



March 8, 2010

Honorable Hilda L. Solis
Secretary of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Madam Secretary:

I currently serve as a Director of the National Retiree Legislative Network (NRLN), a retiree organization representing over two million members, and I am the chairman of the Delta Pilots' Pension Preservation Organization (DP3) representing approximately 6000 retired Delta pilots.

As the chairman of a group of retirees who have had their defined benefit pension plan terminated during a corporate bankruptcy, I believe there are issues where your department can assist our organization to serve our members better.

As the Delta pilots have experienced, there are many areas of bankruptcy law, and current PBGC interpretations of ERISA regulations, where the retirees of a defined benefit pension plan find themselves at a severe disadvantage during, and after, a corporate restructuring in bankruptcy.

One area that concerns the leadership of DP3, and has negatively affected many of our members, is a provision under the current tax laws that provides access to a Health Care Tax Credit (HCTC) for retirees who are currently **receiving a benefit from the PBGC** and meet other eligibility criteria.

Access to the HCTC is a valuable benefit for retirees who have suffered a pension termination, because companies in bankruptcy normally gut retiree medical benefits along with terminating defined benefit pension plans whenever the bankruptcy courts will allow. Due to a fairly unique circumstance, many retired Delta pilots have **lost all** of their qualified pension benefits under the PBGC's interpretation of their lookback authority, and as a consequence they receive nothing from the PBGC, even though the agency is the trustee of our plan and has determined that PC3 is currently funded at 100% of estimated benefits.

All retired Delta pilots would currently receive some benefit from the PBGC if it were not for the lookback penalties, in conjunction with the fact that Delta pilots were allowed to take a portion of their qualified pension in a lump sum. The PBGC has determined that in some cases the annuity value of the lump sum exceeds the PBGC's PC3 benefit after the lookback reductions are applied. Additionally the PBGC has taken **more than three years** to determine our final benefits and these Delta retirees are currently denied the HCTC based on the PBGC's **estimate** of the retiree's PC3 benefit, without taking into account that there may be sufficient funds in the terminated plan to pay retirees PC5 benefits when the final determinations are eventually made.

It is ironic that under current policies a retiree who lost nothing in the pension termination and is receiving 100% of their PC3 qualified benefit is eligible for the HCTC, while a retiree who suffered an actual financial loss in the termination, and is not receiving anything from the PBGC, is ineligible for the credit.

If logic were to prevail, everyone whose pension plan was assumed by the PBGC would be eligible for the HCTC—**especially** those who are currently excluded from any benefit payment. The IRS has told us that they would be willing to add these retirees to the HCTC program if the PBGC would add them to the list of eligible retirees. We are hopeful that a policy review would lead to a decision that a retiree whose defined benefit pension plan is terminated, and where that termination has led to a reduction in retirement benefits (including a reduction to the point that no benefits are payable) would be eligible for the HCTC, especially in a case where the Final PBGC Benefits have not yet been determined.

In a similar fashion we have retirees who are subject to a QDRO where the former spouse is receiving a PBGC benefit, but the retiree is not. Even though the spouse is receiving the **PC3 benefit attributable to the retiree**, the PBGC will not add those retirees to the list of those eligible for the HCTC.

Thank you for any assistance you can provide in this matter and please advise me if there is someone else I should contact to help resolve this issue.

Sincerely yours,

Will Buergey
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