



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

Office of the Director

**MAR 30 2010**

Will Buergey, Chairman  
Delta Pilots' Pension Preservation Organization  
P.O. Box 76362  
Atlanta, GA 30358

Re: *Delta Pilots' Retirement Plan*

Dear Mr. Buergey:

Secretary of Labor Solis asked me to respond to your letter of March 8, 2010, regarding the Health Coverage Tax Credit (HCTC), particularly as it relates to certain retired Delta pilots.

The HCTC is a tax credit, which is administered by the Internal Revenue Service. Ultimately, decisions about entitlement to this tax credit are made by the IRS, not PBGC. PBGC's role, although important, is limited to providing information to the IRS, as explained below.

The statute creating the HCTC provides that an individual is entitled to the HCTC if, among other things, he or she is an "eligible PBGC pension recipient." 26 U.S.C. § 35(c)(1)(C). The statute defines "eligible PBGC pension recipient" to mean:

with respect to any month, any individual who –

- (A) has attained age 55 as of the first day of such month, and
- (B) is receiving a benefit for such month any portion of which is paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974.

26 U.S.C. § 35(c)(4). Thus, under the law, HCTC eligibility is determined month-by-month based on whether a person is receiving a benefit from PBGC for that month (assuming other requirements are met).

Consistent with this statutory framework, PBGC sends the IRS a list each month of all persons who are 55 or over and who are receiving a benefit from PBGC. In recent months, the list has contained almost 750,000 individuals, of whom more than 6,000 are retired Delta pilots. The IRS and PBGC are in close contact regarding PBGC's procedures for compiling the list.

PBGC includes on its monthly list only those participants who are actually receiving a benefit from PBGC, with one exception. The exception is that we also

include those participants who would have been receiving a benefit from PBGC but for the fact that – after the plan terminated – PBGC paid their PBGC benefit in the form of a lump sum. (PBGC pays benefits in lump-sum form only if the value of the total benefit is \$5,000 or less.) PBGC does not include participants who – before the plan terminated – received a benefit from their plan in a lump sum and, as a consequence, have no benefit payable by PBGC.

Each month, PBGC adds and removes names from the list as appropriate – for example, adding persons who have begun receiving a PBGC benefit. Generally, when PBGC takes over a terminated pension plan, it pays to retired employees estimated benefits under the plan until it can complete its review of all relevant information, including pension plan documents and employee records, and values benefit liabilities under the plan. After PBGC completes its review, it adjusts, if necessary, the benefits -- increasing benefits if it was paying too little and decreasing benefits if it was paying too much. With regard to the Delta Pilots Retirement Plan (“Plan”), PBGC is currently paying estimated benefits to retired pilots but has just recently completed its valuation of benefits. PBGC expects in April of 2010 to begin sending benefit determination letters, notifying pilots of any adjustments to the calculation of their benefits from PBGC.

Although the monthly list currently includes about 6,000 retired participants in the Plan who are receiving benefits from PBGC, your letter focuses primarily on a group of about 230 retired Delta pilots who had been receiving a benefit from the Plan before it terminated in 2006 but who have not been receiving an estimated benefit from PBGC. The reason these participants have not been receiving a benefit from PBGC is that PBGC had estimated that the amount of benefit to which these persons were entitled to receive from PBGC under the law was \$0.

As a result of PBGC’s recently completed valuation of Plan benefits, PBGC has determined that 152 of these approximately 230 retirees are entitled to a PBGC benefit. Because PBGC appreciates that the HCTC is of great importance to participants, the first batch of benefit determinations that PBGC issues next month will include these 152 retirees. These participants should begin receiving monthly payments from PBGC on June 1, 2010. Finally, as a result of these determinations, it follows that these individuals are currently due a benefit from PBGC, and thus we have sent their names to the IRS as persons receiving a benefit from PBGC. Moreover, we will inform the IRS that these participants are entitled to backpayments to the month in which PBGC began making payments following the Plan’s termination (and we note that the PBGC became trustee of the Plan in December 2006). The IRS will then determine whether these 152 participants have met any other requirements for HCTC eligibility and also whether they may claim the HCTC retroactively.

Of the remaining approximately 80 individuals in the group of 230, PBGC has determined that 34 of them are not entitled to a benefit from PBGC. Thus, these 34

will not be added to the HCTC list that we send to the IRS. The remaining approximately 46 retirees are those whose benefits are subject to a qualified domestic relations order (QDRO). The processing of benefits subject to a QDRO generally takes longer than other benefits, and PBGC has not yet made determinations about these benefits. If, as is likely, we find that some of these participants and/or their alternate payees are entitled to a PBGC benefit, we will promptly add them to the HCTC list that we send IRS.

I realize that you and other Delta retirees may disagree with decisions PBGC has made about benefit entitlement – for example, about which benefits are included in priority category 3 under section 4044(a) of ERISA. This letter is not the proper place to debate the merits of those issues. PBGC made its decisions about benefit entitlement based on our best understanding of the law and the facts of the case.

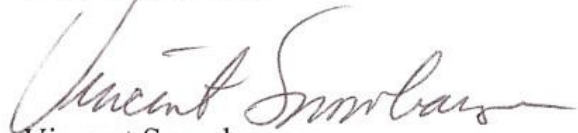
Soon, Delta Pilots Plan participants will be receiving from PBGC their benefit determinations setting forth PBGC's determination about their benefit entitlement under the PBGC insurance program. If a participant disagrees with PBGC's benefit determination, he or she will have an opportunity to appeal to PBGC's Appeals Board. If the Appeals Board determines that the participant is entitled to a PBGC benefit, then we will add such an individual to the HCTC list (provided the individual satisfies the criteria for being an "eligible PBGC pension recipient," such as attaining the age 55). The Appeals Board's decision on the benefit is PBGC's "final agency action" (see section 4003.59(b) of our regulations), which means that if the participant disagrees with the Board's decision, he or she at that point may seek relief in court.

I know that you and other pilots are frustrated that it has taken this long to reach this point. However, processing the termination of a large, complex plan like the Delta Pilots Plan is an incredibly complicated matter. Dozens of PBGC employees and contractors have worked long and hard to move the case along as fast as we could.

Finally, I note that many of your complaints about the HCTC have to do with the way the law was written. In light of the clear statutory language (quoted on page 1 of this letter), it would be inappropriate for PBGC to include on its monthly HCTC list individuals who are not receiving a benefit from PBGC simply because you or I or anyone else might think they *should* get the credit. That is ultimately a matter for Congress to decide.

If you have any questions regarding the processing of the Delta Pilots Retirement Plan, please contact Nicole Williams, the Division Manager handling this matter, at 202-326-4000, extension 3203.

Very truly yours,

A handwritten signature in black ink, appearing to read "Vincent Snowbarger". The signature is fluid and cursive, with a long horizontal stroke at the end.

Vincent Snowbarger  
Acting Director

cc: Honorable Hilda L. Solis, Secretary of Labor  
Lynn H. Reno, IRS HCTC Business Operations Lead