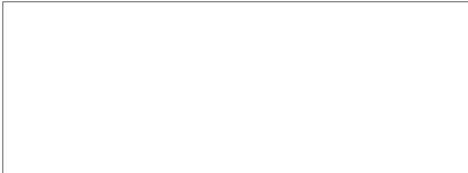




Pension Benefit Guaranty Corporation
 1200 K Street, N.W., Washington, D.C. 20005-4026
 www.pbgc.gov

November 26, 2010



Re: [Redacted] Appeal [Redacted] Case Number 207148
 Republic Storage Systems Company Pension Plan for
 Non-Bargaining Employees (the "Salaried Plan")

[Redacted] Appeal [Redacted] Case Number 207149
 Republic Storage Systems Company Pension Plan for
 Bargaining Employees (the "Hourly Plan")

Dear [Redacted]

We are responding to your appeal of PBGC's determinations of [Redacted] PBGC benefits under the Salaried Plan and the Hourly Plan. For the reasons stated below, we are partially granting your appeal. We are increasing [Redacted] PBGC benefit as follows:

PBGC-Payable Benefits Before Reducing for Overpayments

Period	Hourly Plan		Salaried Plan		Total Both Plans	
	PBGC	Appeals Board	PBGC	Appeals Board	PBGC	Appeals Board
6/01/2006 - 1/01/2016	\$1,095.21	\$1,095.21	\$193.11	\$372.30	\$1,288.32	\$1,467.51
2/01/2016 - 1/01/2019	\$1,095.21	\$1,095.21	\$193.11	\$193.11	\$1,288.32	\$1,288.32
2/01/2019 & thereafter	\$1,095.21	\$1,095.21	\$164.46	\$164.46	\$1,259.67	\$1,259.67

Benefits Plan Officials Determined

[Redacted] retired under a 30-Year Retirement effective July 1, 2005 with a permanent pension totaling \$1,259.67 **[\$1,452.17** ¹ accrued - \$192.50 LTV ²] per month. Administrators at

¹ \$3,950.36 earnings x 30 years (including LTV service) x 1.167% + 5%

² \$192.50 is the accrued benefit under the LTV Hourly Plan on 6/16/1986. The LTV Hourly Plan (the "**LTV Plan**") is successor to the Pension Plan of Republic Steel Corporation. See Enclosure 2 to this letter.

Republic Storage Systems Co. (the "Company") divided the \$1,259.67 total as follows:

- \$164.46³ under the Salaried Plan, plus
- \$1,095.21⁴ under the Hourly Plan.

Moreover, Plan actuaries found she was entitled to a \$455.81⁵ per month temporary amount under the Salaried Plan, payable until age 65. Thus, when the Plans terminated in May 2006, she was receiving a total of \$1,715.48⁶ per month.

[redacted] permanent Company-sponsored pensions, totaling \$1,259.67, and temporary amount, \$455.81, are payable as single life annuities with no survivor benefits. She is also entitled to a separate Surviving Spouse's Benefit under each plan.

PBGC's February 2, 2010 Determination Letters

PBGC determined almost the same plan-provided benefits, totaling \$1,715.11,⁷ instead of \$1,715.48, including a \$455.44⁸ pre-age 65 temporary amount. However, PBGC also determined that PBGC may pay only \$28.65 of the temporary amount. Thus, PBGC determined [redacted] pension amounts as follows:

³ \$1,259.67 net accrued at Republic Storage x 13.056% salaried service.

Plan actuaries and PBGC divided the same \$1,259.67 total slightly differently. See Enclosure 1 to this letter. For simplicity, in this letter we discuss only PBGC's version of the division.

⁴ \$1,259.67 total earned at Republic Storage x 86.944% hourly service.

⁵ \$1,715.48 initial amount - \$1,259.67 total permanent pensions

⁶ \$3,950.36 earnings x 30 years x 1.5333% + 5% - \$192.50 LTV
= \$1,095.21 Hourly Plan permanent pension
+ \$164.46 Salaried Plan permanent pension
+ \$455.81 Salaried Plan temporary amount payable to age 65.

A reduction for 50% of the Social Security benefit (50% x \$1,437.00) does not apply under this "1.5%" formula until she reaches age 65. Afterward, her benefit becomes larger (\$1,259.67) under another formula. See page 1.

⁷ \$3,950.36 earnings x 30 years x 1.533% + 5% - \$192.50 LTV

Plan actuaries mistakenly used a 1.5333% accrual rate instead of 1.533%. Compare footnote 6 with Enclosure 3 page 9 Plan section 3.1(b)(1).

⁸ \$1,715.11 initial amount - \$1,259.67 total permanent pensions

Benefits PBGC Determined - Before Reducing for Overpayments

Period	Hourly Plan		Salaried Plan		Total Both Plans	
	Full Plan Benefit	PBGC Payable	Full Plan Benefit	PBGC Payable	Full Plan Benefits	PBGC Payable
6/01/2006 - 1/01/2019	\$1,095.21	\$1,095.21	\$619.90	\$193.11	\$1,715.11	\$1,288.32
2/01/2019 (age 65 & thereafter)	\$1,095.21	\$1,095.21	\$164.46	\$164.46	\$1,259.67	\$1,259.67

PBGC is also guaranteeing a Surviving Spouse's Benefit under each Plan. Because [redacted] has continued to receive \$1,715.48 as her total estimated guaranteed benefits, PBGC determined:

- She was overpaid \$18,367.88⁹ through April 1, 2010.
- Her PBGC benefits must be temporarily reduced at most 10% to "recoup" her overpayments.

Your March 8, 2010 Appeal of PBGC's Determinations

You argued PBGC should not reduce [redacted] \$1,715.48 payments. You gave the following reasons:

- She earned the \$1,715.48 amount she was receiving.
- She has relied on PBGC representations that she would receive the \$1,715.48 amount for the remainder of her life.
- Reducing her payments will cause financial hardship, likely leading to bankruptcy.

Legal Limits Apply Due to Plan Underfunding

Both the Salaried Plan and the Hourly Plan terminated May 11, 2006, without assets sufficient to provide all benefits. The Salaried Plan was only 55%-funded¹⁰ and was underfunded by more than \$7.8 million.¹¹ Consequently, under ERISA,¹² PBGC became the statutory trustee of each plan. Further, under ERISA:

⁹ $(\$1,715.48 - \$1,288.32) \times$ [redacted] months [redacted] 2006 through [redacted] 2010

Her overpayments will be recalculated consistent with the new PBGC benefits decided here. PBGC is "recouping" only overpayments following the September 22, 2006 date of the Notice of Determination on which the Plans' terminations were based. See 29 CFR 4022.81(c)(1). Recoupment is explained starting on page 7 below.

¹⁰ \$9,421,724 Salaried Plan assets ÷ \$17,253,958 benefit liabilities

¹¹ \$17,253,958 benefit liabilities - \$9,421,724 Salaried Plan assets

¹² The Employee Retirement Income Security Act of 1974, as amended.

- PBGC guarantees benefits as provided in a plan or otherwise required by ERISA, subject to legal limits given in law and regulation.¹³
- PBGC also allocates toward benefits a terminated plan's assets and expected legal recoveries.¹⁴

Discussion

No Evidence that \$1,715.48 Was Represented as Permanent

Your appeal asserts PBGC has represented to [redacted] that she would continue to receive \$1,715.48 every month during her lifetime. You have provided no evidence, however, to support that assertion. We found to the contrary:

- When she retired in 2005, plan administrators determined that at age 65, her total benefits would be reduced to \$1,259.67, the same total that PBGC will pay.¹⁵
- After the plans terminated in 2006, PBGC continued her \$1,715.48 total payments as her estimated PBGC benefits, while her final benefits were being determined. Neither have you provided nor have we seen any evidence that PBGC ever stated the \$1,715.48 estimated total would become permanent.

Therefore, we cannot agree with your assertion that PBGC (or Company officials) ever advised [redacted] that her \$1,715.48 payments would be permanent.

Salaried Plan Requires Reducing at Age 65

In any event, PBGC still may guarantee and allocate assets only to benefits that are actually provided by a pension plan.¹⁶

¹³ PBGC guarantees benefits under ERISA sections 4022(a)-(b).

¹⁴ Plan assets are allocated under ERISA section 4044. Expected legal recoveries are allocated under ERISA sections 4022(c) and 4044.

¹⁵ Plan administrators determination of the \$1,259.67 age-65 total is shown in Enclosure 1. PBGC's \$1,259.67 age-65 total is shown in our summary table on page 3 above.

¹⁶ For guaranteed benefits, see ERISA section 4022(a), and section 4001(a)(8) for the definition of a "non-forfeitable" benefit. The requirements for allocating assets only to a plan's benefits are given in ERISA section 4044(a).

The Salaried Plan discontinues her temporary amount at age 65.¹⁷ Thus, we must affirm PBGC's determination that her total Plan-provided benefit (before adjusting for her overpayments) is \$1,259.67 per month at age 65.

We Reviewed PBGC's Guaranty of the Temporary Amount

PBGC determined lower PBGC-payable benefits than Company officials determined only for the period before age 65, and only under the Salaried Plan. See the table on page 3 above. Thus, we discuss next what portion PBGC may pay of the Salaried Plan's (\$455.44) pre-age 65 temporary amount.

"Accrued-At-Normal-Limit" Equal to Age-65 Benefit Amount

PBGC generally may guarantee only old-age retirement benefits instead of temporary amounts that a plan stops before Normal Retirement Age. Thus, PBGC's regulation generally limits a guaranteed benefit to the amount of a normal retirement benefit if paid as a Straight Life Annuity.¹⁸ This limit is often called the Accrued-at-Normal Limit (the "AAN Limit"). The Hourly Plan and Salaried Plan define the Normal Retirement Age as 65. Thus, [] AAN Limit is her age-65 pension amount.

PBGC Limited by Age-65 Amount already Reduced by LTV Benefit

PBGC determined [] AAN Limit to be her combined \$1,259.67 age-65 benefit under the Hourly and Salaried Plans. The \$1,259.67¹⁹ limit that PBGC used is the net benefit under the Hourly and Salaried Plans after the offset for the accrued benefit under LTV Plan (\$192.50) has been applied.²⁰

RTI Plan Precedent for not Reducing AAN Limit for LTV Benefit

The Appeals Board has previously decided an appeal that questioned the AAN Limit for a pension plan like the pensions in

¹⁷ Her plan-provided benefits change from the "1.5% pension" to the "1.1 pension" at age 65. Under section 3.1(b)(1), her 1.5% pension totals \$1,715.11:

\$3,950.36 earnings x 30 years x 1.533% + 5%
- \$192.50 accrued benefit under the LTV Hourly Plan on 6/16/1986

At age 65, the \$1,715.11 amount must be reduced by 50% of her Social Security benefit (50% x \$1,437.00), under Salaried Plan section 3.5(b)(2) in Enclosure 3. Her benefit under the "1.1% pension" then becomes largest: \$1,259.67.

¹⁸ See 29 CFR section 4022.21(a)(1). Certain exceptions, for example for certain disability benefits, do not apply to [] benefit.

¹⁹ \$1,452.17 accrued - \$192.50 LTV Plan

²⁰ See the calculations in footnotes 1 and 2 on page 1.

the Salaried Plan and the Hourly Plan. Under the RTI Plan ²¹ the Appeals Board found:

"In some pension plans, such as the RTI Plan, the participant's accrued benefit is based on his combined service with two employers with an offset for the benefit payable under the second employer's pension plan. Also, sometimes the benefit payable under the second employer's pension plan has a different start date. PBGC has developed an actuarial procedure for applying the Accrued-at-Normal limit in such situations." ²²

The Appeals Board decided on the RTI Appeal:

- PBGC's procedures require calculating a combined-plan Accrued-at-Normal-Limit equal to the total accrued benefit before reducing for a deferred LTV benefit, and
- PBGC already followed such a procedure on the RTI Plan.

AAN Limit Equals \$1,452.17 Including LTV Benefit

Applying the RTI Plan precedent, we are combining Ms. Harris's AAN Limits under the Hourly Plan, the Salaried Plan, and the LTV Plan. Her LTV Plan AAN Limit is \$192.50. ²³ Also, her combined AAN Limits under the Hourly Plan and the Salaried is \$1,259.67. Thus, her combined Accrued-At-Normal Limit under the three plans is \$1,452.17.

Her \$1,452.17 combined AAN Limit is less than the \$1,715.11 total that the Hourly Plan and the Salaried Plan together provide her before age 62, when her LTV Plan accrued benefit first becomes payable in an unreduced amount. Thus, her guaranteed benefits as affected by the combined AAN Limit become:

²¹ The Republic Technologies International LLC-USWA Defined Benefit Plan.

²² The Appeals Board's decision under the RTI Plan is dated April 16, 2009. A redacted version is posted on PBGC's web site. See page 9 of the decision:
<http://www.pbtc.gov/apbletters/Decision--Republic%20Technologies%20Intl-USWA%202009-04-16.pdf>.

²³ The LTV Plan, like the Hourly Plan and Salaried Plan, defines the Normal Retirement Age as 65. [redacted] LTV Plan accrued benefit (\$192.50) was determined by PBGC on March 23, 2005. Her earliest "unreduced retirement date" is [redacted] 2016, as noted on the Benefit Statement with PBGC's LTV Plan determination. See Enclosure 2 to this letter. [redacted] did not appeal PBGC's determination under the LTV Plan. She may choose to receive an actuarially reduced LTV Plan amount earlier than at age 62 without affecting her guaranteed Salaried Plan and Hourly Plan benefits.

Guaranteed Accrued Benefits based on the Combined AAN Limit ²⁴

Period	Hourly Plan	Salaried Plan	LTV Plan	Total
6/01/2006 - 1/01/2016 (until age 62)	\$1,095.21	\$356.96	\$0.00	\$1,452.17
2/01/2016 - 1/01/2019 (starting at age 62)	\$1,095.21	\$164.46	\$192.50	\$1,452.17
2/01/2019 & thereafter (starting at age 65)	\$1,095.21	\$164.46	\$192.50	\$1,452.17

Legal Recoveries Allocated to Unfunded Non-Guaranteed Benefits

Expected legal recoveries fund 3.50% ²⁵ of the Salaried Plan benefits that otherwise are neither funded by plan assets nor guaranteed. Under complicated rules, recoveries fund 6.917% of the amount by which her Salaried Plan benefit under 5-year old plan provisions (**\$578.67** ²⁶) exceeds her guaranteed benefits (\$356.96 and \$164.46). Thus, we are changing the PBGC-payable amounts that PBGC determined to the following:

Guaranteed Benefits Plus Benefits Funded by Expected Legal Recoveries

Period	Hourly Plan	Salaried Plan	Total
6/01/2006 - 1/01/2016	\$1,095.21	\$372.30	\$1,467.51 ²⁷
2/01/2016 - 1/01/2019	\$1,095.21	\$193.11	\$1,288.32 ²⁸
2/01/2019 & thereafter	\$1,095.21	\$164.46	\$1,259.67 ²⁹

²⁴ Our increase to [] AAN Limit does not trigger other legal limits on PBGC's guaranty. A \$41.23 benefit increase by a plan amendment, from \$578.67 to \$619.90 (shown on page 3 above), is well below an \$80 threshold for a limit on such increases under ERISA section 4022(b)(7). Also, her total guaranteed benefit under the three plans, \$1,452.17, is well below PBGC's \$1,575.53 Aggregate Maximum Guaranteed Benefit for age 52 [] at plan termination in 2006. See ERISA sections 4022(b)(3) and 4022B, and 29 CFR section 4022.23(c) and section 4022 Appendix D.

²⁵ \$75,355 expected legal recoveries
 ÷ \$2,153,331 benefits that are both unfunded and non-guaranteed
 ERISA sections 4022(c) and 4044(a)(5) apply.

²⁶ \$3,722.58 {5-year average earnings} x 30 years x 1.5% + 5% - \$192.50 LTV
 - (\$3,722.58 x 30 years x 1.133% + 5% - \$192.50 LTV) x 86.944% hourly service

²⁷ \$1,452.17 guaranteed + 6.917% x (\$578.67 old plan - \$356.96 guaranteed)

²⁸ \$1,259.67 guaranteed + 6.917% x (\$578.67 old plan - \$164.46 guaranteed)

²⁹ The full total plan-provided benefits under the Hourly Plan and Salaried Plan at age 65.

Favorable Recoupment Terms

To prevent economic hardship, PBGC pays estimated benefits while collecting and auditing plan documents and data on all of a plan's participants. Unfortunately, because [redacted] estimated benefits have been too high, she has been overpaid.

Law and regulation require PBGC to recoup her overpayments.³⁰ PBGC's method for recouping overpayments, however, is generally advantageous to her:

- (i) PBGC is recouping only by temporarily reducing future benefit payments,
- (ii) PBGC generally limits to 10% its reductions for recoupment,
- (iii) PBGC is not charging interest on her overpayment balance, and
- (iv) PBGC will not seek direct repayment of any remaining overpayment balance from her or her husband's estates.

PBGC's Authorized Plan Administrator will contact her about adjusting her payments and recalculating her overpayment balance. If she has any questions about her benefit, she may contact PBGC's Authorized Plan Administrator at 1-(800)-400-7242.

Decision

Having applied Plan provisions and the law and regulations to the facts in [redacted] case, we are partially granting her appeal. We are increasing her total PBGC-payable benefits to the following amounts:

PBGC-Payable Benefits

Period	Hourly Plan	Salaried Plan	Total
6/01/2006 - 1/01/2016	\$1,095.21	\$372.30	\$1,467.51
2/01/2016 - 1/01/2019	\$1,095.21	\$193.11	\$1,288.32
2/01/2019 & thereafter	\$1,095.21	\$164.46	\$1,259.67

The amounts above will be temporarily reduced at most 10% to recoup her overpayments.

PBGC will redetermine [redacted] Surviving Spouse's Benefit under the Salaried Plan consistent with this decision. Her new determination will include a new 45-day right to appeal issues not decided in this letter.

³⁰ See 29 CFR sections 4022.81 and 4022.82(a)(2)(i).

This letter concludes [redacted] administrative remedies with respect to PBGC's February 2, 2010 determinations. When her new Salaried Plan determination becomes final, she may, if she wishes seek court review of this decision with respect to the issues you have raised. We thank you and [redacted] for your patience while we carefully reviewed your appeal.

Sincerely,



William D. Ellis
Appeals Board Member

[redacted]

[redacted]