PBGC
Protecting America's Pensions

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

December 23, 2014

[redacted]

Re: Appeal 2014-[redacted]; [redacted] Case # 199627, United Airlines, Inc. Pilots Fixed Benefit Income Plan (the "Plan")

Dear Mr. [redacted]

This Appeals Board decision responds to the individual appeal filed by your client, Captain [redacted] of PBGC's [redacted] 2012 revised determination of his benefit under the Plan.

In a prior decision issued on [redacted] 2014 (Appeal 2013-[redacted]), the Appeals Board increased Captain [redacted] PBGC-payable benefit.[1] The Board's [redacted] 2014 decision, however, did not decide Captain [redacted] individual appeal issue regarding PBGC's offset for the Partial Lump Sum Amount ("PLSA") distribution of $266,682.85 that he received on [redacted], 2005.[2] Rather, we concluded that a decision on Captain [redacted] PLSA issue should be deferred because similar PLSA issues had been raised in the Consolidated Appeal that you filed on behalf of a number of Plan participants, including Captain [redacted]

In a decision issued on September 30, 2014 ("Consolidated Appeals Decision"), the Appeals Board denied relief on the PLSA issues you raised in the Consolidated Appeal. Additionally, for the reasons provided in this decision, the Appeals Board denies Captain [redacted] individual appeal on the PLSA issue. Accordingly, the Board is not changing the amounts the Board determined in [redacted] 2014 for Captain [redacted] This decision is PBGC's final action with respect to Captain [redacted] PBGC-payable benefit under the Plan.

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[1] We provide a copy of the Board's [redacted] 2014 decision, without its Appendix and its enclosures, as Enclosure 1 of this decision. We also provide, as Enclosure 2, a copy of the Benefit Statement Worksheet (dated [redacted] 2013) that the Board prepared for Captain [redacted]

[2] Under the Plan's terms, a participant who retires or terminates employment may elect to receive a portion of his or her accrued benefit in the form of a lump-sum distribution. The term "Partial Lump Sum Amount" refers to the lump-sum amount the participant could receive under this benefit payment option.

## Background

1. The Plan's termination and PBGC's trusteeship

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

In a Notice of Determination issued to United Air Lines, Inc. ("UAL") on December 29, 2004, PBGC determined, under ERISA § 4042(a), "that the United Airlines Pilot Defined Benefit Pension Plan ('Plan') must be terminated because the possible long-run loss of the corporation with respect to the Plan may reasonably be expected to increase unreasonably if the Plan is not terminated." PBGC proposed a Date of Plan Termination ("DOPT") of December 30, 2004.

The Air Line Pilots Association, International and a group representing retired pilots challenged PBGC's proposed DOPT in judicial proceedings. On October 26, 2005, Bankruptcy Judge Eugene R. Wedoff entered judgment in favor of PBGC's request to terminate the Plan with a December 30, 2004 DOPT.[3] PBGC became trustee of the Plan on October 26, 2005.

2. The Board's [redacted] 2014 decision for Captain [redacted]

Captain [redacted] filed an individual appeal on [redacted] 2013, which the Appeals Board addressed in its [redacted] 2014 decision.[4] The Board's [redacted] 2014 decision increased Captain [redacted] PBGC-payable benefit, which is in the form of a Straight Life Annuity with a Level Income Option ("SLA with LIO"), to: (1) $3,930.18 from [redacted] 2005 through [redacted] 2011, and (2) $2,774.01 starting on [redacted] 2011. These amounts are before the deduction for PBGC's recoupment of benefit overpayments. PBGC currently is paying Captain [redacted] $2,774.01 per month.[5]

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[3] The Circuit Court of Appeals, in *In re UAL Corporation (Pilots' Pension Plan Termination)*, 468 F.3d 444 (7th Cir. 2006), affirmed the Bankruptcy Court order that terminated the Plan with a December 30, 2004 DOPT.

[4] Captain [redacted] appealed PBGC's benefit determination dated [redacted] 2011, which stated he was entitled to a monthly PBGC-payable benefit of (1) $3,423.94 from [redacted] 2005 to [redacted] 2011, and (2) $2,373.68 starting on [redacted] 2011. On [redacted] 2012, PBGC determined that, based on a revised audit of the Plan's assets, Captain [redacted] monthly benefit would increase to: (1) $3,471.35 from [redacted] 2005 to [redacted] 2011, and (2) $2,411.18 starting on [redacted] 2011.

[5] The Board's [redacted] 2014 decision is not PBGC's final action for Captain [redacted] The Board stated on page 2 of the [redacted] 2014 decision:

> We did not decide the issues Captain [redacted] raised regarding his Partial Lump Sum Amount ("PLSA") distribution, because similar PLSA issues are pending in the Group Appeal. Captain [redacted] situation differs from some of your Group Appeal clients, however, because Captain [redacted] retired and received a PLSA distribution after (rather than before) the Plan's termination date. The Appeals Board later will review and decide the PLSA issues raised by Captain [redacted]

In its [redacted] 2014 decision, the Appeals Board also explained in detail its calculations of: (1) Captain [redacted] Plan benefit; (2) his PBGC-guaranteed benefit, which is impacted by one of ERISA's limitations, the Maximum Guaranteed Benefit limit; and (3) his PBGC-payable benefit based on the allocation of the Plan's assets and PBGC recoveries.

3. The Board's Consolidated Appeal Decision

On September 30, 2014, the Appeals Board decided the Consolidated Appeal. An electronic copy of the Consolidated Appeal Decision (with names of individual participants redacted) is now posted on PBGC's website at http://www.pbgc.gov/Documents/apbletter/Decision--United-Airlines-Inc-Pilots-2014-09-30.pdf.

The Consolidated Appeal raised two issues that relate to how PBGC calculates benefits in Priority Category 3 ("PC3") for appellants who received PLSA distributions or are the beneficiaries of participants who received PLSA distributions. The Consolidated Appeal Decision denied both of the PLSA distribution issues you raised in the Consolidated Appeal. The Board also informed you and Captain [redacted] that the Board "will decide Captain [redacted] PLSA issue in a separate decision that will be issued in the near future."[6]

4. Captain [redacted] pension data

PBGC records contain the following information that applies to Captain [redacted] benefit calculation:

- He was born on [redacted] 1945;
- He began working for United Airlines, Inc. ("UAL") on [redacted] 1966;
- His Date of Participation is [redacted] 1967;
- He was actively employed on DOPT (December 30, 2004);
- He retired and started receiving his Plan benefit on his [redacted] 2005 Actual Retirement Date ("ARD"), in the form of a SLA with LIO; and
- On [redacted] 2005, he received $266,682.85 as a distribution of his PLSA.

5. Appeals Board's calculation of Captain [redacted] PBGC-payable benefit

A detailed explanation of the Appeals Board's calculation of Captain [redacted] PBGC-payable benefit is provided in the Appendix. The Appendix to this decision follows the same format as the Appendix to the [redacted] 2014 decision and contains essentially the same information. The following is a summary of the Appendix.

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[6] The Appeals Board observed on page 5 of the Consolidated Appeals Decision that the "primary focus" of the Consolidated Appeal "is upon PBGC's calculations for participants who received PLSA distributions before DOPT, rather than the calculations for participants who received PLSA distributions after DOPT and before PBGC's trusteeship." The Board further noted that Captain [redacted] filed an individual appeal that disagrees with how PBGC determined the offset for his post-DOPT PLSA distribution.

*a. Captain [redacted] Plan benefit amounts*

Before his [redacted] 2005 retirement date, UAL calculated Captain [redacted] accrued Plan benefit as $8,190.61 per month as of his age-60 Normal Retirement Date ("NRD"). Because Captain [redacted] elected to retire on his NRD, there is no early retirement reduction to his accrued Plan benefit.

PBGC and the Appeals Board calculated a somewhat smaller Plan benefit amount for Captain [redacted] $8,062.16 per month at NRD.[7] The difference between the PBGC-calculated and UAL-calculated Plan benefit amounts does not have a material impact upon Captain [redacted] PBGC-payable benefit, however, because PBGC cannot pay Captain [redacted] his full Plan benefit amount.

Using UAL's method for computing LIO amounts, PBGC and the Appeals Board calculated the following Plan benefit amounts for Captain [redacted] in the form of a SLA with LIO and without a PLSA offset: (1) $9,281.74 through [redacted] 2011; and (2) $7,339.74 starting [redacted] 2011.

Captain [redacted] PLSA distribution of $266,682.85 was paid on his [redacted] 2005 retirement date. This PLSA distribution has a monthly annuity equivalent value of $1,595.72 using UAL's annuity conversion factors, which are consistent with the Plan's terms. Thus, Captain [redacted] election of a PLSA distribution resulted in a $1,595.72 per month reduction to his monthly Plan annuity. As explained later, PBGC applied the same monthly annuity equivalent ($1,595.72) in calculating Captain [redacted] PBGC-payable benefit.

*b. Captain [redacted] PBGC-guaranteed benefit*

ERISA's maximum guaranteed benefit ("MGB") limit provides that PBGC's guarantee of a participant's benefit cannot exceed a specified dollar amount payable in the form of a Straight Life Annuity ("SLA") at age 65.[8] For plans terminating in 2004, as the Plan did, the MGB is $3,698.86 per month ($44,386.32 per year) for a participant who begins receiving PBGC-payable benefits at age 65 in the form of a SLA with no survivor benefit. If the person is younger than 65 and/or if a survivor benefit will be paid (for example, to a spouse), the MGB is lower.[9]

As explained in the Appendix, the MGB limit caused Captain [redacted] PBGC-guaranteed benefit to be substantially smaller than his Plan benefit amount. PBGC and the Appeals Board computed Captain [redacted] guaranteed benefit as: (1) $2,754.17 per month from [redacted] 2005 through [redacted] 2011; and (2) $2,177.92 per month starting on [redacted] 2011.

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[7] As explained in the Appendix, ERISA section 204(i)(1) does not permit a defined benefit pension plan to increase benefits while the sponsor of the plan is in bankruptcy. For this reason, PBGC's calculation of Captain [redacted] Plan benefit did not include a benefit increase that resulted from a post-bankruptcy Plan amendment.

[8] *See* ERISA § 4022(b)(3).

[9] *See* 29 C.F.R. §§ 4022.22-.23.

The above-stated amounts: (1) reflect the SLA with LIO benefit form that Captain [redacted] elected; (2) include an age adjustment for Captain [redacted] MGB because he started receiving his benefit 59 full months before age 65; and (3) are before the reduction for Captain [redacted] PLSA distribution. The PBGC-guaranteed amounts are less than the amounts PBGC may pay him based on the allocation of the Plan's assets, as is shown below.

c. *Captain [redacted] benefit based on the allocation of the Plan's assets*

ERISA's six-tier asset allocation structure determines how a terminated pension plan's assets are distributed among various categories of benefits when the assets are insufficient to pay all promised benefits. The six priority categories are referred to as "PC1," "PC2," "PC3," etc.[10] PC3, which is the most significant category with respect to Captain [redacted] benefit, covers a participant's benefits that were "in pay status" (i.e., were being paid) three or more years before the plan's termination date, or that would have been in pay status three years before the termination date if the participant had retired.[11]

PBGC determined that the Plan's assets as of DOPT ($2,878,128,788) covered 82.0617% of the Plan's benefits in PC3. ERISA provides that, if a plan's assets do not cover all benefits in PC3, each participant or beneficiary with a PC3 benefit will receive a pro rata share of the assets.[12] Captain [redacted] accordingly has a benefit in PC3 that is 82.0617% funded by Plan assets. For Captain [redacted] the funded PC3 amount is greater than the benefit that PBGC guarantees (i.e., his PC4 amount). The Plan's assets are insufficient to pay him any benefit amounts in the lowest two priority categories, PC5 and PC6.

ERISA requires PBGC to determine the benefits that are funded by the Plan's assets as of the Plan's DOPT.[13] Because Captain [redacted] had not received a PLSA distribution (or any monthly payments) on or before DOPT, PBGC computed his PC3 benefit without applying a PLSA offset. The Board calculated Captain [redacted] PC3 benefit as: (1) $4,899.73 from [redacted] 2005 through [redacted] 2011; and (2) $3,874.57 starting on [redacted] 2011.[14]

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[10] The Plan has no benefits in the first two priority categories (PC1 and PC2), which relate to benefits derived from a participant's own contributions. The next priority category, PC3, is described above. PC4 generally covers benefits guaranteed by PBGC. PC5 covers other nonforfeitable benefits (generally, benefits that are not in PC3 and are not guaranteed due to ERISA's guarantee limits). PC6 covers all other benefits under the plan (*i.e.*, non-vested benefits).

[11] Additionally, as explained in the Appendix, PBGC must calculate the PC3 benefit using the benefit formula and other pension terms that were in effect during the five-year period ending on the Plan's termination date that provide the lowest benefit.

[12] *See* ERISA § 4044(b)(2); 29 C.F.R. § 4044.10(d).

[13] *See* ERISA 4044.

[14] As explained in the Appendix, the Appeals Board calculated Captain [redacted] PC3 amount by: (1) first determining the monthly benefit in PC3 in the normal form (i.e., as a SLA); and (2) then adjusting his PC3 amount in the normal form for his election of the LIO and the 82.0617% funding of PC3. In converting Captain [redacted] normal form PC3 amount to a LIO, the Board used the same actuarial factor and estimated Social Security amount that UAL had used when it computed Captain [redacted] LIO. *See* explanation in the Appendix.

*d. Captain [redacted] benefit including PBGC's recovery from UAL and before PLSA offset*

Section 4022(c) of ERISA authorizes PBGC to pay additional benefits based on the amounts that PBGC recovers from employers that maintained under-funded pension plans. PBGC allocates this additional money (the "section 4022(c) amount") to pay otherwise unfunded benefits in excess of guaranteed benefits. For a pension plan like the Plan, in which the outstanding amount of unfunded non-guaranteed benefit liabilities exceeds $20 million, the section 4022(c) amount is based on PBGC's actual recovery on its claims against the plan sponsor.

For the Plan, PBGC determined that the Plan's section 4022(c) amount covers 58.4630% of all unfunded nonguaranteed benefits in PC3. As explained in the Appendix, the Appeals Board computed Captain [redacted] ERISA § 4022(c) benefit as $626.17 per month through [redacted] 2011 and $495.16 per month beginning [redacted] 2011.

When Captain [redacted] section 4022(c) benefit is added to his PC3 benefit, his monthly PBGC-payable benefit before his PLSA offset is $5,525.90 through [redacted] 2011 and $4,369.73 beginning [redacted] 2011. These amounts are computed as follows:

- Monthly amount before PLSA offset from [redacted] 2005 ARD through [redacted] 2011:

  $4,899.73 (PC3 benefit) + $626.17 (section 4022(c) benefit) = $5,525.90

- Monthly amount before PLSA offset starting [redacted] 2011:

  $3,874.57 (PC3 benefit) + $495.16 (section 4022(c) benefit) = $4,369.73

*e. Captain [redacted] PBGC-payable benefit after PLSA offset*

After the Plan's DOPT, Captain [redacted] effectively received a portion of his PBGC-payable benefit through his PLSA distribution. To account for this distribution, PBGC and the Appeals Board deducted the annuity equivalent of his PLSA, $1,595.72 per month, from the amounts that he otherwise would have received from PBGC.

Thus, the Board's calculation of Captain [redacted] PBGC-payable benefit after accounting for his PLSA distribution is:

- *Monthly PBGC-payable benefit from [redacted] 2005 ARD through [redacted] 2011:*

  $5,525.90 (PBGC-payable benefit before PLSA offset) – $1,595.72 (PLSA offset amount) = **$3,930.18** (PBGC-payable benefit after PLSA offset).

- *Monthly PBGC-payable benefit starting [redacted] 2011:*

  $4,369.73 (PBGC-payable benefit before PLSA offset) – $1,595.72 (PLSA offset amount) = **$2,774.01** (PBGC-payable benefit after PLSA offset).

## Discussion

Captain [redacted] primary contention concerning his PLSA offset is that PBGC used "a different method" for his benefit calculations than for another pilot "in the same category."[15] To support this contention, Captain [redacted] enclosed both his own PBGC-prepared Benefit Statement Worksheet and a Benefit Statement Worksheet for another individual.[16] In particular, Captain [redacted] objected to "the order in which the lump-sum deduction is taken out."[17]

As Captain [redacted] appeal recognizes, PBGC applies the PLSA offset in an earlier calculation step for participants who retired and received their PLSA distributions prior to DOPT than for participants who retired and received their PLSA distributions after DOPT. The reason for this calculation difference is that PBGC is required to allocate the value of the Plan's assets that are available to pay benefits and the Plan's section 4022(c) amount to the Plan's future benefit liabilities, with the asset value, the 4022(c) amount, and future benefit liabilities determined as of DOPT.[18] As a result, the monthly amount a participant receives from PBGC through the ERISA-required allocation is determined differently if the participant received a portion of his Plan benefit before DOPT through a PLSA distribution, as compared to Captain [redacted] situation where no pre-DOPT distribution was made. *See* more-detailed explanation below.

The Appeals Board concludes that PBGC: (1) correctly determined Captain [redacted] PLSA offset amount; and (2) correctly followed the requirements in ERISA and PBGC regulations when it applied the PLSA offset as the final step in the calculation of his PBGC-payable benefit (rather than in an earlier calculation step). Accordingly, the Board finds no basis for increasing Captain [redacted] PBGC-payable benefit.

1. <u>PBGC correctly computed Captain [redacted] PLSA offset as $1,595.72 per month</u>

The PLSA offset that PBGC applies in determining the PBGC-payable benefit equals the actual reduction to the participant's monthly Plan benefit that resulted from the participant's

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[15] Captain [redacted] individual appeal also disagrees with PBGC's calculation of his Plan benefit amount and his LIO amounts in PC3. The Appeals Board, in its [redacted] 2014 decision, changed PBGC's method for calculating his LIO benefit in PC3, which resulted in a benefit increase for Captain [redacted] The Board's [redacted] 2014 decision also explained its calculation of Captain [redacted] Plan benefit, his PBGC-guaranteed benefit, and his PBGC-payable benefit before the deduction for his PLSA distribution. Because the [redacted] 2014 decision fully resolved all aspects of Captain [redacted] benefit calculation with the exception of the PLSA offset, we do not further address the aspects of his benefit calculation that do not relate to his PLSA offset.

[16] For privacy reasons, we are not able to provide information about the benefits of other individuals.

[17] Captain [redacted] appeal references the parts of PBGC's Benefit Statement Worksheet showing PBGC's calculations of his benefit funded by the Plan's assets and his ERISA § 4022(c) amount.

[18] *See* ERISA § 4044. PBGC regulations provide that plan assets available to pay for benefits "include all plan assets . . . remaining after the subtraction of all liabilities, other than liabilities for future benefit payments paid or payable from plan assets under the provisions of the plan." 29 C.F.R. § 4044.3(a). For terminated plans trusteed by PBGC, plan assets are allocated to future benefits as of the plan's termination date (i.e., its DOPT). 29 C.F.R. § 4044.3(b).

election of a PLSA distribution. PBGC, using the same annuity conversion factor as UAL, computed Captain [redacted] PLSA offset as $1,595.72, which corresponds to the actual reduction to his monthly Plan benefit. *See* explanation in the Appendix.

In the Consolidated Appeal Decision, the Appeals Board rejected your contentions that PBGC incorrectly computed PLSA offsets to PC3 benefits for the appellants you represent, which includes Captain [redacted] The Appeals Board also concludes that Captain [redacted] individual appeal does not provide a basis for changing the $1,595.72 PLSA offset that PBGC computed for him.

2. <u>PBGC properly applied the PLSA offset as the final step in Captain [redacted] benefit calculation</u>

ERISA § 4044 requires PBGC to allocate the Plan's assets to the Plan benefits that are payable after the Plan's DOPT, in accordance with the six-tier priority category structure described above. Because Captain [redacted] was not retired at DOPT and had not received a PLSA distribution before DOPT, PBGC's allocation of the Plan's assets applies to his entire Plan benefit, including the amount covered by the PLSA payment option.

Captain [redacted] Plan benefit, in the form of a SLA with LIO and without a PLSA offset, is: (1) $9,281.74 through [redacted] 2011; and (2) $7,339.74 starting [redacted] 2011. The Plan's assets, however, covered only 82.0617% of the benefits in PC3 and 0% of the benefits in lower-priority categories. Consequently, as explained in the Appendix, the allocation of the Plan's assets provided Captain [redacted] with a monthly PC3 benefit of: (1) $4,899.73 from [redacted] 2005 through [redacted] 2011; and (2) $3,874.57 starting on [redacted] 2011.

The Plan's section 4022(c) amount increases Captain [redacted] PBGC-payable amounts in PC3 to: (1) $5,525.90 from [redacted] 2005 through [redacted] 2011; and (2) $4,369.73 starting on [redacted] 2011. We observe that, with the addition of the section 4022(c) amount, Captain [redacted] PBGC-payable benefit equals 92.5489% of his benefit in PC3.

If Captain [redacted] had not received a PLSA distribution, Captain [redacted] would be entitled to receive the $5,525.90 (through [redacted] 2011) and $4,369.73 (starting [redacted] 2011) monthly amounts described above. By electing the PLSA payment option, however, Captain [redacted] essentially exchanged $1,595.72 of his monthly PBGC-payable benefit for a $266,682.85 lump-sum payment.

PBGC appropriately accounted for his PLSA distribution by deducting $1,595.72 per month as the final step in the calculation of Captain [redacted] PBGC-payable benefit. With the $1,595.72 monthly deduction, Captain [redacted] PBGC-payable benefit is: (1) $3,930.18 from [redacted] 2005 through [redacted] 2011, and (2) $2,774.01 starting on [redacted] 2011 – which are the amounts the Board determined in its [redacted] 2014 decision for Captain [redacted]

In the Consolidated Appeal Decision, the Appeals Board concluded that PBGC's PC3 calculations maintain equivalence, based on the Plan's actuarial assumptions, between participants who elected a PLSA distribution and those who are receiving their entire Plan benefit as an annuity. This equivalence in benefit amounts occurs for Captain [redacted] under the Board's calculations. Under those calculations, the combined benefits provided to Captain [redacted] by his PLSA distribution and his monthly payments from PBGC are equivalent to the monthly amounts PBGC would have paid him if he had not elected a PLSA distribution.

We further observe that PBGC, after it became the Plan's trustee on October 26, 2005, did not allow retiring participants to elect the PLSA payment option.[19] Thus, Plan participants who retired after October 26, 2005 – unlike Captain [redacted] – could not receive a PLSA distribution. The Appeals Board finds that PBGC treated Captain [redacted] and other Plan participants who received PLSA distributions after DOPT equivalently (with respect to the value of their benefits) to the post-trusteeship retirees who were not permitted to elect PLSA distributions.

3. <u>PBGC properly used a different calculation method for Captain [redacted] than for participants who received PLSA distributions before DOPT</u>

Captain [redacted] individual appeal contrasts PBGC's calculation of his PBGC-payable benefit with PBGC's calculation for a participant who received a PLSA distribution before DOPT. Captain [redacted] is correct that PBGC uses a different calculation method for participants who received PLSA distributions before DOPT than for participants who received PLSA distributions after DOPT; the reason for the difference is explained below.

For participants with pre-DOPT distributions, PBGC: (1) first applies the PLSA offset in determining the monthly amount in PC3; (2) afterwards adjusts for the 82.0617% funding of PC3 by Plan assets; and (3) completes the calculation by adding the section 4022(c) benefit. This differs from the calculations for participants with post-DOPT distributions, where PBGC: (1) calculates the monthly amount in PC3 without applying a PLSA offset (because no PLSA distribution has occurred as of DOPT); (2) next adjusts for the 82.0617% funding of PC3 by Plan assets; (3) then adds the section 4022(c) benefit; and (4) completes the calculation by deducting the annuity equivalent of the post-DOPT PLSA distribution.[20]

The Appeals Board concludes that ERISA requires PBGC to use different calculation methods for the two identified groups of participants. That is so because ERISA requires PBGC to determine the Plan's assets *as of DOPT* and to allocate those assets to the Plan's future benefit liabilities determined *as of DOPT*. In the case of a participant who received a PLSA distribution

[19] PBGC regulation 29 C.F.R. § 4022.7 provides that PBGC does not guarantee benefits payable in a single installment; instead, PBGC generally guarantees and pays benefits in the plan's alternative annuity form. *See also* 29 C.F.R. § 4022.8 (benefit forms paid by PBGC).

[20] Essentially, Captain [redacted] appeal proposes that the Appeal Board change the calculation steps for determining his PBGC-payable benefit so that the order of his calculations resembles the order of calculations for participants who received PLSA distributions before DOPT. Captain [redacted] proposal for changing PBGC's order of calculations for his benefit would not make a difference if PC3 had been 100% funded by the Plan's assets and section 4022(c) amount. However, because the combined allocation covers only 92.5489% of his benefit in PC3, Captain [redacted] proposed change to PBGC's order of calculations would increase his PBGC-payable benefit. *See* explanation on pages 10-12 of the Appendix. As is stated in this decision, the Board is unable to accept the calculation method suggested by Captain [redacted] because it is inconsistent with ERISA § 4044 and PBGC regulations.

before DOPT, the portion of the Plan benefit that was paid through the PLSA distribution is not a future liability of the Plan *as of DOPT.* Thus, for a participant with a pre-DOPT PLSA distribution, PBGC must reduce the full benefit earned under the Plan by the PLSA offset, and it is only to the net benefit that PBGC is allowed to allocate Plan assets and the section 4022(c) amount.[21] By contrast, for participants like Captain [redacted] who did not retire or receive a PLSA distribution before DOPT, the entire benefit that was earned under the Plan is a future liability of the Plan *as of DOPT* for purposes of the allocation of Plan assets and the section 4022(c) amount.

In summary, PBGC cannot reduce Captain [redacted] benefit by the value of his PLSA distribution before PBGC allocates Plan assets and the section 4022(c) amount to his benefit, because the portion of his benefit represented by his PLSA was still a future liability of the Plan *as of DOPT.* Instead, PBGC correctly accounts for Captain [redacted] post-DOPT PLSA distribution by deducting the PLSA's annuity equivalent (as of the [redacted] 2005 payment date of the lump sum) in the final step of the calculation. The Appeals Board finds that PBGC correctly followed the requirements in ERISA and PBGC regulations when it calculated Captain [redacted] PBGC-payable benefit.

Captain [redacted] appeal objects to PBGC's calculation of his PBGC-payable benefit because "the order in which the lump sum deduction is taken out . . . should have nothing to do with when I received my lump sum, especially because it was received prior to the final termination ruling by the Judge."

As his appeal states, Captain [redacted] PLSA distribution was paid before a final court order was issued regarding the Plan's termination and its DOPT. Pursuant to ERISA § 4044, the allocation of a terminated plan's assets to benefit liabilities is determined as of the plan's DOPT, even if the final court order approving the termination occurs on a later date. For this reason, PBGC correctly treats Captain [redacted] PLSA distribution as a post-termination event, even though it occurred before the issuance of the final court order.

## Decision

Having applied the terms of the Plan, the provisions of ERISA and PBGC regulations and policies to the facts in this case, the Appeals Board finds no reason for changing the manner in which PBGC applied a PLSA offset in determining Captain [redacted] PBGC-payable benefit. Accordingly, the Board is not changing the amounts the Board determined in its [redacted] 2014 decision for Captain [redacted]

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[21] As discussed above, the PLSA offset is equivalent in value to the portion of the participant's earned benefit that was paid before DOPT through the PLSA distribution.

We note that, if Captain [redacted] had received a PLSA distribution before (rather than after) DOPT: (1) his monthly benefit in PC3 would have been smaller because PBGC would have applied a PLSA offset in determining that amount; and (2) PBGC's adjustment for the 92.5489% funding of his benefit in PC3 would be applied to the net PC3 amount after the PLSA offset.

Captain [redacted] currently is receiving $2,774.01 per month, which is the amount the Appeals Board determined in its [redacted] 2014 decision. The $2,774.01 monthly amount is before PBGC's adjustment for the overpayments that Captain [redacted] received on earlier dates. PBGC's Benefit Administration and Payment Department, the office responsible for determining and paying benefits, will contact Captain [redacted] regarding the recoupment reduction for his prior overpayments.

This decision is PBGC's final agency action, regarding PBGC's [redacted] 2012 revised determination of Captain [redacted] benefit under the Plan. If you or Captain [redacted] wish, you may seek court review of this decision in an appropriate Federal District Court. If you or Captain [redacted] has any questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

Charles Vernon

Charles Vernon
Chair, Appeals Board

Appendix

Enclosures:

(1) Copy of the Board's [redacted] 2014 decision for Captain [redacted] (Appeal 2013-[redacted]), without its Appendix and its enclosures (7 pages)
(2) Benefit Statement Worksheet for Captain [redacted] dated [redacted] 2013, showing the Appeals Board's calculations (6 pages)

cc: [redacted]

## APPENDIX

The Benefit Statement Worksheet in Enclosure 2 ("AB Worksheet"), which is dated [redacted] 2013, shows the Appeals Board's calculation of Captain [redacted] PBGC-payable benefit. The Board previously provided the AB Worksheet to you and Captain [redacted] as an enclosure to the Board's [redacted] 2014 decision.

The Appeals Board's calculations in the AB Worksheet are explained in detail on pages 1 to 10 of this Appendix. The Board also discusses the difference between PBGC's calculation method and the calculation method suggested by Captain [redacted] on pages 10 to 12 of this Appendix.

### A. Captain [redacted] pension data

PBGC records contain the following information that applies to his benefit calculation:

- He was born on [redacted] 1945;
- He began working for United Airlines, Inc. ("UAL") on [redacted] 1966;
- His Date of Participation is [redacted] 1967;
- He was actively employed on the Date of Plan termination (December 30, 2004);
- He started receiving his Plan benefit on [redacted] 2005; and
- On [redacted] 2005, he received $266,682.85 as a distribution of his Partial Lump Sum Amount ("PLSA").

### B. Captain [redacted] Plan benefit amounts

1. *Captain [redacted] accrued Plan benefit as a SLA and before PLSA offset*

Before his [redacted] 2005 retirement date, UAL calculated Captain [redacted] Plan benefit under various benefit form options. UAL's calculations show that his accrued benefit as a SLA (which is the normal benefit form for an unmarried participant) is $8,190.61 per month on his age-60 Normal Retirement Date ("NRD"). Since Captain [redacted] elected to retire on his NRD, there is no early retirement reduction to his Plan benefit amount.

As of the Plan's termination date, PBGC determined that Captain [redacted] accrued benefit as a SLA is $8,062.16 per month on his age-60 NRD. This amount was not changed by the Appeals Board. The reason that PBGC's calculation of Captain [redacted] Plan benefit amount is somewhat lower than UAL's calculation is explained below.

a. The Plan's benefit formulas

Based on the Plan's provisions, Captain [redacted] benefit is the greater of the following two amounts: (1) the benefit calculated under the pension formula that was in effect when the Plan terminated; and (2) the benefit he earned as of May 31, 2003 under the pension formula that was in effect on that day.

In Captain [redacted] case, both UAL and PBGC determined that the larger amount is the benefit he earned under Plan provisions in effect on May 31, 2003, which is:

Final Average Earnings ("FAE") × 1.5% × Participation Service ÷ 12 = monthly benefit at Normal Retirement.

b. <u>UAL's and PBGC's computations of Captain [redacted] accrued Plan benefit</u>

The UAL calculation worksheet provided by Captain [redacted] show that his accrued monthly benefit as of May 31, 2003 is **$8,190.61**. UAL computed that amount using $183,714.36 as his FAE and 35.6667 years as his Participation Service. The calculation of this amount is:

$183,714.36 (FAE) × 1.5% (percentage stated in formula) × 35.6667 (Participation Service) ÷ 12 = **$8,190.61** per month.

PBGC and the Appeals Board computed an **$8,062.16** accrued benefit using a smaller FAE amount ($180,833.33) and the same Participation Service as UAL (35.6667 years). The calculation of PBGC's amount is:

$180,833.33 (FAE) × 1.5% (percentage stated in formula) × 35.6667 (Participation Service) ÷ 12 = **$8,062.16** per month.

The reason PBGC used a smaller FAE amount than UAL is that the Third Amendment to the 1999 Restatement of the Pilots Plan ("Third Amendment"), which was adopted while UAL was in bankruptcy proceedings, changed the Plan's definition of FAE in a way that increased benefits for some participants.[2]

ERISA section 204(i)(1) does not permit a defined-benefit pension plan to increase benefits while the sponsor of the plan is in bankruptcy. UAL did not exit bankruptcy until February 1, 2006, which is after the Plan's DOPT (December 30, 2004). In determining Plan benefit amounts, PBGC does not include benefit increases provided under plan amendments that become effective after the Plan's DOPT, which result in a decrease to Captain [redacted] FAE from the amount UAL computed.

Accordingly, as required by ERISA section 204(i)(1), PBGC disregarded the Third Amendment's change to the Plan's FAE definition in determining Captain [redacted] accrued benefit. We further note that the difference between the PBGC-calculated and UAL-calculated Plan benefit amounts does not have a material impact upon Captain [redacted] PBGC-payable benefit, because (1) PBGC cannot pay Captain [redacted] his full Plan benefit amount and (2) his FAE for purposes of determining his PC3 benefit cannot include earnings after December 30, 2001. *See* discussion later in this Appendix.

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[2] The Third Amendment's change to the FAE definition was adopted because UAL implemented an "interim wage reduction" effective between January 1, and May 31, 2003. The Third Amendment provides that pensionable earnings for the January 2003 through May 2003 time period are to be based upon the hourly rate of pay in effect immediately prior to January 1, 2003, rather than upon the (smaller) amount of the pilot's actual earnings. Immediately prior to the Third Amendment, FAE was based on the pilot's actual earnings.

2. *The LIO adjustments to Captain [redacted] Plan benefit*

Captain [redacted] elected the "Straight Life Annuity with Level Income Feature" ("SLA with LIO"). In computing his benefit in that form, UAL used an estimated Social Security Amount ("SSA Amount") of $1,942.00 and a Level Income Option Factor ("LIO Factor") of 0.628 to determine the SLA with LIO amounts it would pay Captain [redacted]

PBGC and the Appeals Board used the same LIO Factor and SSA Amount as UAL in computing Captain [redacted] Plan benefit in the form of a SLA with LIO. As is shown on lines (5) and (6) of the AB Worksheet, we calculated Captain [redacted] Plan benefit, in the form of a SLA with LIO and without a PLSA offset, as: (1) $9,281.74 through [redacted] 2011; and (2) $7,339.74 starting [redacted] 2011. PBGC and the Board calculated these amounts as follows:

- *Benefit payable from [redacted] 2005 through [redacted] 2011*. We started with Captain [redacted] accrued Plan benefit of $8,062.16. To calculate the additional monthly income the Plan will pay him before age 66, we multiplied his SSA Amount of $1,942.00 by his LIO Factor of 0.628, which equals $1,219.58. We then added the $1,219.58 amount to his SLA amount of $8,062.16, which results in a pre-age-66 monthly benefit of $9,281.74. Thus, the pre-age-66 benefit calculation is:

  $8,062.16 (SLA amount) + [$1,942.00 (SSA Amount) × 0.628 (LIO factor)] = $9,281.74

- *Benefit payable starting [redacted] 2011*. To calculate this amount, we subtracted his SSA Amount of $1,942.00 from his pre-age-66 amount of $9,281.74. This offset results in a $7,339.74 monthly benefit starting at age 66.

3. *The PLSA offset to Captain [redacted] Plan benefit*

The benefit calculations provided by Captain [redacted] show that, on [redacted] 2005, UAL computed (1) his PLSA as $264,120.65, and (2) the annuity equivalent of his PLSA as $1,580.39.[3] Thus, his election of a PLSA would reduce his accrued benefit by $1,580.39 per month.

Captain [redacted] actual PLSA distribution, which was paid on his [redacted] 2005 retirement date, is $266,682.85 (i.e., $2,562.20 more than in the UAL calculations dated [redacted] 2005). PBGC, using this larger PLSA and the same annuity conversion factor as UAL, computed the annuity equivalent of Captain [redacted] PLSA as $1,595.72 (i.e., $15.33 more than in UAL's [redacted] 2005 calculations).[4] The actual benefit payments that Captain [redacted] received before the Plan terminated were reduced by $1,595.72 per month for his PLSA distribution (rather than the $1,580.39 reduction shown in UAL's [redacted] 2005 calculations).

[3] $1,580.39 = $264,120.65 (PLSA amount on [redacted] 2005) ÷ [167.123 (annuity conversion factor at age 60).

[4] $1,595.72 = $266,682.85 (PLSA amount on [redacted] 2005) ÷ 167.123 (annuity conversion factor at age 60).

### C. Captain [redacted] guaranteed benefit

*1. Captain [redacted] guaranteed benefit if he had elected a SLA without the LIO.*

ERISA's maximum guaranteed benefit limit ("MGB") provides that PBGC's guarantee of a participant's benefit cannot exceed a specified dollar amount payable in the form of a Straight Life Annuity at age 65. For pension plans with termination dates in 2004, such as the Plan, the MGB is \$3,698.86 per month (\$44,386.32 annually) for a participant who begins receiving PBGC benefits at age 65 in the form of a SLA.

As explained below, the \$3,698.86 amount must be reduced because Captain [redacted] was younger than age 65 when he began receiving his Plan benefit. Accordingly, we made the following adjustment in computing his MGB:

- Age Adjustment. As provided in PBGC regulations, the MGB for a participant who begins receiving a benefit before age 65 is reduced to reflect the number of whole months between: (1) the later of the plan's termination date ("DOPT") and the participant's retirement date, and (2) the date the participant attains age 65. In Captain [redacted] case, his retirement date is later than the December 30, 2004 DOPT. As is also provided in PBGC's regulation, the age reduction to the MGB is 7/12 of 1% for each of the first 60 months before age 65.

PBGC and Plan records show that Captain [redacted] date of birth is [redacted] 1945. Thus, he had 59 whole months between his retirement date ([redacted] 2005) and when he reached age 65. His MGB age-adjustment factor of 0.6558 is calculated as follows:

$$1.0 - (7/12 \times 0.01 \times 59) = 0.6558$$

- MGB after adjustment for age. Captain [redacted] MGB, after adjusting for his age when he started receiving benefits, is \$2,425.71. That amount is calculated as follows:

$$\$3{,}698.86 \text{ (age 65 MGB)} \times 0.6558 \text{ (age factor)} = \$2{,}425.71$$

This guaranteed benefit calculation also is shown on lines (8) through (12) of the AB Worksheet. Please note that the \$2,425.71 amount shown on line (11) and on line (12) does not include an offset for Captain [redacted] PLSA distribution.[5]

*2. Captain [redacted] guaranteed benefit based on his election of the LIO.*

If PBGC were paying Captain [redacted] a level benefit, his monthly guaranteed benefit would be \$2,425.71 per month starting on [redacted] 2005 (his ARD) before the offset for his PLSA

[5] For participants who retired and received a PLSA distribution after DOPT, the PLSA offset is applied to the MGB in a later calculation step. *See* lines (30) and (31) of the AB Worksheet. Because Captain [redacted] benefit based on the allocation of the Plan's assets is greater than his MGB, his PLSA offset of \$1,595.72 is deducted from his (larger) Plan asset benefit, rather than from his MGB. *See* lines (32) and (33) of the AB Worksheet.

distribution. PBGC, however, continues to pay benefits in non-level amounts after plan termination if the participant entered pay status with a non-level plan benefit.

To determine Captain [redacted] guaranteed non-level benefit amounts, PBGC first converts his Plan benefit amounts under his SLA with LIO to an equivalent level amount. This makes it possible to compare the value of his MGB (which was calculated above as a level amount) to the value of his Plan benefit. A PBGC regulation, 29 C.F.R. § 4022.23(f), specifies the factors to be used in converting the "temporary additional benefit" under Captain [redacted] LIO to a level life annuity.

In Captain [redacted] case, his Plan benefit as of the Plan's termination date and before the PLSA offset is $9,281.74 per month from [redacted] 2005 through [redacted] 2011 and $7,339.74 per month afterwards. . Based on the factors in 29 C.F.R. § 4022.23(f), PBGC converted his non-level amounts of $9,281.74 and $7,339.74 to a level-life Plan benefit of $8,174.80 starting at his ARD. The $8,174.80 amount is shown on line (7) of the AB Worksheet.

PBGC's regulation further provides that, if the level-life monthly Plan benefit exceeds the MGB, the monthly non-level amounts that PBGC guarantees equals the non-level Plan amounts multiplied by the "ratio" (i.e., the percentage) of the level MGB to the level-life Plan benefit.[6] PBGC, applying its regulation, computed the percentage of his Plan monthly benefit guaranteed by PBGC as 29.6730%. This percentage, which is shown on line (13) of the AB Worksheet, is calculated as follows:

$2,425.71 (MGB) ÷ $8,174.80 (Plan Level-Life benefit at Plan termination) = 29.6730%

PBGC then uses this guaranteed percentage (29.6730%) to determine his monthly guaranteed benefit amounts, as shown by the following computation:

- $9,281.74 (Plan benefit through [redacted] 2011) × 29.6730% (PBGC guaranteed percentage) = $2,754.17 (PBGC guaranteed benefit from [redacted] 2005 through [redacted] 2011); and

- $7,339.74 (Plan benefit starting [redacted] 2011) × 29.6730% (PBGC guaranteed percentage) = $2,177.92 (PBGC guaranteed benefit starting on [redacted] 2011).

Please note that Captain [redacted] PBGC guaranteed amounts of $2,754.17 (through [redacted] 2011) and $2,177.92 (starting [redacted] 2011) are less than the amounts PBGC may pay him based on the allocation of the Plan's assets, as is shown below.

[6] 29 C.F.R. § 4022.23(f)(2).

**D. Captain [redacted] benefit based on allocation of Plan assets and PBGC recoveries.**

The six-tier asset allocation scheme under ERISA section 4044 determines how a pension plan's assets are distributed among various categories of benefits when the assets are insufficient to pay all promised benefits. In this decision, we refer to these priority categories as PC1, PC2, PC3, etc. The highest priority categories (Priority Categories 1 and 2) are reserved for benefits derived from a participant's own contributions. PBGC determined that Captain [redacted] and other Plan participants did not have benefits in PC1 or in PC2.

PC3, which is the most significant category with respect to Captain [redacted] benefit, covers a participant's benefits that were "in pay status" (i.e., were being paid) three or more years before the plan's termination date, or that would have been in pay status three years before the termination date if the participant had retired. PC4 generally is for benefits guaranteed by PBGC. PC5 is for other nonforfeitable benefits, and PC6 covers all other benefits under the plan (i.e., non-vested benefits).

Captain [redacted] has a benefit in PC3. Also, as shown below, his PC3 amount is greater than the benefit that PBGC guarantees (i.e., the PC4 amount). The Plan's assets and PBGC's recoveries on its claims against UAL are insufficient to pay him any benefit amounts in the lowest two priority categories, PC5 and PC6.

*1. Captain [redacted] PC3 benefit if he had elected a SLA without the LIO.*

Captain [redacted] PC3 benefit is based on the assumption that he had retired as of the beginning of the three-year period ending on Plan's Date of Plan Termination (i.e., December 30, 2001, which we refer to as "DOPT-3"). Thus, to determine his PC3 benefit, PBGC must use his age, service, and his earnings as of DOPT-3.

PBGC also must use the early retirement factor for a benefit starting on DOPT-3. Finally, PBGC must calculate his PC3 benefit using the benefit formula and other pension terms that were in effect during the five-year period ending on the Plan's termination date that provide the lowest benefit.

As a result of these PC3 benefit requirements, Captain [redacted] PC3 benefit differs from his Plan benefit in the following five ways:

(1) Captain [redacted] had 34.2500 Years of Participation Service for purposes of computing his PC3 benefit (as compared with 35.6667 Years of Participation Service that was used in computing his accrued Plan benefit as of May 1, 2003).

(2) Captain [redacted] PC3 calculation uses a FAE of $160,000.00 (as compared with his FAE of $180,833.33 that was used to compute his Plan benefit). We note that, because Captain [redacted] FAE is determined based on the compensation limits under section 401(a)(17) of the Internal Revenue Code ("IRC") that were in effect 5 years before DOPT, his FAE is less than his actual earnings as of DOPT-3.

(3) Because the Plan protected benefits earned before December 31, 1994, Captain [redacted] benefit is the greater of the following: (1) his benefit calculated without consideration of his accrued benefit as of December 31, 1994; and (2) his accrued benefit as of December 31, 1994, plus the benefit he earned after December 30, 1994 (based on FAE and Participation Service after that date). As shown on pages 3-4 of the AB Worksheet, the PC3 amount with the December 31, 1994 protected benefit ($6,637.50) is greater than the non-protected PC3 amount ($6,439.00).

(4) Because Captain [redacted] was [redacted] years and [redacted] months old on December 30, 2001 ([redacted] months before age 60), PBGC must apply an Early Retirement Factor ("ERF") of 0.780 to calculate his PC3 benefit. Use of the 0.780 ERF is required under the Plan provisions in effect five years before DOPT.

(5) In calculating his PC3 benefit, PBGC must use the benefit formula that was in effect at the beginning of the five-year period before the Plan terminated. The benefit formula in effect five years before the Plan's termination date provided for a benefit multiplier of 1.41%, as compared to a later-adopted benefit multiplier of 1.5%.

PBGC and the Appeals Board, using these five components, computed a "Monthly Benefit for Priority Category 3 Before Adjustment for Level Income Option" for Captain [redacted] of $5,177.25. *See* line (18) of the AB Worksheet. The $5,177.25 amount is calculated as follows:

$5,321.50 (monthly benefit earned as of 12/31/1994) + [1.41% (multiplier) × $160,000.00 (PC3 FAE) × 7.0000 (service from 12/31/1994 to 12/30/2001) ÷ 12] = $6,637.50 (monthly benefit earned as of 12/30/2001)

$6,637.50 (monthly benefit earned as of 12/30/2001) × 0.780 (ERF) = $5,177.25 (PC3 benefit before adjustment for LIO)

The $5,177.25 PC3 amount does not include the adjustment for PBGC's determination that the Plan's assets covered only 82.0617% of the benefit liabilities in PC3 and is before the offset for Captain [redacted] PLSA distribution.

2. *Captain [redacted] monthly amounts in PC3 in the form of a SLA with LIO.*

In its December 11, 2013 decision for another appellant, the Appeals Board decided that PBGC should calculate a LIO benefit in PC3 for a participant who retired after DOPT-3 as follows:

- first determine the participant's PC3 benefit in the Plan's normal form (i.e., without the LIO); and
- then convert the normal form PC3 amount to a LIO using the LIO factor and SSA Amount that the Plan had applied as of the participant's actual benefit commencement date.

The Appeals Board applied these two steps in calculating Captain [redacted] PC3 benefit, and, as shown on lines (19) through (21) of the AB Worksheet, this results in the following monthly LIO amounts in PC3:

- *Monthly benefit in PC3 from the Plan's termination date through* [redacted] *2011*. We start with his PC3 benefit amount of $5,177.25 as a SLA. To calculate the additional PC3 amount before age 66, we multiply his SSA Amount of $1,942.00 by his LIO Factor of 0.628, which equals $1,219.58. We then add the $1,219.58 amount to his SLA amount of $5,177.25, which results in a pre-age-66 PC3 amount of $6,396.83.
- *Monthly benefit in PC3 benefit starting* [redacted] *2011*. To calculate this amount, we subtract his SSA Amount of $1,942.00 from his pre-age-66 amount of $6,396.83. This adjustment results in a $4,454.83 monthly benefit starting at age 66.

Consistent with the reasoning in the Board's December 11, 2013 decision, we found that calculation of the above PC3 amounts for Captain [redacted] maintains the actuarial equivalence between his PC3 benefit amount as a SLA and his PC3 benefit amount as a SLA with LIO.

3. *Captain* [redacted] *PC3 benefit before PLSA offset.*

As is the case with his guaranteed benefits (see explanation above), PBGC calculates Captain [redacted] PC3 benefit as a "percentage" of the Plan benefit amount he would receive as a SLA with LIO. Additionally, in calculating the PC3 percentage, PBGC takes into account that the Plan was not fully funded for benefits in PC3. PBGC determined that the Plan's assets covered 82.0617% of the benefit liabilities in PC3.

Using the following five steps, we computed non-level PC3 amounts for Captain [redacted] (which are before the PLSA distribution offset):

(1) We first determined the present value ("PV"), based on PBGC's actuarial assumptions, of the monthly benefit amounts payable to him after DOPT if the Plan was fully funded, which are: (1) $9,281.74 per month from [redacted] 2005 through [redacted] 2011; and (2) $7,339.74 per month afterwards. The PV of those non-level Plan amounts as of DOPT is $1,266,483 (which is the same PV that PBGC computed).

(2) We then determined the PV, based on PBGC's actuarial assumptions, for the Board-calculated monthly PC3 amounts that are explained above: (1) $6,396.83 per month from [redacted] 2005 through [redacted] 2011; and (2) $4,454.83 per month afterwards. The PV of those non-level PC3 amounts as of DOPT is $814,708.

Thus, if Captain [redacted] PC3 benefit had been 100% funded by Plan assets, it would equal 64.3284% of his Plan benefit amount [$814,708 ÷ $1,266,483 = 64.3284%].

(3) We then multiplied the PV of his PC3 amounts, $814,708, by the Plan's PC3 funding percentage of 82.0617%, which equals $668,563. This is the PV of his funded PC3 benefit as of DOPT.

(4) We then computed, as of DOPT, the ratio of his funded PC3 benefit to his total Plan benefit. To calculate this ratio, we divided the PV of his funded PC3 benefit ($668,563) by the the PV of his Plan benefit ($1,266,483), which equals 52.7889%.

(5) Finally, we used this percentage, 52.7889%, to determine his PBGC-payable monthly benefits in PC3, as shown by the following computation:

- $9,281.74 (Plan benefit through [redacted] 2011) × 52.7889% (funded PC3 benefit percentage) = **$4,899.73** PC3 benefit from [redacted] 2005 through [redacted] 2011; and
- $7,339.74 (Plan benefit starting [redacted] 2011) × 52.7889% (funded PC3 benefit percentage) = **$3,874.57** PC3 benefit starting on [redacted] 2011.

4. *<u>Captain [redacted] PBGC-payable benefit (including ERISA § 4022(c) benefit and after offset for PLSA distribution).</u>*

a. <u>ERISA § 4022(c) benefit calculation</u>

Section 4022(c) of ERISA authorizes PBGC to pay additional benefits based on the amounts that PBGC recovers from employers that maintained under-funded pension plans. PBGC allocates this additional money (the "section 4022(c) amount") to pay otherwise unfunded benefits in excess of guaranteed benefits. For a pension plan like the Plan, in which the outstanding amount of unfunded non-guaranteed benefit liabilities exceeds $20 million, the section 4022(c) amount is based on PBGC's actual recovery on its claims against the plan sponsor.

For the Plan, PBGC determined that the Plan's section 4022(c) amount covers 58.4630% of all unfunded nonguaranteed benefits in PC3. The Appeals Board computed Captain [redacted] ERISA § 4022(c) benefit as $626.17 per month through [redacted] 2011 and $495.16 per month beginning [redacted] 2011. The Board's calculation is:

- *<u>Monthly ERISA § 4022(c) benefit through [redacted] 2011</u>:*

  $5,970.79 (PC3 benefit if 100% funded)[8] – $4,899.73 (82.0617% funded PC3 benefit) = $1,071.06

  $1,071.06 × 58.4630% (section 4022(c) funding % for PC3) = $626.17

- *<u>Monthly ERISA § 4022(c) benefit starting [redacted] 2011</u>:*

  $4,721.54 (PC3 benefit if 100% funded) – $3,874.58 (82.0617% funded PC3 benefit) = $846.96

  $846.96 × 58.4630% (section 4022(c) funding % for PC3) = $495.16

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[8] The $5,970.79 amount we computed for his 100% funded PC3 benefit through [redacted] 2011 equals his Plan benefit for that time period ($9,281.74) multiplied by 64.3284%. (As previously stated, if PC3 was 100% funded PBGC would pay Captain [redacted] 64.3284% of his Plan benefit amount.) The $4,721.54 amount we computed for his 100% funded PC3 benefit starting [redacted] 2011 equals his Plan benefit for that time period ($7,339.74) multiplied by 64.3284%.

b. Captain [redacted] PBGC-payable benefit before PLSA offset

When Captain [redacted] section 4022(c) amounts are added to his PC3 amounts, his monthly PBGC benefit before PLSA offset is $5,525.90 through [redacted] 2011 and $4,369.73 beginning [redacted] 2011. These amounts are computed as follows:

- *Monthly amount before PLSA offset through [redacted] 2011:*

  $4,899.73 (PC3 benefit) + $626.17 (section 4022(c) benefit) = $5,525.90 (PBGC benefit)

- *Monthly amount before PLSA offset starting [redacted] 2011:*

  $3,874.57 (PC3 benefit) + $495.16 (section 4022(c) benefit) = $4,369.73 (PBGC benefit)

The Appeals Board's calculation of Captain [redacted] monthly PBGC benefit before the offset for his PLSA distribution is shown on lines (24) through (29) of the AB Worksheet.

c. Captain [redacted] PBGC-payable benefit after PLSA offset

Captain [redacted] received his Partial Lump Sum Amount after DOPT. PBGC therefore concluded that, as the final step in his PBGC benefit calculation, the annuity value of his PLSA distribution must be deducted from the PBGC benefit amounts that he would have received without a PLSA distribution. Because Captain [redacted] received a PLSA of $266,682.85 on [redacted] 2005, the Appeals Board (and PBGC) deducted a PLSA amount of ($1,595.72) in determining his PBGC-payable benefit.

Thus, the Board's calculation of Captain [redacted] PBGC-payable benefit after the offset for his PLSA distribution is:

- *Monthly PBGC-payable benefit from [redacted] 2005 through [redacted] 2011:*

  $5,525.90 (PBGC-payable benefit before PLSA offset) - $1,595.72 (PLSA offset amount) = **$3,930.18 (PBGC-payable benefit after PLSA offset)**

- *Monthly PBGC-payable benefit starting [redacted] 2011:*

  $4,369.73 (PBGC-payable benefit before PLSA offset) - $1,595.72 (PLSA offset amount) = **$2,774.01 (PBGC-payable benefit before PLSA offset)**

These amounts are shown on lines (32) and (33) of the AB Worksheet.

## E. Comparison of Captain [redacted] suggested calculation method with PBGC's method

Captain [redacted] appeal essentially proposes that the Appeal Board change the calculation steps for determining his PBGC-payable benefit so that the order of his calculations resembles the order of calculations for participants who received PLSA distributions before DOPT.

Captain [redacted] proposal for changing PBGC's order of calculations for his benefit would not make a difference if PC3 had been 100% funded by the Plan's assets and section 4022(c) amount.[10] However, because the combined allocation covers only 92.5489% of his benefit in PC3, Captain [redacted] proposed change to PBGC's order of calculations would increase his PBGC-payable benefit. As an example, the following shows the PBGC-payable benefit under the two methods if Captain [redacted] had elected a SLA without a LIO:

*Under PBGC's method (for a SLA without LIO):*

$5,177.25 (benefit in PC3) × 92.5489% (funding of PC3 benefit at DOPT) =
$4,791.49 (PBGC-payable benefit before deduction for post-DOPT distribution)

$4,791.49 (PBGC-payable benefit before deduction) - $1,595.72 (deduction for post-DOPT Distribution*) =
**$3,195.77** (PBGC-payable benefit after post-DOPT distribution)

*Under method suggested by Captain [redacted] (for a SLA without LIO):*

$5,177.25 (benefit in PC3) - $1,595.72 (deduction for post-DOPT distribution) =
$3,581.53 (benefit in PC3 reduced for post-DOPT distribution)

$3,581.53 (benefit in PC3 reduced for post-DOPT distribution) × 92.5489% (funding of PC3 benefit at DOPT) =
**$3,314.67** (PBGC-payable benefit after post-DOPT distribution)

*The "deduction for post-DOPT distribution" equals the monthly annuity equivalent of Captain [redacted] PLSA distribution as of its [redacted] 2005 payment date (which is [redacted] months after DOPT).

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[10] The following shows the PBGC-payable benefit under the two methods if Captain [redacted] had elected a SLA without a LIO and if PC3 was 100% funded:

*Under PBGC's method (for a SLA without LIO) if PC3 was 100% funded:*

$5,177.25 (benefit in PC3) × 100% (funding of PC3 benefit at DOPT) =
$5,177.25 (PBGC-payable benefit before deduction for post-DOPT distribution)

$5,177.25 (PBGC-payable benefit before deduction) - $1,595.72 (deduction for post-DOPT distribution) =
**$3,581.53** (PBGC-payable benefit after post-DOPT distribution)

*Under method suggested by Captain [redacted] (for a SLA without LIO) if PC3 was 100% funded):*

$5,177.25 (benefit in PC3) - $1,595.72 (deduction for post-DOPT distribution) =
$3,581.53 (benefit in PC3 reduced for post-DOPT distribution)

$3,581.53 (benefit in PC3 reduced for post-DOPT distribution) × 100% (funding of PC3 benefit at DOPT) =
**$3,581.53** (PBGC-payable benefit after post-DOPT distribution)

Although the monthly amounts for the SLA with LIO form that Captain [redacted] elected would be different under Captain [redacted] method than under PBGC's method, the value of the PBGC-payable benefit would not be materially greater if PC3 was 100% funded and if Captain [redacted] method was used.

The above calculations show that, if Captain [redacted] had elected a SLA without a LIO, his PBGC-payable benefit would be $118.90 per month greater (i.e., approximately 3.7% more) under his method than under PBGC's method. The $118.90 difference is calculated as follows: $3,314.67 (Captain [redacted] method) - $3,195.77 (PBGC's method) = $118.90. For the SLA with LIO form that Captain [redacted] elected, Captain [redacted] method would have a similar impact (with regard to the value of the benefit) as the $118.90 difference shown above for an SLA without a LIO.

## F. Conclusion

PBGC determined that Captain [redacted] monthly PBGC benefit is: (1) $3,471.35 from [redacted] 2005 through [redacted] 2011, and (2) $2,411.18 starting on [redacted] 2011. As a result of the Appeals Board's [redacted] 2014 decision, his monthly PBGC benefit increased to: (1) $3,930.18 from [redacted] 2005 through [redacted] 2011 (an increase of $458.83), and (2) $2,744.01 starting [redacted] 2011 (an increase of $332.83). The above amounts are before the adjustment for the repayment of Captain [redacted] overpayments.

Although Captain [redacted] proposal for changing PBGC's method of calculating his benefit would result in additional increases to his PBGC-payable benefit amounts, the Appeals Board is unable to accept his suggested calculation method because it is inconsistent with ERISA and PBGC regulations.