



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

April 30, 2015

Mr. Joseph L. O'Neil  
President  
Retired Firefighter's Association of Washington, D.C.  
Firefighters Association of the District of Columbia, Local No. 36  
2120 Bladensburg Road, NE, Suite 210  
Washington, DC 20018-1440

Mr. Edward C. Smith  
President  
Firefighters Association of the District of Columbia, Local No. 36  
2120 Bladensburg Road, NE, Suite 210  
Washington, DC 20018-1440

Re: Office of D.C. Pension Federal Benefit Corrections

Dear Mr. O'Neil and Mr. Smith:

This letter responds to your letters to Nani A. Coloretti, dated March 19, 2015, and April 6, 2015, regarding the recent corrections made by the U.S. Department of the Treasury's Office of D.C. Pensions (Treasury) to the retirement annuities of 136 retired firefighters under the District of Columbia Police Officers and Firefighters' Retirement Plan (the Plan). Please be advised that Ms. Coloretti no longer serves in the role of Assistant Secretary for Management. Mr. Brodi Fontenot currently serves in this role, and I am responding to your letters on his behalf.

Treasury recognizes the impact that these corrections have had on your members. However, Treasury is required by federal law to correct these errors in all future benefit payments under the Plan.<sup>1</sup> Under the "Appropriations Clause" of the U.S. Constitution, Treasury is permitted to pay benefits to your members only to the extent authorized by Congress in the laws it has passed regarding the Plan. The benefit corrections relate to administrative errors made by the District government that resulted in payments from the Plan in excess of what has been authorized by Congress. Treasury is obligated to correct identified errors so that future benefit payments to the affected members are paid at the levels authorized by Congress.

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<sup>1</sup> Treasury has limited discretion to provide retroactive relief. Treasury has exercised its discretion by automatically waiving repayment of overpayments received by your members as a result of the systemic "average pay" and "Lookback COLA" errors. With regard to other, non-systemic errors (such as sick leave miscalculations), Treasury may further exercise its discretion on a case-by-case basis in response to individual requests for waivers.

Treasury realizes that these errors were not the fault of your members, and the corrections could result in hardship for some members. However, this does not relieve Treasury from its obligations under the Appropriations Clause. The U.S. Supreme Court has made clear that this is the case even when a government employee has misinformed an individual about his or her rights under a federal pension program, and the individual has acted on the basis of the misinformation. *See Richmond v. United States*, 496 U.S. 414 (1990). The Supreme Court has also held that the United States is not subject to the defense of laches when enforcing its rights. *See United States v. Summerlin*, 310 U.S. 414 (1940).

Accordingly, Treasury corrected your members' annuities on March 1, 2015 to fulfill its obligations under the Appropriations Clause. However, if a member appeals the correction, and if a determination is made during the appeal process that the member's annuity should not have been reduced, the member's annuity will be returned to the correct level, and the member will receive a corrective payment for amounts withheld during the period the reduction was in effect.

Lastly, please note that federal privacy laws prohibit Treasury from disclosing any information about a member or the member's benefit without a signed privacy waiver from the member. Therefore, Treasury is not authorized to provide you with a list of the members of your association who have been affected by these corrections without signed privacy waivers from the members.

I hope this letter has helped to address the concerns raised in your letters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anita K. Blair', with a stylized flourish at the end.

Anita K. Blair  
Deputy Assistant Secretary for Human Resources  
& Chief Human Capital Officer