include the increases in the section 415(b) limits that went into effect before DOPT-3. *See, e.g.,* the PBGC benefit calculation for [redacted] at Appendix A. Nothing in PBGC's regulations supports an extension of this "automatic increases" provision to allow PC3 to cover increases to the section 415(b) limits after that date. Accordingly, we concluded that your request for PBGC to apply the section 415(b) limit that is in effect "at the time of each participant's retirement or the date of plan termination, whichever is later," is contrary to PBGC's regulation at 29 C.F.R. § 4044.13(b)(5).[28]

II. ISSUES INVOLVING PBGC'S CALCULATIONS.

Issue 5: PBGC's Calculation of ERIP Benefits.

Your Appeal. Your appeal, at AB 14-15, questions the benefits PBGC determined for 65 of your clients, listed on Exhibit C of your appeal, who retired under the ERIP. Referring to those 65 ERIP retirees, you note that PBGC's benefit statements showed that each participant's benefit was the same before and after the ERIP enhancement. You state: "Since ERIP participants received an increase in either their years of service, their age at retirement, or both, it defies logic and math that any ERIP participant (except for those who retire at actual age 60 and had 30 years of service) would have the same benefit before and after the ERIP enhancement." AB at 14-15.

You assert that, based on the "apparently egregious errors in the ERIP statements" for the 65 individuals, you are concerned about the accuracy of the other calculations undertaken by PBGC. You also state that PBGC has not given you sufficient information to determine "why the ERIP statements contain inaccurate information." Again referring to the 65 ERIP clients you listed, you requested:

- an explanation as to why their benefits before and after the enhancement are the same;
- the individual data used in the calculations of benefits before and after enhancement, as well as an explanation of the methodology used;

[28] Your appeal asserts that the meaning of "automatic increases" is unclear because PBGC's regulation does not define those words, and ERISA § 4022 and 4044 do not even mention them. While "automatic increases" is not defined in the regulation, we concluded that benefit increases that occur when the section 415 limits change (as provided in section 7.2 of the Plan) clearly are "automatic increases" within the general meaning of those words. Indeed, IRS used the words "automatic benefit increases" in describing pension plan provisions that increase plan benefits automatically whenever the section 415 limits change. IRS Rev. Rul. 2001-51, Q&A 2 (2001) (IRS guidance on the amendment to the section 415 limits under the Economic Growth and Tax Relief Reconciliation Act of 2001).

- for those with PC3 benefits that were not in pay status three years before plan termination,[29] the individual data used to calculate their PC3 benefits as well as an explanation of the methodology used; and

- to the extent underpayments are discovered, prompt restoration of benefits by PBGC and the payment of future benefits at the correct amounts.

Our Conclusions. As you state, the ERIP enhancement increased the total retirement benefits for all pilots retiring under this program. But, for the most senior pilots whose Plan benefits at retirement already were at the IRC section 415(b) limit, the ERIP increased only the *non-qualified* Top Hat Plan portion of their pension payable at retirement. As further explained below, this is the reason why the 65 ERIP participants in your Exhibit C had the same *qualified* benefits before and after the ERIP's Magic Five enhancement.

Additionally, in the course of examining PBGC's benefit calculations for the 65 appellants in your Exhibit C, we discovered that PBGC unintentionally changed US Airways' benefit calculation methodology for some ERIP retirees who elected the 50% or the 75% Lump Sum option. PBGC's Benefits Administration and Payment Department ("BAPD") will review the benefits of 64 of the 65 appellants in your Exhibit C and correct any benefits as they find necessary. BAPD further will issue new Benefit Determinations, with new 45-day appeal rights, to these 64 appellants as well as to 21 similarly-situated appellants listed at Enclosure 1.[30] As detailed later in this section, we decided that PBGC's Benefit Determination is correct for the one appellant on your Exhibit C who chose to receive his benefit in the form of a life annuity.

Background on ERIP Benefit Calculations. As discussed above at pages 7-8, the ERIP created the "Magic Five enhancement" to early retirement benefits. LOA 46, Pt. II, § A. The Magic Five enhancement is applied to the participant's total benefits that are payable from the Plan, the Target Plan, and the Top Hat Plan. A pilot retiring under the ERIP further was permitted to choose one of the following three forms of payment (which applied to the combined benefits under the three plans): (1) an annuity form; (2) a 75% Lump Sum option (balance in an annuity form); or (3) a 50% Lump Sum option (balance in an annuity form). *See* LOA 46, Pt. II, § A.5.

For pilots who chose an annuity form, the ERIP calculation and the payment of benefits is relatively straightforward. First, the plan administrator determines which of the three Magic Five enhancement options (i.e., the Age Option, the Credited Service Option, or the Age and Credited Service Option) produces the highest monthly benefit. *See* LOA 46, Pt. II, § A. To the extent the IRC permits, the highest enhanced benefit amount is paid monthly from the Target Plan and from the Plan.[31] The Top Hat Plan pays those benefit amounts (if any) that cannot be

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[29] Exactly seven of the 65 retired after April 1, 2000, i.e., less than three years before DOPT. Enclosure 12 lists those seven 7 individuals.

[30] The Appeals Board, however, denied your claims for these 85 appellants on Issues 1-4 and 6-10 for the reasons stated in this decision.

[31] LOA 46, Pt. II § A.5(c) provides, however, that if a pilot's Target Plan benefit exceeds 75% of his total retirement benefits, his entire lump sum will be paid from the Target Plan.

paid from the Plan and Target Plan due to the limitations in IRC sections 401(a)(17) and 415. *Id.* Additionally, as the IRC section 415(b) limits increase, monthly benefits payable from the Plan may increase (in accordance with section 7.3 of the Plan document) with a corresponding decrease in the monthly Top Hat Plan benefit. LOA 46, Pt. II, § A.6.

For pilots who chose one of the two Lump Sum options, the ERIP benefit calculation is more complex. First, the plan administrator computes the monthly benefit with the ERIP enhancement, as is described in the above paragraph. Then, the plan administrator determines the lump sum value of the full monthly ERIP benefit, using (among other things) the interest rate specified in LOA 46, Pt. II § A.5(c).[32] A participant electing the 75% Lump Sum option is paid, upon retirement, a lump sum equal to 75% of this value, with the payment made first from the Target Plan, then from the Plan, and then from the Top Hat Plan, until the full 75% amount is satisfied. *Id.* The remaining 25% in benefits is paid as a monthly annuity, with payments made first from the Plan (to the extent the IRC § 415(b) and IRC § 401(a)(17) limits allow) and then from the Top Hat Plan. Finally, as is the case with the annuity benefit described above, monthly benefits payable from the Plan may increase as the section 415(b) limits increase.

The 50% Lump Sum benefit calculation mirrors the 75% Lump Sum calculation that is described above.

Discussion.

(1) *ERIP Benefits Before and After Enhancement.* You claim that PBGC's benefit statements are in error for your 65 Exhibit C participants because they show that each individual's benefit was the same before and after the ERIP enhancement.

We agree that the ERIP increased the total benefits provided by the three US Airways' pension plans for all 65 of the individuals you named. When each of these 65 pilots retired, however, the monthly benefit calculated without the ERIP's Magic Five enhancement already was at the maximum permitted by IRC section 415(b). Thus, the ERIP enhancement increased only the Top Hat Plan benefit for the 65 appellants, as their Plan benefit was already at its maximum amount permitted by law.

This conclusion is illustrated by the statements US Airways prepared for ERIP retirees that show the pilot's benefits before and after the ERIP enhancement. *See* Enclosures 13 and 14, which are US Airways-prepared statements for two of your appellants whose benefits are discussed in more detail below. As Enclosures 13 and 14 show, the "Qualified" benefit amounts did not change as a result of the ERIP enhancement, but instead the enhancement increased only the "Non-qualified" benefit.[33]

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[32] LOA 46, Pt. II § A.5(c) states, in relevant part: "For a Participating Pilot, the interest rate used to determine the 75% Lump Sum from the Retirement Plan, the Target Plan and the Nonqualified Plan shall be the lesser of (x) the rate required under the Plans on the participant's Benefit Commencement Date or (y) the greater of 6.25% or the rate required under the Plans if the participant's Benefit Commencement Date was May 1, 1998 (the first day following the close of the Window Period)."

[33] The "Qualified" benefit is the combined benefit payable from the Plan and the Target Plan, and the "Non-Qualified" benefit is the benefit payable from the Top Hat Plan.

As reflected in the table on page 20, the IRC section 415(b) limits generally increased between 1998 and 2003. More precisely, increases in the section 415(b) limit occurred in 2000, 2001, and 2002. In 2003, the year the Plan terminated, the section 415(b) limit did not increase. Each of the 65 appellants on your Exhibit C had at least a portion of his or her retirement benefit paid in the form of a life annuity, as the ERIP did not permit a 100% lump sum distribution. As the section 415(b) limits increased over this 1998 - 2003 period, it had no effect on the total retirement income for these retired pilots; their total annuity payments remained constant, but the portion paid from the Plan increased and the portion paid from the Top Hat Plan decreased in years 2000, 2001, and 2002. The Plan required these section 415(b) increases to be paid from the Plan, rather than from the Top Hat Plan. Thus, as the section 415(b) limits increased over time, the annuity portion of the ERIP benefit increasingly was paid from (or entirely was paid from) the Plan.

PBGC included in its PC3 calculation all such Plan-required post-retirement section 415(b) benefit increases until three years before the Plan terminated (DOPT-3). The example below for your client [redacted] illustrates that PBGC included the increased Plan benefits allowed under IRC section 415(b) in its PC3 calculation. Accordingly, we decided that your appeal provided no basis for changing PBGC's findings (based on information it received from US Airways) that the 65 ERIP participants in your Exhibit C had the same *qualified* benefits before and after the ERIP's Magic Five enhancement.

(2) *Your Request for an Additional Explanation of PBGC Benefits*. The Appeals Board's purpose is to decide specific issues that are raised in appeals of PBGC's Benefit Determinations, rather than to provide explanations to appellants concerning their benefit calculations.[34] While we are not providing individualized benefit explanations for all of your Exhibit C appellants, we have informed BAPD of your requests that PBGC provide more information concerning the calculation of their benefits.

Because the PC3 benefit calculations for pilots receiving ERIP benefits are complex, we will discuss in detail (as examples) the ERIP benefit calculations for two of your clients: one who elected an annuity benefit and one who elected a 50% Lump Sum. *See* the discussion immediately below and in Appendices A and B to this decision.

A. ERIP calculations for a pilot who elected an annuity benefit. [redacted] is the only one of your 65 clients listed on your Exhibit C who elected to receive payment of all of his Plan benefits in an annuity form. As discussed in more detail in Appendix A to this decision, the Plan benefit [redacted] was receiving on April 1, 2000 (the applicable date for determining his PC3 benefit amount) equaled the IRC section 415(b) limit applicable to him on that date. Accordingly, the Appeals Board concluded that PBGC correctly determined both [redacted] Plan benefit under the ERIP and his PC3 benefit, since he could not receive payments from the Plan that exceed the section 415(b) limit.

[34] We also note that PBGC's Disclosure Officer responds to requests from participants and their representatives concerning pension data and calculations. For these appeals, PBGC's Disclosure Officer has responded to all of your requests for information.

B. ERIP calculations for a pilot who elected a 50% Lump Sum. [redacted] retired on [redacted] 1, 2000 and elected the 50% Lump Sum option under the ERIP. Upon retirement, [redacted] (1) received a 50% lump sum of $935,712.01 from the Plan and a lump sum of $335,574.26 from the Target Plan (his entire Target Plan balance); (2) was paid a monthly Plan benefit of $1,264.47 and a monthly Top Hat Plan benefit of $8,294.68 in 2000 ($9,559.15 total monthly); and (3) as a result of increases to the IRC section 415(b) limits, was paid a monthly Plan benefit of $2,679.55 and a monthly Top Hat Plan benefit of $6,879.60 ($9,559.15 total monthly) in 2003 (the year the Plan terminated). While his total monthly life annuity benefit remained constant at $9,559.19, the amount of this benefit paid from the Plan increased with the 2001 and 2002 changes in the IRC section 415(b) limit, as explained above.

As is discussed further in Appendix B, PBGC accepted US Airways' data for [redacted] with respect to his date of birth, service, compensation, his Target Plan account balance, etc. PBGC also accepted the following calculations made by US Airways: (1) his monthly benefit amounts (both "qualified" and "non-qualified") before and after the ERIP enhancement; (2) his 50% ERIP lump sum amount; (3) the amount of the 50% ERIP lump sum to be paid from the Plan and the amount to be paid from the Target Plan; (4) the annuity value of his Target Plan benefit; and (5) the IRC section 415(b) limit applicable to his benefits.

PBGC, however, calculated [redacted] monthly Plan benefit as of [redacted] 1, 2000 (the applicable date for determining his PC3 benefit amount) to be $1,023.35, as compared to the $1,264.47 he was receiving on [redacted] 1, 2000 from US Airways.[35] The primary difference between these two amounts, as is explained in more detail in Appendix B, is that PBGC changed US Airways' method for determining the remaining monthly benefit amount after payment of the lump sums.

Because PBGC unintentionally changed US Airways' benefit calculation methodology as discussed above, PBGC will issue new Benefit Determinations, with new 45-day appeal rights, to [redacted] and the 63 other participants who elected ERIP lump sum options on your Exhibit C. In addition, thus far, PBGC has identified 33 similarly-situated participants, 21 of whom are appellants in this appeal, who received ERIP benefits and need their PBGC benefit recalculated. Enclosure 1 lists all 85 appellants who will receive new Benefit Determinations.

Issue 6: PBGC's Calculation of COLAs for Former Piedmont Pilots.

Your Appeal. The Plan provides that former Piedmont pilots are entitled to COLAs as of January 1 of every year following retirement.[36] The COLA increases are usually 1% of the Piedmont portion of the total Plan benefit.[37]

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[35] The $1,264.47 amount that US Airways paid includes the ERIP enhancement to his benefits. Without the ERIP enhancement, it appears that [redacted] benefit would be approximately $1,250.80 using US Airways' methodology. *See* explanation in Appendix B.

[36] Section 17.5(C) of the Plan provides: "Any cost of living adjustment . . . pursuant to section 9 of the Piedmont Plan shall apply to the benefit of a Piedmont Participant accrued immediately prior to the merger date . . . ."

You question whether PBGC included in PC3 the "full value" of the COLA increases for former Piedmont pilots "for 1999 and 2000 (and all prior years)." AB at 7. You note that PBGC's Actuarial Case Report, in its discussion of PC3 benefits, does not mention the Piedmont COLAs. AB at 7. You further refer to statements in the Actuarial Case Report that: (1) the Piedmont COLA adjustments during each of the last five years prior to DOPT "are subject to $0/0%, $20/20%, $40/40%, $60/60%, $80/80% phase-ins respectively;" (2) 97 former Piedmont pilots are affected by phase in; and (3) COLA increases occurring after DOPT are included in PC5. AB at 8.

You assert that any exclusion from PC3 of the Piedmont COLAs that occurred in 2000 and prior years would violate ERISA section 4044(a)(3)(B) and PBGC's regulation at 29 C.F.R. § 4044.13(b)(5). AB at 7. You request that benefits "for the 97 individuals who have a Piedmont COLA that was not paid for 1999 and 2000 should be adjusted to reflect full credit for the entire COLA provided by the Plan."[38] AB at 8.

Our Conclusion. PBGC included the 1999 and 2000 Piedmont COLAs (as well as the COLAs that went into effect in prior years) in calculating the PC3 benefits for Plan participants.

Discussion. Although it was not specifically mentioned in the Actuarial Case Report, PBGC concluded that the 1999 and 2000 Piedmont COLAs met the definition of an "automatic increase" under PBGC's regulation at 29 C.F.R. § 4044.13(b)(5). Under that provision, automatic increases are included in PC3 if they went into effect three or more years before the Plan's termination date.[39] Accordingly, PBGC had decided prior to the actuarial valuation that the 1999 and 2000 Piedmont COLAs are included in PC3.

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[37] The Plan's Summary Plan Description explains the COLAs provided in section 17.5(C) of the 2001 Plan document as follows: "As of each January 1 after you retire, your accrued benefit under the Piedmont Plan will be multiplied by the lesser of: 1%, or [the annual change in the Department of Labor's Consumer Price Index]." *Retirement Income Plan for Pilots of US Airways, Inc. and Target Benefit Plan for Pilots of US Airways, Inc. Summary Plan Description Effective January 1, 2003* ("2003 SPD"), at page 41.

[38] In your footnote 6, at AB 8, you contend that, even if "the phase-in methodology was the appropriate methodology to apply to a PC3 benefit in a plan that has 100% funding for PC3," the Piedmont-COLA increases should not be "phased in" at all. Referring to ERISA § 4022(b)(7), you assert that phase in applies only if the number of years that a "plan or amendment . . . has been in effect" is less than 5 years. You, thus, claim that none of the Piedmont-COLA increases should be phased in, because the Piedmont COLAs have been in the Plan for at least 10 years. *Id.*

Your position concerning phase-in is contrary to PBGC's long-standing interpretation of ERISA, which is reflected in its regulations. PBGC's regulation, at 29 C.F.R. § 4022.25(b), provides that the phased-in guaranteed benefit is determined based on the following formula: the number of years a "benefit increase" has been in effect, not to exceed 5, multiplied by the greater of (1) 20%; or (2) $20 per month. PBGC's regulation at 29 C.F.R. § 4022.2 further defines "benefit increase" as including "a scheduled increase in benefits under a plan or plan amendment, such as a cost-of-living increase." It is PBGC's position that, based on these provisions, each COLA increase in a pension plan is phased-in as of the date it takes effect, which for the Piedmont COLAs occurred on January 1 of each year. Thus, each of the Piedmont COLA benefit increases that occurred in the five years before plan termination (i.e., in the period between April 1, 1998 and March 31, 2003) is subject to phase-in.

[39] See also the discussion under Issue #4 above concerning "automatic increases" based on the Plan's provisions involving the IRC § 415(b) limits.

The Appeals Board is not aware of any instance where PBGC's calculations of PC3 benefit amounts did not include the 1999 and 2000 Piedmont COLAs. Your appeal, however, suggests that omissions occurred because the Actuarial Case Memo identifies 97 participants with "phased-in" Piedmont COLAs.

We examined the list of the 97 participants and found that it contains exactly two of your clients with timely-filed appeals. We explain PBGC's treatment of the Piedmont COLAs for these two individuals in Appendix C to this decision. As is shown in Appendix C, PBGC included the 1999 and 2000 Piedmont COLAs in the PC3 benefit calculations for these two participants. Both participants, however, have guaranteed benefit amounts in PC4 that are higher than their PC3 benefit amounts. For each participant, therefore, PBGC is not paying the PC3 benefit amount, but rather the higher guaranteed amount.

For this issue, we also examined PBGC's benefit calculations for a third timely-filed appellant. This individual is a former Piedmont pilot whose PC3 benefit is larger than his guaranteed benefit. As is shown in Appendix C, PBGC is paying in PC3 100% of the 1999 and 2000 Piedmont COLAs (and all earlier COLAs) for this individual. Accordingly, as is further explained in Appendix C, PBGC correctly has applied the requirements in ERISA and its regulations with respect to the Piedmont COLAs.

Issue 7: PBGC's Calculation of the "Prior Plan Minimum Benefit."

Your Appeal. Prior to 1972, Allegheny Airlines pilots participated in a mixed defined benefit and defined contribution pension plan known as the "Retirement Income Plan for Pilots of Allegheny Airlines, Inc." (the "Prior Plan").[40] As you note in your appeal, section 4.1(E) of the Plan provides a "minimum benefit" (which we also refer to as the "Prior Plan minimum benefit") for pilots who were on the Allegheny Airlines System Seniority List as of December 1, 1972 (the "Prior Plan pilots").

Your appeal claims, at AB 23-37, that US Airways (as the former plan administrator) miscalculated benefits for the Prior Plan pilots and PBGC perpetuated these errors. You assert that these errors are the result of an incorrect interpretation of section 4.1(E), which "memorializes the guarantee that Prior Plan pilot retirees shall receive no less than they would have received had the Prior Plan remained in effect without change." Specifically, you state that US Airways and PBGC failed to provide the full Prior Plan minimum benefit because they had: (1) omitted the impact of reinvested dividends in applying the Standard and Poor's 500 stock index ("S&P 500") that is referenced in section 4.1(E); (2) incorrectly ceased annual S&P 500 adjustments upon a pilot's retirement date; (3) "ignored the 1% termination credit in calculating the number of Retirement Income Units to which a pilot was entitled;" and (4) failed to follow

[40] The Prior Plan, named the "Retirement Income Plan for Pilots of Allegheny, Inc.," was amended and restated several times. In this decision, when we use the term "Prior Plan" in citing to provisions in the formal document, we are referring to the amendments and restatement effective April 12, 1972. The April 12, 1972 document was the last restated plan document before the conversion to a single defined-benefit plan. We note that, after the merger of Allegheny Airlines and Mohawk Airlines in 1972, the merged company was renamed "US Airways, Inc." *See* Actuarial Case Memo at page 4.

the Prior Plan provision that provided for a 50% benefit increase in certain situations when a participant was found to be T&P disabled.

Our Conclusion. For the reasons outlined below under the heading "Discussion," the Appeals Board denied your appeal on this issue and found that PBGC properly determined Prior Plan minimum benefits. Specifically, the Appeals Board found that: (1) the plain language of the Plan requires application of the investment performance of the S&P 500 without an adjustment for reinvested dividends; (2) the Plan does not require further adjustment of the Prior Plan minimum benefit following termination of employment or the Benefit Commencement Date; (3) US Airways' long-standing practice, which PBGC followed, of not applying the 1% termination credit is consistent with the terms of the Plan; and (4) there is no support for your assertion that certain appellants are entitled to a 50% disability benefit increase.

Background. The Prior Plan. The Prior Plan included both a defined benefit component (the "A Plan") and a defined contribution, variable benefit component (the "B Plan"). Benefits under the B Plan were "variable" in the sense that the benefit amounts paid to retirees and their beneficiaries were based, among other things, upon the actual performance value of a group of diversified stocks that were held by the Prior Plan.[41]

For purposes of the B Plan benefit, the Prior Plan maintained an account for each pilot under which Retirement Income Units were credited.[42] The number of Retirement Income Units credited to each pilot depended upon the amount of employer contributions made on his or her behalf, his or her age, the longevity of the participants in the Prior Plan, and the current value of each Retirement Income Unit.[43]

Transition from the Prior Plan to the Current Plan. In 1972, Allegheny negotiated with ALPA (who was the certified collective bargaining representative for its pilots) to convert the Prior Plan to a single defined benefit plan. In a Letter Agreement dated November 21, 1972 ("1972 Letter Agreement"), Allegheny and ALPA agreed to a new, defined-benefit formula that would constitute the "basic benefit" for pilots under the new Plan. Additionally, section II.E. of the 1972 Letter Agreement provided a "minimum benefit" for pilots who were on the Allegheny Airlines System Seniority List as of the effective date of this Agreement.

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[41] This is reflected in section XI of the Prior Plan, which states: "The Trust Fund shall be valued at market value as of the Evaluation Date and shall include both cash and securities of whatever kind held by the Trust Fund, and each valuation shall include dividends declared but unpaid as well as gains or losses, realized or unrealized."

[42] Section XI of Prior Plan document states: "All monthly retirement income under the Variable Retirement Income Plan . . . is measured by Retirement Income Units. An account shall be maintained for each Member representing his accumulated Retirement Income Units in the Trust Fund." Section I of the Prior Plan defines a "Retirement Income Unit" as "the unit used to measure the retirement income which is credited to Members under the Variable Retirement Income Plan, in the manner and to the extent provided herein."

[43] Prior Plan section XI sets forth how Retirement Income Units are valued and how they are allocated to a participant's individual accounts. *See also* "1970 SPD," which summarizes how Retirement Income Units are valued and allocated under the Prior Plan. The 1970 SPD is Exhibit M to your appeal.

In 1973, the Prior Plan minimum benefit formula was incorporated into the formal Plan document. Section 4.3(C) of the 1973 Plan document – which was renumbered as section 4.1(E) in later Plan documents – stated:

> The Retirement Income provided for a Participant covered under the Prior Plan shall not be less than that to which he would have been entitled at his Benefit Commencement date or Termination of Employment had the Plan continued in effect without change, assuming, for the purposes of determining the retirement income to which the Participant would have been entitled under the Variable Retirement Income Plan . . . the investment performance thereunder, would be equal to the investment performance of the Standard and Poor's 500 stock index (*unadjusted for dividends*).

(Emphasis added). Although the Plan was amended on several occasions after 1973, the Prior Plan minimum benefit as provided in section 4.1(E) has not been materially changed with respect to the issues raised in your appeal.

The Standard & Poor's 500. Standard and Poor's U.S. indices, such as the S&P 500, are designed to reflect the U.S. equity market and, through the markets, the U.S. economy. Information concerning the Standard and Poor's U.S. indices is available on the internet at www.indices.standardandpoor.com. Enclosure 15 to this decision provides information we obtained from Standard and Poor's ("S&P") website.[44]

The S&P 500 is calculated using a "market-cap weighted methodology."[45] This means that the level of the index reflects the total market value of all the component stocks relative to a particular base period.[46] Basically, the total market value of a company included in the index is determined by multiplying the price of its stock by the number of shares outstanding.[47] The S&P 500, as it is generally disseminated to the investment community and the public, reflects the stock values of its component companies. It does not, however, take into account the added

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[44] Enclosure 15 contains the following documents: (1) S&P 500 "Fact Sheet" (2 pages); (2) "S&P U.S. Indices Frequently Asked Questions" (4 pages); (3) "S&P 500 Annual Returns" with accompanying description (3 pages); (4) selected pages from "S&P U.S. Indices, Index Methodology" (16 pages enclosed); and (5) selected pages from "Index Mathematics Methodology" (11 pages enclosed).

[45] S&P, "Index Mathematics Methodology," page 4. The S&P 500, with approximately 75% coverage of U.S. equities, focuses on the large capitalization sector of the market. S&P 500 "Fact Sheet," page 1. The S&P 500 is maintained by the S&P Index Committee, a team of economists and index analysts who meet on a regular basis. The S&P Index Committee follows a set of published guidelines for maintaining the index. *Id.*

[46] S&P, "Index Mathematics Methodology," page 4. The S&P 500's base period is 1941-43. S&P, "S&P U.S. Indices Frequently Asked Questions," page 3.

[47] S&P, "Index Mathematics Methodology," page 4. Among other things, a "float adjustment" is included in determining the value of the S&P 500. As a result of the float adjustment, the stock share counts used in calculating the indices reflect only those shares that are available to investors, rather than all of a company's shares. S&P, "S&P U.S. Indices, Index Methodology," pages 16-18.

return investors would receive based on the immediate reinvestment of dividends back into the S&P 500 companies.[48]

S&P also calculates and makes available information concerning the "total returns" of the S&P 500.[49] The total returns calculation builds upon the S&P 500 (which, in S&P publications, is referred to as a "price index") to reflect, during a given time period, both stock values and dividend income.[50] For the "total returns" calculation, S&P essentially assumes that ordinary dividends, as they are distributed, are reinvested on a daily basis in the companies that comprise the S&P 500.[51] We note that, historically, the S&P 500 value based on "total returns" has significantly exceeded the S&P 500 value without the reinvestment of dividends.[52]

The *Everett v. USAir Group* Litigation. A group of retired and active pilots initiated litigation in the United States District Court for the District of Columbia in May 1995. This group of pilots asserted (among other things) that the Plan had failed to provide them with their full benefits because, in the Prior Plan minimum benefit calculations, the S&P 500 was applied exclusive of reinvested dividends. In 1996, Judge Friedman dismissed this complaint for lack of subject matter jurisdiction on the ground that the issue was one committed to the US Airways Pilot Retirement Board ("Retirement Board") under the Railway Labor Act. *Everett v. USAir Group,* 927 F. Supp. 478 (D.D.C 1996). The plaintiffs appealed this ruling, which was then dismissed on the basis that Judge Friedman's decision was not final. *Everett v. US Airways Group,* 132 F.3d 770 (D.C. Cir. 1998). After further proceedings, plaintiffs filed a second appeal in 1998. The United States Court of Appeals for the District of Columbia Circuit resolved that appeal by affirming Judge Friedman's order and his rationale regarding lack of subject mater jurisdiction. *Everett v. US Airways Group,* 194 F.3d 173 (D.C. Cir. 1999) (opinion designated by court as "unpublished"), *cert. denied,* 528 U.S. 815 (1999).

The group of Prior Plan pilots, having been denied court review on the merits of their claims, then submitted their claims to the Retirement Board. The Retirement Board is a four-person body, with two members appointed by US Airways and two by ALPA. In 2000, the Retirement Board deadlocked on the claims at issue, with the two US Airways' members voting against the Prior Plan pilots and the two ALPA members voting for them. Under the collective bargaining agreement, the next step in the dispute resolution process was for the issue to be resolved by a five-person Board chaired by a neutral arbitrator. Based on the information available to PBGC, it appears that this arbitration process never was completed.

Discussion. Your appeal does not provide any specific examples to illustrate the financial impact upon appellants of the alleged errors in PBGC's Prior Plan minimum benefit

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[48] S&P, "Index Mathematics Methodology," pages 4-9.

[49] S&P, "S&P U.S. Indices Frequently Asked Questions," pages 3-4.

[50] S&P, "Index Mathematics Methodology," page 20.

[51] *Id.*

[52] *See* S&P, "S&P 500 Annual Returns," in Enclosure 15. This document lists the year-end "Price Change" and "Total Return Change" in the S&P 500 for each year during the 1988-2007 time period.

calculations.[53] Rather, your appeal focuses only upon the general methodology used by US Airways and PBGC in calculating benefits. Since we are denying your claims for the reasons stated below, we did not fully examine whether a favorable decision on this issue would change the benefits of any of your appellants.[54]

We further note that your appeal on this Issue #7 contains 12 exhibits and makes a number of very specific contentions. The Appeals Board's findings and holdings concerning Issue #7 are presented below. In addition, Appendix D to this decision provides supplemental responses to certain of the more-specific contentions in your appeal.

(1) Your Assertions Concerning Reinvested Dividends. Your appeal notes that, under the Prior Plan, the actual income from reinvested dividends was taken into account in determining the variable benefit amounts payable to participants. You contend that, while the Prior Plan minimum benefit provision replaced "an actual basket of securities" with the S&P 500 index, the Prior Plan provisions were otherwise not changed and, therefore, reinvested dividends should be included in applying the S&P 500 index. You further assert that inclusion of reinvested dividends is supported by the Plan's bargaining history, both at the inception of the current plan in 1972 and in US Airways' subsequent attempts to amend it.

The 1972 Letter Agreement stated that the Prior Plan minimum benefit would be determined based on the assumption that "the variable fund assets had achieved investment performance equal to the performance of the Standard and Poor's 500 Index." Section 4.3(C) of the 1973 Plan amendments, however, stated that the minimum benefit would be based on the assumption that "investment performance . . . would be equal to the investment performance of the Standard & Poor's 500 stock index (*unadjusted for dividends*)" (emphasis added). Thus, while the Letter Agreement was silent concerning whether the S&P 500 index would be adjusted for dividends, the 1973 amendments specifically included the language "unadjusted for dividends."

The Appeals Board concluded that this crucial language in the 1973 Plan document – that is, "the Standard & Poor's 500 stock index (unadjusted for dividends)" – plainly means the value

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[53] Although the appeal does not provide specific examples of benefit calculations, Exhibit H to your appeal lists 472 individuals who you assert: (1) are your clients; (2) are pilots, or surviving spouses of pilots, who were on the Allegheny Airlines System Seniority list as of December 1, 1972; and (3) had received Benefit Determinations from PBGC. Additionally, Exhibit I of your appeal lists 103 individuals who you assert are "certain pilots who received 100% lump sum distributions from the Current Plan at retirement, but who have identical claims against the Plan and who were parties to the [Everett] litigation." AB at 24. (Some of the names on Exhibit I are identical to those on Exhibit H.) Since this Appeals Board decision applies only to appellants with timely-filed appeals, we have not addressed the benefit rights of any individual who is listed on Exhibit H and/or Exhibit I and who is not a timely-filed appellant.

[54] The benefit payable under the Prior Plan minimum benefit formula, like the benefit provided under the Basic Formula, cannot exceed the IRC section 415(b) limits. PBGC's Actuarial Case Memo, at page 7, indicates that the section 415(b) limits have had a significant impact upon pilots who qualified for the Prior Plan minimum benefit, since "the minimum benefit as calculated pursuant to plan practice has generally produced amounts in excess of the IRC section 415 maximum benefit limits for qualified plans." Therefore, even if your contentions concerning the Prior Plan minimum benefit calculation are correct, it appears likely that many (if not all) of your appellants would not be entitled to benefit increases from PBGC.

of the S&P 500 without taking into account the added return an investor would receive based on the reinvestment of dividends paid by the S&P 500 companies. As such, the Appeals Board found the bargaining history information and other documents you provided in your appeal to be irrelevant with respect to this issue. *See* further discussion on pages 1-4 of Appendix D.

(2) Your Assertions Concerning "Post-Retirement Tracking" of the Minimum Benefit. Your appeal notes that, for the variable B Plan benefit, the Prior Plan made semi-annual, post-retirement adjustments to monthly benefit amounts, with the adjustments based on the actual performance value of a group of diversified stocks held by the Prior Plan. You assert that the Prior Plan's methodology for post-retirement benefit adjustments was incorporated into the minimum benefit calculation in section 4.1(E) of the Plan. For this reason, you claim that the minimum benefit amounts paid to pilots should be adjusted post-retirement based on changes in the S&P 500. You further contend that such post-retirement benefit adjustments would be consistent with the purposes underlying the adoption of the Prior Plan minimum benefit provision.

In analyzing your contentions, we start with the language of section 4.1(E). It provides that the Prior Plan minimum benefit "shall not be less than the amount to which [a pilot] would have been entitled at his Benefit Commencement Date or Termination of Employment had the Plan continued in effect without change on and after December 1, 1972 . . . ." Thus, section 4.1(E) provides that the minimum benefit amount is determined as of the pilot's Benefit Commencement Date or Termination of Employment date and then is compared to the Basic Formula amount, with the pilot receiving as retirement income the greater of the two amounts.

Section 4.1(E), however, does not state that the Prior Plan minimum benefit amount should be further adjusted after the Benefit Commencement Date or the Termination of Employment date. By contrast, in other (unrelated) instances where post-retirement benefit adjustments occurred, the Plan's governing documents specifically had provided for such post-retirement benefit adjustments.[55] We also found no evidence that Allegheny or US Airways, at any time, adjusted the minimum benefit amount after the Benefit Commencement Date or the Termination of Employment date. Accordingly, having considered the specific language of section 4.1(E) and other benefit provisions in the Plan documents and the Plan's practice, the Appeals Board concluded that PBGC was correct in not including post-retirement adjustments to the Prior Plan minimum benefit, and, therefore, PBGC's calculations of the Prior Plan minimum benefit should not be changed. *See also* our additional findings and conclusions with respect to this claim on pages 4-5 of Appendix D.

[55] Section 17.5(C) of the 2001 Plan document specifically provides that "any cost of living adjustment . . . pursuant to section 9 of the Piedmont Plan shall apply to the benefit of a Piedmont Participant accrued immediately prior to the merger date." The 2003 SPD further clarifies this provision by stating that "as of each January 1 after you retire, your accrued benefit under the Piedmont Plan will be multiplied by the lesser of: 1%, or [the annual change in the Department of Labor's Consumer Price Index]." Similarly, section 7.2 of the 2001 Plan document (which concerns the IRC section 415(b) limits) provides that "the "yearly retirement income otherwise payable [to a pilot] following his retirement shall be increased for each such limitation year following his retirement to reflect, as appropriate to him, any increase in such limitation." *See also* p. 21 of 2003 SPD, which discusses the "maximum benefits" payable under the IRC section 415(b) limits.

(3) Your Assertions Concerning the 1% Termination Credit. Your appeal states that the Prior Plan, for purposes of determining Retirement Income Units to be allocated annually to each pilot prior to retirement, included a 1% actuarial adjustment that reflected "forfeitures to the Plan caused by termination of service of unvested participants." You assert that PBGC and US Airways, in calculating the Prior Plan minimum benefit, "ignored the 1% termination credit in calculating the number of Retirement Income Units to which a pilot was entitled."

The Appeals Board agrees that section XI(a) of the Prior Plan (which you cite in your appeal) included a 1% termination credit for forfeitures of non-vested participants. The November 21, 1972 Letter Agreement and the 1973 Plan document, however, do not mention the 1% termination credit, and we did not locate any subsequent Plan or US Airways document that discussed the credit. We also found no evidence that Allegheny or US Airways included, at any time, a 1% termination credit in its Prior Plan minimum benefit calculations.

The Appeals Board concluded that the Plan's terms did not conflict with US Airways' longstanding practice—which appears to have been unchallenged by participants and their collective bargaining representative while the Plan was ongoing—of not including a 1% termination credit in Prior Plan minimum benefit calculations. Accordingly, the Appeals Board, having reviewed your claim on this issue, decided that PBGC is not required to apply the 1% termination credit in its Prior Plan minimum benefit calculations.[56]

(4) Your Assertions Concerning the Prior Plan's Disability Provisions. You contend, at AB 30-31, that US Airways and PBGC incorrectly calculated benefits for disabled Prior Plan pilots because PBGC and US Airways have failed to award the 50% supplement for "Totally and Permanently Disabled" participants that had been part of the Prior Plan's disability benefit. You assert that a disabled retiree who participated in the Prior Plan should be "paid the greater of: his Prior Plan disability benefit; his pension benefit provided by the Plan; or his disability benefit based on Plan section 4.1(E)."

Upon reviewing the Plan's terms, we concluded that the Prior Plan's 50% "Totally and Permanently Disabled" supplement is not included in the Prior Plan minimum benefit formula. The applicable Plan provision, section 4.1(E), contains both the Prior Plan minimum benefit formula and the Plan's disability retirement benefit formula. With respect to Plan participants who were totally and permanently ("T & P") disabled:

- The first paragraph of Plan § 4.1(E), which sets forth the "retirement income" a pilot is entitled to receive under the Prior Plan minimum benefit formula, is silent concerning benefits for disabled participants;

- The third paragraph of Plan § 4.1(E), which sets forth the Plan's disability retirement formula, provides that a retirement benefit under that formula is available to "a

[56] As is more fully explained on pages 5-6 of Appendix D, the Prior Plan's 1% termination credit appears to have been included in the Prior Plan to comply with then-existing IRS requirements. *See* IRC section 401(a)(8) and Treasury Regulation section 1.401-7. When the Prior Plan was amended to replace an actual pool of securities with "phantom values" based on the S&P 500, the IRC requirements underlying the creation of the 1% termination credit were no longer relevant.

Participant who begins receiving disability benefits under the Additional Benefit Programs on or after December 1, 1974, and who is determined to be totally and permanently disabled . . . ." Additionally, subsection (A) of Plan § 4.1(E) provides that the retirement benefit under the Plan's disability retirement formula cannot exceed 133% of the initial disability benefit paid under the Additional Benefit Program; and

- The final paragraph of section 4.1(E) states: "The yearly amount of basic retirement income payable under the Plan to a Participant who begins receiving disability benefits under the Additional Benefit Programs prior to December 1, 1974 will be equal to the amount he was entitled to receive thereunder."

When these provisions are read together, they establish that: (1) the Plan's disability retirement formula (which is capped at 133%) applies to a T & P disabled participant who started receiving benefits under the Disability Plan on or after December 1, 1974; and (2) the Prior Plan's disability formula (which includes the 50% supplement) applies to a participant who started receiving benefits under the Disability Plan before December 1, 1974. We further concluded that the logical construction of these provisions, based on their plain meaning, is that the Plan's T & P disability retirement formula replaced the disability formula under the Prior Plan. We accordingly reject your position that a Prior Plan pilot who started receiving benefits under the Disability Plan on or after December 1, 1974 is entitled to the larger of the amounts calculated under the two disability formulas.

We further found nothing to indicate that US Airways and ALPA, when they drafted the Plan's minimum benefit provisions, had intended to preserve the benefit under the Prior Plan's disability formula for pilots who started receiving Disability Plan benefits after December 1, 1974. Indeed, US Airways reached the conclusion (which PBGC did not change) that a pilot was not entitled to receive the greater of the benefit calculated under both disability formulas. *See* March 6, 2001 letter from Joseph P. Edwards, US Airways' Senior Retirement Specialist, to Daniel Katz (Enclosure 16), which set forth US Airways' position on this issue with respect to appellant [redacted] Therefore, we deny your claim that PBGC incorrectly calculated the minimum benefit for disabled participants, in addition to denying the other three specific claims we discussed above.[57]

Issue 8: The Plan's Offset for the Target Plan Benefit.

Your Appeal. You state that PBGC "appears to calculate each participant's qualified benefit, payable from the Plan and then subtracts any benefit received from the Target Benefit Plan." AB at 38. You disagree with this methodology, asserting that the Target Plan document and the Collective Bargaining Agreement ("CBA") "demonstrate that the Target Plan does not serve to offset the benefit paid by the Plan." AB at 38. You request that PBGC recalculate Plan benefit

[57] It is unnecessary for the Appeals Board to decide in this decision how Plan benefits should be calculated for participants who were receiving disability benefits before December 1, 1974. For this Issue #7, the appeal did not indicate that any appellants were receiving disability benefits before December 1, 1974. Furthermore, we have identified 30 timely-filed appellants who potentially are affected by your disability issue (presented at AB 16-23) for which the Appeals Board is deferring a decision. Based on records in PBGC's possession, none of these 30 appellants was receiving disability payments under the Additional Benefit Programs before December 1, 1974.

amounts for all participants with a Target Plan benefit. AB at 38-39. Your appeal does not give, for this issue, any specific examples to illustrate the impact of PBGC's benefit calculations on the appellants.

Our Conclusion. The Appeals Board concluded that the Plan document clearly provides that the Target Plan benefit is offset from the amount calculated under the Plan's Basic Formula (or, if applicable, under the Plan's disability retirement formula). We also found that your appeal does not establish that PBGC has applied the Target Plan offset incorrectly. Accordingly, we denied your appeal on this issue.

Background Concerning the Target Plan. The Target Plan went into effect on January 1, 1983. It was established "to alleviate, to the extent permissible through the use of tax-qualified plans, the impact of the changes made to section 415 of the Internal Revenue Code by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") on the retirement benefits of pilots." CBA § 28(B)2. We note that, because of changes to the tax laws that occurred in the late 1980s, US Airways had not made any contributions to the Target Plan since 1988.[58]

The Target Plan does not provide for a specifically-defined pension amount at normal retirement. For this reason, it is an "individual account" pension plan,[59] rather than a defined-benefit plan, and is not covered by PBGC's insurance program. *See* ERISA § 4021(b)(1), (c)(1) (ERISA Title IV does not cover individual account plans).

Section 4.1(A) of the Target Plan defines the "target" benefit, which the Target Plan refers to as the "Target Retirement Income."[60] Essentially, the "Target Retirement Income" is the amount calculated under the Basic Formula less the IRC-limited amount payable by the Plan.[61] The "Target Retirement Income" is not the amount that a participant will actually receive from the Target Plan at retirement. Section 4.1(B) of the Target Plan makes this clear by stating:

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[58] *See* 2003 SPD, at page 53.

[59] Section 4.1(B) of the 2001 Target Plan document states: "The Actual Retirement Income with respect to each Participant under this Plan shall be the amount of annual benefit, payable in the form of a life annuity, which can be purchased from the Account Balance of the Participant . . . immediately preceding his Benefit Commencement Date." (In this decision, when we use the term "Target Plan" in citing to provisions in the formal document, we are referring to this 2001 document.) Thus, Target Plan § 4.1(B) establishes that a participant's Target Plan benefit is determined based upon the amount in his or her individual account at retirement.

[60] The "Target Retirement Income," in combination with the actuarial assumptions stated in section 11 of the Target Plan, is used to determine the annual contributions that US Airways will make to each of the Target Plan's individual accounts. *See* Target Plan §§ 4.1, 11.

[61] The 2003 SPD contains the following description of this provision: "During the years that contributions were made to the Target Benefit Plan, the Target Benefit Plan's actuary would estimate, for each participant, whether his or her retirement benefit would exceed the federal government's limit on the amount of benefits that can be paid from the Retirement Income Plan. If your benefit was expected to exceed the limit, the actuary would estimate the amount needed to make up the difference (referred to as the target benefit), and a contribution may be made to your account in the Target Benefit Plan."

> Due to the fact that the investment accounts of Participants will be used to provide the Target Retirement Income to which a Participant is entitled, it is recognized that the amount of each Participant's Actual Retirement Income, whether more or less than the Target Retirement Income, may vary depending upon the investment results of the Participant's account.

Upon retirement, the pilot may choose a Target Plan retirement benefit that equals the annuity value of his or her individual account balance. Target Plan § 4.1(B) (which is quoted, in pertinent part, in footnote 59); *see also* Target Plan § 4.3 (amount of Normal Retirement Income).[62]

Discussion. As previously noted, subject to certain exceptions, PBGC guarantees the payment of nonforfeitable benefits under the terms of covered plans. The "plan" at issue in this case is the Retirement Income Plan – not the Target Plan. Section 4.1 of the (Retirement Income) Plan states:

> **4.1 Basic Formula.** The yearly amount of basic retirement income payable under the Plan to a Participant is equal to the sum of (A) and (B) *less the sum of (C)* . . . :
>
> (A) 2.4% of the Participant's Final Average Earnings multiplied by the number of the Participant's full and partial years of Credited Service up to a maximum of 25 years;
>
> (B) 1% of the Participant's Final Average Earnings multiplied by the number of the Participant's full and partial years of Credited Service in excess of 25 years, up to a maximum of five years;
>
> *(C) the yearly amount of retirement income payable to the Participant under the Target Benefit Plan.*

Plan § 4.1 (emphasis added). Thus, as the italicized language above makes clear, the Plan provides for an offset of the Target Plan's yearly retirement income from the yearly amount payable under the Plan's Basic Formula.[63] Similarly, the second (B) in Plan section 4.1 requires that the yearly Target Plan benefit amount be deducted from the yearly amount payable under the Plan's special disability retirement provision.

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[62] The Target Plan provided that the "Normal Form of Payment" for married participants is a Joint and 50% Survivor Annuity, and for single participants is the "Life-No Death Benefit form." Target Plan § 9.1. The Target Plan also offered certain optional forms of payment, including a "Lump Sum Option." Target Plan §§ 9-10. The Target Plan placed certain restrictions upon the availability of the Lump Sum Option, however. *See* Target Plan § 10.4.

[63] We note that the Basic Formula in Plan § 4.1 was amended effective January 1, 2003 in a way that decreased future benefit accruals after that date for some pilots, but the amendment did not modify the Target Plan offset.

US Airways' practice in administering the Plan is consistent with this conclusion. As indicated on pages 3-4 and page 9 of the Actuarial Case Memo, US Airways in practice deducted the Target Plan benefit from the Basic Formula amount to obtain the correct Plan yearly retirement income. Consistent with the plain language of the Plan and US Airways' practice, PBGC applied the Target Plan benefit offset in determining the amount of the pilot's Plan benefit amounts. *See* Actuarial Case Memo at pages 3-4, 9.[64]

For pilots whose greatest benefit is under the Basic Formula, the impact of the Target Plan offset is that the pilot will receive, in combined yearly benefits from the Plan and the Target Plan, no more than the yearly Basic Formula amount. [65] Not only is this result mandated by the Plan's plain language, but it also is consistent with the terms of the CBA. The CBA states: "In no event shall the combined benefit for any pilot produced by the Target Benefit Plan for Pilots of US Airways, Inc. and the Retirement Income Plan for Pilots of US Airways, Inc. exceed the benefits that would otherwise have been payable to the pilot under the Retirement Income Plan prior to the adoption of the Target Benefit Plan and without regard to the impact of TEFRA." CBA § 28(B)2.a.

Your appeal asserts, at AB 38, that PBGC's application of the Target Plan offset is improper because "PBGC appears to calculate each participant's qualified benefit, payable from the Plan and then subtracts any benefit received from the Target Benefit Plan." Thus, your appeal suggests that PBGC applied the Target Plan offset incorrectly in determining Plan benefit amounts.

PBGC's benefit calculation methodology, however, is different from the way you have described it. Your appeal suggests that PBGC erred because it deducted the Target Plan benefit from the "qualified" benefit amount (i.e., the Basic Formula amount after the reduction to the Plan benefit based on IRC section 415 limits), rather than from the full Basic Formula amount. We agree that such a method is incorrect. In fact, PBGC's methodology is to apply the Target Plan offset against the Basic Formula amount before taking into account the IRC section 415 limits. [66]

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[64] As noted on page 9 of the Actuarial Case Memo, the last Target Plan balance available is as of January 1, 2003. Soon after plan termination, the Target Plan administrator made Target Plan distributions to all participants with remaining balances. It accordingly became necessary for PBGC to develop a procedure (see description on page 9 of the Actuarial Case Memo) for calculating the Target Plan offset for participants who were not in pay status as of January 1, 2003, but had received Target Plan distributions.

[65] For some pilots, the combined Plan and Target Plan amount is less than the Basic Formula amount. Indeed, this frequently is the case since, as noted above, changes to the tax laws that occurred in the late 1980s prevented US Airways from contributing to the Target Plan after 1988. US Airways and ALPA addressed this situation by establishing the Top Hat Plan to pay the additional benefit amounts. Thus, the Top Hat Plan paid Basic Formula amounts that the Plan and Target Plan could not provide.

[66] Your appeal also states at AB 38: "Because any reductions of the Plan benefit would have already taken place prior to Plan termination, PBGC lacks any basis to further offset Target Plan benefits against Plan benefits." We agree with you that, in situations where US Airways had already applied the Target Plan offset in determining the Plan benefit amount, any additional Target Plan offset would be inappropriate. As discussed on page 9 of the Actuarial Case Memo, however, PBGC has followed US Airways' practice with respect to the Target Plan offset. Further, there is no suggestion or evidence that PBGC is applying an additional offset beyond that applied by US Airways.

Your appeal refers to section 28(B)2.b of the CBA, which states that "in no event shall establishment of the Target Benefit Plan serve to reduce a benefit that would otherwise have been payable to a pilot under the Retirement Income Plan prior to the adoption of the Target Benefit Plan." You claim, at AB 39, that this provision establishes that the Target Plan "does not serve to decrease a participant's payment from the defined benefit plan."

Subsections 28(B)2.a through 28(B)2.d of the CBA set forth the "principles" agreed to by US Airways and ALPA for coordinating Plan benefits with the newly-created benefits under the Target Plan. When US Airways and ALPA amended the Plan to implement the "principles" that they had agreed to in the CBA, they adopted language in Plan section 4.1(E) that (as discussed above) plainly provided for an offset for the Target Plan benefit. They did not include, however, a Plan amendment that mirrored the language in subsection 28(B)2.b of the CBA.[67] This suggests it is likely that either: (1) the language in Plan section 4.1(E) reflected the intended meaning of subsection 28(B)2.b of the CBA; or (2) the parties decided, when they adopted Plan section 4.1(E), to change what they had agreed to in subsection 28(B)2.b of the CBA. In any event, we concluded that the clear language in Plan section 4.1(E), rather than your interpretation of subsection 28(B)2.b of the CBA (which seems to contradict it), should be controlling with respect to this issue.[68]

Your appeal states at AB 39 that the Target Plan benefit "was a benefit above and beyond that paid by the defined benefit plan because the defined benefit plan was frequently prevented from paying the full benefit due to a pilot as a result of tax code limitations, in particular § 415(b)." We agree that your statement reflects the general intent of the Target Plan, but we also concluded that the Target Plan offset has not reduced benefits in a manner inconsistent with that general intent.

As is discussed above for Issue #4, Plan section 7.1 states that the Plan benefit "may not exceed the limitations contained in section 415(b)" of the IRC. Thus, if the Basic Formula amount less the Target Plan offset is above the IRC section 415(b) limit, the Plan provides that the participant will receive the smaller section 415-limited amount. Accordingly, in such

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[67] We concluded that the meaning of subsection 28(B)2.b (which you cite in your appeal) is not entirely clear, especially when read in combination with subsection 28(B)2.a (which is quoted on page 38).

[68] You also referred to section 28(B)1.i.(10) of the CBA, which provides an example as to how benefits are paid under the "50/50 lump sum" payment option. While this example shows the order of payment of the 50% lump sum (first from the Top Hat Plan, then from the Target Plan, and last from the Plan) and how the remaining 50% annuity would be allocated among the three plans, the example does not discuss how the underlying benefit amounts in the three plans are calculated. Therefore, we concluded that this section of the CBA does not address whether the Target Plan benefit is offset against the Plan benefit.

Additionally, you refer to LOA 46, which established the ERIP. While LOA 46 defines the ERIP's benefit enhancements, its three benefit options (i.e., annuity, 50% lump sum, and 75% lump sum), and the order of payment under those options, it did not change how benefits are calculated under the Plan's Basic Formula. As discussed above, the Plan's plain language provides for a Target Plan offset to the Basic Formula amount. Thus, we found no inconsistency between the language in LOA 46 and PBGC's application of the Target Plan offset.

situations – which apply to many pilots who had accrued benefits in both the Plan and the Target Plan – the Plan benefit will equal the full amount permitted under the IRC, and the Target Plan will provide the pilot with an additional benefit above the IRC limit.[69] The PBGC-calculated benefit detailed at Appendix A for one of your appellants, [redacted] illustrates this point.

Finally, your appeal provided no specific examples to illustrate your claim (nor did you list the participants who potentially are affected by this issue). Thus, you have not demonstrated that PBGC has applied the Target Plan offset incorrectly in the calculation of any appellant's benefits. Accordingly, for the reasons given above, the Appeals Board concluded that you provided no basis for changing PBGC's Benefit Determinations with respect to this issue.[70]

III. OTHER CLAIMS FOR RELIEF.

Issue 9: PBGC's Expected Retirement Age Regulation.

Your Appeal. In your appeal, at AB 13-14, you dispute PBGC's determination that the average Expected Retirement Age ("XRA") of active vested US Airways pilots is 55.9 years of age. You contend that, because PBGC has applied an "artificially low" XRA, benefit liabilities for active vested pilots will be "artificially high," which results in "fewer assets available to pay benefits." AB at 13. You assert that the XRA tables in PBGC's regulation are flawed in two respects: first, rather than looking at the experience of the Plan and when participants are likely to retire, the tables simply impose the same assumptions on all plans; and second, PBGC's XRA tables unreasonably assume that someone with a higher expected retirement benefit is more likely to retire early.

Discussion. The procedure for determining the XRA is described in 29 C.F.R. § 4044.55, with reference to Appendix D of the same regulation. The regulation requires the plan administrator or PBGC[71] first to establish whether a participant is in the high, medium, or low retirement rate category using a table in Appendix D. Applying this rate category and other factors to Table II-A, II-B or II-C, whichever is appropriate, will enable the plan administrator or PBGC to determine the participant's XRA. PBGC's regulations do not provide for, or allow, the plan administrator or PBGC to exercise discretion in applying these XRA assumptions.

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[69] We further note that, in those situations (applicable to many of your appellants) where the benefit amount PBGC determined is at the section 415(b) limit, the elimination of the Target Plan offset would not result in any increase in the Plan benefit. Therefore, this Issue #8 does not affect any pilot whose Plan benefit (as calculated by PBGC) is at the section 415(b) limit.

[70] We are not deciding, however, whether PBGC's Benefit Determinations are correct for those ERIP participants with Target Plan benefits who will be receiving new Benefit Determinations based on this decision. *See* discussion under Issue #5.

[71] PBGC's regulation provides that the XRA assumptions in 29 C.F.R. § 4044.55 apply to the plan administrator's valuation of benefits in plans that have been or will be placed into trusteeship by PBGC. 29 C.F.R. § 4044.41. PBGC uses the same assumptions when it values benefits in terminated pension plans, and, accordingly, has applied these XRA assumptions in valuing the Plan's benefits.

Your arguments on this issue are based solely on the contention that the regulations governing the XRA are seriously flawed and based on unreasonable, artificial assumptions. AB at 13. Thus, the crux of your argument is that the regulations themselves are unreasonable or invalid, rather than that PBGC has applied its regulations incorrectly. The Appeals Board, however, does not review the reasonableness of the regulations that PBGC has issued, but rather applies the regulations under the assumption they are valid.[72] Consequently, the Appeals Board concluded that it does not have the authority to grant you relief with respect to this issue.

Issue 10: Your Claim that Funds Were "Improperly Transferred from the Plan."

Your Appeal. In the final issue raised on appeal, you state, at AB 39-40, that PBGC, as fiduciary of the Plan, is obligated to recover funds due and owing to the Plan. You claim there is evidence that, as late as April 2001, the Plan's fiduciaries were transferring assets of the Plan to other plans sponsored by US Airways.

You ask that PBGC be either required to undertake its own investigation of these alleged improper transfers of Plan assets or request the United States Department of Labor to do so. You further state that recovery of these funds would allow appellants with benefits in PC4 or PC5 to obtain a greater percentage of the amounts they lost through the Plan's termination. AB 40-41.

Discussion. In your appeal, you state that "we believe transfers occurred from the Plan to the Target Benefit Plan to make up shortfalls in that Plan as well as to provide funds to pay retirees whose benefit under the so-called phantom plan were higher than their benefits under the Plan. These errors occurred because US Airways, absent the transfers, would have been required to make such payments out of its own assets or through the top hat plan." AB at 40.

The issue you raise is beyond the scope of what the Appeals Board is authorized to review.[73] Although the documentation you later provided at our request does not appear to substantiate your claim, the Appeals Board has forwarded the information and documents to an appropriate division in PBGC's Office of the General Counsel.

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[72] It is worth noting, however, that a bankruptcy court in an earlier U.S. Airways decision examined the issue of whether to value unfunded future benefits using PBGC's regulations or a formula determined by U.S. Airways. The PBGC regulation was described as having a "presumption of validity" and was given "considerable deference" by the bankruptcy court. *In re U.S. Airways Group, Inc.*, 303 B.R. 784, 793 (Bankr. E.D. Va. 2003).

[73] PBGC's "Rules for Administrative Review of Agency Decisions" authorize the Appeals Board to review certain initial determinations made by PBGC, including PBGC's determinations of benefits payable to individual participants. 29 C.F.R. §§ 4003.1 and 4003.51. That regulation, however, does not provide for Appeals Board review with respect to the actions PBGC may take to recover funds that may be owed to a PBGC-trusteed pension plan.

DECISION

Having applied the Plan provisions, the provisions of ERISA, other applicable law, and PBGC regulations and policies to the facts in this case, the Appeals Board determined that: (1) the 85 appellants listed in Enclosure 1 will receive new Benefit Determinations with new 45-day appeal rights; (2) the Board will issue a supplemental decision or decisions with respect to the disability issue you raised for 30 appellants also listed in Enclosure 1; and (3) in all other respects, your appeal is denied on the issues you raised. Additionally, as discussed in footnote 3, the Appeals Board will issue supplemental decisions for eight appellants answering the unique issues each raised in their correspondence submitted directly to the Appeals Board.

This decision is PBGC's final Agency action with respect to the appellants who will not receive new Benefit Determinations or supplemental decisions. These appellants, if they wish, may seek review of this decision in an appropriate federal district court. For the appellants (listed on Enclosure 1) who will receive new Benefit Determinations and/or supplemental decisions, this decision is not yet PBGC's final agency action. If any appellant needs other information regarding his or her PBGC benefits, he or she may contact PBGC's Authorized Plan Representative at 1-800-400-7242.

Sincerely,

Charles Vernon

Charles Vernon
Appeals Board Chair

Appendices (A-D) and Enclosures (19)

LISTING OF APPENDIXES AND ENCLOSURES

4 APPENDIXES:

A. ERIP Calculations for a Pilot who elected an Annuity Benefit – [redacted]
B. ERIP Calculations for a Pilot who elected a 50% Lump Sum – [redacted]
C. Examples of How PBGC Included Piedmont COLAs in PC3.
D. Additional Responses concerning PBGC's Calculation of "Prior Plan" Benefits.

19 ENCLOSURES:

1. List of Appellants who will receive new Benefit Determinations and/or supplemental decision letters (3 pages).
2. Appeals Board acknowledgement letter for your 737 timely-filed appellants (30 pages).
3. Appeals Board listing of 32 later filed appellants accepted as timely (1 page).
4. Letter of Agreement 46 (Early Retirement Incentive Program) (16 pages).
5. Letter dated July 15, 2004 from PBGC Assistant GC Susan Birenbaum (4 pages).
6. Preamble to PBGC's final "Allocation of Assets" regulation, 46 Fed. Reg. 9480, 9481 (13 pages).
7. PBGC Opinion Letter 79-8 dated April 25, 1979 (3 pages).
8. *Proposed Determination of Payable Benefits*, 40 Fed. Reg. 51,368-51370 (3 pages).
9. *Interim Regulation on Allocation of Assets*, 41 Fed. Reg. 48480-48481 (2 pages).
10. IOD Policy Bulletin 00-8; Eligibility for Benefits in PC3; 09/25/2000 (1 page).
11. Excerpt from ASD Procedures Manual; including pages 536 – 539-3 (13 pages).
12. 7 Individuals on Exhibit C of Appeal that retired after April 1, 2000 (1 page).
13. US Airways prepared statements for [redacted] (3 pages).
14. US Airways prepared statements for [redacted] (3 pages).
15. Information concerning S&P 500 from Standard & Poor's website (36 pages).
16. US Airways Letter dated March 6, 2001 to [redacted] (8 pages).
17. PBGC Benefit Statement for [redacted] (4 pages).
18. Deloitte & Touche, "Retirement Income Study for Pilots of USAir, Inc" (June 1, 1993) (13 pages).
19. Letter Re Data on Investment Performance for 1973 to ALPA dated February 12, 1974, by H.L Dyer (2 pages).

APPENDIX A

ERIP Calculations for a Pilot Who Elected an Annuity Benefit [redacted]

[redacted] retired on [redacted] 1, 1999 when he was age 56 years, 10 months. Both before and after the ERIP enhancement, the "Prior Plan minimum benefit" formula produced the greatest benefit. [redacted] elected the Joint & 50% Survivor form of benefits, and he also had elected a pre-retirement annuity. As is shown on Enclosure 13, US Airways had calculated the following monthly benefit amounts after adjusting for his benefit form:[1]

	Qualified	Non-Qualified	Total
Before ERIP enhancement	$8,090.57	$5,429.71	$13,520.28
After ERIP enhancement	$8,090.57	$6,848.97	$14,939.54

We note that, in [redacted] case, the ERIP enhancement benefit of $14,939.54 was divided between the three pension plans as follows.

	Benefit	Payment Source
(1)	$7,314.42	Available from the Plan
(2)	$776.15	Annuity available under "Target Plan"
(3)	$6,848.97	Residual benefit in "Top Hat Plan"
(4)	$14,939.54	Total annuity possible from US Airways plans

The "Target Plan" is the Target Benefit Plan for Pilots of US Airways, Inc., an IRS-qualified defined contribution plan. The "Top Hat Plan" is the name for an US Airways program to pay benefits outside the IRS-qualified Target Plan and the Plan. PBGC cannot assume responsibility for any benefits provided by the Target Plan or Top Hat Plan. [2]

The IRC section 415(b) limit applicable to [redacted] Plan benefit was $7,314.42 when he retired in 1999 [$130,000 x .675177 (age adjustment) ÷ 12 months]. As recited in the US Airways' payments to him for January – March 2000, his section 415(b) limit had increased to $7,595.75 [$7,314.42 x $135,000 ÷ $130,000] based on the $135,000 age-62 415(b) limit in effect at DOPT-3. US Airways, after applying the applicable section 415(b)

[1] US Airways applied: (1) a 0.974 factor to adjust for his election of a qualified pre-retirement survivor annuity; and (2) a 0.982 factor to adjust for his election of the Joint & 50% Survivor form of benefit.

[2] *See* ERISA sections 4021(b)(1) and 4021(b)(8).

limits, paid [redacted] the following benefit amounts from the three plans:

		US Airways-Provided Monthly Benefits			
		Plan	Target	Top Hat	Total
(1)	6/1/1999	$7,314.42	$776.15	$6,848.97	$14,939.54
(2)	4/1/2000	$7,595.75	$776.15	$6,567.64	$14,939.54
(3)	3/1/2003	$9,002.34	$776.15	$5,161.05	$14,939.54

PBGC determined [redacted] PBGC benefit, in PC3, is the full $7,595.75 benefit the Plan was paying him on [redacted] 1, 2000, three years before the Plan terminated. Therefore, PBGC is paying [redacted] in PC3 the maximum the law allows, under IRC 415(b) and ERISA 4044(a)(3)(A). [redacted] is receiving his Target Plan benefit from the Target Plan in addition to his PBGC benefit.

APPENDIX B

ERIP Calculations for a Pilot Who Elected a 50% Lump Sum [redacted]

[redacted] was born [redacted] 1943 and started working at US Airways on [redacted] 1966. He retired on [redacted] 1, 2000 under the Early Retirement Incentive Program ("ERIP"). Below is a discussion of how US Airways and PBGC calculated his benefits. Please note, however, that we are not deciding [redacted] correct PBGC benefit, in light of BAPD's decision to recalculate his benefit and issue him a new Benefit Determination with 45-day appeal rights.

A. US Airways' calculation of [redacted] *benefits.*

1. Calculation of [redacted] pre-ERIP and post-ERIP monthly benefits.

[redacted] total annual US Airways pension, from all retirement plans, was largest under the Allegheny "Prior Plan Minimum Benefit" formula:

(i) Fixed Income Benefit: $62,240.18[1] based on a percentage of pay after 1971, plus

(ii) Variable Plan Benefit: $174,274.87 [2] derived by converting 11% of annual pay into units of a hypothetical S&P 500 Index Fund.

US Airways (as Plan Administrator) concluded his total annuity would be **$19,118.30** per month.[3] It similarly calculated that, if IRS wage limits applied, the total benefit would be **$18,383.83** per month. As discussed below on pages 3-4, US Airways used wage-limited total benefits in calculating benefits under the lump sum options. Without the ERIP, it calculated [redacted] wage-limited total benefit as **$17,044.95**.[4]

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[1] 1.75% x $57,077.69 final pay + $61,241.32 prior total

[2] 11% x $57,077.69 earnings in 2000 ÷ 12.5548 annuity rate
+ $56.7253 (unit value on 4/1/2000) x 3063.44 units on 12/31/1999.

$56.7253 = $56.0255 (12/31/99 value) x 102% (for subsequent 2% actual increase in S&P 500 Index without dividends) ÷ $1.03^{3/12}$ (for increase to 4/1/2000 using 3% interest assumed in annuity rates)

[3] ($62,240.18 Fixed + $174,274.87 Variable) x .97 pre-retirement survivor annuity charge ÷ 12 months

[4] ($59,658.25 Fixed + $172,700.18 Variable) x 0.9075 early retirement x .97 pre-retirement survivor coverage ÷ 12 months. The ERIP-enhanced $19,118.30 total would have been only $17,349.86 [$19,118.30 x .9075 early factor] without the ERIP enhancement.

The wage-limited benefits, $18,383.83 (ERIP) and $17,044.94 (non-ERIP), do not differ by the .9075 early factor, under IRS rules for preserving accrued benefits. Thus, the wage-limited $17,349.86 (ERIP) was calculated under Plan section 2.1(K)(b), while the $17,044.94 (non-ERIP) was under section 2.1(K)(a).

US Airways divided the $19,118.30 total between its three pension plans as follows:

	Benefit	Payment Source
(1)	$1,840.24	Annuity available under "Target Plan" [5]
(2)	$7,641.03	Maximum Plan benefit under IRC section 415(b) [6]
(3)	$9,637.03	Residual benefit in "Top Hat Plan"
(4)	$19,118.30	Total annuity possible from US Airways plans

The "Target Plan" is the Target Benefit Plan for Pilots of US Airways, Inc., an IRS-qualified defined contribution plan. USAir's "Top Hat Plan" is the name for a US Airways program to pay benefits not in either the IRS-qualified Target Plan or the Plan. PBGC cannot assume responsibility for any benefits provided by the Target Plan or Top Hat Plan.[7]

2. The ERIP enhancement increased only [redacted] Top Hat Plan monthly benefit.

As is shown in Enclosure 14 (and as reflected in the above-discussed calculations), US Airways calculated the following Life Annuity amounts for [redacted]

	Qualified	Non-Qualified	Total
Before ERIP enhancement	$9,481.27	$7,868.59	$17,349.86
After ERIP enhancement	$9,481.27	$9,637.03	$19,118.30

Please note that the "Qualified Plan" benefit amounts shown on US Airways' benefit statements equals the sum of his benefits under the Plan and under the Target Plan.

Thus, the ERIP enhancement did not change [redacted] Qualified Plan benefit amounts. This is because: (1) even without the ERIP enhancement the Plan benefit was limited by section 415(b) to $7,641.03; (2) the Target Plan benefit equaled the annuity value ($1,840.24) of his Target Plan account balance ($335,574.26); and (3) accordingly, his total "Qualified Plan" benefit was $9,481.27 [$7,641.03 + $1,840.24 = $9,481.27].

The ERIP enhancement, however, increased [redacted] Life Annuity amount payable from the Top Hat Plan from $7,868.59 to $9,637.03. We note that [redacted] used only 3 1/12 years of a 5-year maximum "age + service" enhancement under the ERIP, because the additional service provided by the ERIP did not increase his benefit amounts under the "Allegheny Minimum formula benefit" (which was the formula that provided the greatest benefit for him).

[5] ($335,574.26 balance - $375 fee) x 0.00549 purchase rate

[6] $135,000 (Annual Maximum Defined Benefit Limit for 2000)
÷ 12 months x 0.679203 age adjustment

[7] *See* ERISA sections 4021(b)(1) and 4021(b)(8).

3. [redacted] 50% lump sum payment and his 50% monthly annuity.

[redacted] elected the 50% Lump Sum payment option. As is specified in LOA 46, the lump sum payment under this option equals 50% of the value of his full monthly ERIP benefit, calculated (among other things) based on the interest rate specified in LOA 46, Pt. II § A.5(c). US Airways, based on LOA 46, calculated [redacted] 50% lump sum amount as $1,271,286.27.[8]

Also, as is provided in LOA 46, the 50% lump sum payment is made first from the Target Plan, then from the Plan, and then from the Top Hat Plan, until the full 50% amount is satisfied. In [redacted] case, US Airways concluded that the entire $1,271,286.27 lump sum amount was satisfied from the Target Plan and the Plan, as follows:

- $335,574.26 from the Target Plan, which was his full Target Plan account balance; and

- $935,712.01 ($1,271,826.27 - $335,574.26) from the Plan.

As is discussed below, US Airways further concluded that: (1) the $935,712.01 lump sum the Plan paid [redacted] was less than the full amount that could be paid under the IRC limits applicable to him; and (2) upon his retirement in April 2000, $1,264.47 of his total 50% monthly annuity of $9,559.15 would be paid from the Plan, with the remaining $8,294.68 paid from the Top Hat Plan because of the IRC section 415(b) limits. We note that the $9,559.15 monthly annuity equals 50% of the $19,118.30 total annuity payable from the US Airways plans after the ERIP enhancement. See calculations on page 1 above.

4. How US Airways computed [redacted] net Plan benefit (after the lump sum payment).

For purposes of determining the remaining monthly annuity that could be paid from the Plan, US Airways had computed the annuity value of the Plan's $935,712.01 lump sum payment. To determine that annuity value, US Airways used an actuarial quantity called an Adjusted Plan Value Factor ("APVF"). [redacted] APVF mathematically combined the following two quantities:

(i) 150.30708 GATT present value factor, a minimum in some instances under rules for converting defined benefit pensions to single lump sums,[9] and

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[8] $19,118.30 x 50% x 132.99156 "present value factor," based on UP-84 mortality, 6.25% interest, and linear interpolation between $\ddot{a}_{56}^{(12)}$ and $\ddot{a}_{57}^{(12)}$. Section 6 of Letter of Agreement #35, dated 12/22/1993, requires using UP-84 mortality assumptions and the maximum rate permissible under IRC § 411(a)(11)(B) "applicable on the pilot's Benefit Commencement Date, or such other rate as required by law to maintain the qualified status of the plan." 6.25% = 120% x 5.25% PBGC rate capped at the 6.25% plan rate for actuarial conversions (in an Addendum to the 1/1/1994 plan).

[9] *See* IRC § 417(e)(3)(A), reflecting amendments to ERISA and the IRC made in 1994 by Title IV of the Uruguay Round Agreements Act, Public Law 103-465 ("GATT"). The term "GATT present value factor" thus refers to the maximum interest rate that is permitted under IRC § 417(e)(3) after the GATT amendments went into effect.

(ii) 182.35353 Target plan factor, which reflects the mathematical relationship between the monthly benefit using the Target Plan's annuity value ($1,840.24) and his Target Plan account balance of $335,574.24 [$335,574.26 ÷ $1,840.24 = 182.35353].

US Airways, also using his $18,383.83 wage-limited total Plan benefit,[10] computing a combined Adjusted Plan Value Factor of:

$$146.742366 \text{ APVF} = 182.35353 \text{ x } \frac{\$18,383.83 \text{ x } 150.30708 - \$335,574.26}{\$18,383.83 \text{ x } 182.35353 - \$335,574.26}$$

US Airways then used an Adjusted Plan Value Factor of 146.742366 to determine the monthly annuity value of the $935,712.01 lump sum he received from the Plan. Thus, US Airways calculated the annuity value of his lump sum as $6,376.56 [$935,712.01 ÷ 146.742366 = $6,376.56]. US Airways further concluded that [redacted] remaining monthly Plan benefit starting on April 1, 2000 was $1,264.47 [$7,641.03 IRC section 415(b) limit - $6,376.56 from lump sum = $1,264.47].

5. Benefits US Airways paid.

Consistent with the calculations discussed above, US Airways paid [redacted] pensions totaling $9,559.15 [$19,118.30 x 50%] per month, in addition to his $1,271,286.27 total lump sums. The $9,559.15 was initially divided between the Plan and Top Hat Plan as shown in row (1) of the table below. Afterward, the portion of his benefits payable from the Plan increased as the IRS 415(b) limit increased: [11]

Total USAir Pension Payments

	Year	415(b)-Limit Increase	Plan Benefit	Residual Top Hat Benefit	Total
(1)	2000		$1,264.47	$8,294.68	$9,559.15
(2)	2001	$283.00	$1,547.47	$8,011.68	$9,559.15
(3)	2002	$1,132.01	$2,679.55	$6,879.60	$9,559.15
(4)	2003		$2,679.55	$6,879.60	$9,559.15

We note that the benefit statement PBGC prepared for [redacted] (Enclosure 17) shows his monthly Plan benefit at his actual retirement date as $2,679.55. In fact (as is shown in the above table), the $2,679.55 amount is the benefit he was receiving from the Plan on the Plan's March 31, 2003 termination date.

[10] The $18,388.83 wage-limited amount was computed prior to any reduction to his Plan benefit based on the IRC § 415(b) limits.

[11] The annual section 415(b) increases for [redacted] equal his 0.679203 early retirement factor multiplied by the change to the 415(b)-limit. Thus, the increases for him were as follows:

0.679203 x ($140,000-$135,000) ÷ 12 in 2001
0.679203 x ($160,000-$140,000) ÷ 12 in 2002

6. PC3 benefit amount under US Airways' benefit calculation method.

As is discussed under Issue #1 of the decision, the PC3 benefit for a participant (such as [redacted] who was in pay status 3 years before the Plan's March 31, 2003 termination is the benefit in pay status "based on the provisions of the plan (as in effect during the 5-year period ending on [the plan termination date]) under which such benefit would be least."[12] In [redacted] case, his PC3 benefit also is the full amount he is entitled to receive from PBGC, because his PC3 benefit is larger than his guaranteed benefit and he is not entitled to any additional payments based on ERISA section 4022(c).

The ERIP enhancement is not included in PC3, as explained under Issue #1 of this decision. Under US Airways' calculation method, the ERIP resulted in a slight improvement in [redacted] benefits under the 50% Lump Sum option (even though, as discussed above, the ERIP would not have affected his benefits if he had he elected an annuity). This increase for the 50% Lump Sum option occurred because: (1) the ERIP increased [redacted] total wage-limited US Airways benefit from $17,044.94 to $18,383.83 (see footnote 4 above); and (2) for the $17,044.95 wage-limited amount, US Airways' APVF was 146.428466207[13] (rather than the 146.742366 factor shown on page 4); and (3) using the 146.428466207 factor, [redacted] annuity benefit payable from the Plan (after deduction of the 50% lump sum) as of [redacted] 1, 2000 was $1,250.80.[14]

Thus, using US Airways method for calculating the monthly benefit payable from the Plan (after payment of the 50% lump sum), it appears that [redacted] PC3 benefit is the $1,250.80 per month benefit that would be payable from the Plan on April 1, 2000 without the ERIP increase.

B. PBGC's calculation of [redacted] benefits.

PBGC accepted the US Airways' data for [redacted] with respect to his date of birth, service, compensation, his Target Plan account balance, etc. PBGC also accepted the following calculations made by US Airways: (1) his monthly benefit amounts (both "qualified" and "non-qualified") before and after the ERIP enhancement; (2) his 50% ERIP lump sum amount; (3) the amount of the 50% ERIP lump sum to be paid from the Plan and the amount to be paid from the Target Plan; (4) the annuity value of his Target Plan benefit; and (5) the IRC section 415(b) limit applicable to his benefits.

PBGC, however, used different present value factors than US Airways for the purpose of determining the annuity values of the lump sum payments [redacted] received from the Plan and from the Target Plan. As is shown on line (D) of the PC3 benefit calculation on [redacted]

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[12] *See* ERISA section 4044(a)(3)(A) and 29 C.F.R. § 4044.13.

[13] Using the formula discussed on page 4, the 146.428466207 factor is calculated as follows: 182.35353 x ($17,044.94 x 150.30708 - $335,574.26) ÷ ($17,044.94 x 182.353530 - $335,574.26) = 146.428466207.

[14] $1,250.80 = $7,641.03 [415(b) limit] - $935,712.01 ÷ 146.428466

benefit statement (Enclosure 17), PBGC applied a monthly "Lump Sum Equivalence Factor" of 12.5256 to both the Plan and the Target Plan lump sum payments. This 12.5256 factor is based on the GATT present value actuarial assumptions discussed above (*see* footnote 9).[15]

Thus, as is reflected in PBGC's benefit statement, PBGC calculated [redacted] PC3 benefit as follows:[16]

	Benefit	Description
(1)	$7,641.03	Maximum Plan monthly benefit (based on applicable IRC 415(b) limit on [redacted] 1, 2000 retirement date)
(2)	+ $1,840.24	Target monthly benefit ([redacted] Target Plan balance converted to monthly benefit using Target Plan's annuity purchase rate)
(3)	= $9,481.27	Combined Plan & Target Plan monthly annuities
(4)	- $2,232.59	Deduction for annuity value of Target lump sum ($335,574.26 Target lump sum ÷ 150.30708 GATT factor)
(5)	= $7,248.68	Remaining Plan monthly benefit (after deduction for Target lump sum but before deduction for Plan lump sum)
(6)	- $6,225.33	Deduction for annuity value of Plan lump sum ($935,712.01 Plan lump sum ÷ 150.30708 GATT factor)
(7)	= $1,023.35	Plan monthly benefit after deductions for lump sum payments (which also is the PC-3 benefit amount PBGC determined)

We note that, under PBGC's calculation method, the monthly Plan benefit payable on April 1, 2000 (i.e., the benefit with the ERIP enhancement) and the monthly PC3 benefit (i.e., the benefit without the enhancement) are the same ($1,023.35).

Accordingly, as a result of the use of different present value factors, the $1,023.35 April 2000 benefit PBGC determined is lower than the $1,264.47 amount US Airways paid. The Appeals Board, upon discovering this difference, informed PBGC's Benefits Administration and Payment Department ("BAPD") of the discrepancy between PBGC's and US Airways' methods.[17] BAPD looked into the matter and concluded that the change PBGC made to US Airways' benefit calculation methodology was not intended.

As discussed under Issue #5 of this decision, PBGC will be issuing new Benefit Determinations, with new 45-day appeal rights for matters not decided in this letter, to [redacted]

[15] The 12.5256 monthly present value factor, when converted to an annual factor, equals the 150.30708 GATT present value factor discussed above, after differences due to rounding are eliminated.

[16] Although the table below presents the information in somewhat different way than PBGC's benefit statement, the table's amounts and calculations are the same as those in the benefit statement.

[17] US Airways, in calculating the participants' benefits, was acting in the capacity of Plan Administrator. We note that it is PBGC's general practice to: (1) accept the benefit calculation method of the former plan administrator unless PBGC discovers an error in the method; and (2) to explain the reasons for any changes PBGC makes in the Actuarial Case Memo.

[redacted] and 63 other participants on your Exhibit C, as well as an additional 21 similarly situated appellants (see full list at Enclosure 1).[18]

[18] It is possible that the PBGC benefit will not change for some of these 85 appellants receiving a new Benefit Determination even though the methodology may change.

APPENDIX C

Examples of How PBGC Included Piedmont COLAs in PC3

Exactly two of your clients are on PBGC's list of 97 participants whose Piedmont COLAs are not fully guaranteed. The benefits PBGC determined for these two individuals are shown on columns (1) and (2) in the below table. The third column of the table is an example of one of your other timely-filed appellants whose PC3 benefit is larger than his guaranteed benefit. We include this third example to illustrate that when the PC3 benefit is larger than the MGB, PBGC is paying in PC3 100% of the 1999 and 2000 Piedmont COLAs (and all earlier COLAs), as you requested.

		(1)	(2)	(3)
Participant Appeal Number		[redacted]	[redacted]	[redacted]
Date of Birth		[redacted]1934	[redacted]1924	[redacted]1937
Retirement Date		[redacted]1995	[redacted]1984	[redacted]1989
Form of Plan Benefit		J&50%S	J&50%S	J&100%S
Benefit Plan Paid 1/1/2000	Piedmont	$1,936.10	$6,414.25	$5,431.09
	Non-Piedmont	$1,694.71	$0.00	$0.00
	Total	$3,630.81	$6,414.25	$5,431.09
Plus three 1% Piedmont COLAs = Benefit Plan Paid 1/1/2003	Piedmont	$1,994.77	$6,608.60	$5,595.65
	Non-Piedmont	$1,694.71	$0.00	$0.00
	Total	$3,689.48	$6,608.60	$5,595.65
PC-3 Benefit PBGC Calculated	Piedmont	$1,936.10	$6,414.25	$5,431.09
	Non-Piedmont	$1,694.71	$0.00	$0.00
	Total	$3,630.81	$6,414.25	$5,431.09
Guaranteed Benefit		$3,669.73	$6,470.74	$3,176.04
Benefit PBGC Determined		$3,669.73	$6,470.74	$5,431.09

Please note that PBGC, in determining the guaranteed benefit amount for each of these individuals, took into account the applicable MGB limit as well as the required reduction to PBGC's guarantee due to phase in. Because each of the three individuals retired and was receiving benefits before the Plan's termination date ("DOPT"), the MGB in each case is adjusted based on the individual's age at DOPT and form of benefit.

PBGC's calculations for these three individuals are further explained below.

[redacted]

PBGC calculated [redacted] guaranteed benefit as $3,669.73. This $3,669.73 guaranteed benefit amount includes all of his Piedmont COLA increases before DOPT,

except for the final $19.75 COLA effective January 1, 2003. The COLA increases effective in 1999, 2000, 2001, and 2002 are not reduced due to phase-in because each of those increases is less than the minimum (i.e., $20 x the number of full years the increase is in effect before DOPT). The final $19.75 COLA was in effect less than one year when the Plan terminated; it is not guaranteed because final year benefit increases are "phased in" at $0/0%. Also, except for this $19.75 COLA, PBGC is paying [redacted] the entire $3,689.48 monthly amount that US Airways was paying him when the Plan terminated.

PBGC further calculated [redacted] PC3 benefit as $3,630.81, which includes all Piedmont COLAs through January 1, 2000. Because [redacted] benefit based on the allocation of Plan assets (his PC3 benefit) is slightly less than his guaranteed benefit, PBGC is paying him the larger $3,669.73 guaranteed benefit amount.

[redacted]

PBGC calculated [redacted] guaranteed benefit as $6,470.74. This $6,470.74 guaranteed benefit amount includes all of the Piedmont COLA increases that occurred through January 1, 1999, but the COLA increases after that date are limited by phase in.[1]

PBGC further calculated [redacted] PC3 benefit as $6,414.25, which includes all Piedmont COLAs through January 1, 2000.[2] Because [redacted] benefit based on the allocation of Plan assets (his PC3 benefit) is, like [redacted] slightly less than his guaranteed benefit, PBGC is paying him the larger $6,470.74 guaranteed benefit amount.

[redacted]

As is indicated in the table, PBGC determined that [redacted] PC3 benefit ($5,431.00) is significantly greater than his guaranteed benefit ($3,176.04). For [redacted] PBGC is paying 100% of the 1999 and 2000 Piedmont COLAs (as you request), but is not paying COLAs for years after 2000. The COLAs after 2000 are Plan benefits, but they are in PC5 and are, unfortunately, unable to be funded with available plan assets.

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[1] The $6,470.74 guaranteed benefit amount was calculated as follows:

$6,287.86 full Plan benefit on 1/1/1998
+ $62.88 full Piedmont COLA effective on 1/1/1999
+ $60.00 of $63.51 Piedmont COLA effective on 1/1/2000
+ $40.00 of $64.14 Piedmont COLA effective on 1/1/2001
+ $20.00 of $64.78 Piedmont COLA effective on 1/1/2002
+ $ 0.00 of $65.43 Piedmont COLA effective on 1/1/2003
= $6,470.74 guaranteed benefit

[2] [redacted] PC3 benefit equals the amount US Airways was paying him when the Plan terminated ($6,608.60) divided by 1.01^3. The 1.01^3 amount is an actuarial adjustment to eliminate the three 1% COLAs in the years 2001, 2002, and 2003 that PBGC is not including in PC3.

APPENDIX D

Additional Responses Concerning PBGC's Calculation of "Prior Plan" Benefits

This Appendix supplements the discussion under Issue #7 of our decision letter in responding to your claims that PBGC had miscalculated benefits for the Prior Plan pilots (i.e., pilots who were on the Allegheny Airlines System Seniority List as of December 1, 1972).

(1) Your Assertions Concerning Reinvested Dividends.

As discussed in our decision letter, your appeal asserts that PBGC should take into account the value of reinvested dividends in applying the S&P 500 index to the calculation of the Prior Plan minimum benefit. Below is our additional response regarding specific arguments you advanced in the appeal concerning reinvested dividends.

- You contend that the minimum benefit should be interpreted to include reinvested dividends since Prior Plan benefit calculations included the impact of reinvested dividends. You cite the 1970 Prior Plan SPD, as well as memorandums that were prepared by W.D. Chapman of Allegheny in 1974 and by Herbert L Dyer in 1977, as support for this position.

We agree with you that the parties to the collective bargaining agreement intended, in general, that the minimum benefit would provide retirement income comparable to that of the Prior Plan benefit, assuming the Prior Plan remained in effect. Despite this intent, however, the drafters of these amendments clearly did not keep the Prior Plan's benefit provisions in their entirety. Rather, the conversion to a single defined-benefit plan resulted in the elimination of the separate accounts which previously had provided the Prior Plan's participants with retirement benefits that reflected actual investment earnings (or losses). In its place, the drafters provided for a minimum benefit based on "phantom values," which were calculated based on the investment performance of the S&P 500.

Accordingly, when the amendments were being negotiated between Allegheny and ALPA in 1972, the Prior Plan's benefits could not be completely preserved, since the "phantom values" based on the S&P 500 would not replicate exactly the Prior Plan's measure based on actual investment performance.[1] Furthermore, the amended Plan differed from the Prior Plan in that a fixed benefit no longer was added to the variable benefit, but instead the pilot was to receive the greater of the amounts calculated under two benefit formulas.

Given these significant differences between the Prior Plan and the amended Plan, we concluded that the parties through the collective bargaining process reasonably could have

[1] We note in this regard that, under the Prior Plan, the investment performance of the trust included an adjustment for the trust's investment expenses. *See June 1993 Retirement Income Study for Pilots of US Air, Inc. prepared by Deloitte & Touche* (Appendix C of an *Everett* brief filed by US Airways), which we are providing as Enclosure 18. Although the *Deloitte & Touche* study indicated that trust expenses were in the ½% to 1% range, the S&P 500 investment performance measure that Allegheny and ALPA adopted did not include an adjustment for investment expenses.

decided that the S&P 500 index incorporated into the new Plan would not be adjusted for reinvested dividends, notwithstanding that income from reinvested dividends was included in determining actual investment performance under the Prior Plan.

The Board further found that the 1974 Chapman and 1977 Dyer memorandums, which did not analyze the language in the Plan's documents in any detail, also do not prove that that the parties had intended to include reinvested dividends in the S&P 500 measure. (The Chapman and Dyer memorandums are discussed in more detail below regarding your "post-retirement tracking" claim.)

- You state that the 1972 Letter Agreement was modeled on a similar collective bargaining agreement between ALPA and Delta Airlines that was completed in May 1972.[2] You further assert that the only difference between the two with respect to the S&P 500 index was that the parties changed "Delta's standard of 120% [of the S&P Index] to Allegheny's 100%." You further state that, when the Delta letter agreement was converted to Plan language, the phrase "investment performance" was replaced with "the value of the Standard and Poor's Stock Index (with allowance for dividends)." You contend that this bargaining history establishes that "dividends were intended to be included."

We found the bargaining history information you provided to be unpersuasive. While we agree that the two 1972 Letter Agreements involving Allegheny and Delta were similar, the provisions that the two companies (with ALPA's approval) subsequently adopted as formal pension plan amendments contained significantly different language. Indeed, the Delta pension plan language that you cite – i.e., "the value of the Standard and Poor's Stock Index (with allowance for dividends)" – differs substantially from the language in Plan § 5.1(E), i.e. "the investment performance of the Standard and Poor's 500 stock index (unadjusted for dividends)." Moreover, the fact that Delta and ALPA agreed to an index based on 120% of the S&P, while Allegheny and ALPA agreed only to 100%, indicates that the negotiators of the Plan amendments had not followed the Delta plan provisions in all respects.

- You also provided as an exhibit the affidavit of John Rahll, Chairman of ALPA's Master Executive Council for Allegheny and US Airways, which had been prepared for earlier litigation. Mr. Rahll's affidavit states that "we agreed that no adjustments would be made to the investment performance of the substitute index that would eliminate the effects of reinvested dividends."

While your appeal states that "all of the negotiators with a recollection of the 1972 talks adamantly deny that there was any intent to eliminate the effect of dividends on the calculation of retirement benefits," the only affidavit you provided with your appeal was that of John Rahll, who was an ALPA negotiator. Your appeal therefore lacks any documentation that the US Airways negotiators had similar recollections of what was intended by the S&P 500 language. In any event, we concluded that the statements in Mr. Rahll's affidavit (as well as those in any

[2] You note that the ALPA negotiator for both the Delta and US Airways agreements was Leo Daub. Your appeal included Mr. Daub's marked-up copy of the Delta agreement, which you offer as proof of "where Allegheny intended to follow the Delta agreement and where Allegheny intended to modify it."

similar affidavit that you may be able to provide) are insufficient to establish your claim, because they are contrary to the Plan's language. We further note that US Airways' long-standing interpretation of the Plan was that the S&P 500 would not be adjusted for reinvested dividends, and it administered the Plan accordingly.[3] Thus, US Airways' interpretation and practice were contrary to the position stated in Mr. Rahll's affidavit.

- Your appeal states that in 1992 US Airways (then known as US Air, Inc.) drafted a Letter of Agreement that, among other things, stated that the minimum benefit is to be calculated based upon the "assumed investment experience (post 1972) based upon the S&P 500 Index without taking into consideration the reinvestment of dividends." You further state: (1) ALPA objected to this language and never signed the 1992 Letter of Agreement, so it never went into effect; (2) ALPA also objected to similar language that US Air had inserted into the Pilot Plan's 1991 SPD and its Form 5500 filing; and (3) following the objections, US Air did not use this language again in the Pilot Plan's SPDs and Form 5500 filings. You contend that "[i]f the Company really believed that its methodology was authorized by the existing plan language," it would not have proposed the 1992 draft language nor would have agreed to the removal of language from the SPD and Form 5500.

We found no support for your suggestion that these actions by US Air, Inc. establish that it believed that its interpretation of the Pilot Plan's provisions was erroneous. While the draft 1992 Letter of Agreement states that "the parties agree that the method of calculating said minimum benefit requires clarification," nothing in the draft suggests that US Air believed that its interpretation of the existing Prior Plan minimum benefit provision was wrong.

We further note that Deloitte & Touche, who ALPA had commissioned to study the matter (see footnote 1), concluded on June 1, 1993 that: "In general, US Air's current procedures used to calculate the minimum benefit for pilots formerly covered under the provisions of the Retirement Income Plan for Pilots of Allegheny Airlines appear consistent with the plan, the letter of agreement, and documents available to us. The only area of concern which may deserve some attention is the lack of definition in the 1992 proposed working agreement as to whether or not the Standard & Poor's index is to include dividends." Enclosure 18, pp. 3-4. Accordingly,

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[3] *See Letter Re Data on Investment Performance for 1973 to ALPA dated February 12, 1974*, by H.L Dyer (the "phantom" B Plan benefit is the "fictitious average that would have been earned had the assets been invested in the S & P 5000 stocks (without reinvestment of dividends)." US Airways included this letter as Appendix A of its *Everett* brief. We are providing a copy of this letter as Enclosure 19.

We further note that US Airways had the authority to determine how the Plan's governing documents should be interpreted, since section 14.1 of the 2001 Plan states:

> The Employer, which shall be the administrator for purposes of ERISA and the Plan Administrator for purposes of the Code, shall be responsible for the administration of the Plan and, in addition to all the powers and authorities expressly conferred upon it herein, shall have all such powers and authorities as may be necessary to carry out the provisions of the Plan, including the sole right to interpret and construe the Plan, to make Benefit Determinations, and to resolve any disputes thereunder, subject to the provisions of section 14.3 [which established the Retirement Board].

we concluded that the above-discussed circumstances involving the 1992 proposed Letter Agreement do not lead to the conclusion that US Airways' interpretation of the minimum benefit provision is incorrect.

(2) Your Assertions Concerning "Post-Retirement Tracking" of the Minimum Benefit.

Your appeal asserts that Prior Plan benefit amounts paid to pilots should be adjusted post-retirement based on changes in the S&P 500. Below is our additional response regarding specific arguments you advanced in the appeal concerning post-retirement benefit adjustments.

- You quote language in the Prior Plan's 1970 SPD, which states (among other things) that the Prior Plan's variable benefit "changes with the current value of the [Prior Plan's] investments, dividends, and capital appreciation, thereby providing you with a hedge against inflation during your retirement years." You also refer to the examples in the 1970 SPD that show how the Prior Plan's variable benefits amounts could grow based on investment performance. You contend that the SPD statements and examples illustrate that the Prior Plan "contemplated ongoing adjustments to retirement benefits." You suggest that the Prior Plan minimum benefit should "continue to grow based on the S&P 500 even after retirement."

The documents you provided illustrate that the variable benefit amounts the Prior Plan had paid to retirees were adjusted post-retirement based on actual investment experience. The provisions that US Airways and ALPA adopted in the 1972 Letter Agreement and 1973 Plan document, however, ended these adjustments based on actual investment performance. Additionally, the terms of the amended Plan did not provide for post-retirement adjustments to the Prior Plan minimum benefit. The Appeals Board concluded, based on its analysis of Plan section 4.1(E), that post-retirement benefit adjustments to the Prior Plan minimum benefit are not required under the Plan's terms. *See* discussion at page 33 of the decision. Accordingly, while the documents you provided describe how the Prior Plan functioned and its general purpose, the Board found that they fail to establish that the Prior Plan minimum benefit amounts must be adjusted post-retirement based on the S&P 500.

- You included as an exhibit to your appeal the March 6, 1974 memorandum from Wayne D. Chapman, Allegheny's Manager of Personal Services, to all pilots. This memorandum, which announced the upcoming distribution of benefits information, included the following statement: "Under the terms of the new plan, an identical calculation of the former plan will be made yearly after you retire to make sure that you never receive less income than what the prior plan provides."

Mr. Chapman's 1-page memorandum, which discussed the "new plan" in very general terms, does not analyze the specific language in the 1972 Letter Agreement and 1973 amendments. Furthermore, its statement that "[u]nder the terms of the new plan, an identical calculation of the former plan will be made yearly after you retire" is not entirely accurate, since under the new plan the S&P 500 index is used in place of the Prior Plan's benefit adjustments based on actual investment performance. The Appeals Board, therefore, concluded that the very general explanation in the memorandum should not be used as a guide in interpreting the more

specific terms that were adopted in the 1972 Letter Agreement and 1973 amendments. Accordingly, the Chapman memorandum does not establish that post-retirement benefit adjustments to the minimum benefit were intended by the drafters of those provisions, in light of the other considerations we have discussed above.

- Your appeal also includes as an exhibit the September 19, 1977 memorandum from Herbert L. Dyer, Allegheny's Treasurer and a "Plan Administrator" for the Plan, to Walter J. Short, Allegheny's Vice President-Finance. You state that Mr. Dyer's memorandum "made abundantly clear that the Company was not complying with the investment standard required by the Pension Plan and the Company was not funding the Plan adequately to replicate the former A and B Plans."

Mr. Dyer's memorandum, which was an internal Allegheny communication labeled "Confidential/Personal," was drafted in response to concerns raised by an ALPA representative regarding whether the Plan was adequately funded for the Prior Plan minimum benefit obligations. While the memorandum indicated that Mr. Dyer believed, based on his "rough calculations," that a funding problem might exist, it did not discuss in any detail how the Prior Plan minimum benefit provision should be interpreted. Rather, the only reference to the minimum benefit calculation was the memorandum's statement that "we promised 100% of the S&P 500 index in their contract." Because the Dyer memorandum did not address the issue of whether or not post-retirement benefit adjustments to the Prior Plan minimum benefit were required, we found that it was not useful in resolving that question.

- Your appeal states that "other available documents evidence the principle that the benefit is supposed to grow based on the S&P even after retirement." You provided as an example a letter from US Airways to [redacted] dated June 3, 1994.

As discussed on page 33 of the decision and its footnote 55, some of the other Plan benefit provisions (which are unrelated to the Prior Plan minimum benefit provision) specifically require post-retirement benefit adjustments. Thus, as is indicated by the US Airways letter to [redacted] US Airways benefit personnel had concluded that they needed to make "increasing life annuity" calculations in administering these other benefit provisions. The [redacted] letter, however, did not discuss at all the Prior Plan minimum benefit provisions. Rather, that letter appears to concern how a one-time lump sum benefit was to be calculated and paid under a disability retirement formula which included certain COLA increases after the lump sum payment date. Therefore, we concluded that the [redacted] letter (which was the only example you gave) does not lead to the conclusion that post-retirement benefit adjustments were required for the Prior Plan minimum benefit calculation.

(3) Additional Information Concerning the 1% Termination Credit.

Our decision at page 34 and footnote 56 states that the Prior Plan's 1% termination credit represents an adjustment for the anticipated forfeitures of Retirement Income Units by non-vested participants. This provision appears to have been included in the Prior Plan to comply with then-existing IRS requirements. *See* IRC § 401(a)(8) and Treasury Regulation § 1.401-7. The IRC had contained a general rule that a qualified pension plan could not use forfeitures of

non-vested benefits to increase the benefits of other participants. Pension plans, however, were permitted to "anticipate the effect of forfeitures in determining the costs under the plan." *Id.*

Additionally, in IRS Revenue Ruling 60-73, 1960-1 C.B. 155 (1960), the IRS concluded that a money-purchase plan provision that increased "the credits to participants by one percent in anticipation of forfeitures" would comply with the IRC and applicable regulations. Since the Variable Benefit under the Prior Plan essentially was a money-purchase plan provision, the 1% termination credit constituted an approved method of complying with the then-existing IRC requirements.

When the Prior Plan was amended to replace an actual pool of securities with "phantom values" based on the S&P 500, the "purchase" of Retirement Income Units ended. Also, since no actual forfeitures of individual account amounts occurred after the conversion to a single plan, the IRC requirements discussed above were no longer relevant. As is discussed in the decision, the Appeals Board concluded that PBGC is not required to apply a 1% termination credit in Prior Plan minimum benefit calculations.