



Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

June 27, 2012

Re: Case 196603; Bethlehem Steel Corporation Pension Plan (the "Bethlehem Plan" or the "Plan")

Dear

This Appeals Board decision responds to your appeal regarding PBGC's August 18, 2010 determination of your benefit under the Bethlehem Plan. As we explain below, the Appeals Board changed PBGC's determination by deciding that your Actual Retirement Date ("ARD") is 2003 instead of 2003. PBGC will send you a corrected determination of your benefits based on your corrected ARD, with a new 45-day right of appeal except for matters already decided in this decision letter. As part of its corrected determination of your monthly benefits, PBGC will provide you with a detailed calculation of the Surviving Spouse's Benefit payable to your spouse if you were to die on the date of the corrected determination. With respect to the rest of the issues you presented, the Board found that your appeal did not provide a sufficient basis for changing PBGC's determination. We must, therefore, deny your appeal with respect to the remaining issues.

PBGC's Determination

PBGC's August 18, 2010 letter said that you are entitled to a PBGC benefit of \$2,112.65 per month before age 62 and \$2,330.25 per month after age 62, payable as a Straight Life Annuity with an Automatic Five-Year Certain period and a separate Surviving Spouse's Benefit. The letter said that as the monthly amount you are entitled to receive is less than the estimated amounts (\$2,402.18 before age 62 and \$2,647.72 after age 62) that you have received, PBGC has paid you too much. The letter explained that PBGC would reduce your future monthly payments by a small percentage until the total overpayment is repaid, without interest.

PBGC's letter also explained that PBGC will pay you your funded Category 3¹ benefit because you could have retired before December 19, 1999 and your funded Category 3 benefit is larger than what PBGC would otherwise guarantee.

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Section 4044 of ERISA defines six benefit categories, also known as priority categories. **Enclosure 1** is a standard PBGC information sheet; it describes the benefit liabilities assigned to each Category. Section 6 of this letter provides more information regarding the § 4044 allocation process.

Your Appeal

After requesting a filing extension, you filed an appeal on November 30, 2010. In your appeal letter, you raised the following six issues.

▶ Your Actual Retirement Date

The Benefit Statement included with PBGC's August 18, 2010 determination said that your Actual Retirement Date ("ARD") was [] 2003. You claimed that your ARD was actually [] 2003. You said that you understood that correcting this error could change your monthly pension, and could increase your total overpayment amount.

▶ Estimated Funding Percentage vs. Final Funding Percentage

You said that, at the time of your retirement, PBGC estimated the Category 3 funding percentage to be 70%, which is larger than the final funding percentage of 60.0424%. You claimed that the funding percentage was a critical factor in your electing to retire on [] 2003 rather than deferring your retirement to age 65 in order to reduce the impact of PBGC's Maximum Guaranteeable Benefit ("MGB") limit on your Category 4 guaranteed benefit amount. You requested that PBGC continue paying you a benefit based on the estimated 70% funding percentage because (1) you relied on that funding percentage; and (2) you believe that PBGC might not have based the final funding percentage on the correct amount of Final Assets.

▶ Application of PBGC Policy 5.2-4

In the event that the Appeals Board would deny your request to continue paying you a benefit based on the estimated 70% funding percentage, you requested the opportunity to change your annuity starting date by suspending payment of your pension for at least a month and then restarting your pension based on either your current age, or retroactive to your 65th birthday [] 2010). You noted that (1) PBGC Policy 5.2-4 allows such an opportunity to change an annuity starting date when PBGC overstates an early retirement reduction factor by more than 10% when providing a participant with estimated benefit amounts; and (2) PBGC erred by approximately 10% in its estimate of the Plan's Category 3 funding percentage.

▶ PBGC's Calculation of Your Category 3 Benefit

PBGC used a Retirement Account Balance ("RAB") offset of \$252.68, the annuity value of your RAB as of the end of December, 2002, when it calculated your Category 3 benefit. You claimed that PBGC should have used a RAB offset of \$226.70, the annuity value of the RAB as of the end of December, 1999, when it calculated your Category 3 benefit.

▶ "Conversion" to Effective P% for Calculating Your Category 3 Benefit

You claimed that PBGC erroneously "converted" the Category 3 portion of your Plan benefit into an equivalent Joint and p% Survivor Annuity ("J&p%SA"). You said that the Plan provisions under which your Plan benefit is calculated do not provide for

conversion of the Plan calculated amount to an equivalent J&p%SA for purposes of taking into account the value of the Surviving Spouse's Benefit. You asked PBGC to "remove the conversion to effective P% calculation."

▶ PBGC's Calculation of the Benefit Payable to Your Surviving Spouse

In response to an earlier request you made, PBGC's representative provided you with an estimate (\$775.66) of the benefit payable to your surviving spouse based on the assumption that you passed away on November 23, 2010. You asked the Appeals Board to verify the survivor benefit payable to your spouse if you die first.

Discussion

1. **Background**

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

Records available to the Appeals Board show that PBGC issued a Notice of Determination on December 16, 2002, finding that the Plan would be unable to pay benefits when due and that the Plan needed to be terminated to protect the interests of the participants. PBGC became trustee of the Plan on April 30, 2003, in accordance with the provisions of a trusteeship agreement that was executed on April 29, 2003. The trusteeship agreement set December 18, 2002 as the Plan's termination date.

The trusteeship agreement further provided that PBGC became trustee only of the defined benefit portion of the Bethlehem Plan. Paragraph 5 of the trusteeship agreement and its "therefore" clause stated:

5. Effective June 30, 1996, the Retirement Account Balance Plan, a separate individual account plan within the meaning of 29 U.S.C. §§1002(34) and 1002(35)(B) that is excluded from coverage under Title IV of ERISA pursuant to 29 U.S.C. § 1321(b)(12), was merged into the Plan, with the individual accounts maintained within the Plan (the individual accounts within the Plan are hereinafter referred to as the RAB Plan). The Plan (excluding the RAB Plan) is an employee pension benefit plan to which 29 U.S.C. § 1321(a) applies and is not exempt under 29 U.S.C. § 1321(b). The Plan (excluding the RAB Plan) is therefore subject to Title IV of ERISA.

NOW THEREFORE, the parties agree:

1. Pursuant to 29 U.S.C. § 1342(c), the Plan (excluding the RAB Plan) is hereby terminated.

2. Pursuant to 29 U.S.C. § 1348, the date of termination for the Plan (excluding the RAB Plan) is December 18, 2002.

3. Pursuant to 29 U.S.C. § 1342(c), PBGC is hereby appointed trustee of the Plan (excluding the RAB Plan) effective as of the date of this agreement.

5. The RAB Plan shall continue as a separate employee benefit plan and [] shall continue as administrator of the RAB Plan.

As part of the process of implementing the trusteeship agreement, Bethlehem Plan assets sufficient to fund the remaining RABs of its participants were transferred to a separate trust. This transfer of Bethlehem Plan assets permitted participants to receive their RABs as lump sums. We note that, if the RABs had not been separately distributed, PBGC would have been required to pay the RABs as monthly annuities.²

The documents that PBGC received from the Bethlehem Plan's former sponsor ("Bethlehem") show that: (1) you began work on [] 1968; (2) you were still actively employed when the Plan terminated on December 18, 2002; and (3) you were covered under the provisions of the 1999 Steel Division component of the Bethlehem Plan for nonrepresented salaried Bethlehem employees. For simplicity, when we discuss the provisions of the Bethlehem Plan below, we will generally be referring only to the provisions of the 1999 Steel Division component of the Bethlehem Plan.

2. Your Date of Termination of Employment and Actual Retirement Date

In your appeal, you claimed that your date of termination of employment with Bethlehem was [] 2003 and that your Actual Retirement Date ("ARD") under the Plan was [], 2003. You stated that PBGC's Benefit Statement erroneously said that your ARD was [] 2003.

After reviewing the files in PBGC's records, we have concluded that your date of termination of employment with Bethlehem was, in fact, [] 2003. As a result of your actual date of termination of employment with Bethlehem and PBGC's Working Retirement Policy, your earliest retirement date was [] 2003. PBGC's records further show that you elected to start receiving your benefit effective [] 2003.

Based on the above, the Appeals Board changed your ARD from [] 2003 (as stated in your Benefit Statement) to [] 2003. PBGC will redetermine your PBGC benefits payable based on your actual ARD and send you a corrected determination letter with a new 45-day right to appeal any matters that are not resolved by this decision.

² PBGC's regulation at 29 Code of Federal Regulations ("C.F.R.") § 4022.7 provides that, with the exception of de minimis lump sums (i.e., those having a value of \$5,000 or less), PBGC does not pay guaranteed benefits in the form of a lump sum, but instead will pay the benefit in the form of an annuity.

3. The Estimated Funding Percentage (used to calculate your estimated PBGC benefit) versus the Final Funding Percentage (used to calculate your final PBGC benefit)

When PBGC becomes trustee of a terminated plan, PBGC collects participant data and plan data and audits that data. As you know, PBGC's audit process can take some time, as evidenced by the fact that PBGC did not issue your benefit determination letter until August 18, 2010, more than seven years after PBGC became trustee of the Bethlehem Plan.

Due to the length of time it generally takes PBGC to complete the audit process, PBGC requires its actuaries to create an estimation program or otherwise establish estimation procedures shortly after PBGC becomes trustee of a plan. Estimation programs and procedures allow PBGC to calculate and start paying estimated benefits to deferred-vested participants when they reach retirement age while PBGC completes the audit process.

PBGC believes that its estimation programs and procedures are important as they avoid the hardship that might otherwise occur if deferred-vested participants could not start receiving their retirement benefits until completion of the audit process. The Appeals Board has reason to believe that, in most cases, the estimation programs and procedures result in estimated benefit amounts that are very close to final PBGC benefit amounts. Nevertheless, the estimates are not always as close as expected.

PBGC forewarns participants when they start receiving estimated benefits that the benefits are estimates and that their final benefits could be higher or lower. Thus, when you started receiving your estimated benefit in 2003, PBGC's September 9, 2003 letter explained as follows:

After we complete our review of the pension plan, we will send you a formal determination of your benefit and a description of your right to appeal. Your estimated payment may be lower than the amount you expected to receive. There are legal limits on how much we can pay. If, we paid you too much, you may have to repay us for all the overpayments without interest if the overpayment amount is more than \$500. If we paid you too little, we will pay the difference in a single payment with interest.

[Underlining added by the Appeals Board for emphasis.]

As stated in PBGC's September 9, 2003 letter, PBGC adjusts a participant's monthly benefit after it completes its review of the participant's pension plan if the participant's final benefit amount is larger or smaller than the estimated amount. In cases where the estimated amount is higher than the final amount, PBGC must lower the participant's monthly benefit because Congress has not authorized PBGC to pay benefits that are larger than the benefits the participant earned under his plan's provisions, as reduced by ERISA's limits.

Your appeal suggested that PBGC may have incorrectly calculated the final Category 3 funding percentage. You claimed that various estimates of the Category 3 funding percentage, which were all calculated using simplifying assumptions that actuaries typically use when making estimates, might be closer to the "correct"

Category 3 funding percentage. You claimed that the document you received from PBGC showed that PBGC used a Final Assets amount of \$3,532,607,066 while another document showed that the Plan's assets as of the Plan's termination date had a total value of \$3,610,566,815.46.

Please note that the document showing that the total value of the Plan's assets of \$3,610,566,815.46 was one page of one of the source documents that PBGC used in preparing the Bethlehem Plan's Plan Asset Audit Report ("PAAR") dated July 7, 2004. That total amount did not include any deductions for many of the Plan's liabilities. PBGC's PAAR reported a net assets amount of \$3,483,258,007.75. After ensuring that the appropriate liabilities of the Plan were deducted from total assets in accordance with 29 C.F.R. § 4044.3(a) to arrive at the net assets amount available for allocation, PBGC's Financial Operations Department approved the \$3,483,258,007.75 Final Assets amount in August 2004. **Enclosure 2** is a copy of the July 7, 2004 PAAR (excluding its many Work Papers and Attachments, which are available to you through the FOIA process).

The Final Assets were later increased by \$49,349,058.11 in January 2010 to arrive at the Final Assets amount of \$3,532,607,065.84 after PBGC determined that the December 31, 2002 benefit payments were not a liability of the Plan as of December 18, 2002.

PBGC's final calculation of the Plan's total Category 3 liabilities used audited plan and participant data in accordance with PBGC's actuarial rules for seriatim (individual) valuations of the Category 3 benefits payable to each of the 90,000-plus participants of the Plan in accordance with ERISA and PBGC's rules and regulations. Thus, the Appeals Board has found no reason to believe that any other calculation of the Category 3 funding percentage would arrive at a more accurate result. Additionally, we have concluded that PBGC properly adjusted your benefit upon completion of the audit. The Appeals Board certainly regrets any hardship that may result from PBGC's high estimate of your PBGC-payable benefit.

4. **PBGC Policy 5.2-4 is Not Applicable to Your Situation**

Records available to the Appeals Board show that, when PBGC calculated your estimated benefit to be \$2,402.18 before age 62 and \$2,647.72 after age 62, PBGC used an estimated Category 3 funding percentage of 70%. When PBGC completed its valuation of the Plan's liabilities, however, it determined that the Category 3 funding percentage is 60.0425%. The high estimated funding percentage is one of the reasons why your estimated PBGC benefits (\$2,402.18 before age 62 and \$2,647.72 after age 62) were larger than your final PBGC benefits (\$2,112.65 before age 62 and \$2,330.25 after age 62).

While PBGC's estimated benefit amounts are usually fairly close to PBGC's final benefit amounts, the estimates are not always as close as we would like them to be. In cases where a participant's estimated benefit was too high because of an incorrect early retirement factor, PBGC will sometimes allow a participant to change his or her Annuity Starting Date based on the theory that the participant may have elected a later retirement date if the participant had known that the reduction for early retirement under his or her plan's documents was greater than estimated.

The cases in which PBGC will allow a participant to elect a new retirement date due to an incorrect early retirement factor are fairly limited. Specifically, subsection G of Policy 5.2-4 (in PBGC's Operating Policy Manual) describes the special situation in which participants may be allowed to change their Annuity Starting Date. Section G.2. of the current version of Policy 5.2-4 states as follows:

2. Change for incorrect early retirement estimates

If PBGC erred by 10% or more in the early retirement factor used to provide a benefit estimate, a participant (or a surviving spouse being paid a QPSA benefit) may be allowed to change the annuity starting date to a prospective date if, solely as a result of the error, the actual early retirement reduction for the annuity starting date chosen is a greater reduction than the estimate indicated. The magnitude of the error is determined by subtracting the correct early retirement factor from the incorrect early retirement factor originally applied. A difference of 0.10 or greater indicates an error of 10% or more.

[Underlining added by the Appeals Board for emphasis.]

An error in the early retirement factor in the calculation of an estimated benefit is the only type of error mentioned in Policy 5.2-4 that will result in PBGC offering an opportunity to elect a new Annuity Starting Date. The intention that no other error types should be considered under Policy 5.2-4 is indicated by the underlined phrase above. That phrase strongly suggests that the overstatement of the estimated benefit amount considered by Policy 5.2-4 must have been created "solely as a result of the error" in the early retirement factor.

Your appeal expressly recognizes that PBGC Policy 5.2-4 applies to an early retirement factor. You suggested, however, that the Category 3 funding percentage is very similar to an early retirement factor, and you claimed that the estimated Category 3 "funding percentage was the critical factor in [your] electing retirement on [redacted] 2003, rather than deferring [your] retirement until age 65 in order to reduce the impact of" ERISA's MGB limitation on your guaranteed benefit amount. While we agree that there is a similarity between an early retirement factor and a plan's Category 3 funding percentage for someone whose guaranteed benefit is affected by the MGB limit, there are also significant differences.

In the case of an early retirement factor, the use of an incorrect one in the calculation of an estimated benefit usually results from (1) using the early retirement factors from a plan document that is not applicable to the participant; (2) making a simple mathematical error in the calculation of the factor; or (3) incorrect participant data. In such instances, the correct early retirement factor for the estimated benefit is usually readily available or easily calculable by PBGC at the time it calculates the estimated benefit.

The Category 3 funding percentages that PBGC estimates for the purpose of calculating estimated benefits, on the other hand, are generally based on (1) broad assumptions regarding large groups of participants that might or might not be true with respect to individual participants; and (2) the gross liabilities calculated in a recent

actuarial valuation report for large groups of the plan's participants. If any of the broad assumptions resulted in estimates of gross Category 3 liabilities that turn out to be much lower than the final benefit liabilities, the estimate of the Category 3 funding percentage may not even be close to actual funding percentage.³

The calculation of an early retirement factor is a simple mathematical exercise for an individual participant if PBGC has the correct data and plan documents. Estimating the Category 3 funding percentage, however, is typically more complicated, more time-consuming, and less precise than calculating early retirement factors. Given these differences, the Board declines your request to extend PBGC's Policy 5.2-4 on erroneous early retirement factors to estimated Category 3 funding percentages. Thus, the Board has decided that PBGC will not offer you the opportunity to elect to come out of pay status or to elect a later Annuity Starting Date under Policy 5.2-4.

5. **History of the Retirement Account Balance Plan and its Relationship to the Bethlehem Plan**

According to documents that PBGC received from Bethlehem, the Retirement Account Balance Plan ("RAB Plan") was established by Bethlehem as a money purchase pension plan (a type of defined-contribution plan) for its non-represented salaried employees effective January 1, 1986.⁴

The Bethlehem Plan was amended to eliminate service crediting for benefit accrual purposes for non-represented salaried employees after December 31, 1985. In other words, benefit accruals under the Bethlehem Plan were frozen for such employees at the same time they started earning benefits under the RAB Plan. Crediting of service under the Bethlehem Plan continued for eligibility, vesting, entitlement and other purposes.

Effective May 31, 1989, benefits accruals in the Bethlehem Plan were unfrozen for retirements on or after May 31, 1989, and non-represented salaried employees were given full credit for service after December 31, 1985 for all purposes.⁵

Section 8 of the March 18, 2002 Restatement of the Bethlehem Plan ("2002 Plan") explains the transfer of the RAB Plan's assets to the Bethlehem Plan's trust funds and the merger of the two plans. In particular, the pertinent part of section 8.2 provides as follows:

³ Based on somewhat similar assumptions, one PBGC actuary estimated the Category 3 funding percentage for the Bethlehem Plan to be 64.71% while a PBGC actuarial contractor estimated the percentage to be 77%. PBGC's records indicate that the 70% funding percentage was chosen as a near midpoint between the two estimates. In the end, however, both estimates turned out to be too high.

⁴ Bethlehem Plan documents indicate that the official name of this plan was the "Retirement Account for Salaried Employees of Bethlehem Steel and Subsidiary Corporations."

⁵ On August 31, 1989, participants became fully vested in their accounts in the RAB Plan and Employer Contributions to the RAB Plan ceased after the August, 1989 Employer Contributions were made.

- 8.2 (a) A Retirement Account Balance shall be maintained under this Plan for each Participant who also had a Retirement Account Balance under the Retirement Account which was transferred to the trust or trusts established under the Pension Plan in connection with the merger of the Retirement Account into the Pension Plan . . . on June 30, 1996, . . . The Retirement Account Balance of a Participant under this Plan shall, at any time, be an amount equal to the total of the following:
- (1) the Participant's Retirement Account Balance as of June 30, 1996, under the Retirement Account; and
 - (2) earnings credited to the Participant's Retirement Account Balance under this Plan beginning with July 1, 1996, based upon the announced interest rate from time-to-time applicable to the Stable Value Investment Fund under the Savings Plan.
- (b) The Retirement Account Balance of a Participant shall be maintained under this Plan until such time as the Participant or a Surviving Spouse elects, pursuant to paragraph 8.3, to forego a separate distribution of the Retirement Account Balance or until a separate distribution of the Participant's Retirement Account Balance is made.
- (c) A Participant's Retirement Account Balance under this Plan shall be 100% vested at all times.⁶

At retirement or termination of employment on or after May 31, 1989, a participant who had a RAB was required to make an election to either (1) "receive a separate distribution of his Retirement Account Balance and a reduced Regular Pension under this Plan" or (2) "forgo a distribution of his Retirement Account Balance and receive an unreduced Regular Pension under this Plan." This election procedure was the same before and after the RAB Plan was merged into the Bethlehem Plan.

Sections 8.5 and 8.6 of the 2002 Plan, which are titled "Distribution Upon Termination of Employment" and "Alternative Forms of Benefit Distributions," provided

⁶ The provisions of section 8 of the Bethlehem Plan remained essentially the same after the merger of RAB Plan until December 2002. In the December 11, 2002 and December 18, 2002 Restatements, however, section 8.2(a)(2) provided as follows:

- (2) earnings credited to the Participant's Retirement Account Balance under this Plan beginning with July 1, 1996, based upon the announced interest rate from time-to-time applicable to the Stable Value Investment Fund under the Savings Plan[; provided, however, in the event the Pension Benefit Guaranty Corporation assumes trusteeship of the funds in the trust established under the Pension Plan that are allocable to the portion of the Pension Plan that is subject to Title IV of ERISA in connection with the termination of the portion of the Pension Plan subject to Title IV of ERISA pursuant to Section 4042 of ERISA, earnings shall be credited to a Participant's Retirement Account Balance beginning with the date of such trusteeship based on actual gains and losses].

that a participant who elected a RAB distribution could choose among several alternative forms of payment, which included several types of annuities in addition to the lump sum option. If the participant elected to receive a RAB distribution as an annuity, the Bethlehem Plan would purchase an annuity contract from an insurance company.

When the Bethlehem Plan terminated and its remaining RABs were transferred to a separate trust, those participants with RABs could no longer elect the option of foregoing a RAB distribution. PBGC did not allow this option because neither ERISA nor PBGC's rules and regulations provide a mechanism for a participant to transfer funds to a PBGC-trusted plan after its termination date. As you retired after the Plan's termination date, you were one of the participants who did not have the opportunity to forgo a RAB distribution. Instead, your RAB was transferred to a separate trust so that you could receive your RAB as a lump-sum distribution.

6. **The Allocation of the Plan's Assets to Category 3 Benefits and the RAB Offset that PBGC used to Calculate Your Category 3 Benefit**

In accordance with ERISA and federal regulations, the Bethlehem Plan's assets were transferred to PBGC after it became trustee of the Plan. As trustee, PBGC is required to allocate the value of the Bethlehem Plan's assets that are available to pay benefits to the Plan's future benefit liabilities, with both the assets and future benefit liabilities valued as of the termination date.⁷ Section 4044 further establishes a hierarchy of six priority categories for this allocation process. Thus, PBGC must first allocate the Plan's Final Assets to benefit liabilities that are in Category 1, then Category 2, then Category 3, and so forth until the assets have been exhausted. See **Enclosure 1** (at the end of this letter) for a description of the liabilities assigned to each Category.

In the Bethlehem Plan, there were no benefit liabilities in Category 1 or Category 2 because the Plan did not require or allow employee contributions. As a result, PBGC allocated all of the Plan's Final Assets to the benefit liabilities in Category 3 and found that they were sufficient to cover 60.0425% of Category 3 liabilities.

ERISA § 4044(a)(3) defines Category 3 as follows:

(3) Third, in the case of benefits payable as an annuity —

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

(B) In the case of a participant's or beneficiary's benefit (other than a benefit described in subparagraph (A)) which would have been in pay status as of the beginning of such 3-year period if the participant had retired prior to the

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29 United States Code ("U.S.C.") § 1344. 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). Plan assets are valued "at their fair market value, based on the method of valuation that most accurately reflects such fair market value." 29 C.F.R. § 4044.41(b).

beginning of the 3-year period and if his benefits had commenced (in the normal form of annuity under the plan) as of the beginning of such period, to each such benefit based on the provision of the plan (as in effect during the 5-year period ending on such date) under which such benefit would be the least.

For purposes of subparagraph (A), the lowest benefit in pay status during a 3-year period shall be considered the benefit in pay status for such period.

Since you could have retired three years before the Bethlehem Plan terminated, you are entitled to a Category 3 benefit. Your Category 3 benefit (before adjustment for the funding percentage) is based on the benefit that you would have received if you retired three years before the Bethlehem Plan terminated ("DOPT-3"), but disregarding any benefit increase made within the five years before termination.

PBGC, in determining the amount of your Category 3 benefit, first had to determine which participants elected to forgo receipt of their RAB as a lump sum. As you did not elect to forgo receipt of your RAB as a lump sum, PBGC effectively calculated your "gross Category 3 benefit" as the annuity benefit you would have received at DOPT-3 under the 5-year-old plan provisions by deducting the annuity equivalent of your RAB amount (\$226.70) as of DOPT-3. PBGC then calculated your "net Category 3 benefit" by applying an additional offset for the amount by which the annuity equivalent of your RAB amount (\$252.68) on the Plan's termination date ("DOPT") exceeded the annuity equivalent of your RAB balance as of DOPT-3.

This additional offset was necessary because (1) consistent with ERISA § 4044, PBGC allocates assets only to those benefit liabilities that remain as of the Plan's termination date; and (2) the difference between the annuity equivalents of the two RAB amounts was no longer payable by the Plan once your RAB amount was transferred out of the Plan's trust.⁸ Although the annuity value of the lump sum you actually received in 2003 from the separate trust was slightly larger than \$252.68, PBGC adjusted your gross Category 3 benefit only by the difference between \$226.70 and \$252.68 because DOPT is "deemed" to be the date of termination of employment of participants who were actively employed on DOPT for purposes of calculating benefit liabilities in Categories 1 through 5.

Accordingly, PBGC (1) treated the RAB lump sum that you received shortly after the Bethlehem Plan terminated as a partial distribution of your Category 3 benefit and (2) is paying you a Category 3 benefit that equals the net Category 3 amount multiplied by the funding percentage (60.0425%). PBGC used the same procedure in calculating the Category 3 benefits for other Bethlehem Plan participants who retired after DOPT.⁹

⁸ We note that PBGC does not pay Category 3 benefits retroactively, nor does it actuarially increase Category 3 amounts for participants who start their benefits after DOPT-3.

⁹ PBGC's valuation of the Bethlehem Plan's assets as of its termination date did not include the funds that were transferred to a separate trust to fund RAB distributions. Accordingly, when PBGC valued the assets and liabilities of the Bethlehem Plan, it: (1) did not include as benefit liabilities the RAB amounts that were payable to participants after the termination date; and (2) excluded from the Bethlehem Plan's assets the funds that were required to pay RAB benefits through a separate trust.

PBGC's adjustment of your gross Category 3 benefit by an additional offset is consistent with the procedures PBGC uses when a participant with benefits in Category 3 received a partial distribution of his benefit through either a lump-sum payment or through the purchase of an insurance annuity. In such cases, PBGC offsets the participant's Category 3 benefit by the monthly annuity equivalent of the partial distribution that actually was made after DOPT-3 because the distribution amount can no longer be considered among the assets or benefit liabilities of the plan as of DOPT, which is the allocation date set out in section 4044 of ERISA and PBGC's regulations.¹⁰

We note that during the period between the 1996 plan merger and the Bethlehem Plan's termination date, the plan assets that were available to fund RAB distributions also were available to fund the non-RAB benefits that were payable to all participants under the Bethlehem Plan. Thus, if a participant elected a distribution of his RAB (Option 1), then the money associated with the participant's RAB account was paid directly to the participant, resulting in a corresponding decrease in the Bethlehem Plan's assets. On the other hand, a participant's election (before the Bethlehem Plan terminated) to forego a distribution of his RAB (Option 2) meant that: (1) the participant would receive a larger Bethlehem Plan benefit instead of a RAB distribution; and (2) there would be no decrease in Bethlehem Plan assets resulting from a RAB distribution.

Based upon the above pension plan history, plan provisions, and the impact of RAB distributions upon Bethlehem Plan funds, we concluded that PBGC properly treated your RAB benefit in the same manner as if you had received a direct lump-sum payment directly from the Bethlehem Plan on its termination date. In so concluding, we observe that the transfer of the full value of your RAB to a separate trust on DOPT placed you in a better situation than if your RAB amounts had remained in the Bethlehem Plan as part of your Category 3 benefit because PBGC is paying Category 3 benefits at only 60.0425%.

We further concluded that PBGC's adjustment of your gross Category 3 benefit by the additional offset puts you in a comparable position to other participants with Category 3 benefits who retired on or after DOPT-3 and who elected either Option 1 or Option 2. The **Appendix** to this decision explains in more detail how PBGC calculated the net Category 3 benefits to which to allocate the Plan's Final Assets. The Appendix discusses four hypothetical participants, of which you are most similar to [redacted]. As the Appeals Board found that PBGC followed its usual procedures in determining your net Category 3 benefit, the Board must deny your request that PBGC allocate assets to your gross Category 3 benefit.

7. **"Conversion" to Effective P% for Calculating Your Category 3 Benefit**

You claimed that PBGC erroneously "converted" the Category 3 portion of your Plan benefit into an equivalent Joint and p% Survivor Annuity ("J&p%SA"). You said that the Plan provisions under which your Plan benefit is calculated do not provide for conversion of the Plan calculated amount into an equivalent J&p%SA for purposes of taking into account the value of the Surviving Spouse's Benefit ("SSB"). For that reason, you asked PBGC to "remove the conversion to effective P% calculation."

¹⁰ See generally 29 U.S.C. § 1344; 29 C.F.R. §§ 4044.41-75.

We note that the fact that the Plan did not reduce a participant's benefit to pay for the Surviving Spouse's Benefit does not negate the fact that the Surviving Spouse's Benefit has value and that value must be included in the overall value of Category 3 benefits. As discussed above, ERISA § 4044 requires PBGC to allocate a plan's assets to various priority categories of benefit liabilities set out in the law. To calculate Category 3 benefits, PBGC determines the value of a plan's assets and the value of the plan's Category 3 benefit liabilities as of the plan's termination date. PBGC then determines whether the assets allocated to a participant's Category 3 benefit liabilities are sufficient to provide a larger benefit than the participant's guaranteed benefit. [A "guaranteed" benefit is a benefit limited by the accrued-at-normal, MGB, and phase-in limits.] To complete this valuation and allocation procedure, PBGC must calculate the present value ("PV") of the plan's Category 3 benefit liabilities as of the plan's termination date.¹¹

PBGC has developed a methodology, the Weighted Average Method ("W-A Method"), for performing actuarial calculations with respect to plans that provide certain special types of survivor benefits, such as the Surviving Spouse's Benefit that the Bethlehem Plan provides. The W-A Method is primarily used for the purpose of applying ERISA's MGB and Five-Year Phase-In limits to a plan's guaranteeable (or "basic-type") benefits. [The W-A Method is also used, however, to calculate the PV of the basic-type benefits payable under a plan as of the plan's termination date.

Thus, in accordance with its Actuarial Technical Manual ("ATM"), PBGC used its W-A Method to determine the PV of Category 3 benefits, which required the calculation of a separate $p\%$ for each participant's Category 3 benefits. PBGC allocated the Plan's assets to the value of all participants' Category 3 benefits and determined that the Plan's assets as of the Plan's termination date covered 60.0425% of all of the Plan's Category 3 liabilities.

When PBGC's Ariel program calculated your benefit at what it erroneously believed to be your Actual Retirement Date ("ARD"), it had to recalculate a $p\%$ for your Category 3 benefit due to the postponement of your retirement because that postponement changed the "shape"¹² of your Category 3 benefit. Thus, the program again had to calculate a new $p_{PC3}\%$ (28.5%) for Category 3 and a new $p_{FULL}\%$ (28.37%) for your full guaranteeable Plan benefit to determine whether your guaranteed benefit was greater than or less than the funded portion of your Category 3 benefit. Before calculating and comparing the PV of your funded Category 3 benefit starting on your ARD and the PV of your guaranteed benefit starting on your ARD, the program adjusted the Category 3 benefit's levelized amount by a factor of 28.37%/28.5%. That calculation was necessary so that when comparing the PVs, the Ariel program would be comparing the PVs of benefits payable in the same benefit shape.

Once it was determined that the funded portion of the PV of your Category 3 benefit was more than the PV of your guaranteed benefit, the Ariel program then

¹¹ See 29 C.F.R. §§ 4044.41-.75.

¹² PBGC refers to the benefit payment streams as shapes. PBGC will generally pay a participant's benefit in its full plan benefit shape. Thus, PBGC must convert the participant's Category 3 benefit to the full plan benefit's shape. In order to do this conversion, PBGC utilizes the effective $p\%$ s it calculates.

converted the funded portion of the PV of your Category 3 benefit back into the shape of your Category 3 benefit¹³ using that same $p_{PC3}\%$.

Based on the above, the Appeals Board found that PBGC properly followed its ATM's prescribed method for taking into account the SSB that was a part of your Category 3 benefit and in calculating the PV of your Category 3 benefit. Thus, we have found no reason for changing PBGC's calculation of your Category 3 benefit.

8. PBGC's Calculation of the Benefit Payable to Your Surviving Spouse

In your appeal, you noted that PBGC previously estimated the monthly amount of your [] potential Surviving Spouse's Benefit ("SSB") to be \$775.66 based on the assumption that you passed away on November 23, 2010. You asked the Appeals Board to verify the survivor benefit payable to your spouse if you die first.

As you know, the amount of the Bethlehem Plan's SSB payable to your [] depends on the date of your death. Your spouse's PBGC benefit depends also on your final PBGC benefit amounts. As PBGC is going to send you a corrected determination letter based on your Actual Retirement Date ("ARD") of [] 2003, we do not yet know your final PBGC benefit amounts. The corrected determination will include a detailed calculation of the Surviving Spouse's Benefit payable to your spouse if you were to die on the date of the corrected determination.

Decision

Having applied the terms of the Plan, the provisions of ERISA and PBGC's rules, the Appeals Board changed PBGC's determination by deciding that your Actual Retirement Date is [] 2003; PBGC will send you a corrected determination letter of your benefits based on your corrected Actual Retirement Date, with a new 45-day right of appeal except for matters already decided in this decision letter. As part of its corrected determination of your monthly benefits, PBGC will provide you with a detailed calculation of the Surviving Spouse's Benefit payable to your spouse if you were to die on the date of the corrected determination. With respect to the rest of the issues you presented, your appeal did not provide a sufficient basis for changing PBGC's determination. We must, therefore, deny your appeal with respect to the remaining issues.

This decision is PBGC's final agency action regarding the matters addressed by this decision. If you wish, you may seek review of this decision in an appropriate federal district court.

We regret the delay in responding to your appeal and appreciate your patience while PBGC prepares your corrected determination letter. If you have other questions regarding your PBGC benefit, you may call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the

¹³

Enclosure 3 contains selected pages of the May 2008 release of CR 0331 of PBGC's Valuation Process Definition ("VPD") document. Enclosure 3 explains why PBGC decided to pay your PBGC benefit in the shape of your Category 3 benefit and what PBGC means by "shape."

Bethlehem Plan (Case 196603).

Sincerely,

A handwritten signature in cursive script that reads "Michel Louis".

Michel Louis
Appeals Board Member



To show how PBGC determined net Category 3 benefits in the Bethlehem Plan, we considered four “hypothetical” participants of the Plan. Suppose that all four participants were essentially exactly the same with respect to all of their employment history with Bethlehem except for (1) the date they terminated employment; and (2) the election they made with respect to forgoing receipt of their account balances as a lump sum.

We note that the four hypothetical participants have essentially the same RAB information as you had and that you are roughly in the same situation as Mr. D. Table 1 shows their account balances and annuity equivalents at December 18, 1999 and at their dates of termination of employment. December 18, 2002, the Plan’s termination date, is deemed to be Mr. D’s date of termination of employment for purposes of determining the account balance used in determining his final accrued benefit.¹⁴

Participant's Name	RAB at DOPT-3	DOTE	RAB when employment ended	Annuity Equivalent at DOPT-3	Annuity Equivalent at DOTE
Mr. A	\$31,467.60	12/18/1999	\$31,467.60	\$226.70	\$226.70
Mr. B	\$31,467.60	12/18/2000	\$33,512.99	\$226.70	\$251.14
Ms. C	\$31,467.60	12/18/2000	\$33,512.99	\$226.70	\$251.14
Mr. D	\$31,467.60	12/18/2002	\$37,779.17	\$226.70	\$252.68

Among the four hypothetical participants, only Ms. C elected not to receive her RAB as a lump-sum distribution. Mr. A, who terminated employment at DOPT-3, Mr. B, who terminated employment the same day as Ms. C, and Mr. D, who was actively employed on the termination date, all received a lump-sum distributions from either the Plan or a separate trust. Thus, there is no RAB offset in calculating Ms. C’s gross Category 3 amount, while Mr. A, Mr. B, and Mr. D each had a RAB offset in the calculating of their gross Category 3 amount because they elected not to forgo their lump-sum distributions.

Table 2 on the next page shows how PBGC determined the net Category 3 benefit for the four hypothetical participants. It shows PBGC’s adjustment (for asset allocation purposes) to Mr. B’s Category 3 benefit to take into account the fact that he received his lump-sum distribution after the beginning of the 3-year period ending on the Plan’s termination date. As shown in column G of Table 2, PBGC adjusted his gross Category 3 amount to account for the excess of annuity value of the lump sum that he actually received over the annuity value of his account balance as of the beginning of the 3-year period ending on the Plan’s termination date.

¹⁴

For you, and other participants who received their RAB as a lump-sum distribution after DOPT, PBGC used the value of the RAB as of DOPT – in your case \$252.68 – in determining the appropriate additional offset to your Category 3 benefit.

TABLE 2

(A)	(B)	(C)	(D)	(E)	(F)	(G)
Participant	Rejected Lump Sum Payment	Accrued Benefit at DOPT-3 before RAB offset	RAB offset at DOPT-3	Plan Benefit payable at DOPT-3 Based on Plan's Provisions (C)-(D)	Annuity Equivalent of Post-DOPT-3 Lump Sum Distribution Paid Out of Plan's Assets	Net Category 3 Amount for the § 4044 Allocation (E) minus Excess of (F) over (D)
Mr. A	No	\$2,500	\$226.70	\$2,273.30	\$0	\$2,273.30
Mr. B	No	\$2,500	\$226.70	\$2,273.30	\$251.14	\$2,248.86
Ms. C	Yes	\$2,500	\$0	\$2,500.00	\$0	\$2,500.00
Mr. D	No	\$2,500	\$226.70	\$2,273.30	\$252.68	\$2,247.32

If PBGC had offset Mr. B's benefit only by \$226.70, his net Category 3 amount would be \$2,273.30 (instead of \$2,248.86). Furthermore, if a net Category 3 amount of \$2,273.30 for Mr. B is added to the annuity value of his RAB lump sum (\$251.14), the monthly value of his total benefits (from both PBGC and the RAB) is \$2,524.44. This can be viewed as being unfair to Mr. A because, in his case, the sum of his net Category 3 amount (\$2,273.30, which is the same as for Mr. B) and the annuity value of his RAB lump sum (\$226.70, which is less than Mr. B's) is \$2,500.00. Thus, if the RAB offset at DOPT-3 is used, Mr. A would be receiving less valuable combined benefits because his net Category 3 amount would include an offset for the full annuity value of the lump sum he received, while Mr. B's net Category 3 amount would be offset by less than the annuity equivalent of the lump sum he actually received.

Similarly, if PBGC had offset Mr. B's benefit by only \$226.70, it can be viewed as unfair to Ms. C because she (like Mr. A) has total benefits from PBGC and the RAB of \$2,500.00 – in her case, \$2,500.00 from PBGC and \$0 from the RAB. This difference in treatment between Ms. C and Mr. B would occur because Ms. C essentially had forfeited her full RAB (as of her date of termination of employment) in order to avoid a RAB offset, while a \$226.70 offset for Mr. B would represent only a portion of the value of his RAB when he terminated employment.

Finally, Mr. D is similar to Mr. B except that (1) the annuity value of his RAB is larger than Mr. B's - \$252.68, rather than \$251.14 – because of Mr. D's later termination of employment date, and (2) the lump-sum distribution of Mr. D's RAB was from a separate trust. Like Mr. B, Mr. D would receive more valuable combined benefits from PBGC and the RAB than Mr. A and Ms. C if only his RAB offset at DOPT-3 (\$226.70) is used to determine his net Category 3 benefit.

Table 3 on the next page shows the benefits each of the hypothetical participants would receive if we use PBGC's methodology and further assume that the Bethlehem Plan's assets were sufficient to fully fund Category 3 liabilities.

(A)	(B)	(C)	(D)
Participant	Net Category 3 Benefit for § 4044 Allocation [From Table 4]	Annuity Equivalent of Lump Sum Distribution Paid	Total Benefits Paid if Category 3 Liabilities Were Fully Funded (B) + (C)
Mr. A	\$2,273.30	\$226.70	\$2,500.00
Mr. B	\$2,248.86	\$251.14	\$2,500.00
Ms. C	\$2,500.00	\$0	\$2,500.00
Mr. D	\$2,247.32	\$252.68	\$2,500.00

Effectively, PBGC's methodology of allocating assets in Category 3, including the offsets used for each participant, ensures that the total benefits received by each Participant who was in pay status or eligible to be in pay status three years before the Plan terminated would be the same if Category 3 benefit were fully funded. The reasonableness of this approach, as it relates to participants who have different employment termination dates and who made different choices concerning whether to receive a RAB distribution, reinforces the Appeals Board's conclusion that PBGC's determination of your net Category 3 benefit amount is correct.