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

March 4, 2011

Re: Appeal 2009-[redacted]; [redacted]; Case 203572; Retirement Plan for Flight Attendants in the Service of US Airways, Inc. (the "FA Plan" or the "Plan")

Dear [redacted]:

This Appeals Board decision responds to the appeal you filed on behalf of your client, [redacted], regarding PBGC's April 30, 2009 determination of [redacted] benefit under the FA Plan. For the reasons we state below, the Appeals Board decided that your appeal does not provide a basis for changing [redacted]'s PBGC benefit determination. We must, therefore, deny [redacted]'s appeal.

This decision was reached by a divided vote of the Appeals Board.[1] The dissenting opinion of Appeals Board member Michel Louis is enclosed.

PBGC's Determination and [redacted]'s Appeal

PBGC's April 30, 2009 benefit determination letter stated that [redacted] is entitled to a PBGC benefit of $2,410.78 per month paid in the form of a Straight Life Annuity with No Survivor Benefits.[2] PBGC further informed [redacted] that, because the $2,410.78 amount is less than the estimated monthly benefit of $2,649.54 [redacted] has been receiving, [redacted] had been overpaid $12,893.04 after the FA Plan terminated. PBGC told [redacted] that PBGC would

[1] 29 Code of Federal Regulations ("C.F.R.") section 4003.2, which is located in the "Definitions" section of PBGC Administrative Review regulation, defines "Appeals Board" as "a board consisting of three PBGC officials." In this appeal, two Board members voted to affirm PBGC's determination and one member dissented. The majority's decision constitutes the final agency action by PBGC with respect to [redacted]'s appeal. *See* 29 C.F.R. § 4003.59 (decision by the Appeals Board).

[2] PBGC frequently uses the term "Straight Life Annuity" when it refers to a benefit payable for an individual's lifetime. In its communications with plan participants, however, the FA Plan's administrators used either the term "Life Annuity" or the term "Single Life Annuity" to describe this type of benefit. In this decision, we will use the term "Single Life Annuity."

reduce [redacted] payments by $76.90 per month until the overpayment amount (without a charge for interest) is repaid.

PBGC's April 30, 2009 letter further stated that PBGC first determined [redacted]'s benefit under the terms of the FA Plan and then applied the limits under federal pension law. PBGC's benefit statement, which is an enclosure to the April 30, 2009 letter, explained that the "Phase-In Limitation" to PBGC's guarantee resulted in a reduction to the benefit PBGC may pay [redacted]. The Phase-In Limitation applies to plan amendments that increase benefits within five years of plan termination.

On May 7, 2009, [redacted] sent a letter to PBGC's Disclosure Office requesting an explanation of how PBGC calculated [redacted] PBGC benefit and how US Airways, Inc. ("US Airways") calculated [redacted] Plan benefit.[3] On May 20, 2009, [redacted] sent to the Appeals Division a PBGC Form 723 (Request for Additional Time to File an Appeal of a PBGC Benefit Determination).[4] On May 21, 2009, PBGC's Disclosure Office sent a copy of [redacted]'s benefit file to [redacted].

In accordance with PBGC's established procedures, the Appeals Board asked PBGC's Benefits Administration and Payment Department ("BAPD,"), also known as the Insurance Operations Department, to provide [redacted] with an explanation of [redacted] benefits. On June 15, 2009, BAPD sent a letter to [redacted] explaining that the benefit formula in the FA Plan required a benefit reduction when [redacted]'s spouse, [redacted], attained age 62. The letter also explained that [redacted]'s benefit was affected by the Phase-In Limitation required by federal law.

On June 26, 2009, you sent to the Appeals Division a PBGC Form 724 (Appeal of a PBGC Benefit Determination) signed by [redacted]. With the Form 724, you included a copy of a US Airways statement showing a benefit amount of $2,649.54 per month starting on April [redacted], 2002, and payable as a Single Life Annuity and a letter from [redacted] stating why [redacted] believes PBGC's benefit determination is incorrect. In the letter, [redacted] noted:

> I believe that under the Retirement Plan for Flight Attendants in the Service of US Airways, I was to be paid a Single Life Annuity, which would not change upon my obtaining any given age, nor my spouse obtaining any given age.
>
> Further, even if this pension plan does call for a reduction upon m[e] or my spouse obtaining a certain age, that was not represented to me at the time I was about to retire. Attached hereto is a letter dated March 22, 2002, which indicated that if the participant was married less than a year, [redacted] would be paid as a Single Life Annuity. No mention was made of any reduction if [redacted] was married before retirement and upon [redacted] spouse's 62nd birthday. The participant could have easily waited for [redacted] date of marriage

[3] In this decision, we refer to "US Airways" is in its capacity as the FA Plan's Administrator, unless the context of the sentence indicates the company was acting in a different capacity.

[4] On this form, [redacted] noted that [redacted] was waiting for PBGC's Disclosure Officer to provide [redacted] with records through the Freedom of Information Act.

(March 22, 2002) until after [redacted] retirement date (April [redacted], 2002) if it was represented that there would be a reduction at [redacted] spouse's 62nd birthday.

On July 22, 2009, you supplemented [redacted]'s appeal. You noted that benefit estimate letters from US Airways in 1998, 1999 and 2000 all indicate that if a participant is single or has been married for less than one year the participant's benefit is paid as a Single Life Annuity and that [redacted] believed that [redacted] benefit "plan" would not change. You enclosed copies of the following documents: letters dated September, 9, 1998, July 13, 1999, and August 24, 2000 that US Airways sent to [redacted]; the 2004 Summary Plan Description for Flight Attendants of US Airways; and [redacted]'s Social Security earnings data. You further stated:

> On page number four of the Summary Plan Description it talks about the definition of Family Social Security Benefit. The definition talks about ***"benefits paid to you because of your spouse."*** The definition does not talk about benefits payable to the participant ***and*** the spouse. It only talks about additional benefits potentially available to [redacted] because of [redacted] spouse. [redacted]'s benefit did not change when [redacted] husband reached 62. Therefore, under the definition, no change should occur to [redacted] benefit. Further, the Family Social Security Benefit definition talks about the Social Security Benefits payable at age 65. It does not discuss Social Security available at age ***62*** and therefore again I don't believe that provision is applicable.
>
> Finally, enclosed herewith please find the final average earnings summary calculations report that [redacted] [[redacted]] received. For that, it would appear as though the calendar [years] 1997, 1998, and 1999 were used for calculation of [redacted] benefits. I also enclosed herewith [redacted] social security statement. That statement indicates that for those years [redacted] income was actually higher than that noted on the calculation sheet being used with regards to [redacted] benefits. (Emphasis in original.)

Background

PBGC insures certain defined-benefit pension plans in accordance with Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1302-1461. If a plan sponsor is unable to support its defined-benefit pension plan, PBGC becomes trustee of the plan and pays pension benefits according to the plan provisions and legal limits of ERISA.

The FA Plan's History. On July 1, 1962, Allegheny Airlines, Inc. ("Allegheny") established a program to provide retirement income and other benefits for flight attendants and their beneficiaries. Following several airline mergers and the change of the company's name from Allegheny to "US Air, Inc.," the program was renamed, effective October 1, 1979, as the "Retirement Plan for Flight Attendants in the Service of USAir, Inc." Later, effective February 21, 1997, the Plan was renamed the "Retirement Plan for Flight Attendants in the Service of US Airways, Inc."[5] The FA Plan terminated on January 10, 2005, without sufficient assets to provide all promised benefits. On February 1, 2005, PBGC became statutory trustee of the FA Plan.

[5] In this decision, our reference to "FA Plan" refers to the pension program under all three of these names.

The FA Plan's Formal Document. The FA Plan's formal document has been restated in its entirety on four occasions since ERISA's September 10, 1974 enactment. The effective dates of these restatements are: January 1, 1976; January 1, 1985; January 1, 1994; and January 1, 2001. The January 1, 2001 Restatement of the FA Plan (the "2001 Restatement") was in effect when [redacted] retired; thus, it is the FA Plan document under which [redacted] benefit is determined.

PBGC's Determination of [redacted]'s PBGC Benefit. When PBGC becomes trustee of a terminated plan, it collects participant information and the plan's governing documents from the plan administrator and performs a review of all this information before making benefit determinations. PBGC necessarily relies on the data it receives from the plan administrator unless its review finds errors in the data or a participant supplies PBGC with documentation demonstrating such errors. In applying plan provisions to determine the benefit to which a participant is entitled, PBGC follows the established practice of the plan administrator so long as it is consistent with plan documents and governing law.

After a review of the data and governing documents, PBGC followed US Airways' established practice in calculating [redacted]'s benefit. PBGC's calculation agreed with the calculation previously performed by US Airways. PBGC then applied the relevant legal limit – the Phase-in Limitation for plan amendments that increase benefits within five years of plan termination – which resulted in a downward adjustment of $42.43.

Summary of Appeals Board's Findings and Conclusions

Your appeal raises two issues. First, you claim a data error in that [redacted]'s FA Plan "Earnings" for [redacted] three highest calendar years are lower than the amounts shown in [redacted] Social Security earnings report. PBGC had accepted the Earnings information US Airways had used when the company calculated [redacted]'s FA Plan benefit near the time of [redacted] retirement. The Appeals Board concluded that the Social Security earnings report you submitted does not provide a sufficient basis for changing the Earnings amounts PBGC had used because: (1) the report you submitted does not identify the employer or employers who paid [redacted]; and (2) the FA Plan's definition of Earnings differs in some respects from Social Security earnings.

Second, you challenge the application of the FA Plan's offset for the "Family Social Security Amount." PBGC applied this provision in conformance with the FA Plan's governing plan documents and long-standing practice. In fact, the Plan's practice concerning this provision was well enough known and understood by the participants' union that it became the subject of collective bargaining, which resulted in a FA Plan amendment in 2000 to ameliorate the offset's effect on married participants. PBGC has applied the changes made by the 2000 amendment. We also found no basis for concluding that the FA Plan's provisions and/or how they were applied were in violation of applicable law. Accordingly, the Appeals Board must deny your appeal.

(b)6 - Personal Privacy

Discussion

I. Data Issue: [redacted]'s Final Average Earnings

One element in the FA Plan's calculation of a participant's benefits is [redacted] Final Average Earnings ("FAE"). The FAE is the participant's highest average earnings based on any three full calendar years during the last ten years of employment. Your appeal claims that [redacted]'s FAE was calculated incorrectly because the earnings amounts shown for [redacted] three highest calendar years (1997, 1998, and 1999) are lower than the amounts shown on [redacted] Social Security earnings record.

The FA Plan at Section 2.1(I) of the 2001 Restatement defines the "Earnings" that the FA Plan uses to calculate a participant's FAE as follows:

> (I) **Earnings** – total compensation for employment as an Employee reported by the Employer on Form W-2 for federal Income Tax purposes in respect to the year specified and all amounts that would have been paid to the Employee for such period but for a compensation reduction authorization executed by the Employee pursuant to (A) the US Airways, Inc. 401(k) Savings Plan or any other plan sponsored by the Employer qualifying under Section 401(k) of the Code, (B) the US Airways, Inc. Flexible Benefits Plan or any other cafeteria plan under Section 125 of the Code, or (C) an election to receive qualified transportation fringe benefits in accordance with Section 132(f)(4) of the Code; except that earnings shall not include (1) income imputed to the Employee through the exercise of stock options, (2) income attributable to the vesting of stock options, (3) income that, pursuant to Section 79 of the Code results from group term insurance provided by the Employer, (4) income imputed to the Employee from the exercise of any air travel pass privileges by the Employee or the Employees family, or (5) amounts reported by the Employer on Form W-2 that relate to reimbursement of expenses rather than compensation for services such as, but not limited to, meal expenses and moving expenses, or (6) any deferred compensation received in the form of a lump sum distribution.

Similar definitions of "Earnings" are included in the FA Plan's Summary Plan Descriptions ("SPDs").

The prior Plan Administrator calculated [redacted]'s FAE as $68,996.68, which equates to a monthly average of $5,333.06. PBGC accepted the prior Plan Administrator's calculations. The table below shows for calendar years 1997-1999 the earnings amounts used by US Airways and those shown on the Social Security report you submitted.

Year	FA Plan Earnings	Social Security earnings
1997	$64,218.50	$65,400
1998	$63,199.80	$67,370
1999	$64,571.74	$64,429
3-year average (annual)	$63,996.68	$65,733
3-year average (monthly)	$5,333.06	$5,477.75

The Social Security earnings record you submitted does not identify the employer or employers who paid [redacted]. Thus, we are unable to determine from this record whether the listed Social Security earnings for [redacted] were paid exclusively by US Airways. For

this reason alone, the Appeals Board found that you have not provided a sufficient basis for changing [redacted]'s FAE.

In addition, as stated in the definitions in the 2001 Restatement and in the SPDs, the FA Plan defines "Earnings" as the amount the employer reports on federal W-2 tax forms with certain specified additions and exclusions.[6] Because of the additions and exclusions, neither [redacted]'s W-2 forms nor [redacted] Social Security earnings report would establish with certainty the amount of [redacted] Earnings for FA Plan purposes. For example, one of the exclusions from the FA Plan's Earnings definition – "amounts reported by the Employer on Form W-2 that relate to reimbursement of expenses rather than compensation for services such as, but not limited to, meal expenses and moving expenses" – could be applicable to [redacted]'s employment as a flight attendant during the years 1997-1999. Likewise, the exclusion for "income imputed to the Employee from the exercise of any air travel pass privileges by the Employee or the Employees family" could also be applicable to [redacted]'s employment during this three-year period.

As stated above, PBGC relies on the data it receives from the prior plan administrator, unless PBGC's review finds errors in the data or a participant (or another party) supplies PBGC with information demonstrating that an error had occurred. PBGC's review did not find any error in the data used to calculate [redacted]'s FAE. Your submission of [redacted]'s Social Security earnings records does not provide sufficient evidence for the Appeals Board to conclude that [redacted]'s FAE amount is incorrect. Additionally, we note that the difference between the 3-year Social Security earnings average and the 3-year Earnings average used by the FA Plan ($1,736.32) is less than 3%. This small percentage difference, which could be the result of differences in how "earnings" are defined, further indicates that US Airways used reliable data in calculating [redacted]'s FAE. Accordingly, the Appeals Board denies your appeal on the FAE data issue.

II. Plan Interpretation Issue: The Family Social Security Offset

The remaining issue in your appeal deals with an aspect of the FA Plan's benefit formula called the "Family Social Security Offset."[7] Since plan sponsors are responsible for paying for a substantial portion of Social Security benefits, it is not unusual for plans to take Social Security benefits into account in determining pension benefits. The FA Plan's offset is unusual, however, in that it also applies to benefits that Social Security provides for the participant's spouse, based on the participant's earnings alone (not the separate earnings of the spouse). The Plan's offset is complex and requires an understanding of the benefits available under Social Security to a family unit.

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[6] You have not provided the Appeals Boards with W-2 forms for [redacted], nor are they available in PBGC records.

[7] As is explained in more detail below, one of the benefit formulas set forth in the FA Plan's formal document includes an offset for the "Family Social Security Amount." *See* Section 4.1A of the 2001 Restatement. The term "Family Social Security Amount" is defined in the "Definitions" section of the formal document. *See* section 2.1(O) of the 2001 Restatement. In this decision, we refer to the offset as the "Family Social Security Offset."

A. Background for Plan Interpretation Issue

Benefits under the Social Security Act In addition to earning a Social Security benefit that is based on her own wages, a married worker earns a Social Security benefit for her spouse. In general, a spouse is entitled to a spousal Social Security benefit of 50% of the worker's benefit, unless the spouse's own earnings entitle him to a larger benefit in his own right, in which case there is no spousal benefit.[8] Spousal Social Security benefits generally are first payable upon both parties' attainment of age 62.[9]

Social Security benefits include the worker's Primary Social Security Benefit ("PSSB," which also is referred to as "the old-age worker's benefit"),[10] as well as other benefits that are payable to some of the worker's dependents. Section 2.02 of the Social Security Act ("SS Act")[11] describes the types and the eligibility requirements of all of the "Old-age and survivors insurance benefit payments" that are available to a worker who has earned a vested Social Security benefit and to the worker's dependents.[12]

Under Social Security law, the eligibility requirements for the Husband's Benefit are defined as follows:

> (c) Husband's insurance benefits
>
> (1) The husband . . . of an individual entitled to old-age or disability insurance benefits, if such husband . . .
>
> (A) has filed application for husband's insurance benefits,
>
> (B) has attained age 62 or . . . has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual, . . .,
>
> . . . and
>
> (D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual, . . .

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[8] 42 U.S.C. § 402(c)(1)(D), 402(c)(2) ("Husband's insurance benefits"); *see also* 42 U.S.C. § 402(b)(1)(D), 402(b)(2) ("Wife's insurance benefits").

[9] 42 U.S.C. §§ 402(b)(1); 402(c)(1).

[10] 42 U.S.C. § 402(a). *See also* 42 U.S.C. § 415(a) (definition of "Primary insurance amount").

[11] 42 U.S.C. § 402.

[12] In addition to the Husband's Benefit and the Wife's Benefit (which are discussed in detail in this decision), section 2.02 of the SS Act (42 U.S.C. § 402) includes the following benefits: (1) the Child's Insurance Benefit; (2) the Widow's Insurance Benefit; (3) the Widower's Insurance Benefit; (4) the Mother's and Father's Insurance Benefit; and (5) the Parent's Insurance Benefit.

shall . . . be entitled to a husband's insurance benefit.

42 U.S.C. § 402(c)(1). Under current law, the requirements for entitlement to the Wife's Benefit mirror the requirements for the Husband's Benefit.[13]

The SS Act provides that the monthly amount of the Husband's Benefit "shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife) for such month."[14] In the situation where the individual is entitled to a Social Security benefit based on his own earnings that is less than the Husband's Benefit amount, the Husband's Benefit is equal to one-half of the wife's Primary Insurance Amount ("PIA") minus the husband's PIA payable on their own earnings.[15] Thus, if a wife's PIA is $2,000 and her husband's PIA is $800, then the Husband's Benefit at the husband's Full Retirement Age ("FRA") is equal to $200, where $200 is equal to one-half of $2,000 (or $1,000) minus $800.[16] Calculation of Husband's Benefit amount under the SS Act mirrors the calculation of the Wife's Benefit amount.[17]

The Family Social Security Offset under the FA Plan's Formulas Between 1975 and 2000, the FA Plan used a single benefit formula to calculate pension benefits, with that formula including a Family Social Security Offset. Following complaints that this offset was a kind of "marriage penalty," the flight attendants' union negotiated it out of the FA Plan in 2000. The change to the offset first was adopted in a Collective Bargaining Agreement, and, later, it was incorporated into the 2001 Restatement. The new benefit formula, which does not include a Social Security offset, is the only benefit formula for employees hired on or after May 1, 2000.

For some participants hired before May 1, 2000, such as [redacted], the new formula was less generous than the older formula. Therefore, the 2001 Restatement provided that, for

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[13] *See* 42. U.S.C. § 402(b)(1).

[14] 42 U.S.C. § 402(c)(2).

[15] 42 U.S.C. § 402(k)(3)(A).

[16] The $200 in this example would be reduced for early commencement if the spouse elects to start receiving it before [redacted] FRA. *See* 42 U.S.C. § 402(q) (reductions to Social Security benefit amounts for early commencement).

Postponement of the start date of a Wife's Benefit or a Husband's Benefit beyond the later of the individual's or the spouse's FRA, however, does not increase the amount of the benefit. This is because the SS Act defines the Husband's or Wife's Benefit as 50% of the spouse's PIA and further does not provide for a spouse to earn late retirement credits on the benefit. 42 U.S.C. § 402(b)(2), 402(c)(2).

[17] 42 U.S.C. § 402(k)(3)(A).

The SS Act provides that an application for a Wife's Benefit or a Husband's Benefit filed before the individual's FRA is deemed to be an application for a PSSB based on her own earnings. 42 U.S.C. § 402(r). This deemed application rule, for example, prevents a husband from receiving a Husband's Benefit from an early retirement age until his FRA and then "switching" to receive an unreduced Social Security benefit based on his own earnings record. In some circumstances, however, a spouse may apply for a Husband's Benefit or a Wife's Benefit on or after his or her FRA and later switch at age 70 to receive a higher PSSB based on his or her own earnings.

participants hired before May 1, 2000, a pension would be calculated under both formulas, with the participant entitled to use whichever formula resulted in the greater benefit.

The older benefit formula, which is set out in section 4.1A(II) of the 2001 Restatement, provides that a participant's yearly retirement income at Normal Retirement is the sum of (C) plus (D), which are defined as follows:

> (C) Sixty percent (60%) of the Participant's Final Average Earnings less fifty percent (50%) of the Participant's Family Social Security Amount, multiplied by the ratio that the participant's years of Credited Service on the date the participant's Service ceased bears to 25 if he has less than 25 years of Credited Service on the date Service ceased; and
>
> (D) One percent (1%) of the Participant's Final Average Earnings multiplied by the number of the Participant's years of Credited Service in excess of 25 but not in excess of 30.

The new benefit formula, which is set forth in Section 4.1A(I) of the 2001 Restatement, provides that a participant's yearly retirement income at Normal Retirement is the sum of (A) plus (B), where (A) and (B) are defined as:

> (A) One and sixty four one hundredths percent (1.64%) of the Participant's Final Average Earnings multiplied by the Participant's years of credited Service, up to a maximum of 25 years; and
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> (B) One percent (1%) of the Participant's Final Average Earnings multiplied by the number of the Participant's years of Credited Service in excess of 25 but not in excess of 30.

Section 2.1(O) of the 2001 Restatement defines the term "Family Social Security Amount" as follows:

> (O) Family Social Security Amount - the yearly amount which is payable to the Participant as a monthly old age benefit at age 65 under the Social Security Act (or under any similar Federal acts or act as now existing or subsequently amended or created) as in effect on his Normal Retirement Date or the date his Service ceases, whichever is earlier, including any benefits available to the Participant with respect to his Spouse, but excluding any such benefits actually earned by such Spouse. If a Participant's Service ceases prior to his Normal Retirement Date, the Family Social Security Amount to which such Participant will be entitled at age 65 will be based upon the assumption that the Participant will not receive, in the future, any compensation which would be treated as wages for the purposes of the Social Security Act.
>
> The Family Social Security Amount shall include benefits available with respect to the Spouse of the Participant only after such benefits are actually payable under the Social Security Act. If such benefits cease to be payable, the Family Social Security Amount shall be reduced by the amount of such benefits.
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> The Family Social Security Amount shall be determined by the Plan Administrator based on Employer records and shall in no event exceed the maximum offset permitted by the Code.

> Notwithstanding the foregoing, if a Participant who retires or terminates employment with vested rights after December 31, 1983, provides to the Plan Administrator within the relevant computation period a statement from the Social Security Administration evidencing his actual wages for Social Security purposes for some or all years prior to the date his retirement or termination of employment (whichever date occurs first), such wages shall be taken into account as his wages for such years in calculating his Social Security benefit for the purposes of this Plan. For years prior to the Participant's retirement or termination of employment for which such a statement is not provided to the Plan Administrator during the relevant computation period, the Plan Administrator shall be entitled to estimate the Participant's wages. Such estimate shall be made in accordance with a method uniformly applied, which satisfies the rules for use of estimated earnings history that are set forth in Revenue Ruling 84-45.
>
> For purposes hereof, the "relevant computation period" for a Participant shall be a period of 120 days beginning on the later of (A) the date of retirement or termination of employment with vested rights or (B) the date, on which the Plan Administrator has furnished or caused to be furnished to him (1) a calculation of his retirement income under this Plan, determined with a Social Security benefit calculated on the basis of estimated wages, (ii) a statement that the Participant has the right, within the relevant computation period, to supply his actual wage history and to have it taken into account in calculating his retirement income, and (iii) a statement that the Participant can obtain his actual wage history from the Social Security Administration.

The FA Plan thus provides that, for married participants, the Family Social Security Offset consists of two deductions. The first deduction (which we refer to as the "Participant Social Security Offset" or "Participant Offset") relates to the participant's age-65 Social Security benefit. The second deduction (which we refer to as the "Spousal Social Security Offset" or "Spousal Offset") relates to the Social Security benefit "available with respect to the participant's spouse." Section 4.1A(I) of the 2001 Restatement provides, however, that the Spousal Social Security Offset does not apply until the younger of the participant and the spouse turns age 62. The FA Plan's drafters apparently had decided not to apply the Spousal Offset before age 62 because, under the Social Security Act, spousal Social Security benefits generally are first payable upon both parties' attainment of age 62.

As is stated above, participants such as [redacted] receive *the greater of* the benefits calculated under the pre-May 1, 2000 formula, which includes the Family Social Security Offset, and the post-May 1, 2000 formula, which does not. Because the Family Social Security Offset may change after the participant's Benefit Commencement Date, it also is possible that the benefit formula that will produce the *greater* benefit amount will change. For example, the older formula may produce the greater benefit amount before the participant and spouse attain age 62, and the new formula may provide the greater amount afterwards. Section 4.1A of the 2001 Restatement specifically preserves the larger benefit amount in this situation.

The FA Plan's Calculation of [redacted]'s Benefit In February 2002, [redacted] informed US Airways of [redacted] intent to retire effective April [redacted], 2002. US Airways then prepared a benefit calculation of [redacted] estimated pension, which is dated March 22, 2002. *See* Enclosure 1 to this decision (US Airways' March 22, 2002 benefit calculation worksheets) and Enclosure 2

(March 22, 2002 letter from US Airways to [redacted], with enclosed "Flight Attendant Pension Calculation").

The March 22, 2002 Flight Attendant Pension Calculation lists [redacted] name as "[redacted]" and [redacted] spouse's name and date of birth as "NA." Since US Airways' records then showed [redacted]'s marital status as "divorced," US Airways determined that [redacted] benefit would be greater under the older formula *without* a Spousal Social Security Offset, rather than under the new formula. As is shown in Enclosure 2, US Airways determined that [redacted] monthly benefit as a Life Annuity starting on April [redacted], 2002 and continuing for the rest of [redacted] life was $2,649.54.

The benefit calculation worksheets in Enclosure 1 further show that US Airways had calculated [redacted]'s benefit under three different scenarios, which are as follows:

(1) Using the older formula with a Participant Offset for [redacted] but not including the Spousal Offset, US Airways calculated a benefit of $2,649.54 in the Single Life Annuity form as follows:

> (.60 x final average earnings) – (.5 x Participant Offset) x (years of service/25) + (.01 x final average earnings) x (years of service over 25 but not more than 30), **which is** (.60 x $5,333.06) – (.50 x $1,633.90) x (25/25) + (.01 x $5,333.06) x 5 = $2,649.54

(2) Using the older Offset formula and *including* the Spousal Offset, US Airways calculated a benefit of $2,241.06 as follows:

> Benefit without Spousal Offset – Spousal Offset, **which is** $2,649.54 - $408.48 = $2,241.06.

The Worksheet further states that the Spousal Offset in this calculation is "applied at the later of the Participant and Spouse's Age 62 date."

(3) Using the new, post-May 2000 benefit formula that eliminates the Family Social Security Offset, US Airways calculated a benefit of $2,453.21, as follows:

> (.0164 x final average earnings) x (years of service up to 25) + (.01 x final average earnings) x (years of service over 25 but not more than 30), **which is** (.0164 x $5,333.06) x 25 + (.01 x $5,333.06) x 5 = $2,453.21.

In calculation (1) above, the Participant Offset of $1,633.90 represents US Airways' estimate of [redacted]'s age-65 Social Security Act benefit. The Spousal Offset of $408.48 in calculation (2) above equals one-fourth (25%) of the $1,633.90 amount. This $408.48 amount reflects that: (1) the Husband's Benefit under the Social Security Act corresponds to 50% of the worker's Social Security benefit (*see* more detailed discussion later in the decision) and (2) the older benefit formula provides that the Family Social Security Offset is multiplied by 50%.

Thus, the $408.48 amount equals $1,633.90 (Participant Offset) x 50% (Spousal Offset percentage) x 50% (percentage in FA Plan formula).

US Airways' calculations of the Family Social Security Offset for [redacted] were consistent with its longstanding practice as the Administrator of the FA Plan. US Airways' practice with respect to the offset is explained in more detail in the **Appendix** to this decision.

[redacted] married [redacted] on March 22, 2002. On April 8, 2002, [redacted] elected the "Life Annuity" form on the FA Plan's "Retirement Election and Income Options" form (Enclosure 3). This notarized form also contains the signature of [redacted], who, as [redacted]'s spouse, consented to the waiver of the Joint & Survivor Annuity form of payment.

On April 17, 2002, US Airways revised [redacted]'s pension calculations based upon the updated spousal information. *See* Enclosure 4 (US Airways' April 17, 2002 calculation worksheets) and Enclosure 5 (April 18, 2002 letter from US Airways to [redacted], with enclosed "Flight Attendant Pension Calculation"). The revised calculations took into account that [redacted] already had attained age 62 as of [redacted] April [redacted], 2002 retirement date, and [redacted] reached age 62 nine days later on April 1, 2002.

As shown in Enclosures 4 and 5, US Airways determined that [redacted]'s benefit payable as a Single Life Annuity was $2,649.54 from April [redacted], 2002 to April 30, 2002, and $2,453.21 from May 1, 2002 forward. We note that the revised calculation worksheets show the exact same three amounts US Airways had used in the March 22, 2002 benefit calculation. The revised "Flight Attendant Pension Calculation," however, differs from the earlier one since it shows a reduction to [redacted]'s monthly payments starting on May 1, 2002. This change occurred because, as a result of [redacted]'s marriage, the Spousal Social Security Offset had become relevant for the older benefit formula calculations. Also, as required by the FA Plan, [redacted]'s benefit of $2,453.21 from May 1, 2002 forward is based on the new formula, since the new formula provides a greater benefit amount than the older formula for those payments.

Although in its revised benefit determination US Airways calculated [redacted]'s benefit as $2,453.21 payable from May 1, 2002 forward, the FA Plan did not reduce the payment to $2,453.21 on May 1, 2002. Instead, the FA Plan continued to pay [redacted] the $2,649.54 benefit that initially was calculated for [redacted] as an unmarried participant, rather than the revised benefit amount based on the updated spousal information.

PBGC's Calculation of [redacted]'s Guaranteed Benefit As stated in [redacted]'s determination letter, PBGC first determined [redacted]'s benefit under the FA Plan and then applied the limits under federal pension law. PBGC calculated [redacted]'s Plan benefit using the same calculation method as US Airways used in 2002. PBGC also reached the same result as US Airways, that is: [redacted]'s FA Plan benefit is $2,649.54 from April [redacted], 2002 to April 30, 2002, and $2,453.21 from May 1, 2002, forward, with her benefit paid as a Single Life Annuity. After calculating [redacted]'s Plan benefit, PBGC applied the legal limitations that apply to the benefits PBGC guarantees.

The guaranteed benefit limitation which affects [redacted]'s benefit is the Phase-In Limitation. Sections 4022(b)(1) and 4022(b)(7) of ERISA provide for the "phase in" of a benefit increase that results from any plan amendment made or effective within the five years before Plan termination. This phase in of the increase is equal to the greater of 20 percent of the benefit increase or $20.00 per month (but not more than the increase itself) for each full year the pension plan amendment was in effect before plan termination. Under ERISA, the time a benefit increase is in effect begins with the later of the date the increase was adopted or the date it became effective.

[redacted]'s benefit is increased as a result of the change in the benefit formula adopted May 1, 2000, as discussed in the prior sections of this letter. The May 1, 2000 change was in effect for four full years prior to the date the FA Plan terminated. PBGC, therefore, guarantees 80% of the benefit increase or $80.00, whichever is greater. [redacted]'s benefit beginning May 1, 2002 is $212.15 more under the new percentage formula than it would have been under the older offset formula ($2,241.06 under older formula and $2,453.21 under new formula). As the benefit increase is phased in at 80%, PBGC guarantees $169.72 of the increase [$212.15 x .8 = $169.72]. Thus, [redacted]'s PBGC benefit is $2,410.78 [$2,241.06 + $169.72 (allowed phase-in portion of increase) = $2,410.78]. Accordingly, [redacted]'s FA Plan benefit of $2,453.21 starting on May 1, 2002 is reduced by $42.43, to $2,410.78, due to the Phase-in Limitation.[18]

B. Appeals Board's Findings and Conclusions Concerning Plan Interpretation Issue

On the record before the Appeals Board, it is beyond dispute that PBGC applied the Family Social Security Offset in accordance with US Airways' long-standing practice. Accordingly, we look to the plan documents in existence at the time [redacted] retired, including Summary Plan Descriptions ("SPD's") provided to FA Plan participants, to ensure this practice was consistent with the governing documents.

The critical language comes from the definition of Family Social Security Offset in the 2001 Restatement – "including any benefits available with respect to the participant's spouse, but excluding any such benefit actually earned by the participant's spouse." US Airways interpreted this language to provide an offset for any Social Security benefit potentially payable to the participant's spouse on account of the participant's earnings (whether or not that spousal Social

[18] After the FA Plan terminated, [redacted] continued to receive monthly payments of $2,649.54, the same amount [redacted] was receiving before the Plan terminated. As discussed above, [redacted]'s correct PBGC benefit is $2,410.78, which includes reductions for both the Spousal Social Security Offset and the Phase-in Limitation. Thus, for the time period beginning February 1, 2005, [redacted] was overpaid $238.76 per month. PBGC is not seeking collection of overpayments the FA Plan made prior to its termination date.

PBGC regulations require PBGC to recover overpayments by recouping a small percentage of a retiree's benefits in those cases where the retiree is entitled to receive future benefits from PBGC. 29 Code of Federal Regulations § 4022.81. As [redacted] is entitled to receive future benefits from PBGC, PBGC must recover [redacted] overpayments through a reduction to [redacted] monthly payments.

Security benefit was actually paid). As is shown immediately below, this interpretation was clearly communicated to participants in all the SPD's sent to participants in the years leading up to [redacted]'s retirement.

The FA Plan's Summary Plan Descriptions The 1978 Allegheny Airlines Flight Attendants Plan SPD ("1978 SPD," with excerpts in Enclosure 6), which was provided to FA Plan participants to explain the plan provisions in effect as of January 1, 1977, states on page 3: "If you retire at age 65, you will normally begin to receive full Social Security benefits and retirement income from Allegheny's plan. The plan benefit will be equal to 60% of your Final Earnings, less 50% of your Family Social Security Benefit." Three paragraphs later, the 1978 SPD describes the "Family Social Security Benefit" as follows:

> "Family Social Security Benefit" means the annual amount to which you will be entitled under the Social Security Act . . . . This amount will include payments to which you are entitled on account of your spouse or dependents when and if they become payable, but exclude any Social Security Benefits actually earned by them. In the event that your spouse receives Social Security Benefits actually earned by him or her, *your "Family Social Security" will still include the amount you would otherwise have been eligible to receive on account of your spouse.*"[19]

The 1981 SPD for the FA Plan (excerpts in Enclosure 7) states the following concerning the Family Social Security Benefit:

> FAMILY SOCIAL SECURITY BENEFIT means the amount you'll be able to receive each year from Social Security, based on the Social Security Act in effect when you retire or leave USAir. You may be eligible for extra Social Security benefits because of your spouse or dependents. In that case, your Family Social Security Benefit will include those extra benefits. If your spouse receives Social Security benefits [redacted] or [redacted] actually earned, that benefit will not be included, but the amount you would have received on account of your spouse if [redacted] hadn't earned separate benefits will still be included.[20]

The 1981 SPD then provides an example where the spouse's Social Security benefit is 50% of the participant's Social Security benefit.

The 1987 SPD for the FA Plan (excerpts in Enclosure 8) contains the following language concerning the Family Social Security Amount:

> You may be eligible for Social Security benefits because of your husband, wife, or dependents. In that case, your Family Social Security Benefit **will include** those extra benefits. The most common example is a spouse, who may be eligible for payments equal to 50% of yours. The Plan will count that extra 50% in your Family Social Security amount, even if your spouse earns and receives a separate benefit.[21]

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[19] 1978 SPD at 3 (emphasis added).

[20] 1981 SPD at 13.

[21] 1987 SPD at 12.

As is the case with the 1981 SPD, the 1987 SPD then provides an example where the spouse's Social Security benefit is 50% of the participant's Social Security benefit.

The July 1992 US Air SPD (excerpts in Enclosure 9) contains a detailed discussion of the "Family Social Security Benefit." With respect to the Spousal Social Security Offset, the July 1992 SPD states:

> If you are eligible for additional Social Security benefits because of your spouse or dependents, the Family Social Security Benefit will include the additional benefit. The most common example is a spouse who may be eligible for a Social Security Benefit equal to 50% of yours. The Plan takes into account that additional amount even if your spouse earns and receives a separate benefit.
>
> Example:
> Suppose an employee has a Social Security benefit of $9,900 a year. If this employee is married, he or she may be eligible to receive an extra 50% ($4,950) because he or she has a spouse. This means the Social Security Benefit used to calculate this employee's benefits from this Plan will be $14,850 ($9,900 + $4,950), even if the spouse earns and collects a larger retirement benefit on his or her own (subject to certain maximums).
>
> Your Plan payments may be increased or decreased over the years to reflect changes in your eligibility for a Family Social Security Benefit. If your spouse reaches age 62 several years after you retire, for example, your Plan payments will be decreased at that point, to reflect the increase in your Social Security benefits. If your spouse dies after your eligibility for Social Security benefits, your Plan payments will increase to reflect the decrease in your Social Security.[22]

The Appeals Board found that the FA Plan's practice throughout the time the Family Social Security Offset was in effect – which was a time period of more than 20 years – was consistent with the language in the FA Plan's SPDs.

Negotiations and Communications by the Flight Attendants' Union US Airways and its union, the Association of Flight Attendants, AFL-CIO ("AFA"), negotiated pension benefits under the FA Plan. Upon reaching agreement, the parties included the basic pension terms in Collective Bargaining Agreements ("CBAs"). As discussed below, the Family Social Security Offset became the subject of collective bargaining, and, in 2000, an agreement to amend the FA Plan's benefit formula was reached.

According to news reports (examples of which are provided in Enclosure 10), many US Airways flight attendants objected to the Family Social Security Offset, which some flight attendants viewed as a "marriage penalty." The AFA responded by negotiating the new benefit formula, which did not contain a Social Security offset. For some flight attendants, however, the new formula was less generous than the older formula. Thus, the CBA and the FA Plan's documents provided that flight attendants hired before May 1, 2000 would receive the greater of the benefit under the older benefit formula or the benefit under the new benefit formula.

[22] July 1992 SPD at 7-8.

Enclosure 11 is a copy of the pages in the CBA signed on May 1, 2000 that pertain to the FA Plan.

The Appeals Board found nothing, however, that would indicate that the AFA had questioned whether US Airways' practice concerning the Family Social Security Offset was in conformity with the FA Plan's governing documents. Furthermore, after the FA Plan had terminated and had been taken over by PBGC, AFA provided information to participants that was consistent with the way US Airways had administered the FA Plan. For example, an October 1, 2006 AFA newsletter (Enclosure 12) stated:

> 5. What about the Social Security offset?
>
> The Social Security offset is reflected in your estimate for a single person. If you are married when you get the final determination there will be another deduction. The Social Security offset is just part of the formula and is LOOSELY based upon Social Security. The PBGC does not have access to your Social Security records or your spouse's. The offset is based on an older Social Security formula and does not reflect cost of living increases that Social Security has given. It also does not reflect you[r] spouse's true earnings if they are a high wage earner.

Additionally, AFA newsletters dated October 28, 2008 and November 4, 2008 (also in Enclosure 12), which notified flight attendants that PBGC had issued benefit determinations and that they had the right to appeal them, stated: "The Social Security offset is already in the calculation. Remember that the Social Security offset is only a stepdown in the formula that allows for the person who is age 62, and/or spouse if married, to begin to receive Social Security whether they take Social Security at that time or not. The Social Security offset has nothing to do with the actual amount of money you are to receive from Social Security."

Language in the FA Plan's governing documents. The FA Plan's longstanding practice was to apply a Spousal Social Security Offset that is based on any benefits potentially payable to the participant's spouse on account of the participant's earnings (whether or not actually paid). Thus, under this practice, the FA Plan applied a Spousal Offset that is 50% of the Participant Social Security Offset amount, with the Spousal Offset starting when both the participant and the spouse had attained age 62.

The Appeals Board concluded that the FA Plan's practice is consistent with the FA Plan's governing documents. While the language in the FA Plan alone does not expressly state that "benefits available" encompasses benefits only potentially available (but never paid), that is certainly a reasonable interpretation of this language ("available" being broader than "paid"). And while the drafters of this provision used this broad language to describe the offset, they used precise language in excluding from the offset the Social Security benefit "actually earned" by the participant's spouse. This language shows that if the drafters had intended to only offset benefits actually paid to the spouse, as opposed to simply available, they knew how to do it.[23]

[23] The FA Plan's "Family Social Security Amount" definition refers in certain places to the benefits "payable" under the Social Security Act. The word "payable" commonly is used in pension plan documents when there is an offset for another income source, since the participant often has the option of delaying payments from the other income source. By using the word "payable" rather than "paid," the offset is applied when the participant first

Furthermore, the FA Plan definition takes into account that, under Social Security law, a married worker potentially is eligible for two different Social Security benefits: a benefit based on the worker's own earnings and a Husband's or Wife's Benefit based on the spouse's earnings. These two Social Security benefits are overlapping in the sense that they potentially are payable to the same individual at the same time. Social Security law, however, limits the Social Security benefit that is actually paid to the individual in this potential dual entitlement situation.[24] By using the broader word "available" rather than paid, the FA Plan's Spousal Social Security Offset includes the potential Husband's or Wife's Benefit that is not paid because it overlaps with the Social Security benefit based on the worker's own earnings.

Importantly, when we include the SPDs, which according to the Supreme Court are "documents and instruments governing the plan,"[25] we do find express statements that potential benefits are within the scope of the offset. For example, the 1981 SPD states: "If your spouse receives Social Security benefits he or she actually earned, that benefit will not be included, but the amount you would have received on account of your spouse if he hadn't earned separate benefits will still be included."

We further note that the FA Plan's "Family Social Security Amount" definition does not contain any requirement that the participant submit proof of their spouse's earnings. Proof of spousal earnings would be necessary if the Spousal Social Security Offset is limited to the Husband's Benefit or Wife's Benefit that is actually paid or payable by Social Security.[26]

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becomes entitled to receive payments from the other income source, even if the participant decides to start them later. We concluded, in the context of the entire "Family Social Security Amount" definition, the word "available" is broader than both "paid" and "payable."

[24] As we explained earlier, an individual with relatively high Social Security earnings of his own (as compared to his wife's) may not qualify for a Husband's Benefit. If the individual's Social Security earnings are more modest, however, he may be entitled to a Husband's Benefit in addition to his own Social Security benefit. The Husband's Benefit in that situation generally will be less than 50% of the Social Security benefit payable to his wife based on her own earnings. Finally, if the individual is not entitled to a Social Security benefit based on his own earnings, then the Husband's Benefit generally will be 50% of his wife's Social Security benefit.

There are exceptions to the general rules stated above. One exception applies when an individual who has not started his Social Security payments before his Full Retirement Age elects to receive a Husband's Benefit before starting his own Social Security benefit. In that situation, the Husband's Benefit is paid at the full 50% amount until the individual starts his own Social Security benefit. Special rules also apply, for example, if the individual has government employment earnings that are not covered by Social Security.

[25] *Kennedy v. Plan Adm'r for DuPont Sav. and Inv. Plan*, 129 S.Ct. 865, 877 (2009), *citing Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 84 (1995).

[26] Except in cases where both spouses worked for US Airways, it would not be possible for the FA Plan's administrator to determine, based only on the US Airways earnings records for the participant, whether a spouse's own earnings were so high as to make him or her ineligible for a Husband's or Wife's Benefit (or would preclude payment of that benefit at the full 50%). Spousal earnings records, however, are unnecessary under US Airways' interpretation of the offset provision, since the offset includes spousal Social Security benefits that are potentially available but not actually paid.

We further note that the "Family Social Security Amount" definition states that the participant "has the right, within the relevant computation period, to supply his actual wage history and to have it taken into account in

For all these reasons, we must uphold US Airways' interpretation of the Family Social Security Offset provision as reasonable.

Appeals Board's Response to Your Arguments

You make several arguments as to why the Spousal Social Security Offset should not apply to [redacted]. First, you claim that the offset should not be applied because [redacted] was told in letters from US Airways that [redacted] would be paid a Single Life Annuity, unchanged upon [redacted] or [redacted] spouse's attainment of age 62, or indeed any given age. This argument confuses the election of a form of benefit with the Family Social Security Offset. The two have no relation to one another. A married participant may elect a Joint and Survivor Annuity payable to [redacted] or [redacted] spouse, or, with the spouse's consent, a Single Life Annuity without a survivor benefit. [redacted], with [redacted] spouse's consent, elected a Single Life Annuity, so that if [redacted] predeceases [redacted] spouse [redacted] will not receive any benefits under the FA Plan. Regardless of which of these benefit forms are elected, the Spousal Social Security Offset applies.

[redacted] states that, if [redacted] knew about the Spousal Social Security Offset, [redacted] would have waited to marry until after [redacted] retired. As we have noted above, the FA Plan's requirements were expressly explained in the three different SPDs that participants received during [redacted]'s working years, and PBGC must administer the FA Plan according to its terms.

You also rely on language in the 2004 SPD, which you claim limits the Family Social Security Offset to "benefits paid to you because of your spouse." You contend this means that the offset should not change on May 1, 2002 (when [redacted] attained age 62) because [redacted]'s Social Security payments did not change on that date. However, as the 2004 SPD was issued two years after [redacted]'s retirement to describe plan terms as of 2004, it is irrelevant to [redacted] appeal. But, even if it were, reading the language in context with the rest of the explanation in the 2004 SPD demonstrates that US Airways correctly determined [redacted]'s Family Social Security Offset. The complete language is:

- **Family Social Security Benefit:** The amount of Social Security retirement benefits payable when you reach age 65, including any additional Social Security benefits payable to you because of your spouse. For example, if you are eligible for an additional Social Security benefit equal to 50% of your benefit because of your spouse, the Plan takes that additional amount into account. The Family Social Security Benefit amount is considered in calculating the Plan benefit amounts for participants hired before May 1, 2000.

  The Family Social Security Benefit amount used to calculate your Plan benefit (if applicable) will be based on the Social Security Act in effect when you retire or leave US Airways, whichever is earlier. If you leave US Airways before your 65th birthday, your Family Social Security Benefit amount will be estimated based on your earnings up until

calculating his retirement income." There is no provision in the FA Plan concerning the spouse's wage history. With respect to recordkeeping, the FA Plan states only that "the Family Social Security Amount shall be determined based on Employer records."

the date you leave US Airways and will assume that you will not have any earnings in the future.

Your Plan payments may be increased or decreased over the years to reflect changes in the amount of your Family Social Security Benefit.

For example:

— When the younger of you or your spouse reaches age 62, your Plan payments will be decreased to reflect the changes in your Family Social Security Benefit amount; or

— If you and your spouse are legally divorced after you retire, or if your spouse dies after your Plan benefits begin, your Plan payments will be adjusted to reflect any change in your Family Social Security Benefit amount. As such, it is important to notify the Plan Administrator of any change in your marital status. You will be asked to provide proof of divorce or death before your benefit payments are adjusted.

Social Security benefit cost-of-living increases that occur *after* you retire or leave US Airways will not affect your Plan payments.

When you retire, you will have 120 days from your benefit commencement date to provide the Plan Administrator a statement of your actual wage history from the Social Security Administration ("SSA"). (The SSA provides these wage history statements on an annual basis). Otherwise, the Plan Administrator will calculate your Plan benefit using a Social Security Benefit based on estimated wages.

Thus, the example in the 2004 SPD of the decrease when the participant and spouse reach 62 is the very situation [redacted] encountered. Accordingly, the Appeals Board concluded, for the reasons stated above, that your appeal does not provide a basis for changing PBGC's April 30, 2009 determination of [redacted] benefits.

C. Appeals Board Majority's Response to Dissenting Opinion

In addition to the issues you raised, the dissenting Appeals Board member's opinion raises a number of additional issues. A central conclusion in the dissenting member's opinion is his view that US Airways, as the FA Plan's administrator, did not follow the language in the FA Plan's formal documents when it applied the Family Social Security Offset. We disagree. As stated above, the Appeals Board has concluded that US Airways' practice in applying the Family Social Security Offset was consistent with the FA Plan's governing documents.

The dissent also discusses IRS requirements and guidance for the integration of Social Security benefits with a defined-benefit plan's benefits.[28] We note that, prior to the termination of the FA Plan, US Airways had submitted to the IRS various restated and amended versions of FA Plan documents that had included the Family Social Security Offset provisions. The Appeals Board majority finds it significant that, during the entire time period between ERISA's enactment and the FA Plan's termination, the IRS had determined that the FA Plan was a tax-qualified pension plan.

The Appeals Board recognizes that, while pension plans with an offset for the participant's own Social Security benefit are common, plans such as the FA Plan that have a second deduction for a "spousal" Social Security benefit are rare. Probably for this reason, we are unaware of any rulings by the IRS, the Department of Labor, or by any other federal government agency that specifically address issues related to "spousal" Social Security offsets. Furthermore, we are unaware of any court decision that addresses them. There is no basis for the Appeals Board to conclude that US Airways' practice concerning the Family Social Security Offset, which the Board found to be consistent with the FA Plan's governing documents, violated applicable law.

Finally, the Appeals Board observes that neither ERISA nor the PBGC's regulations provide for the adjustment of the long-standing terms of pension plans according to PBGC's (or the Appeals Board's) notions of equity. In collectively bargained plans, such as the one before us, the drafting and adoption of pension plan terms is left to the give-and-take of the negotiating process. In fact, the benefit offset provision under review here, as well as the FA Plan practice in implementing it, was sufficiently well known and understood that it became the subject of collective bargaining. That process resulted, through the collective bargaining agreement in 2000, in the amelioration of the offset provision. It is not up to the Appeals Board to further adjust that bargain after-the-fact, no matter how appealing a case can be made for it.

Decision

Having applied the law, PBGC's regulations, and the FA Plan provisions to the facts of [redacted]'s case, the Appeals Board decided that your appeal did not provide a basis for changing [redacted]'s PBGC benefit determination. Thus, we are denying your appeal. This decision is PBGC's final action regarding your appeal. You may, if you wish, seek review of this decision in an appropriate federal district court.

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[28] Those requirements are designed to ensure that a pension plan integrated with Social Security does not discriminate in favor highly compensated employees in violation of the Internal Revenue Code's ("Code's) nondiscrimination requirements. See Code sections 401(a)(4); 410(b). Neither the appellant nor the dissent alleges that the FA Plan violated the Code's nondiscrimination requirements.

In addition, because the nondiscrimination rules are part of the Code's tax-qualification requirements, a pension plan's failure to satisfy those rules may result in disqualification of the plan. However, if done in a timely manner, the nondiscrimination rules allow a pension plan to adopt a retroactive amendment to increase coverage or add a benefit to the plan. *See* Trea. Reg section 1.401(a)(4)-11(g)(2).

If you or [redacted] has other questions about [redacted]'s PBGC benefit, either of you may call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the FA Plan (Case 203572).

Sincerely,

Charles Vernon
Appeals Board Chair

Virginia Robinson
Appeals Board Member

Documents Included with the Appeals Board's Decision:

Appendix to Appeals Board's Decision

Dissenting Opinion of Mr. Louis, with 3 Appendices

cc: [redacted]

(b)6 - Personal Privacy

APPENDIX TO APPEALS BOARD'S DECISION

The FA Plan's Practice Concerning the Family Social Security Offset

This Appendix explains in some detail the FA Plan's practice in applying the Family Social Security Offset.

In determining this offset, US Airways (as the FA Plan's Administrator) first calculated the participant's estimated "Primary Insurance Amount" ("PIA"). The PIA, which is a defined term under the Social Security Act, is the monthly old-age benefit amount that an individual is entitled to receive from Social Security at "Full Retirement Age" ("FRA") based upon his or her own earnings. As provided under the FA Plan's terms, US Airways:

- Used actual earnings records, if they were available, to calculate the estimated PIA. Generally, US Airways maintained earnings records that covered the participant's entire work history with the company.
- If actual earnings records were not available, US Airways calculated the estimated PIA using estimated earnings for the period beginning when the participant turned 22 to the date of retirement or termination of employment. Generally, such estimated earnings were used for time periods between age 22 and when the participant first was employed by US Airways and for any break-in-service periods;[1]
- Provided a participant who was retiring or terminating employment with the opportunity to supply, within a 120-day period, his or her actual wage history and to have it taken into account in calculating "his Social Security benefit for the purposes of this plan." *See* section 2(O) of the 2001 Restatement;[2]
- Calculated the employee's estimated PIA under the assumption that he or she had no earnings after termination of employment with the company, even if he or she left employment at a relatively young age and continued to work for a different employer;[3] and
- Calculated the employee's estimated PIA using the Social Security Act as in effect on his or her Normal Retirement Date or the date Service with the employer ceased, whichever is earlier.[4]

The next step was to convert the estimated PIA to an age-65 amount (which we will refer to as the "age-65 SSB"). This second step was performed because: (1) the FA Plan provides that

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[1] As stated in the Plan's definition of "Family Social Security Amount" in section 2(O) of the 2001 Restatement, the FA Plan followed the rules set forth in (IRS) Revenue Ruling 84-45 for the use of estimated earnings history.

[2] This opportunity to submit actual wage history information is required by Revenue Ruling 84-45.

[3] This assumption of "no future earnings" is stated in the FA Plan's terms and is a permitted method for calculating a Social Security offset under Revenue Ruling 84-45.

[4] Thus, as is required under the Internal Revenue Code, benefit improvements under the Social Security Act that occur after the earlier of those two dates are not taken into account in determining the amount of the offset.

the Participant Social Security Offset is based on the "monthly old age benefit at age 65 under the Social Security Act"; (2) the FRA under Social Security law (which depends upon the year in which the individual is born) is after age 65 for many FA Plan participants; and (3) an individual's Social Security benefit is reduced if payments begin before his or her FRA. As an example, US Airways adjusted [redacted]'s PIA for purposes of the Social Security offset because [redacted] FRA is at age 65 and 4 months (rather than at age 65). Consequently, US Airways multiplied [redacted] estimated PIA amount ($1,671.10) by a factor of 0.97778, which results in an age-65 SSB of $1,633.90. This reflects that [redacted] actual Social Security benefit amount would be reduced if [redacted] started it at age 65 and 0 months, rather than at [redacted] FRA.

For married participants, US Airways then calculated the Spousal Social Security Offset, which (as stated above) relates to the Social Security benefit payable to the participant's spouse. To accomplish this, US Airways multiplied the participant's estimated age-65 SSB by 50%. Thus, the Spousal Social Security Offset is exactly half of the Participant Social Security Offset.

US Airways used 50% of the Participant Social Security Offset as the Spousal Social Security Offset amount because, under Social Security law, the Husband's Social Security Benefit (as is the case with the Wife's Social Security Benefit) is determined based on one-half of the spouse's PIA. US Airways, however, did not adjust the Spousal Social Security Offset amount for any Social Security benefit the spouse had earned based on his (or her) own employment.

As previously discussed, US Airways did not make a reduction for the Spousal Social Security Offset until the younger of the participant and the spouse turned age 62. This rule, which is specifically set forth in sections 2(O) and 4.1A of the 2001 Restatement, apparently was adopted because, under the Social Security Act, spousal Social Security benefits generally are first payable upon both parties' attainment of age 62.

Finally, US Airways' practice was to adjust the Spousal Social Security Offset if there was a change in marital status. Thus, if the participant's spouse died or if the marital relationship ended in divorce (even if the death or divorce occurred after retirement), the Spousal Social Security Offset no longer would be applied.

Dissenting Opinion Re: Appeal 2009-

Summary of Dissent:

I (hereinafter "this dissent") disagree with the majority decision by the Appeals Board on its application of the Plan's "Family Social Security Offset."

This dissent would require PBGC to guarantee and pay benefits in accordance with the plain language of the FA Plan. The plain language of the Plan provides:

- In cases in which a participant's spouse does not have independent social security earnings or such earnings are very low, a full or partial offset based on the Husband's Insurance Benefit or a Wife's Insurance Benefit, whichever applies, is permitted.

- In cases in which a participant's spouse has their own independent social security earnings and those independent earnings result in the spouse being ineligible for a Husband's Insurance Benefit or a Wife's Insurance Benefit under the Social Security Act ("SS Act"), then no offset for a Husband's Insurance Benefit or a Wife's Insurance Benefit is permitted.

With respect to the Appellant's Final Average Earnings, this dissent agrees with the majority's finding.

Thus, in 's case, this dissent would allow to submit a statement from the Social Security Administration ("SSA") showing that is not entitled to a Insurance Benefit.[1] In the likely event that, due to own earnings, 's Insurance Benefit is actually $0.00, then that would be the amount of 's Insurance Benefit offset under the FA Plan's formula.

Background on the Social Security Act:

An understanding of both (1) how the Social Security Primary Insurance Amount ("PIA) is calculated and (2) the package of Social Security benefits that are available to participants is critical in this case.

Dissent Appendix 1 explains how a Primary Insurance Amount ("PIA") is calculated.

Dissent Appendix 2 contains a detailed history of the SS Act and the eligibility conditions for a Husband's Insurance Benefit and a Wife's Insurance Benefit. The information in these two Appendices is critical to understanding the Internal Revenue Service's rules and the provisions of the FA Plan. In particular, the legislative history of

[1] PBGC could also accept evidence of s Social Security earnings from which PBGC could calculate Primary Insurance Amount.

the SS Act and the provisions of the SS Act itself show that Congress specifically rejected the notion of making a Wife's Insurance Benefit available to the wife of every male employee and decided that a Wife's Insurance Benefit would be available under the SS Act only if the wife is "dependent" on her husband. For administrative convenience, the SS Act's definition of "dependence" is a simple mathematical formula. A wife is deemed "dependent" on her husband if either (1) she has no PIA; or (2) her PIA is less than one-half of her husband's PIA. As a result of this definition of "dependence," if a husband has earned a Wife's Insurance Benefit for his wife, then his wife cannot earn a Husband's Insurance Benefit for her husband.

And, as a result of the way Social Security benefits are calculated, a spouse is deemed to be "dependent" on a worker only if the spouse earns approximately 25% or less of the couple's lifetime Social Security earnings, taking into consideration only those earnings below the Social Security wage base. In other words, it is very difficult for married persons who have engaged in any kind of regular full-time job during a substantial part of their life to qualify for a Husband's Insurance Benefit or a Wife's Insurance Benefit based on their spouse's PIA.

Discussion:

The FA Plan is a "PIA Offset" Plan

The FA Plan is a type of PIA Offset Plan because the Plan's benefit formula allows an offset for benefits earned by the participant under the SS Act. The Internal Revenue Service ("IRS") had published some guidance on how PIA Offset Plans worked in 1971 in the form of Rev. Rul. 71-446.[2]

Rev. Rul. 71-446 provided rules for the integration of Social Security benefits with a defined-benefit plan's benefits. It was in full force and effect when the 1976 version of the FA Plan was adopted in 1976. This dissent describes these integration rules at **Dissent Appendix 3**.

One of the primary definitions available in Rev. Rul. 71-446 is the definition of an "offset plan." Section 2.07 of Rev. Rul. 71-446 defines that basic term as follows:

> .07 "Offset plan" means a plan under which (1) no employee is ineligible to participate because his compensation does not exceed a minimum level, (2) no portion of compensation is excluded in computing benefits, and (3) all the provisions including the benefit rates apply uniformly to all covered employees regardless of compensation, except that an employee's benefit otherwise computed under the plan formula is reduced or offset by a stated percentage of such employee's old-age insurance benefit under the Social Security Act. [Underlining added.]

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[2] 1971-2 C.B. 187 (Jan. 1, 1971) Rev. Rul. 71-446 became obsolete with the enactment of the Tax Reform Act of 1986 ("TRA86") and the promulgation of the IRS's nondiscrimination regulations. *See* Rev. Rul. 93-82.

In this dissent's opinion, the FA Plan meets the Rev. Rul. 71-446 definition of an "offset plan" because it uniformly applies an offset against each participant's gross benefit and that offset is equal to a stated percentage (50%) of the old-age worker's benefits and Husband's and Wife's Insurance Benefits actually payable based on the participant's PIA.

The FA Plan Language is Clear and Not Ambiguous

The majority decision seemingly relies on the Plan's long-standing (and wrong) practice regarding the Family Social Security Benefit ("FSSB") to arrive at its conclusion that the Plan language is ambiguous. Finding the Plan language is ambiguous, the majority finds a reasonable interpretation of the Plan language is the Plan practice.

This dissent would uphold the plain language of the definition of Family Social Security Amount ("FSSA") set out in the 2001 Restatement of the Plan and all preceding restatements of the FA Plan.

The FA Plan's Definition of Family Social Security Amount

Every version of the FA Plan, starting with the 1976 Restatement, specifically excluded Social Security benefits actually earned by the participant's spouse from the offset. The 2001 Restatement's version of the FSSA definition contains five (5) paragraphs and provides as follows:

> (O) Family Social Security Amount - the yearly amount which is payable to the Participant as a monthly old age benefit at age 65 under the Social Security Act (or under any similar Federal acts or act as now existing or subsequently amended or created) as in effect on his Normal Retirement Date or the date his Service ceases, whichever is earlier, including any benefits available to the Participant with respect to his Spouse, but excluding any such benefits actually earned by such Spouse. If a Participant's Service ceases prior to his Normal Retirement Date, the Family Social Security Amount to which such Participant will be entitled at age 65 will be based upon the assumption that the Participant will not receive, in the future, any compensation which would be treated as wages for the purposes of the Social Security Act.
>
> The Family Social Security Amount shall include benefits available with respect to the Spouse of the Participant only after such benefits are actually payable under the Social Security Act. If such benefits cease to be payable, the Family Social Security Amount shall be reduced by the amount of such benefits.
>
> The Family Social Security Amount shall be determined by the Plan Administrator based on Employer records and shall in no event exceed the maximum offset permitted by the Code.
>
> Notwithstanding the foregoing, if a Participant who retires or terminates employment with vested rights after December 31, 1983, provides to the Plan Administrator within the relevant computation period a statement from the Social Security Administration evidencing his actual wages for Social Security purposes for some or all years prior to the date his retirement or termination of employment (whichever date occurs first), such wages shall be taken into account as his wages for such years in calculating his Social Security benefit for the purposes of this

> Plan. For years prior to the Participant's retirement or termination of employment for which such a statement is not provided to the Plan Administrator during the relevant computation period, the Plan Administrator shall be entitled to estimate the Participant's wages. Such estimate shall be made in accordance with a method uniformly applied, which satisfies the rules for use of estimated earnings history that are set forth in Revenue Ruling 84-45.
>
> For purposes hereof, the "relevant computation period" for a Participant shall be a period of 120 days beginning on the later of (A) the date of retirement or termination of employment with vested rights or (B) the date, on which the Plan Administrator has furnished or caused to be furnished to him (1) a calculation of his retirement income under this Plan, determined with a Social Security benefit calculated on the basis of estimated wages, (ii) a statement that the Participant has the right, within the relevant computation period, to supply his actual wage history and to have it taken into account in calculating his retirement income, and (iii) a statement that the Participant can obtain his actual wage history from the Social Security Administration.

The first paragraph of the 2001 Restatement is the most important because it defines the Family Social Security Amount in the following critical language:

> Family Social Security Amount - the yearly amount which is payable to the Participant as a monthly old age benefit at age 65 under the Social Security Act . . ., including any benefits available to the Participant with respect to his Spouse, but excluding any such benefits actually earned by such Spouse.

The Plan language clearly states that the FSSA offset is the yearly amount payable to the Participant based on their old age benefit at age 65, "including" any Wife's or Husband's Insurance Benefit that is available. The key word is "available." As explained in Dissent Appendix 2, Congress decided that a Husband's Insurance Benefit and a Wife's Insurance Benefit are not available to many married workers because their spouses typically have their own independent SSA earnings.[3] A small amount of

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[3] In fact, a study in December 2008 concluded that a full Husband's Insurance Benefit or a full Wife's Insurance Benefit is available to less than a fourth of the nation's married persons today. A Briefing Paper was prepared by the Institute for Women's Policy Research in March 2010. In Table 1 of the Briefing Paper, the Institute shows a break-down of benefits payable to retired worker beneficiaries in December 2008. The table shows that 0.3% of men who were receiving Social Security benefits in December 2008 were receiving only a Husband's Insurance Benefit and 0.8% were receiving their own old-age benefit plus a "partial" Husband's Insurance Benefit. Thus, only 0.3% of men were receiving a full Husband's Insurance Benefit, the same full benefit that the SPD's offset for all married female flight attendants.

Table 1 of the Briefing Paper also shows that, in December 2008, 12.8% of women who were receiving Social Security benefits were receiving only a Wife's Insurance Benefit and 34.9% were receiving their own old-age benefit plus a "partial" Wife's Insurance Benefit. Thus, only 12.8% of women were receiving a full Wife's Insurance Benefit, the same full benefit that the SPD's offset for all married male flight attendants.

According to PBGC's actuarial database for the FA Plan, 5201 of the FA Plan's female participants are identified as married, 851 are divorced and 1,085 have an unknown marital status – the rest are single or widowed. The database also reveals that 733 of the male participants are identified as married, 112 are divorced and 120 have an unknown marital status – the rest are single or

independent SSA earnings by that worker's spouse will typically make the Wife's or Husband's Insurance Benefit equal to $0.00 at age 62. In that case, the only benefit available to the participant with respect to the participant's spouse would be benefits actually earned by the spouse, which the definition specifically excludes from the offset.

The second paragraph of the 2001 Restatement's definition of FSSA is also very important and states:

> The Family Social Security Amount shall include benefits available with respect to the Spouse of the Participant only after such benefits are actually payable under the Social Security Act. If such benefits cease to be payable, the Family Social Security Amount shall be reduced by the amount of such benefits.

The language in the second paragraph says that the Wife's or Husband's Insurance Benefit shall only be included in the FSSA "only after such benefits are actually payable under the Social Security Act."

To understand the second paragraph, it is necessary to understand when the two types of Wife's and Husband's Insurance Benefits can start. As this dissent explains in Dissent Appendix 2, Congress effectively created a second type of Wife's Insurance Benefit and Husband's Insurance Benefit in 1972. This second type of Wife's or Husband's Insurance Benefit (or "temporary Wife's or Husband's Benefit") is available to "independent" wives and husbands (unlike the regular Wife's or Husband's Insurance Benefit) but is payable for only a short number of years from the wife's or husband's Full Retirement Age (somewhere between age 65 and age 67 depending on the wife's or husband's year of birth) until age 70.

Not all "independent" wives and husbands qualify for a temporary Wife's or Husband's Benefit. In order to qualify for a temporary Wife's or Husband's Benefit, the wife or husband cannot be eight years or more older than the spouse because, in that case, the wife or husband would reach age 70 before the spouse reaches the spouse's earliest retirement age (age 62). Furthermore, this dissent notes that, in order to take advantage of the availability of a temporary Wife's or Husband's Benefit, the couple must be in a financial position to be able to forgo commencing receipt of the wife's or husband's own old-age worker's benefit until she or he stops receiving the temporary Wife's or Husband's Benefit.

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widowed.

Thus, if a Husband's Insurance Benefit or a Wife's Insurance Benefit were available to participants in FA Plan at the same rate as they were being paid in December 2008 to the general American population (as shown in Table 1 of the Briefing Paper described above), then, under this dissent's reading of the FA Plan's plain provisions, a full Husband's Insurance Benefit would be offset against the benefits of only 16 of the FA Plan's 5201 married female participants, and a full Wife's Insurance Benefit would be offset against the benefits of only 94 of the FA Plan's 733 male participants, where 16 is equal to 0.3% times 5201 and 94 is equal to 12.8% times 733.

Thus, the second paragraph of the definition of the FSSA fits perfectly with the SS Act's provisions regarding when a Wife's or Husband's Insurance Benefit is "actually payable." It allows for an offset starting as early as the wife's or husband's age 62 for the regular Wife's or Husband's Benefit (for "dependent" wives or husbands). It also allows for the offset of the temporary Wife's or Husband's Benefit (for "independent" wives and husbands) starting as early as the wife's or husband's Full Retirement Age.

The final three paragraphs of the definition of FSSA in the 2001 Restatement were added after the issuance of Rev. Rul. 84-45.[4] Just as the definition of FSSA starting with the 1976 Restatement and all later Restatements through 2001 is consistent with the language in Rev. Rul. 71-446, the final three paragraphs of the definition of FSSA that appears in the 2001 Restatement are standard language that was required by Rev. Rul. 84-45 for any plan like the FA Plan that wanted to continue to estimate past earnings when calculating a participant's PIA.

Other Notes and Concerns

1. Dual Entitlement

While the majority opinion suggests that every married participant's spouse is "entitled" to a Wife's or Husband's Insurance Benefit under the SS Act, that "entitlement" often results in a payable benefit of $0. In substance, section 402(k)(3)(A) of the SS Act has the effect of authorizing a "dually-entitled" individual to receive payment of the larger of the two simultaneous benefits, but not both. More precisely, however, as explained by the First Circuit Court of Appeals in Parisi v. Chater,[5]

> . . . the provision entitles the beneficiary to payment of her old-age benefit plus the difference between the "other" benefit and the old-age benefit, if that difference is greater than zero. This is the same as saying that the beneficiary is entitled to an amount equal to the larger of the two simultaneous benefits in question.

As the Social Security Administration ("SSA") explains on its website,[6] if a husband is

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4 1984-a C.B. 115 (January 1984).

5 Parisi v. Chater, 69 F.3d 614, 619 (2d.Cir.1995) at footnote 4. See also the Social Security Administration's regulations at 20 C.F.R. 404.403(a)(5) Example 1 (benefit payable to wife on her own earnings excluded when applying her husband's MFB limit).

6 The SSA explains entitlement to a spouse's benefit on its website at http://www.socialsecurity.gov/pubs/10035.html#family, in part, as follows:

> A spouse who has not worked or who has low earnings can be entitled to as much as one-half of the retired worker's full benefit. If you are eligible for both your own retirement benefits and for benefits as a spouse, we always pay your own benefits first. If your benefits as a spouse are higher than your retirement benefits, you will get a combination of benefits equaling the higher spouse benefit.
> [Underlining added.]

entitled to a benefit based on his own earnings of $1,000 and if one-half of his wife's PIA is $1,000, then the SSA will pay the husband his own benefit of $1,000 and a Husband's Insurance Benefit of $0. SSA's Program Operation Manual System ("POMS")[7] requires that this "Technical Entitlement" to a Husband's Insurance Benefit of $0 be explained in the husband's Notice of Award when he starts receiving a Social Security benefit.

2. The Summary Plan Descriptions Are Inconsistent with the FA Plan's Provisions

The Summary Plan Descriptions that were issued for the FA Plan all directly conflicted with the clear definition of FSSA found in the Restatements of the FA Plan by allowing for offsets of benefits actually earned separately and independently by the participant's spouse under the SS Act.

Each Restatement of the FA Plan was approved through qualification letters from the IRS. Summary Plan Descriptions are not provided to the IRS as part of the qualification process. Thus, there is no reason to expect that the IRS had any idea that Allegheny and its successors were following a practice outlined in the SPDs that was inconsistent with the FA Plan's clear definition of FSSA.

3. Application of the FA Plan's Definition of the FSSA Would Not be Difficult

This dissent notes that application of the FA Plan's written provisions would not have been difficult. The record shows that US Airways collected both the spouse's employer's name and that employer's telephone number as part of a participant's application for medical insurance. If the sponsor had asked for one additional item of information, namely, the spouse's job title, it would have been fairly easy to determine whether a regular Wife's or Husband's Benefit would be available. That is so because practically any full-time job would result in a spouse not being considered "dependent" on the participant because the spouse's lifetime earnings would have to be less than one-third of the Social Security wage base in order for the spouse to be considered "dependent" under the SS Act. And in those cases where it was not clear based on the information available, the flight attendant could submit a form from the Social Security Administration showing that the flight attendant's spouse is not entitled to a Wife's or Husband's Insurance Benefit under the provisions of the SS Act.

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[7] POMS Section NL 00601.010 (Award Notices) refers to such an entitlement to a Husband's Insurance Benefit of $0 as a "Technical Entitlement". Subsection C.2.b. of NL 00601.010 states: "When the two awards are adjudicated simultaneously, include a dictated paragraph regarding the technical entitlement in the 'Notice of Award' for the primary (payable) benefit."
POMS Section NL 00601.010 is available on the SSA's Internet website at: https://secure.ssa.gov/apps10/poms.nsf/lnx/0900601010.

4. The Result of Plan Practice Is that Married Participants Earn Lower Total Retirement Benefits than Single Participants

If the 1976 Restatement of the FA Plan had allowed an offset of a participant's gross accrued benefit by a Wife's or Husband's Insurance Benefit that is not actually payable, the benefits accrued under such a benefit formula would have almost always been lower for married female participants than they would be for most other participants. That is so because history tells us that, in 1976, approximately 1% of married men were dependent on their wives (based on the SS Act's definition of dependence for a Husband's Insurance Benefit) and approximately 90% of married women were dependent on their husbands using the same definition of dependence.[8]

Thus, when Allegheny first adopted the 1976 Restatement, (1) all of the FA Plan's single employees would earn retirement benefits under the SS Act at the rate of 100% of PIA; (2) approximately 99% (plus or minus 1%) of its married female participants would earn retirement benefits under the SS Act at the rate of 100% of PIA; and (3) approximately 90% of its married male participants would earn retirement benefits under the SS Act at the rate of 150% of PIA, or some lesser percentage between 150% and 100%.

Based on the above, if the 1976 Restatement had allowed an offset for a Husband's Insurance Benefit even when it was not actually available to a female flight attendant, the 1976 Restatement would have resulted in practically all of the married female participants receiving lower total fringe benefits for equal work than all of its single participants and most of its married male participants. That is, offsetting a married female participant's accrued benefit by a benefit she did not earn for her husband under the SS Act would have resulted in married female participants *earning* (1) lower Plan benefits than most of the other participants because her gross accrued benefit would be offset by benefits she did not *earn* under the SS Act; and (2) lower total retirement benefits (that is, the sum of the Social Security benefits she *earned* and the Plan benefit that she would have *earned*). This dissent does not believe that this result was intended by the plain language of the FA Plan.

Conclusion

The plain language of the 2001 Restatement as well as previous Restatements of the FA Plan provide a definition of Family Social Security Amount that is the exact definition of Family Social Security Amount that one would expect given the eligibility conditions for a Husband's Insurance Benefit under the SS Act and the IRS's rules in Rev. Rul. 71-446. The "interpretation" of Family Social Security Benefits in the Plan's SPDs directly conflicts with the FA Plan's definition of FSSA in the 1976 Restatement and all later Restatements and the SS Act's eligibility provisions for a Husband's Insurance Benefit and treats similarly-situated participants differently.

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8 Califano v. Goldfarb, 430 U.S. 199, 238 (1977) (dissent of Justice Rehnquist).

This dissent would direct PBGC to follow the clear provisions of the Restatements that were qualified by the IRS and provide Flight Attendants the full benefits they *earned*, unreduced by benefits earned separately and independently by their husbands and wives under the SS Act.

For the reasons stated above, I respectfully dissent.

Sincerely,

Michel Louis
Appeals Board Member

Dissent Appendix 1: Calculation of a Primary Insurance Amount

Each American worker who pays sufficient taxes under the Federal Insurance Contributions Act ("FICA taxes") is entitled under the SS Act to what is often called a Primary Social Security Benefit ("PSSB").[1] Additional benefits are also available to some of the dependent relatives of workers who are entitled to a PSSB. A worker's PSSB together with the additional benefits for dependent relatives are generally called Family Social Security Benefits ("FSSB's").

A worker's PSSB is the old-age benefit provided to the worker under the SS Act. It is based on the worker's Primary Insurance Amount ("PIA"), which is the SS Act's name for what is called the Accrued Monthly Benefit in a defined-benefit plan. That is, if the worker waits until his Full Retirement Age[2] ("FRA") to start receiving his PSSB, then the worker's PSSB will be equal to his PIA, rounded to the next lower dollar if the PIA is not already a multiple of $1.

The amount of a worker's PIA is based on the worker's Average Indexed Monthly Earnings ("AIME"). The AIME is based on the highest 35 calendar years of Indexed Monthly Earnings, the sum of which is divided by 35. Thus, if a worker had only 10 calendar years of earnings, the worker's AIME would be based on the sum of the 10 years of earnings divided by 35. That causes some workers' AIME amounts to be very low compared to their highest years of earnings.

On the other hand, the AIME is not the average of the actual monthly wages that the worker earned during his or her working career. That is so because AIME is based on "indexed" earnings instead of actual Social Security earnings. For example, $31,939.14 of actual Social Security earnings in 1984 would be "indexed" to "more current dollars" of $60,314.61 if the year of indexing is 1999.[3] Thus, if a worker had 35 calendar years of annual earnings of a constant actual dollar amount, say $24,000, the worker's AIME would be significantly greater than $2,000 per month.

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1 In order to be vested in a PSSB, a worker must pay FICA taxes for 10 years (or 40 full quarters) of substantial work.

2 Before the 1983 Act, FRA was age 65. The 1983 Act (97 Stat. 71) prospectively changed the FRA in accordance with the following schedule for persons born after 1937:

Year of Birth	Full Retirement Age
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943--1954	66

Year of Birth	Full Retirement Age
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
1960 or later	67

3 The year of indexing used in the calculation of a PIA is the calendar year that is two years before the worker's first year of eligibility. A worker's first year of eligibility is the year in which the worker attained age 62 and 1 month (or age 62 for a worker born on the first day of a month).

The formula for the calculation of a worker's PIA is based on the benefit rates (percentages) and bend points that are in effect in the worker's first year of eligibility – the PIA is then increased based on cost-of-living increases that go into effect between that year and the date of calculation. For example, the bend points for PIA calculations in 2001 (for a worker born in 1939) were $561 and $3,381. The formula to compute a PIA is (1) 90% of AIME up to the first bend point, plus (2) 32% of AIME in excess of the first bend point but not in excess of the second bend point, plus (3) 15% of AIME in excess of the second bend point. So, if a worker first became eligible for a PSSB in 2001 and the worker's AIME is $5,000, then the worker's PIA based on the basic formula would be **$1,650.10**, where $1,650.10 is equal to 90% times $561 plus 32% times ($3,381 minus $561) plus 15% times ($5,000 minus $3,381), rounded to the next lower dime.

It is important to note that the basic PIA formula has a much higher benefit-percentage rate on lower earnings. Thus, if a worker born in 1939 like the one described above earned an AIME amount of $1,667, which is one-third of the $5,000 AIME earned by the one described above, that worker's PIA amount would be **$858.80**, where $858.80 is equal to 90% times $561 plus 32% times ($1,667.00 minus $561) plus 15% times $0, rounded to the next lower dime. Thus, if a worker's lifetime indexed earnings were only one-third of another worker's AIME, the lower-paid worker would still earn a PIA of more than one-half of the other worker's PIA.

Dissent Appendix 2: History of the Social Security Act and the Wife's and Husband's Insurance Benefits

Section 2.02 of the Social Security Act ("SS Act"[1]) describes the types and the eligibility requirements of all of the "Old-age and survivors insurance benefit payments" that are available to each worker who has earned a vested Primary Insurance Amount ("PIA") and to the worker's dependents. In addition to the Primary Social Security Benefit ("PSSB"), also known as the Old-Age Insurance Benefit under section 2.02(a),[2] SS Act section 2.02 provides the following old-age and survivor benefits to some of the worker's dependents: (1) the Wife's Insurance Benefit;[3] (2) the Husband's Insurance Benefit;[4] (3) the Child's Insurance Benefit;[5] (4) the Widow's Insurance Benefit;[6] (5) the Widower's Insurance Benefit;[7] (6) the Mother's and Father's Insurance Benefit;[8] and (7) the Parent's Insurance Benefit.[9]

The 2001 Restatement of the FA Plan deals only with the first three of the Family Social Security Benefits that Congress made available in SS Act sections 202(a), 202(b) and 202(c), namely, the Old-Age Insurance Benefit, the Wife's Insurance Benefit; and the Husband's Insurance Benefit. The eligibility requirements for a Wife's Insurance Benefit and a Husband's Insurance Benefit have changed over the years. The development of those eligibility requirements helps significantly in understanding which husbands and wives are eligible for such benefits under the current version of the SS Act.

The Wife's Insurance Benefit was added in 1939[10] at the same time as the Widow's Insurance Benefit. In the case of Califano v. Goldfarb,[11] the Supreme Court described the addition and legislative history of the Wife's Insurance Benefit and the

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1 42 USCS § 402.

2 42 USCS § 402(a).

3 SS Act § 202(b); 42 USCS § 402(b).

4 SS Act § 202(b); 42 USCS § 402(c).

5 SS Act § 202(b); 42 USCS § 402(d).

6 SS Act § 202(b); 42 USCS § 402(e).

7 SS Act § 202(b); 42 USCS § 402(f).

8 SS Act § 202(b); 42 USCS § 402(g).

9 SS Act § 202(b); 42 USCS § 402(h).

10 76 P.L. 379, 53 Stat. 1365 (August 10, 1939).

11 430 U.S. 199 (1977).

Widow's Benefit, in part, as follows:

> . . . The old-age provisions of the original Social Security Act, 49 Stat. 622, provided pension benefits only to the wage earner himself, with a lump-sum payment to his estate under certain circumstances.[14][footnote describing the lump-sum calculation omitted] Wives' and widows' benefits were first provided when coverage was extended to other family members in 1939. Social Security Act Amendments of 1939, 53 Stat. 1360, 1364-1366. The general purpose of the amendments was "to afford more adequate protection to the *family* as a unit." H.R. Rep. No. 728, 76th Cong., 1st Sess., 7 (1939). (Emphasis supplied.)
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> . . .
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> In addition to recommending survivors' benefits, the [Social Security] Board suggested the extension of old-age pension benefits "for the aged dependent wife of the retired worker."[16] [For text of footnote 16, see footnote 12 below].
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> . . .
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> There is every indication that, as Wiesenfeld[13] recognized, 420 U.S. at 644,
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> > the framers of the Act legislated on the "then generally accepted presumption that a man is responsible for the support of his wife and children." D. Hoskins & L. Bixby, Women and Social Security: Law and Policy in Five Countries, Social Security Administration Research Report No. 42, p. 77 (1973). . .

Despite the "then generally accepted presumption that a man is responsible for the support of his wife and children," Congress followed the Social Security Board's suggestion to extend old-age insurance benefits only to the "aged dependent wife of the retired worker." Thus, the eligibility conditions for a Wife Insurance Benefit were set out in the 1939 SS Act as follows:

> (b) (1) Every wife (as defined in section 209 (i)) of an individual entitled to primary insurance benefits, if such wife (A) has attained the age of sixty-five, (B) has filed application for wife's insurance benefits, (C) was living with such individual at the time such application was filed, and (D) is not entitled to receive primary insurance benefits, or is entitled to receive primary insurance benefits each of which is less than one-half of a primary insurance benefit of her husband, shall be entitled to receive a wife's insurance benefit for each month, beginning with the month in which she becomes so entitled to such insurance benefits, and ending with the month immediately preceding the first month in which any of the following occurs: she dies, her husband dies, they are divorced *a vinculo matrimonii*, or she becomes entitled to receive a primary insurance benefit equal to or exceeding one-half of a primary insurance benefit of her husband.
>
> (2) Such wife's insurance benefit for each month shall be equal to one-half of a primary insurance benefit of her husband, except that, if she is entitled to receive a primary insurance benefit for any month, such wife's insurance benefit

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12 See also Final Report of the Advisory Council on Social Security in Hearings on the Social Security Act Amendments of 1939 before the House Committee on Ways and Means, 76th Cong., 1st Sess., 30 (1939): "The inadequacy of the benefits payable during the early years of the old-age insurance program is more marked where the benefits must support not only the annuitant himself but also his wife."

13 420 U.S. 636 (1975).

for such month shall be reduced by an amount equal to a primary insurance benefit of such wife.
[Underlining added for emphasis.]

These eligibility conditions for the original Wife's Insurance Benefit excluded those wives whose own earnings resulted in her earning a PIA that was at least one-half of her husband's PIA. And if her PIA was less than one-half of her husband's PIA, the Wife's Insurance Benefit that would be available to her would be equal to one-half of her husband's PIA reduced dollar-for-dollar by the amount of her own PIA. Thus, Congress decided that independent married women (those women who independently earned Primary Insurance Benefits that were at least half of their husbands') would put no additional burden on the Social Security system as a result of Congress's addition of the Wife's Insurance Benefit and that those independent married women would receive the same Social Security benefits as single female workers.

It is important to note that, while the eligibility conditions for the Wife's Insurance Benefit under the 1939 SS Act show that it was intended only for women who were dependent upon their husbands for their livelihood, the "dependency test" (that the wife has earned a Primary Insurance Benefit less than one-half of her husband's) resulted in a Wife's Insurance Benefit being available to some women who would not be considered economically dependent on their husbands. Thus, if the wife was independently wealthy and did not need a job to support herself, or if the wife worked for the federal government (which did not require its employees to pay FICA taxes), or if the wife had lived and worked most of her life outside the United States (and earned retirement benefits under a foreign government program), such wife would also be eligible for a Wife's Insurance Benefit once she attained age 65.

Thus, although the legislative history shows that Congress intended to provide this non-worker benefit only to dependent wives, some independent wives were allowed to receive a Wife's Insurance Benefit so as to make the determination of dependence more administratively simple for the SSA. Despite the allowance of the benefit to some independent women who meet the simple "dependency test," there would have been less confusion in the present case if Congress had given the Wife's Insurance Benefit a more descriptive name, such as "Dependent Wife's Benefit."

During the aftermath of World War II, in 1950, Congress added a Husband's Insurance Benefit. The eligibility requirements were essentially the same as the ones for the Wife's Insurance Benefit but a dependent husband had to also provide the Social Security Administration ("SSA") with information showing that he was, in fact, economically dependent on his wife for more than half of his support. For this reason, a husband's benefit was not available to a husband if the husband was independently wealthy and did not need a job to support himself, or if the husband worked for the federal government (and, therefore, had no PIA), or if the husband had lived and worked most of his life outside the United States (and did not pay FICA taxes).

In 1956, Congress amended the SS Act to allow an eligible woman to receive a Wife's Insurance Benefit as early as age 62, the amount of which would be reduced to

account for the longer period of payment. Importantly, the 1956 SS Act also added section 202(r), under which a woman's application for a Wife's Insurance Benefit was deemed also to be an application for a PSSB based on her own earnings if she applied for a Wife's Insurance Benefit before her Full Retirement Age ("FRA"). This "deemed application" was necessary to enforce the eligibility conditions for a Wife's Insurance Benefit because of the technical rule that a PIA does not exist until the worker applies for his or her PSSB. This deemed application rule, therefore, prevented a wife from receiving a Wife's Insurance Benefit from an early retirement age until her FRA and then "switching" to receive an unreduced PSSB at FRA based on her own record.

In 1961, after proving his dependence, a husband could also receive a Husband's Insurance Benefit as early as age 62, the amount of which would be reduced to account for the longer period of payment. The 1961 SS Act amended section 202(r) so that the "deemed application" rule applied to both a Wife's Insurance Benefit and a Husband's Insurance Benefit.

In 1972, Congress amended the SS Act to allow workers to receive late retirement credits if they postponed receiving their PSSB after their FRA (age 65 for all workers at that time). Under the 1972 SS Act, a worker could receive late retirement credits until age 72. This amendment is significant with respect to the Wife's Insurance Benefit and Husband's Insurance Benefit because Congress inadvertently created a loophole by not amending section 202(r) at the same time. Thus, because an application for Wife's Insurance Benefit or a Husband's Insurance Benefit would not be deemed an application for a PSSB if it was filed between age 65 and age 72, a wife or husband could receive a temporary Wife's Insurance Benefit ("Temporary Wife's Benefit") or a temporary Husband's Insurance Benefit ("Temporary Husband's Benefit") from FRA until age 72 and then "switch" and elect to start receiving an actuarially increased PSSB at age 72. In 1983, the maximum age for late retirement credits was lowered to age 70.

As a result of the 1972 and 1983 amendments to the SS Act, the Temporary Wife's Benefit and Temporary Husband's Benefit are now available to many wives and husbands (regardless of the amount of their FICA earnings) for a period of zero to 5 years, depending on (1) the relative ages of the couple; and (2) whether the couple has enough other income so that they can postpone receiving the wife's or husband's PSSB until the wife or husband has attained age 70.

In 1977, the Supreme Court found, in Califano v. Goldfarb, *supra*, that the dependency requirement for a Widower's Insurance Benefit under the SS Act violated the Equal Protection Clause. As a result, Congress eliminated the dependency requirement for a Widower's Insurance Benefit and a Husband's Insurance Benefit when it passed amendments to the SS Act in late 1977. By eliminating the dependency requirement for husbands, it made a Husband's Insurance Benefit available to an additional group of husbands. For example, if the husband was independently wealthy and did not need a job to support himself, or if the husband had lived and worked most of his life outside the United States (and earned retirement benefits under a foreign government program), such a husband would be eligible for a Husband's Insurance Benefit.

Although the 1977 SS Act did not eliminate a Wife's Insurance Benefit for female employees of the federal government and made male federal employees "eligible" as a result of the Goldfarb–required elimination of a husband's need to show dependency, the 1977 SS Act required any Wife's Insurance Benefit or Husband's Insurance Benefit to be offset by the amount of any benefit payable under the Civil Service Retirement System ("CSRS"). In 1983, the offset to the Wife's Insurance Benefit and Husband's Insurance Benefit was changed so that they would be offset by only two-thirds of the spouse's CSRS benefit. Thus, in general, neither old-age benefits nor a Wife's/Husband's Insurance Benefit are available under the SS Act to federal government employees who receive their retirement benefits under the CSRS if two-thirds of the spouse's CSRS benefit is at least equal to one-half of the worker's PIA.

The SS Act contains other less-often-used rules to make a Husband's Insurance Benefit or a Wife's Insurance Benefit unavailable to a worker's spouse. For example, while a resident alien spouse can receive a Husband's Insurance Benefit or a Wife's Insurance Benefit if the resident alien had no U.S. earnings, no such benefit is available if the couple decides to live outside the United States during their retirement years.

Once it has been determined that a wife or a husband is eligible for a Wife's Insurance Benefit or a Husband's Insurance Benefit, the calculation of the benefit is very simple. The amount of the available benefit is equal to one-half of the worker's PIA minus the wife's or husband's PIA payable on their own earnings.[14] Thus, if a worker's PIA is $1,600 and the worker's spouse's PIA is $700, then the Wife's Insurance Benefit or Husband's Insurance Benefit payable to the spouse is equal to $100, where $100 is equal to one-half of $1,600 (or $800) minus $700. This $100 would be payable at the spouse's FRA, and would be reduced for early commencement if the spouse elects to start receiving it before his or her FRA. There is no advantage gained by postponing receipt of a Wife's Insurance Benefit or a Husband's Insurance Benefit because the SS Act does not allow a spouse to earn late retirement credits on such a benefit.

It is important to note that each worker (regardless of marital status) and the worker's employers pay FICA taxes based on the same percentage of the pay earned during a given calendar quarter. These FICA taxes pay for a PSSB and potential additional FSSB's. The maximum FSSB's payable with respect to an individual worker's PIA is generally equal to 150% of the worker's PIA. This amount is called the worker's Maximum Family Benefit ("MFB").

Thus, if a child and a wife meet the eligibility requirements to receive benefits based on the worker's PIA, each benefit will be reduced so that each of the beneficiaries (the child and the wife) receive the same percentage of their net benefits and that their total benefits add up to 50% of the worker's PIA. Benefits earned by the worker's spouse based upon the spouse's own wages (the spouse's own PSSB) are not included in the worker's FSSB and the worker's PSSB is not included in the spouse's FSSB.[15] Thus, if a

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[14] SS Act § 202(k)(3)(A); 42 U.S.C. § 402(k)(3)(A).

[15] See Parisi v. Chater, 69 F.3d 614 (2d.Cir.1995) (MFB was meant to include only effective

wife is not eligible for a Wife's Insurance Benefit because her PIA is at least one-half of her husband's PIA, the benefit payable to the wife would not be included in her husband's total FSSB and would not count against her husband's MFB amount. Each worker has his or her own FSSB and his or her own MFB.

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entitlements and, thus, conditional spousal benefits could not be counted toward the MFB). See also the Social Security Administration's regulations at 20 C.F.R. 404.403(a)(5) Example 1 (benefit payable to wife on her own earnings excluded when applying her husband's MFB limit).

Dissent Appendix 3: Rev. Rul. 71-446 and Rev. Rul. 84-45

Rev. Rul. 71-446[1] provided rules for the integration of Social Security benefits with a defined-benefit plan's benefits. It was in full force and effect when the essential portion of the FA Plan's definition of Family Social Security Amount ("FSSA") was adopted in 1976. This dissent notes that, while Rev. Rul. 71-446 became obsolete with the enactment of the Tax Reform Act of 1986 ("TRA86") and the promulgation of the IRS's nondiscrimination regulations (*see* Rev. Rul. 93-82), the FA Plan's definition of FSSA did not change significantly after the passage of TRA86.

One of the primary definitions available in Rev. Rul. 71-446 is the definition of an "offset plan." Section 2.07 of Rev. Rul. 71-446 defines that basic term as follows:

> .07 "Offset plan" means a plan under which (1) no employee is ineligible to participate because his compensation does not exceed a minimum level, (2) no portion of compensation is excluded in computing benefits, and (3) all the provisions including the benefit rates apply uniformly to all covered employees regardless of compensation, except that an employee's benefit otherwise computed under the plan formula is reduced or offset by a stated percentage of such employee's old-age insurance benefit under the Social Security Act. [Underlining added.]

Although amendments to the Treasury Regulations issued after TRA86 replaced the integration rules found in Rev. Rul. 71-446, the new regulations generally require that the same offset percentage be used for all participants.

The post-TRA86 regulations did not provide much guidance for the calculation of the estimated Social Security benefits that are used to offset benefits. It has been this dissent's experience that defined-benefit pension plans and their actuaries have regularly followed the estimation procedures described in Rev. Rul. 71-446, as later clarified by Rev. Rul. 84-45,[2] both before and after the TRA86 regulations. Among the rules set out for the calculation of an estimated Primary Insurance Amount ("PIA") are the following:

a. Provisions of the SS Act: The estimate must be calculated based on the version of the SS Act that was in effect on the participant's date of termination employment or an earlier version of the SS Act, which means that post-termination changes in the PIA formula, post-termination changes in the Social Security wage base, and post-termination cost-of-living increases cannot be considered or estimated when performing the calculation of the PIA. The FA Plan uses the SS Act in effect on the participant's date of termination of employment.

b. Future earnings assumption: To calculate the PIA estimate, a plan can use either a zero-future-earnings assumption or a constant future earnings

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1 1971-2 C.B. 187 (Jan. 1, 1971).

2 1984-a C.B. 115 (January 1984).

assumption. If the plan uses a constant-future-earnings assumption, then the estimate must be multiplied by a fraction, the numerator of which is the actual number of years of service with the employer at retirement or severance, and the denominator of which is the number of years of service with the employer that the employee would have if he remained in service until age 65. The FA Plan uses a zero-future-earnings assumption.

c. Past earnings assumption: Rev. Rul. 84-45 told sponsors who were not already doing so that they could estimate past earnings either by (1) projecting backwards based on the actual change in National Average Wages (as determined by the SSA); or (2) projecting backwards based on a level percentage per year that is not less than 6%. We note that "projecting back at 6%" is roughly the same as the first option and that projecting back at more than 6% would result in a lower PIA estimate. The FA Plan uses National Average Wages to estimate past earnings.

Rev. Rul. 84-45 also required plans that used estimated earnings to inform the participants that they could submit evidence of their actual Social Security earnings for the years estimated and that the plan would then have to use the actual earnings. We note that a participant would generally not want a sponsor to use actual earnings unless the participant had a number of years in which he or she had no earnings.

The common theme in all of the above estimation rules is the desire that the estimated PIA upon which offsets are based would never be larger than the Primary Social Security Benefit that a participant would eventually have *earned* at the end of her working career. In other words, the IRS wanted plan sponsors to estimate PIA's on the "low-side" to ensure that the participant's benefit would not be offset for Social Security benefits she did not *earn*. These rules are clearly designed to make sure that the gross benefit that the participant earned under the Plan's formula, based on the years of Credited Service that the participant *earned*, would not be offset by benefits that the participant did not *earn* under the SS Act. As a result of the need to apply the same estimation rules uniformly to all covered employees, however, some employees' estimates are much lower than other employees' estimates and the "best" estimates will be for employees who actually work for the sponsor until age 65 and submit evidence of their actual pre-employment earnings to the sponsor.

In the great majority of PIA-offset plans, the net accrued benefit (that is, the benefit payable at the plan's normal retirement age) is generally defined as the difference between a no-less-than-5-year average of the participant's earnings ("AME") multiplied by a percentage, and the estimated PSSB payable at age 65 multiplied by another percentage. An example of such a benefit formula is: (60% times AME) minus (50% times PSSB). In fact, that was the original formula for the offset in the 1976 FA Plan for the flight attendant's old-age worker's benefit.

In addition to the offset for a flight attendant's old-age worker's benefit, the FA Plan also provides an offset for any available Wife's or Husband's Insurance Benefit that is

payable based on the flight attendant's PIA. Before PBGC became trustee of the FA Plan (and another plan sponsored by US Airways that was trusteed on the same day), PBGC had never seen a PIA-offset plan that offset for the Wife's or Husband's Insurance Benefit separately. And the Appeals Board is unaware of any other ERISA plans that have such a separate offset.

Rev. Rul. 71-446 allows an offset for the total package of potential benefits that a worker can earn. The IRS has valued the total package of potential benefits that a worker can earn to be 166-2/3% of a worker's PIA. That is presumably the maximum that a worker could earn if the worker qualified for all of the dependent benefits and disability benefits that could be payable with respect to a worker's PIA. Rev. Rul. 71-446 says that the employer can take credit for up to one-half of that amount (that is, 83-1/3% of PIA) against each employee's gross accrued benefit regardless of whether the employee qualifies for each of the benefits in the package. And that is what the usual offset plans do. They always use the same (uniform) percentage of the worker's PIA as an offset against each employee's gross accrued benefit. It does not matter whether you call it a percentage of the total potential package (166-2/3% of PIA) or a percentage of the old-age worker's benefit (100% of PIA) because, in either case, the result is that the offset is the same percentage of the worker's PIA for each participant.

The FA Plan, on the other hand, does not base the offset on the total potential package. That is obvious because the FA Plan does not offset the gross accrued benefit of a single participant by the Wife's or Husband's Insurance Benefit that would be payable if she married a dependent husband. The plan offsets by 50% of the old-age worker's benefit payable to all participants plus 50% of the Wife's or Husband's Insurance Benefit only when it is payable. A regular Wife's or Husband's Insurance Benefit is payable only to married participants with "dependent" spouses. Thus, married participants with "independent" spouses are in the same position as single participants with respect to the regular Wife's or Husband's Insurance Benefit.

If you offset a single participant's benefit only by the old-age worker's benefit, then you are offsetting by 50% of benefits actually payable on the participant's PIA. If you offset a married participant's benefit by 50% of the old-age worker's benefit and 50% of the regular Wife's or Husband's Insurance Benefit and the husband has a $0 PIA, then you are offsetting the participant's benefit by 50% of all benefits actually payable on the participant's PIA. If you were to offset a married participant's benefit by 50% of the old-age worker's benefit plus 50% of 50% of the participant's PIA and no Wife's or Husband's Insurance Benefit is actually payable, then you would be offsetting by 75% of the benefits actually payable on the participant's PIA. That would result in more than one stated offset percentage because you are not offsetting all participants by the same percentage of either their PIA or of the benefits actually payable with respect to their PIA.

Offsetting all participant's benefits by 50% of the old-age worker's benefit and 50% of Wife's or Husband's Insurance Benefit only when the participant's spouse has satisfied the eligibility conditions for that Wife's or Husband's Insurance Benefit, as the FA Plan does, ensures that all participants' benefits are calculated in a uniform manner.