

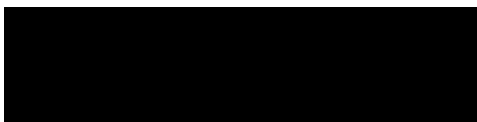


Wednesday, October 10, 2018

VIA U.S. CERTIFIED MAIL

Alaska Electrical Pension Fund
701 East Tudor, Suite 200
Anchorage, AK 99503

RE: Claim for Benefits



Dear Plan Administrator,

The Western States Pension Assistance Project is a non-profit law organization that provides free legal advice and assistance to individuals regarding their retirement plans. I am writing to you regarding our client, [REDACTED] and have enclosed a signed Release for your convenience.

[REDACTED] worked in covered employment under the Plan from approximately 1986-2001. This letter is a formal claim for benefits under the Alaska Electrical Pension Fund (hereinafter, "the Plan"). This claim is made pursuant to Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) and applicable Department of Labor and Department of Treasury regulations.

I. Summary of Claim for Benefits

Since February 2004, the Plan has made deductions from [REDACTED] benefit in order to recover \$54,111.60 in Retirement Income paid to her during months when she was engaged in Post-Retirement Service. These deductions are pursuant to a repayment plan whereby the Plan permanently reduces [REDACTED] benefit for the remainder of her lifetime. This repayment plan is inconsistent with the Plan's written policy regarding the recoupment of overpayments, exceeds the scope of the authority granted to the Board of Trustees in administering the Plan, and acts as an impermissible forfeiture of [REDACTED] benefit under 29 U.S. Code § 1053.

At this time, [REDACTED] has repaid the Plan in full for amounts she received during the period of Post-Retirement Service. Continuing to reduce [REDACTED]'s benefit unjustly harms [REDACTED] and acts as a windfall to the Plan.

II. Factual Background

██████████ is a vested participant in the Alaska Electrical Pension Fund. ██████████ worked in covered employment from approximately 1986-2000. ██████████ began receiving retirement benefits from the Plan on November 1, 2000. In September 2001, ██████████ began employment as a Senior Office Assistance in the Department of Health and Human Services of the Municipality of Anchorage. At that time, ██████████ was unaware that such employment qualified as Post-Retirement Service under the rules of Plan and would result in the suspension of her benefit.

The Plan suspended ██████████'s benefit due to her employment with the Municipality of Anchorage on January 1, 2003. ██████████ appealed the suspension of her benefit alleging that her employment did not fit the definition prohibited Post-Retirement Service. The Plan denied her appeal on May 22, 2003.

While ██████████'s appeal was pending, she left employment with the Municipality of Anchorage and applied to have her benefit reinstated as of May 1, 2003. On July 23, 2003, she received notice from the Plan they had recalculated her benefit in light of the suspension of her benefit and payments she received while working in prohibited Post-Retirement Service. According to the Plan's new calculation, ██████████ had been overpaid benefits she was not entitled to during her employment with the Municipality of Anchorage. The total amount of the overpayment was \$54,111.60.

The notice of overpayment requested that ██████████ repay the entire \$54,111.60 immediately and offered three alternative payment plans if ██████████ could not afford to do so. The repayment options were as follows:

- “Alternative #1: Withhold 100% of the next three benefit checks and 25% of each subsequent check until the entire overpayment has been recovered.

- Alternative #2: Withhold 25% of each benefit check until the full amount of the overpayment has been recovered.

- Alternative #3: Monthly benefit reductions of \$431.36 for the rest of your lifetime.”

██████████ ultimately chose Alternative #3 because it resulted in the smallest deduction from her monthly benefit and would have the least impact on her ability to meet her monthly expenses. Still, due to the reduction in her benefit ██████████ had to move from Alaska to Florida due to the lower cost of living and to find employment that would not be prohibited under the rules of the Plan.

On January 2, 2004, ██████████ received a letter from the Plan stating that because ██████████ left employment with the Municipality of Anchorage in April 2003 and not May 2003, the Plan should have reinstated her benefit one month earlier and that they would recalculate her benefit in light of this change. Because ██████████'s benefit should have started one month earlier, she should have received an additional payment for April 2003 however, the addition of one month resulted in an overall decrease in her benefit calculation. Based on the Plan's recalculation the Plan reduced the overpayment amount to \$46,272.86 to account for the amount already repaid and the amount ██████████ should have received for April 2003. It is worth noting that the letter also repeated the previous Alternative repayment options that reflected the new overpayment amount. Alternative #3 was changed to say “Monthly benefit

reductions of \$379.17 for the rest of your life” and that if [REDACTED] did not select a new option the Plan would automatically implement Alternative #3.

On January 16, 2004 [REDACTED] received yet another recalculation of her benefit that stated that due to the change [REDACTED] had been overpaid \$16.63 per month for 9 months and that instead of deducting the amount owed for the month of April, 2003 the Plan would be issuing [REDACTED] a check for the amount owed minus the amount overpaid for a total of \$3,078.54.

Since February 2004, the Plan has deducted funds from [REDACTED]'s monthly benefit to recoup the overpayment she received. At this time, the total amount recouped by the Plan is well in excess of the original repayment amount of \$54,111.60.

III. Governing Law and Regulations

29 U.S. Code § 1053 (a)- Minimum Vesting Standards

(a) “Nonforfeitability Requirements. Each pension plan shall provide that an employee’s right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the paragraphs (1) and (2) of this subsection.”

29 U.S. Code § 1104(a)(1)(D) – Fiduciary Duties

(a) “Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to the Plan solely in the interest of the participants and beneficiaries and-

(D) In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III.”

Alaska Electrical Pension Plan Document 1999 Restatement Section 2.3 states:

2.3 Actuarial Equivalent

"Actuarial Equivalent" means a benefit of comparable value computed on the following bases:

(a) For purposes of determining the value of lump sum payments, if any, actuarial equivalence will be calculated using the following basis:

- (1) The applicable mortality assumption prescribed by the Secretary of the Treasury under Code Section 417 (e)(3)A(ii)(I).
- (2) The interest assumption is the annual rate of interest on 30-year Treasury securities for November of the year prior to the Plan Year in which the lump sum is paid.

(b) For purposes of determining the maximum retirement benefit in Section 15.6, actuarial equivalence will be calculated using the following basis:

- (1) The applicable mortality assumption prescribed by the Secretary of the Treasury under Code Section 417 (e)(3)(A)(ii)(I).

(2) The interest assumption will be the rate specified in Section 2.3(a)(2) for benefits payable in a form subject to Code Section 417(e)(3) and five percent for all other purposes.

(c) For all other purposes, actuarial equivalence will be calculated using the following basis:

(1) The mortality assumption will be the 1984 Unisex Pensioners Mortality Table.

(2) The interest assumption will be six percent.

Alaska Electrical Pension Plan Document 1999 Restatement Section 7.6 states:

“In the event it is determined that a Participant received Retirement Income payments during any month in which such Participant performed the amount of Post-Retirement Service described in the first paragraph of this Section 7.6, the Participant shall forfeit all payments otherwise due during the first three months following cessation of Post-Retirement Service, until the full amount of such Retirement Income has been recovered. If the full amount has not been recovered from the first three payments otherwise due, subsequent Retirement Income payments shall be reduced by an amount not to exceed 25% of the amount otherwise payable until the earliest of the following:

- (a) The Participant’s death (or the death of the Participant’s surviving spouse pursuant to an election made in accordance with Section 7.8(b) or Section 7.8(c), or the death of the Participant’s designated beneficiary pursuant to an election made in accordance with Section 7.8(a));
- (b) The Participant’s Retirement Income payments are again suspended for performance of Post-Retirement Service in a calendar month; or
- (c) The Trust Fund recovers 100% of the total of all Retirement Income paid in all months in which the Participant completed the amount of Post-Retirement Service described in the first paragraph of this Section 7.6.”

Alaska Electrical Pension Plan Document 1999 Restatement Section 12.1(c) states:

“No part of the Trust Fund (either principal or earnings) remaining after all expenses incurred in terminating or administering the Plan have been paid shall be used or diverted to purposes other than for the exclusive benefit of the Participants, their spouses, or their beneficiaries; **nor shall any amendment operate to deprive any Participant of a previously acquired vested right. In addition, the Accrued Benefit of a Participant may not be decreased by an amendment of the Plan except as specifically allowed by law.**”

Alaska Electrical Pension Plan Document 1999 Restatement Section 13.2(a) states:

“The Board of Trustees shall exercise its authority with respect to the Plan solely in the interest of the Participants and their beneficiaries and:

- (a) For the exclusive purpose of:
 - 1. Providing benefits to Participants and their beneficiaries; and
 - 2. Defraying reasonable expenses of administering the Plan.”

Alaska Electrical Pension Plan Document 1999 Restatement Section 15.4 states:

“Claim Review

- a. Claims for Benefits. No Participant or beneficiary of a Participant shall have any right to claim benefits under the Plan except as specified in the Plan. Any claim or dispute as to eligibility, type, amount, or duration of benefit shall be resolved by the Trustees under and pursuant to the Plan, subject to Claim Review by the Trustees, and the Participant or beneficiary of a Participant shall have no right or claims with respect thereto against the Fund or the Trustees. Neither the Employer, any signatory association, the Union nor any of the Trustees shall be liable for the failure or omission for any reason to pay any benefits under the Plan.
- b. (1) Request for Hearing by Trustees. Any Participant or beneficiary of a Participant who applies for benefits under this Plan and is ruled ineligible by the Trustees or their representative, or who believes he or she did not receive the full amount of benefits to which he or she is entitled, or who is otherwise adversely affected by any action of the Trustees or their representative, shall have the right to request the Trustees to conduct a hearing in the matter, provided that such Participant or beneficiary makes such a request in writing and states the reason for objecting within 60 days after being apprised in writing of the Trustees' or their representative's action. The request may be submitted to the Plan office.

(2) Hearing Date. Within 30 days of receipt of the written request for a hearing in the matter, Trustees or a committee appointed by the Trustees shall notify the Participant or beneficiary of the date, time, and place of hearing. Such notices shall be mailed by first class mail to the Participant's or beneficiary's address of record together with the Claim Review procedure.

(3) Obtaining Information. Upon request in writing from the Participant or beneficiary, the Trustees shall provide to that aggrieved person the sources of information upon which the decision of the Trustees or their representative was based, and permit the Participant or beneficiary to examine the documents and record relating to the decision in possession of the Trustees."

IV. Discussion

- a. The Repayment Alternative applied to ██████████'s benefit is inconsistent with the Plan's written policy regarding recovery of Retirement Income paid during months that the Participant's benefit should have been suspended for Post-Retirement Service under Plan Section 7.6.

29 U.S. Code § 1104(a)(1)(D) states that the fiduciaries of an ERISA covered Plan have an affirmative duty to administer the Plan "In accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III."

Section 7.6 of the Alaska Electrical Pension Plan document clearly states the Plan's written policy and procedure for recovering funds paid to a participant during periods of Post-Retirement Service. Section 7.6 provides that the Plan shall recover benefits paid to a participant during periods of Post-Retirement service not recovered during the first three months following the cessation of Post-Retirement Service by reducing the Participant's monthly benefit by an amount not to exceed 25% until the earliest of either (a) the Participant's death; (b) the Participant's benefit is suspended for performance of Post-

Retirement Service; or (c) the Plan recovers 100% of the amount paid to the participant during Post-Retirement Service.

Instead of following the written rules of the Plan, the Trustees offered ██████ a repayment option attractive to her because it would result in the smallest reduction to her monthly benefit but would also benefit the Plan in that it could continue to reduce ██████'s benefit even after she has repaid the Plan in full. In doing so, the Trustees went beyond the Plan document to create an opportunity for the Plan to enrich itself at ██████'s expense. It was foreseeable at this time that the Plan would have recouped the entire overpayment amount well before the applicable mortality tables would have expected ██████ to die.

By choosing not to implement the procedure outlined in Section 7.6 the Trustees have willfully neglected their duty under 29 U.S. Code § 1104(a)(1)(D). Because the repayment option offered to ██████ is not consistent with the Plan document, the Trustees should not have offered it to her in the first place and the Plan should not be allowed to benefit from it now.

- b. Further deductions from ██████'s benefit in excess of the overpaid amount exceed the scope of the authority granted to the Board of Trustees in administering the Plan under Plan Section 13.2(a).

Section 13.2(a) of the Plan states that the Board of Trustees shall exercise its authority with respect to the Plan solely in the interests of the Participants and their beneficiaries for the exclusive purposes of paying benefits to those entitled to them and defraying the reasonable expenses of administering the Plan.

Continuing to reduce ██████'s benefit after she has repaid the Plan in full does not serve the interests of ██████, her beneficiaries, or any other person entitled to benefits under the Plan, nor does it defray any reasonable expense of Plan administration. Because further deductions do not further a permissible purpose under the Plan, and the Board of Trustees should immediately restore ██████'s benefit to its rightful amount going forward.

- c. In the absence of a specified interest rate under the Plan, the Board of Trustees used an assumption rate that acts as an impermissible forfeiture of benefits under 29 U.S.C. § 1053.

The Alaska Electrical Pension Fund does not specify what interest rate the Plan uses when calculating the annuity value of amounts overpaid to a participant. In the absence of a clear written policy, the Plan applied the 6% interest rate specified under Plan Section 2.3(c).

The conversion of the lump sum value of the total overpayment amount received to an annuity is essentially the reverse of the conversion of an annuity to a single lump sum payment. Therefore, the Plan should have applied the same assumptions and interest rates described in Section 2.3(a) which requires the Plan to apply:

“(1) The applicable mortality assumption prescribed by the Secretary of the Treasury under Code Section 417(e)(3)A)(ii)(I).

(2)The interest assumption is the annual rate of interest on 30-year Treasury securities for November of the year prior to the Plan Year in which the lump sum is paid.”

The application of the interest rate specified in Section 2.3(c) rather than 2.3(a) resulted in the overstatement of the annuity value of the overpayment that ██████ received and the Plan collecting in excess of the overpaid amount. This represents an impermissible forfeiture of ██████'s benefit under 29 U.S. Code § 1053 (a) which states that "an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age."

The law permits the Plan to recoup amounts overpaid to participants by offsetting the overpaid amount from future benefit payments. 29 U.S. Code § 1053 prohibits the Plan from taking any action that causes a participant to forfeit any portion of their accrued benefit. Because ██████ has repaid the Plan in full, continued deductions from benefits due to ██████ do not act as an offset, but instead deprive her of a benefit to which she is legally entitled. Therefore, further deductions constitute an impermissible forfeiture of benefits under 29 U.S. Code § 1053.

- d. ██████████ has repaid the Plan in excess of the amount of Retirement Income she received during months when she was engaged in Post-Retirement Service. Because the Plan has been made whole, continuing to reduce her benefit acts as a windfall to the Plan.

In the interest of justice and to avoid a windfall to the Plan, the client's monthly pension should be restored to its full value since the plan has recouped the total amount of the overpayment and it is necessary to avoid a forfeiture of earned pension benefits. The Plan would continue to receive a windfall if the Plan does not properly restore ██████'s benefit, especially in light of the interest rate used, which greatly favors the Plan.

The law permits the Plan to make itself whole by recouping amounts overpaid to a participant. The Plan is not permitted to excessively profit at the expense of the participant after it has been repaid. Each month, the plan has access and control over a portion of ██████'s monthly benefit, money that she is entitled to but not otherwise receiving because the Plan offered a repayment option outside of the Plan terms and used an interest rate that harms ██████. Continued deductions from ██████'s benefit serve no other purpose than to deny ██████ a portion of the benefit to which she is rightfully entitled and allowing the Plan to retain funds otherwise due to ██████ constitutes an unjustified windfall to the plan.

V. Conclusion

Because continued deductions to ██████'s benefits are unjust, contrary to the rules of the Plan, and prohibited by applicable law, ██████ respectfully requests that the Plan reinstate her benefit to its full rightful amount including a retroactive lump sum effective as of the date that the Plan recouped the entire overpayment amount. In the event a retroactive lump sum is not available, please provide a detailed actuarial valuation to reflect the time passed between the date that the Plan recovered the entire overpayment amount and now.


Please provide a written response to this Claim addressed to:

Attn: Chris McAllister
Western States Pension Assistance Project
501 12th Street
Sacramento, CA 95814

If there is any additional information or documentation that I can provide to assist the Plan in making its determination please feel free to contact me directly at (916) 551-2146.

Sincerely,

Chris McAllister
Staff Attorney, Western States Pension Assistance Project
Phone: (916) 551-2146
Fax: (916) 551-2197
Email: cmcallister@lsnc.net

Enclosures: Permission to Release Information Signed by 

McKenzie Rothwell Barlow & Coughran, P.S.

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BRUCE MCKENZIE**

November 14, 2018

◇ ALSO ADMITTED IN OREGON AND MINNESOTA
◇◇ ALSO ADMITTED IN ALASKA
• ALSO ADMITTED IN CONNECTICUT AND MISSOURI
** ALSO ADMITTED IN MICHIGAN, MONTANA AND OREGON
* ALSO ADMITTED IN MICHIGAN AND CALIFORNIA
*** ALSO ADMITTED IN DISTRICT OF COLUMBIA
*** ALSO ADMITTED IN OREGON AND ALASKA

Via email (cmcallister@lsnc.net)

Chris McAllister
Staff Attorney, Western States Pension Assistance Project
Legal Services of Northern California
501 12th Street
Sacramento, CA 95814

Re: Alaska Electrical Pension Fund
Plan Participant - [REDACTED]

Dear Attorney McAllister:

This firm is legal counsel to the Alaska Electrical Pension Fund ("Fund"). I am writing in response to your October 10, 2018 letter, which was received by the Fund on October 15, 2018.

As you note in your letter, [REDACTED] received an overpayment of \$54,111.60 due to payment of her benefits during a period of post-retirement service. Following her appeal, at which she was represented by legal counsel, the Fund offered [REDACTED] three options to repay the overpaid benefits.

Plan §7.6(h) permits reduction of participant's monthly benefit by an amount not to exceed 25%. In this case, [REDACTED] agreed to repay the Fund by an offset to her future monthly benefits at substantially less than 25% of her monthly benefit. The Fund offers a range of repayment options to permit participants to choose the most advantageous course of action, given the participant's financial resources and circumstances. We reject implication that the Board, by offering [REDACTED] the option of reducing her monthly benefit check by less than 25% is at odds with Plan §7.6(h) or with the Board's fiduciary duty under the Plan and ERISA.

You have also argued the Fund ought to have used the interest rate on 30-year Treasury securities to determine [REDACTED]'s repayment obligation. We disagree.

Chris McAllister
November 14, 2018
Page2

First, in accordance with its fiduciary duties, the Board is required to recoup the overpayment to [REDACTED]. The Board reasonably applied the Plan's general actuarial equivalence assumption (6% and UP-84 mortality) in overpayment cases where participants chose to repay the overpayment through a reduction in future payments. This is consistent with IRS guidance on recouping overpayments in this manner.

IRS's guidance at the time and now requires that plan sponsor to take "reasonable steps" to have the recipient return the amount of the overpayment with "appropriate interest." (Rev. Proc. 2003-44) In the case of a correction of an overpayment by adjustment of future benefits, Rev. Proc. 2003-44 prescribed that a reduction should be made "(over a period not longer than the remaining payment period) so that the actuarial present value of the additional reduction is equal to the Overpayment plus interest at the interest rate used by the plan to determine actuarial equivalence." (Rev. Proc. 2003-44 §§2.04(1), 2.05). (Only where an overpayment is corrected by a single sum payment did the Revenue Procedure imply that the interest rate used for Code § 417(e)(3) purposes should be used. That is not the case here.)

Second, [REDACTED], with the assistance of counsel, agreed to the repayment schedule established in 2004. Her opportunity to challenge the assumptions on which the repayment schedule was established lapsed long ago.

That said, it was never the Trustees' intention that the Fund recoup more than [REDACTED]'s overpaid benefit amount. The Plan's actuary has reviewed [REDACTED]'s file and the underlying calculations and confirmed that [REDACTED]'s overpayment has been repaid in full based on the Plan's assumptions, and a refund of \$2,625.85 is due to [REDACTED]. Accordingly, the Fund will restore payment of her full benefit amount effective as of December 1, 2018, and provide a separate payment of \$2,625.85.

Please contact me at your convenience to discuss this matter further, if you wish.

Sincerely,

McKENZIE ROTHWELL BARLOW & COUGHRAN,
P.S.



Linda Josephson

cc: Gregory R. Stokes
Robert Garcia
Bruce Cable



**Rael &
Letson**

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November 27, 2018

Mr. Robert Garcia
Alaska Electrical Trust Funds
701 East Tudor, Suite 200
Anchorage, AK 99503

Re: [REDACTED] Benefits Reconciliation

Dear Robert,

Plan Counsel has asked us to provide documentation supporting the \$2,625.85 excess as of December 1, 2018 of the accumulated value of amounts withheld from [REDACTED]'s checks over the accumulated value of the amount that she was previously overpaid as of December 1, 2018.

Background

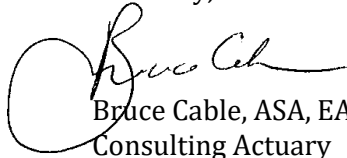
As indicated in the attached January 16, 2004 letter from the Fund office, as supported by the attached Fund actuary's letter dated January 12, 2004, [REDACTED]'s retirement benefit has been reduced by the plan's lifetime monthly reduction of \$430.52 per month since February 2004 to account for the reconciled overpayment of \$51,033.06 as of February 1, 2004. Consistent with the practice at the time (that is still the practice today), the monthly reduction was determined using the default assumptions in the plan document of 6% interest and UP84 mortality.

Reconciliation

The first attached reconciliation exhibit shows that the accumulated value of the reconciled February 1, 2004 overpayment balance equaled the accumulated value of benefit reductions in June 2018 ("equivalency month") using the plan's default actuarial equivalent basis of 6% interest. This assumes beginning of the month payments of \$430.52 with a final payment of \$1.61 in June 2018.

The second exhibit shows the derivation of the accumulated value as of December 1, 2018 of the benefit reductions that the Plan has collected since the equivalency month using the plan's 6% default actuarial equivalent interest basis. The total, \$2,625.83, is the accumulated value with interest of the \$428.91 partial reduction for June and \$430.52 for each of July 2018 through November 2018.

Sincerely,



Bruce Cable, ASA, EA, MAAA
Consulting Actuary

Enclosure
BC:la

Cc: Linda Josephson
Andrea Yip
Sophia Chang

McKenzie Rothwell Barlow & Coughran, P.S.

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●●● ALSO ADMITTED IN OREGON AND ALASKA
** ALSO ADMITTED IN DISTRICT OF COLUMBIA

DIRECT LINE (206) 674-5219
Email: lindaj@mrbclaw.com

April 9, 2019

Via email (cmcallister@lsnc.net)

Chris McAllister
Staff Attorney, Western States Pension Assistance Project
Legal Services of Northern California
501 12th Street
Sacramento, CA 95814

Re: Alaska Electrical Pension Fund
Plan Participant - ██████████

Dear Attorney McAllister:

This firm is legal counsel to the Alaska Electrical Pension Fund ("Fund"). I am writing in response to your March 18, 2019 letter in which you request a refund of payments made pursuant to a settlement agreement your client, ██████████, entered into with the Fund in August 8, 2003.

██████████ received an overpayment of \$54,111.60 when she continued to collect her pension while she was engaged in post-retirement service. She appealed the Fund's determination, but lost her appeal. After the appeal was decided, the Fund offered three repayment options to ██████████. These options were extended to ██████████ based upon Article VI, Section 10 of the Fund's Trust Agreement which provides the Trustees with the authority to "compromise, settle or release claims or demands on such terms and conditions as they deem desirable." As we have previously noted, Plan §7.6(h) permits reduction of participant's monthly benefit by an amount not to exceed 25%.

Chris McAllister

April 19, 2019

Page 2

██████████ chose the repayment option with the schedule that had the smallest effect on her monthly benefit, a "life-time" repayment option which assessed interest on the repayments due. You have taken the position in your March 18, 2019 letter that the Fund should refrain from charging interest on the repayments. This is inconsistent with your previous acknowledgement that the Fund may apply reasonable interest in recouping an overpayment. Indeed, you argued in prior correspondence that the Fund ought to have used the interest rate on 30-year Treasury securities to determine ██████████'s repayment obligation. You have now asserted that the Fund should refrain from charging interest. As indicated in Mr. Cable's July 24, 2003 correspondence, enclosed with your letter, the Plan's interest and mortality assumptions were used to generate the payment for Alternative 3. The Fund is not "adding interest now" as you assert in your letter.

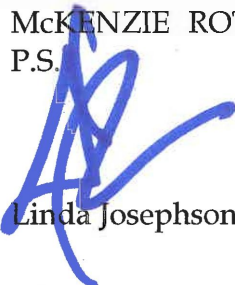
The repayment options provided to ██████████ were reasonable and consistent with the terms of the Fund's Trust Agreement and its Plan Document. ██████████ was represented by legal counsel in her appeal and had the opportunity to seek advice from her legal counsel when considering the three settlement options offered by the Fund. It appears that ██████████ is now seeking to modify the terms of her settlement agreement with the Fund sixteen years after she entered into the agreement. The Fund has already made a compromise with respect to ██████████'s chosen settlement of the overpayment she received by curtailing further repayment since the Fund has fully recouped the overpayment together with reasonable interest.

If ██████████ wishes to pursue this matter further, you may present her appeal to the Appeals Committee of the Board of Trustees. Enclosed for your information is a description of the claim review procedure, including timelines applicable to that process.

Please contact me at your convenience to discuss this matter further, if you wish.

Sincerely,

McKENZIE ROTHWELL BARLOW & COUGHRAN,
P.S.



Linda Josephson

Enclosure

cc: Gregory R. Stokes
Robert Garcia
Bruce Cable