

## **Enhanced Retirement Eligibility Issue**

### **Background**

In November of 2020, CBP sent letters to approximately 1,300 CBP Officers informing them that they were no longer eligible to receive the higher annuity for their time at CBP without 20 years of CBP service, even though that they had been promised a proportional annuity and paid in the higher Law Enforcement Officer (LEO) contribution. In July 2021, CBP sent notices to an additional subset of 295 employees who did not receive the original letters because CBP was determining the impact of the coding errors based on their entry on duty date. CBP recently determined that those employees are subject to the same eligibility restrictions as other employees who entered on duty after July 6, 2008.

This news has upended the lives of these officers who were promised a proportional annuity upon retirement for their years of service as a CBPO. Now these officers face an uncertain future. Moreover, these CBPOs have also been told there is no way to reimburse them for the higher contributions they made to the retirement system.

NTEU is fighting to make these dedicated officers whole.

### **What is the Enhanced Retirement law and why did CBP declare these officers ineligible?**

On December 26, 2007, Congress passed, and the President signed, Public Law 110-161 which made CBPOs eligible for the 1.7% enhanced law enforcement officer (LEO) retirement system. As part of the transition, the law provided that CBPOs who would retire prior to serving 20 years under the new system would receive an annuity at the enhanced rate for the years of service following the implementation of the new retirement system.

While the statute states that all CBP Officers onboard prior to July 6, 2008, would be eligible for the proportional annuity and exempt from the maximum entry age of 37 years and mandatory retirement age of 57 years, some officers hired prior to that date but brought on board after that date were promised the same transitional benefits as those onboard prior to July 6, 2008. Approximately 1,500 candidates received and accepted job offers before July 6, 2008 but did not actually start the job until after that date. Many of these hires did not meet the LEO age requirements. These officers were told when they were hired, and for the last 12 years, that they were not subject to the mandatory retirement age and that they would be provided a proportional annuity upon retirement. In fact, Remark Code 052 was inserted in their SF-50, which says "Exempt from mandatory retirement and eligible for prorated Annuity upon retirement."

In 2011, OPM published regulations for the law which suggested that if an employee was not on the payroll as of July 6, 2008, that employee would not be eligible for a proportional annuity.

However, Remark Code 052 remained in the official record of every CBPO who was hired before July 6, 2008. CBP continued to tell these officers that they would receive the proportional annuity for their years of service as a CBPO. In addition, these officers, and CBP, paid the higher LEO contributions into the retirement system. In November 2020, a decision was made that this group of approximately 1500 officers should not receive the higher annuity for their time at CBP without 20 years of service at CBP, notwithstanding the fact that they had been promised a proportional annuity and that they had paid in the higher LEO contribution. The agency's "fix" to the problem was to send the officers a letter informing them of this change and a new SF-50 that no longer contained Remark Code 052.

Here are copies of the letters that CBP sent to these employees in Nov. of 2020 and July of 2021.

[Letter 1](#)

[Letter 2](#) (nearing retirement)

### **What is NTEU's position on this issue?**

NTEU's position continues to be that these employees should be allowed to receive a proportional retirement and retire at the age of 57 with a prorated retirement at the enhanced 1.7% annuity rate as they were promised when hired, and if they choose to retire at that age. NTEU is working with Congress and the Administration to fix this injustice.

### **I received a letter and I'm confused by the language. Do I have to retire if I am age 57 or older?**

No. CBP has clarified that you do not have to retire provided you meet certain conditions.

In all of the letters sent to impacted employees, including the ones previously sent to approximately 1300 impacted employees, the letters contain the following statement, or something similar:

*Upon review of your employment record, it was discovered that you did not meet the eligibility requirements for a proportional annuity at the time you were hired and that you are subject to mandatory retirement at age 57 or following 20 years of CBPO Enhanced Retirement Service.*

This statement has led employees to believe that they must retire at age 57 regardless of whether they met the 20 years of service in a covered position requirement. However, CBP has confirmed that those employees who were hired after July 6, 2008 and were over the age of 37 at that time will be allowed to continue working past the age of 57 to meet the 20 years of service requirement and receive the enhanced retirement. However, once those employees reach the 20 years of service, they will be subject to mandatory retirement. Further, CBP stated that if employees choose to retire before completing the 20 years of service, those employees will only receive the regular FERS retirement at a 1% annuity rate.

### **What is NTEU doing to fix this problem?**

NTEU is working diligently to address this issue with legislative action. President Tony Reardon has raised this issue repeatedly with OPM, OMB and CBP leadership, including at our national LMRC meeting with CBP in May. OFO and OPM are collaborating with NTEU on this legislation. NTEU has submitted proposed language to the Senate Homeland Security and Governmental Affairs Committee, and we are working with OPM, CBP and the Committee for a final draft of proposed legislation, which we have been assured will be introduced. We will continue to push this effort and provide updates as soon as they are available.

You can read President Reardon's letter to OPM [here](#).

### **What can I do to ensure this is addressed?**

First of all, be sure you retain your NTEU membership and update your member record to provide NTEU with your personal email address.

Watch your email boxes (government and personal) for additional information and action you can take. Once a bill is introduced, we may call on you and your co-workers to take action.

### **What if I retire before this situation is addressed?**

Should you decide to retire before any bill is enacted into law, NTEU encourages you to continue your membership with NTEU as a retiree so we can be sure to keep you up to date on our legislative efforts and any retroactive changes to your annuity based on changes in the law.

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