



March 1, 2021

Acting Director Kathleen McGettigan  
U.S. Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415-1000

Dear Acting Director McGettigan:

I am writing to you to try to resolve a serious issue for approximately 1500 Customs and Border Protection Officers (CBPOs) represented by NTEU. When hired, these officers were told that they would be eligible for a proportional law enforcement officers' annuity. Recently, however, they have been notified that they will not receive the enhanced annuity for the years they have paid into that system because they have served less than 20 years as a CBPO. Now, through no fault of their own, these officers face an uncertain retirement.

As you know, 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. To help with the transition to this new retirement program, 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. NTEU worked with CBP's HR office to implement these provisions.

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. It is our understanding that close to 1,500 candidates received and accepted job offers to be a CBPO 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 that they were not subject to the mandatory retirement age and that they would be provided a proportional annuity upon retirement for their years of service as a CBPO. 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

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annuity. However, Remark Code 052 remained in the official record of every CBPO who was hired before July 6, 2008, but not on payroll by that date and 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.

As you can imagine, this has upended the officers' lives. It has created absurd situations, such as a CBPO who received his Notice of Appointment prior to July 6, 2008, but went on the CBP payroll on November 10, 2008, when he was just shy of 60 years old. He was repeatedly told he would get a proportional 1.7% LEO enhanced retirement annuity for his years of service at CBP. He recently contacted the retirement office at CBP and was told that he now must put in 20 years to get any of that enhanced retirement. By then he will be nearly 80 years old. CBPOs have also been told there is no way to reimburse them for the higher contributions they made to the retirement system.

We would like to work with you to find a just solution for this group of dedicated officers. We believe that that a reasonable solution is to allow those who had were given the SF-50s with Remark Code 052 to retire prior to 20 years of service as a CBPO with a proportional annuity. They paid for it. They were told they would get it. They should receive it.

I would appreciate an opportunity to discuss this matter with you. Please contact Cathy Ball at [Cathy.Ball@nteu.org](mailto:Cathy.Ball@nteu.org) with any questions and to set up a time when we can speak. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony M. Reardon". The signature is fluid and cursive, with the first name being the most prominent.

Anthony M. Reardon  
National President