



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

January 11, 2012

[Redacted]

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

Dear [Redacted]

This Appeals Board decision responds to your appeal of PBGC's December 10, 2009 determination of your benefit under the FA Plan. As we explain below, the Appeals Board changed PBGC's determination by increasing your PBGC benefit. The following table summarizes the Board's changes:

	Full Plan Benefit	PBGC Benefit under the 12/10/2009 Determination Letter	PBGC Benefit Calculated by the Appeals Board
Benefit Before Attainment of Age 62	\$1,665.47	\$1,371.02	\$1,371.02
Benefit After Attainment of Age 62	\$595.47	\$301.02	\$595.47
Total Overpayment through 2/1/2012	N/A	\$25,028.25	\$6,772.35
Present Value of Termination Benefit as of the Plan's Termination Date	N/A	\$73,000	\$113,422
Recoupment Percentage (Based on 3/1/2012 Target Adjustment Date)	N/A	10.00%	5.97%
Monthly Recoupment Reduction Amount	N/A	\$30.10	\$35.55
Reduced Benefit Amount	N/A	\$270.92	<b>\$559.92</b>
First Date of Reduced Benefit	N/A	03/01/2012	03/01/2012
Last Date of Reduced Benefit	N/A	05/01/2081	12/01/2027
Benefit Amount After Last Month of Reduced Benefit	N/A	\$301.02	\$595.47

PBGC's Determination and Your Appeal

PBGC's December 10, 2009 letter and accompanying Benefit Statement indicated that you were entitled to a PBGC benefit of \$1,371.02 per month from February 1, 2005 until age 62 and \$301.02 per month after age 62. The letter said that PBGC first determined the benefit to which you were entitled under the FA Plan, and then applied the limits under the law. The Benefit Statement explained that the limitation under the law affecting your benefit is the Accrued-at-Normal limitation.

PBGC's determination letter also noted that your benefit is payable under the FA Plan's Level Income Option ("LIO"). It explained that, under the LIO, at age 62, your monthly benefit was reduced by an estimate of your Social Security benefit payable at that age.

PBGC also determined that, as you received estimated monthly benefits larger than your PBGC benefit amount, PBGC had paid you \$17,961.45 too much as of the Target Adjustment Date (March 1, 2010). The letter explained that PBGC would reduce your future monthly payments by a small percentage until the total overpayment is repaid, without interest. We note that PBGC has continued to pay you \$595.47 per month while your appeal has been under review and your total overpayment has changed as a result of the changes the Appeals Board made to your final benefits.

In your January  2010 letter, you asked the Appeal Boards for a filing extension. Your extension request said:

A letter . . . dated December 10, 2009 . . . did not arrive before I had left for the Christmas holidays. It stated my new monthly benefit would be almost 50% less than what I am now receiving and what my retirement with US Airways had stipulated. Due to this drastic decrease in benefits & lack of sufficient time to file an appeal, I am requesting an extension for more time to file an appeal.

The record shows that PBGC's Benefits Administration & Payment Department ("BAPD" formerly known as the Insurance Operations Department) sent you a detailed Benefit Statement Worksheet on February  2010. After you requested and were granted two additional filing extensions, you filed an appeal on June  2010. Your June  appeal, filed using PBGC form 724, said:

There are three reasons why the PBGC determination is incorrect. First is that a 50% cut clearly contradicts PBGC's policy as stated in "Your Guaranteed Pension 2005" (PBGC publication 1022, January 2005) on page 1 – "Most people receive the full benefit they had earned before the Plan ended." Also, prior to and during the US Airways bankruptcy, employees were repeatedly assured by the Company, by our unions, and by PBGC that only workers who made over \$40,000 would be affected or have their pension limited. A small reduction (as has happened to other US Airways pensioners) would be understandable, but 50% is just not right.

Circular accounting is the second reason that this determination is incorrect. My original pension was \$1665.47 and \$595.47. PBGC says both these amounts (before and after the Social Security offset) should be reduced to \$1371.02 and

\$301.02. But in the eight pages and sixty line items of convoluted computations and calculations (PBGC Benefit Statement Worksheet – 3/26/2010) it is never explained how this figures are derived. . . . Also both benefits are reduced by the same amount (\$294.45). This suggests that no consideration was given to the fact that the second amount is already being penalized as the Social Security offset.

The third error is an incorrect entry on line #36. The correct amount should be \$241.79 instead of \$0.00 as my first and second change dates are the same. This also changes line #37 and subsequent amounts. This error raises the question of how many other mistakes might be involved in their determination worksheet and this entire process.

Discussion

1. Background

PBGC 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 defined-benefit 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 FA Plan terminated on January 10, 2005 and PBGC became the FA Plan's trustee on February 1, 2005.

When PBGC becomes trustee of a terminated plan, PBGC collects participant data and plan documents, and audits that data. The information comes from a variety of sources, such as the plan's former administrator, the plan's former actuary, and the plan's former paying agent. PBGC necessarily relies on the information it receives from these sources unless (1) PBGC's audit of that information shows that it is wrong, or (2) a participant supplies PBGC with documents showing that the information is wrong.

The records PBGC received from US Airways, Inc. ("US Airways") and your November 23, 2009 Benefit Statement show that (1) you were born on [redacted] (2) you were hired on [redacted] 1980; (3) your employment status changed to LfV on December [redacted] 2002 because you elected a voluntary furlough under the VF2 program; (4) you terminated your employment with US Airways on [redacted] 2004; (5) you elected to start receiving your benefit effective [redacted] 2004; and (6) you were not married when you started receiving your benefit. You did not disagree with any of this information in your appeal letter.

Other records available to the Appeals Board indicate that your date of hire corresponds with your employment commencement date as a Flight Attendant with [redacted] and that you were covered as a Flight Attendant under the [redacted] Plan before the [redacted] Plan merged into the FA Plan on [redacted] 1989.

## 2. Your Estimated PBGC Benefit

When PBGC becomes trustee of a terminated plan, PBGC generally continues to pay retired participants the same benefit amounts they were receiving from the plan's former administrator on an estimated basis while PBGC begins its audit of the plan. Thus, while PBGC accepted the benefits calculated by US Airways for participants like you as the correct amount of the full Plan benefit, that full Plan benefit became the estimated PBGC benefit when the Plan terminated because ERISA's limitations on PBGC benefits go into effect when a plan terminates.

Due to the length of time it generally takes PBGC to complete the audit process, however, PBGC requires its actuaries to create estimation programs or procedures to determine whether any benefits in pay status are likely to be affected by the legal limits on PBGC benefits. If a participant's benefits are likely to be affected by legal limits, PBGC's actuaries calculate a new estimated PBGC benefit, and PBGC reduces the old estimated benefit the participant was receiving to avoid the hardship that might otherwise be caused by the need to repay an even larger overpayment amount. In your case, PBGC's initial review of your benefit in pay status did not result in a finding that an ERISA limitation would likely cause a significant reduction in your final PBGC benefit.

The Appeals Board has reason to believe that, in most cases, the estimation programs and procedures developed by PBGC's actuaries result in estimated benefit amounts that are very close to final PBGC benefit amounts. Nevertheless, errors do sometimes occur.

It is because errors do sometimes occur that PBGC generally does not issue formal determination letters until after it has completed its audits of a plan's records. Thus, when PBGC sent you and most other Flight Attendants a letter on February 14, 2005, telling you that PBGC had become trustee of the FA Plan, it forewarned retired Flight Attendants that the benefits they would receive during PBGC's review of the FA Plan's records were only estimated benefits, as follows:

First, we want to assure you that you will continue to receive benefits without interruption while we review your plan's records. These payments will be an estimate of the benefits that we can pay you under the law. Once we finish our review, we will tell you in writing what your pension amount will be and what rights you have to appeal our decision.

The Appeals Board certainly regrets any hardship that may result from the fact that PBGC's initial review did not identify a need to reduce your estimated benefit. As we explain later in this letter, however, Congress has limited the amount of a plan's benefits that PBGC may pay.

## 3. Your Full Plan Benefit

**Enclosure 1** shows that US Airways calculated your full FA Plan benefit payable under the Plan's Level Income Option ("LIO") to be \$1,665.47 per month from

2004 through [ ] 2006, and \$595.47 thereafter. PBGC's actuaries reviewed US Airways' calculation of your full Plan benefit amounts and accepted those amounts. The Appeals Board also accepted US Airways' calculation of your full Plan benefit.

#### 4. Your Final PBGC Guaranteed Benefit

Your PBGC-guaranteed benefit payable under the Plan's LIO form is less than your *full* FA Plan benefit because your benefit is affected by one of the legal limitations on PBGC benefits. The legal limit that affects your benefit is called the Accrued-at-Normal-Retirement limit (the "AAN limit").

The AAN limit is described in PBGC's regulations. PBGC's regulation on Benefits Payable in Single-Employer Plans (29 Code of Federal Regulations § 4022.21(a)) states that PBGC may not guarantee any portion of an early-retirement supplement that, when added to your regular monthly benefit, exceeds the benefit that you would otherwise receive under the Plan at your normal retirement age in the form of a Straight Life Annuity ("SLA").

We determined that, if you had waited until your Normal Retirement Age (age 65) to start receiving your benefit and had elected to receive your benefit in the form of a SLA, your benefit would have been \$838.84 because  $\$838.84 = \$691.03 + \$147.81$ , where \$691.03 is the US Airways part of your accrued benefit that would be payable at age 65 calculated under the formula that provides the higher benefit (see line 2 on the fourth page of Enclosure 1); and \$147.81 is your [ ] net accrued benefit that would be payable at age 65<sup>1</sup>. This \$838.84 amount is what PBGC generally calls your AAN limit amount.

As shown on the second page of Enclosure 1, if you had elected to receive your benefit in the form of a SLA starting on April 1, 2004, your Plan-defined benefit payable before you attained age 62 would have been \$1,133.29 and your Plan-defined benefit payable after you attained age 62 would have been \$736.94. The difference between these amounts (\$396.35) is your early-retirement supplement.

In your case, because an early-retirement factor was applied in calculating your benefits under the Plan, a portion of your \$396.35 early-retirement supplement is guaranteed by PBGC. The portion of your early-retirement supplement that is not guaranteed is equal to \$1,133.29 minus \$838.84 = \$294.45. Thus, the portion of your \$396.35 early-retirement supplement that is guaranteed by PBGC is \$101.90, where  $\$101.90 = \$396.35$  minus \$294.45.

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<sup>1</sup> We note that \$544.16 is your gross accrued benefit under the [ ] Plan, where  $\$544.16 = 2\% \times \$2,889.32 \times 9.4167$ , and \$396.35 is equal to one-half of your estimated Social Security benefit (\$792.70) as defined in the [ ] Plan (see line 3 on the fourth page of Enclosure 1). Thus, if you had waited until age 65 to retire, the [ ] part of your accrued benefit payable as a SLA would have been \$544.16 minus \$396.35, which equals \$147.81.

Although you did not elect to receive your benefit in the form of a SLA, the portion of your early-retirement supplement that is not guaranteed by PBGC is the same because the Plan's LIO form of benefit is actuarially equivalent<sup>2</sup> to the Plan's SLA form of benefit. Therefore, your final PBGC guaranteed benefit payable under the Plan's LIO form of benefit is \$1,371.02 before age 62 and \$595.47 after age 62, where \$1,371.02 = \$1,665.47 minus \$294.45. **Enclosure 2** is your Corrected Benefit Statement.

5. Recoupment of Your Total Overpayment

As we explained above, Congress has set limitations on the benefits that are payable from a plan's trust fund when a plan terminates. The legal limitations become effective on the plan's termination date. Once PBGC became trustee of the Plan on February 1, 2005, PBGC became responsible not only for making up any underpayments to FA Plan participants that occurred before and after PBGC became trustee, but also for collecting any overpayments made by the Plan before and after PBGC became trustee. Regardless of the cause of your overpayments (in this case, an inaccurate estimate of your guaranteed benefit), it is clear that you have received payments that are higher than your guaranteed benefit amounts.

Although PBGC could ask for repayment in a single payment with interest, PBGC's regulations<sup>3</sup> provide for the recoupment of previous overpayments through small reductions in PBGC's benefit payments. The regulations generally limit the reductions to no more than ten percent of the final PBGC monthly benefits. If you die before PBGC has collected your total overpayment amount, PBGC will not seek any repayment from your estate or your heirs. Finally, PBGC does not charge any interest on the overpayments. All of these limitations on PBGC's recoupment of overpayments are designed to mitigate the potential hardship on PBGC's retired participants resulting from the need to repay large overpayment amounts.

While we regret any hardship that the recoupment reduction may cause, Congress has not authorized PBGC to pay you benefits that are larger than the benefits payable to you under the terms of the Plan and the provisions of ERISA.

Decision

Having applied the terms of the FA Plan and the law to the facts in this case, the Appeals Board changed PBGC's determination by increasing your PBGC benefits. The table on the first page of this decision letter summarizes the Board's changes. This decision is PBGC's final action regarding the issues raised by your appeal. If you wish, you may seek review of this decision in an appropriate federal district court.

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<sup>2</sup> PBGC's regulation (29 Code of Federal Regulations § 4022.21(b)) provides an explicit exception to the Accrued-at-Normal-Retirement limit for "early-retirement supplements" that result from a participant's election of a LIO form of benefit if the LIO form is the actuarial equivalent of the plan's SLA form of benefit.

<sup>3</sup> 29 Code of Federal Regulations § 4022.81.

We regret the delay in responding to your appeal and appreciate your patience while we completed our review. 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 FA Plan (Case 203572).

Sincerely,

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

Michel Louis  
Appeals Board Member

