



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

February 24, 2009



Re: ; Case 202002; Better Business Forms, Inc. Pension  
Plan (the "BBF Plan" or the "Plan")

Dear

This Appeals Board decision responds to your appeal of PBGC's February 25, 2008 determination of your PBGC benefit under the BBF Plan. For the reasons we state below, we changed PBGC's determination by finding that PBGC should offset your monthly benefit by the annuity equivalent of the \$3,867.62 lump sum that you received on December 21, 2004 from the Individual Retirement Account ("IRA") portion of the Escrow Fund and should not offset your benefit for the amounts you received from your personal account in the Escrow Fund on March 2, 2004 and December 21, 2004.

As a result of this decision, PBGC will send you a corrected determination letter regarding your monthly benefit amount and annuity starting date. The corrected determination letter will include a new 45-day right of appeal.

*PBGC's Determination and Your Appeal*

PBGC determined your benefit by calculating your monthly benefit under the Plan as of an annuity commencement date of August 1, 2006 and offsetting this benefit by two distributions you received from the Escrow Fund that was created by you, Better Business Forms, Inc. ("BBF") and Allfirst Trust Company (the "Escrow Agent"). The **Enclosure** is a copy of the Escrow Agreement. The two distributions were in the amounts of (1) \$32,210.85 on March 2, 2004; and (2) \$12,692.58 on December 21, 2004.

In your March 28, 2008 appeal letter and your earlier March 21, 2008 letter, you said that you believe the information PBGC used to calculate your benefit was incorrect. You state that \$3,924.95 was "the only money that was distributed to me from the pension account" and that "other monies that I received were all withdrawn from the escrow account of my personal funds, as well as the interest that was earned." You also provided documents from Coastal Pension Services, LLC ("Coastal") and bank statements to support your appeal.

Legal and Factual 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.

Records available to the Appeals Board show that the BBF Plan terminated on April 30, 2004 and that PBGC became the Plan's trustee on November 23, 2005.

PBGC's records show that your late husband, [redacted] was a Participant of the BBF Plan and earned a vested accrued benefit under the Plan. PBGC's records also show that [redacted] was born on [redacted] 1934 and died on [redacted] 1998 before starting to receive a benefit under the BBF Plan.

The records show that you chose to defer receipt of your pre-retirement survivor benefit ("PSB") until early 2000. At that time, you elected to receive your PSB in the form of a lump sum.

The Plan actuary's calculated a lump sum of \$243,674.76, based on an accrued monthly benefit of \$1,841 and a lump-sum factor of 132.36 as of February 2000. As your husband was a highly-compensated employee and the Plan's assets would have been less than 110% of the value of the Plan's current liabilities after the distribution of the lump sum, part of your lump sum was considered "restricted" under Treasury Regulation § 1.401(a)(4)-5.

Thus, in order to receive the lump-sum distribution, you entered into the Escrow Agreement in accordance with section 5.20 of the BBF Plan and Revenue Ruling 92-76. In accordance with the Escrow Agreement's terms, (1) the Plan paid you the \$243,674.76 lump sum; (2) you rolled the entire amount into an IRA within the Escrow Fund; and (3) you deposited \$36,824.34 of your own funds to bring the initial balance of the fund to \$280,499.10, an amount equal to 125% of the "restricted" portion of your lump sum. At all times, the Escrow Agent maintained separate accounting of the funds in the IRA and your separate funds.

In 2003, the Plan's actuary calculated the balance of the Escrow Fund to be \$309,694.76, of which the restricted portion was \$221,987.13. Thus, the amount available for distribution at that time was \$32,210.85 [\$309,694.76 minus (125% × \$221,987.13)]. The Escrow Fund's records show that you withdrew this \$32,210.85 amount from the Escrow Fund on March 2, 2004, at which time your personal funds in the Escrow Fund covered the entire amount, and the Escrow Agent paid it to you from your personal account within the Escrow Fund.

In 2004, the Plan's actuary calculated the balance of the Escrow Fund to be \$280,118.88, of which the restricted amount was \$213,941.04. Thus, the amount available for distribution at that time was \$12,692.58 [\$280,118.88 minus (125% × \$213,941.04)]. The Escrow Fund's records show that you withdrew this \$12,692.58 amount from the Escrow Fund on December 21, 2004. The documents you submitted show that, at the time of the withdrawal, the balance of your personal account within the Escrow Fund was \$8,824.96. Therefore, the Escrow Agent paid you the balance of your personal account plus **\$3,867.62** from the IRA. An email from M&T Bank (the Escrow Agent's successor) to PBGC confirms that the second distribution you received on December 21, 2004, was composed of \$8,824.96 from your personal account and \$3,867.62 from the IRA asset account within the Escrow Fund. [This \$3,867.62 amount differs slightly from the \$3,924.95 amount you claimed in your letter to PBGC and is more favorable to you.]

#### Discussion

Based on the facts above, we have concluded that PBGC should offset your PBGC benefit by the annuity equivalent of the \$3,867.62 that you received from the Escrow Fund's IRA on December 21, 2004 and not by the annuity equivalent of the lump sums you received from your personal account on March 2, 2004 and December 21 2004.

Please note, however, that during our review of the calculation of your benefit, we learned that PBGC's actuaries lacked some of the information you supplied with your appeal letter when they calculated your monthly benefit and did not check the accuracy of your estimated annuity commencement date. Therefore, we have asked PBGC to review its calculation of your husband's accrued benefit<sup>1</sup> and your annuity commencement date<sup>2</sup> when it recalculates the offset to your PBGC benefit, and to make any necessary corrections.

#### Decision

Having applied the law to the facts of your case, we changed PBGC's determination by finding that PBGC should offset your monthly benefit by the annuity equivalent of the \$3,867.62 lump sum that you received on December 21, 2004 from the IRA portion of the Escrow Fund and should not offset your benefit for the amounts you received from your personal account in the Escrow Fund on March 2, 2004 and December 21, 2004. This decision is PBGC's final action regarding the amount of the

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<sup>1</sup> PBGC calculated your husband's accrued benefit at age 65 to be \$1,409.50. The documents you submitted to PBGC, on the other hand, show that Coastal calculated your husband's accrued benefit at age 65 to be \$1,841.00. We have asked PBGC to resolve this discrepancy.

<sup>2</sup> Application of PBGC's "Required Beginning Date" policy may result in an earlier annuity commencement date and appropriate backpayments.

lump sum you received on December 21, 2004 that will result in an offset to your PBGC benefit.

As a result of this decision, PBGC will send you a corrected determination letter regarding your monthly benefit amount and annuity starting date. The corrected determination letter will include a new 45-day right of appeal.

We regret the delay in responding to your appeal and appreciate your patience while PBGC prepares your corrected determination letter. If you need other information about your PBGC benefit, you may call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to the authorized representative assigned to the BBF Plan (Case 202002).

Sincerely,

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

Michel Louis  
Appeals Board Member

Enclosure