



## **Rumors, Questions, Doubts**

**February 4, 2009**

Recently we have seen a surge in rumors, apparently spurred by the widely publicized denial of the Soaring Eagle's request for preliminary injunction. The misinformation that is taking on a life of its own is not in the best interest of the retirees. The following is an effort to bring facts into the discussion:

**Rumor 1 – If I took the lump sum option at retirement, the PBGC will not pay me anything, and will come after me to recoup any payments I have received from them.**

This is **false** as written.

Delta and the PBGC have already included the annuity value of your lump sum in their preliminary calculations.

The majority of retirees who took lump sums would be receiving larger monthly checks from the PBGC if they were not deducting the annuity value of the lump sum.

In January of 2007 you received a Statement of Estimated Monthly Benefit after Plan Termination from Delta. Look at the very bottom of the page - there were at least 2 different forms sent out. If you received Form 3 – Retired less than 5 years ago - line 14 shows the annuity value of your lump sum at retirement. If you received Form 1 – Retired 5+ years ago – line 12 shows the annuity value of your lump sum at retirement. (Note that the PBGC currently is using the original annuity value of that lump rather than the current value with variable increases – that was an error made in the original calculation by DAL and, without going into the details, would be very appealable.)

This amount was also on page 2 of the preliminary recalculation letter that the PBGC sent out in August of 2007.

In another DP3 position paper to be published soon, the method for calculating your maximum Qualified pension will be discussed in detail. Your lump sum payment came out of the Qualified pension plan. That means that when the PBGC calculates your Qualified annuity they then subtract the annuity value of the lump sum from that total to get the amount they are obligated to pay you.

So if your retirement FAE was very large it is possible that you are not receiving any PBGC annuity at this time. If it was very, very large, it is possible that you received all of your Qualified benefit in the form of the lump sum and will never be eligible for payment from the PBGC.

If you are receiving payments from the PBGC now, they are based on preliminary calculations done by Delta. DP3 has found some potential errors in those calculations and we are discussing them with the PBGC. So far those potential errors would actually increase the payments made to the retirees by the PBGC.

But it is possible that errors have been made in some cases (probably very few) that have led to the PBGC sending a retiree too much money and that these overpayments will be recovered by the PBGC. Their written policy (PBGC regulation

4022) is very liberal and does not charge interest. An amount, calculated over the estimated life of the annuity is deducted monthly from the payment you would normally receive. Once the overpayment is satisfied (in the event that it is) the full payment resumes. Additionally, the PBGC has the authority to waive the recoupment entirely.

The USAir situation appears to be caused by the fact that they could take up to 100% of their retirement as a lump sum, combined with the PBGC's interpretation of numerous contractual changes in the years prior to plan suspension. USAir has numerous subgroups and a significantly more complicated contract situation than ours.

## **Rumor 2 – Soaring Eagles lost in court and this shows we have no chance to succeed in legally challenging the PBGC.**

This is **false**.

The Soaring Eagles had requested a preliminary injunction to prevent the PBGC from implementing any recovery of overpayments while appeals are in process. They have several reasons for doing this, including the fact that it would force some of their retirees to make that money up with cash from their IRAs. If they then win, they would never be able to replace that money in the IRA, which has both financial and estate implications.

According to their letter to their membership, this was not a surprise and is being appealed. They are of the opinion that getting some of the underlying issues involved in the refusal heard by the appeals court will potentially streamline the rest of their claims (they have 10 specific claims in their appeal of the PBGC calculations and procedures).

Several of the Soaring Eagles claims have common ground with our interests. They are appealing the look-backs on the 415b limitations, they have some issues with the valuation of the plan, and they have a very interesting argument that the PBGC should be paying the guarantee in addition to any money we receive from the pension plan itself.

But the two areas that DP3 believes have the most potential for our members are not addressed, nor are they cogent, in the Soaring Eagles litigation. Without discussing strategy, one of those issues involves the applications of look-backs unique to our contract. The other cannot be appropriately discussed at this time without alerting the PBGC to our litigation strategy.

Bottom line is that we may benefit from the Soaring Eagles litigation, but because of the significant differences in our contracts and other factors, we are not dependent on their success. This is a fortunate position.

Click this link for a [Timeline of the USAir Pension Termination Process](#).

## **Rumor 3 – The Delta contract has nothing to do with the PBGC calculations or potential recoupments.**

This is **false**.

All of the PBGC calculations are based precisely on the Delta contract, with the only modifications being the 3 year look-back on FAE and 415B limitations and the 5 year look-back on 401A limitations.

#### **Rumor 4 – We will receive a significant portion, if not all, of our Qualified retirement from the PBGC.**

This is very unlikely, but no one knows at this time.

The overriding variable here is the value of the pension plan. What we do know is that the PBGC valued the stock they received at the price it was the day they received it. This works in our favor, but still leaves the plan woefully underfunded.

We know that there is enough to pay PC3, as it is currently being calculated. We do not know if there is enough to pay PC4 as it is currently defined.

If the Akaka Bill in Congress passes, increasing the PC4 guarantees, more money will be paid out from the pension to the PC4 category (in our situation that means almost exclusively pilots who were under 53 years of age at plan termination).

That means less money will be available to pay PC5.

Note that PC5 phases back in the money that the PC3 look-backs eliminated – on a pro rata basis until there is no more money available in the plan.

The bottom line is that there is no guarantee that any PC5 money will be paid. This is why DP3 is working to maximize the amount of PC3 money that is paid.

#### **Summary:**

It is important to note there are significant differences between the USAIR, United and Delta contracts. Because of differing contract terms, not all PBGC decisions rendered at those airlines will apply directly to us.

DP3 is prepared to address our unique issues as well as more general issues with the PBGC through legal channels if necessary, and believe we have strong grounds to do so. But we also have legislative and administrative options that may allow us to avoid or minimize legal action.

In addition to the issues discussed above, the PBGC has a habit of interpreting gray areas in applicable ERISA rules in a manner that benefits the agency at the expense of retirees. We have reason to believe that the past biases of the PBGC may be altered when a new PBGC Director, appointed by a more labor friendly President takes the reins at the federal agency. Absent an internal decision at the PBGC to re-examine those issues, DP3 is prepared to mount a legislative initiative to help clarify the PBGC's existing authority.