



# FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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October 21, 2015

The Honorable James Lankford  
Chairman,  
Subcommittee on Regulatory Affairs &  
Federal Management  
Committee on Homeland Security &  
Governmental Affairs  
United States Senate  
Washington, DC 20510

The Honorable Heidi Heitkamp  
Ranking Member,  
Subcommittee on Regulatory Affairs &  
Federal Management  
Committee on Homeland Security &  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman & Ranking Member Heitkamp:

I am writing on behalf of the more than 26,000 members of the Federal Law Enforcement Officers Association regarding the October 22, 2015 hearing entitled “Improving Pay Flexibilities in the Federal Workforce.” We applaud the Subcommittee’s focus on this important topic and respectfully request that this letter be made a part of the hearing record.

In order to carry out the innumerable daily demands that are placed upon it, the federal government has to rely on its ability to recruit and retain the best possible workforce. Nowhere is this need greater than in the ranks of the men and women who staff our nation’s federal law enforcement agencies. Federal law enforcement is an occupation that is absolutely unique in the ranks of the federal government. Indeed, no other employee in the federal service is routinely asked to put their lives on the line to protect our nation from terrorists and criminals. It is one of the most stressful, most dangerous, and most rewarding careers for those who meet the rigorous requirements of the job.

Before we address ways in which the government can improve its pay flexibilities and its ability to recruit and retain a strong federal workforce, it is important to note what does not work. In recent years, pay and benefits have become the “low-hanging fruit” for Congress to pick in dealing with the stresses of the budget and sequestration. In both the 112<sup>th</sup> and 113<sup>th</sup> Congresses this resulted in law enforcement pay and benefit systems coming under heavy attack, with numerous legislative attempts to reduce or eliminate the pay and benefits that officers have earned and are entitled to by virtue of their service to the United States. Many of the legislative proposals put forward during this period included such things as arbitrary and across-the-board pay freezes, changes in the retirement benefits for federal law enforcement officers and how those benefits are calculated, and hiring freezes that would decrease officer safety and fail to acknowledge the time required to select and train men and women for demanding federal law enforcement positions. Policies such as these do not work in the law enforcement context and do a disservice to the brave men and women who are asked to put their lives on the line to protect us from terrorists and criminals. Had any one passed, it would have had an immediate and negative impact on law enforcement agencies’ recruitment and retention efforts.

For the first time in decades, we are seeing that the once revolving door through which individuals bring their skills and experience into a career in federal law enforcement has become stuck in one direction. It is now seen much more as an exit only, in which highly-trained law enforcement officers are more rapidly leaving federal service. This is particularly true of those with cybersecurity backgrounds whose skill set is highly marketable in the private sector. Agencies are having an increasingly difficult time backfilling those positions because of the time it takes to recruit and train an individual for a law enforcement position. Unless the Congress decides to invest in its law enforcement workforce, we will continue to see turnover at an unsustainable rate and an increase in vacancies. This is something we can ill-afford at the federal agencies that are the core of our domestic security and safety.

With that as background, there are a number of pay-related measures that the Subcommittee could consider to help increase flexibility and improve the federal government's ability to recruit and retain a strong workforce. These include an overhaul of the locality pay system, modification or elimination of the biweekly and annual caps on overtime as premium pay, and revising the calculation rate under the Federal Employees Retirement System (FERS) to increase the annuity level for federal law enforcement officers at the time of retirement. Each of these is discussed briefly below.

1. *Overhauling the locality pay system*—In 1990, Congress passed the Federal Employees Pay Comparability Act in part to address the disparities that existed in federal and non-federal pay in different parts of the United States, particularly in those areas with the highest costs of living. In the same law, Congress adopted an additional locality-based adjustment under the Federal Law Enforcement Pay Reform Act (FLEPRA) specifically for law enforcement employees in eight of the highest cost of living areas, such as New York, Boston, San Francisco, and Washington, DC. While the intent was to eliminate the disparities within 10 years, it has been a quarter century since the passage of these reforms and the federal government is no closer to closing the pay gap. This is a problem for agencies trying to fill positions in major metropolitan areas as well as those that are trying to increase staffing in other parts of the country to respond to specific needs and situations. To address this problem, FLEOA recommends that Congress expand the FLEPRA special law enforcement locality-based supplement to all locality pay areas. We further recommend that federal law enforcement agencies be granted additional flexibilities to increase locality-based payments as needed to address specific staffing problems that arise for different law enforcement occupations and grade levels in individual localities. Finally, FLEOA recommends that the formula for determining locality pay be revised to better account for the true costs of living in different geographic areas. One indicator to consider is using average housing prices. In the DC area alone, the median sales price of a home is \$539,000, a roughly 6 percent increase from last year. While this is a positive development for a long-time homeowner, it is not so good for a federal law enforcement officer who transfers to DC and is trying to find housing in this market.
2. *Eliminate or modify the biweekly and annual caps on overtime compensation as "premium pay"*—Due to the nature of their profession, federal law enforcement officers are not 9-5, Monday through Friday employees. The work they perform does not lend itself to regular schedules. It is a job that often requires a significant amount of unanticipated or unscheduled overtime hours paid through systems such

as Law Enforcement Availability Pay (LEAP) or Administratively Uncontrollable Overtime (AUO). Unfortunately, many federal law enforcement officers and criminal investigators lose a significant amount of overtime compensation each year because AUO and LEAP are considered “premium pay” and subject to biweekly and annual pay caps that limit the amount of pay an officer or agent can receive. More importantly, the application of these pay caps affects the calculation of a retirement annuity, such that only overtime pay that falls under the caps is taken into consideration by OPM when making an annuity calculation under Civil Service Retirement System (CSRS) and FERS. This means that even at the time of retirement, a law enforcement officer receives zero credit for the years of overtime hours he has provided at no cost to the government and for which he was never paid. In the context of improving recruitment and retention, failing to provide full pay for hours worked is not only an unwise human resources policy but undermines morale, contributes to retention problems, and unnecessarily burdens federal law enforcement employees. We therefore believe that Congress should remove the cap on law enforcement overtime compensation and make AUO and LEAP fully creditable for *pay* purposes. At a minimum, Congress could also consider legislation like H.R. 1702, the “LEO Fair Retirement Act,” introduced by Representative Peter King earlier this year which would ensure that law enforcement overtime compensation is fully creditable for *retirement* purposes. Specifically, H.R. 1702 would amend current law to require OPM to take into account the full amount of overtime hours accrued when calculating the amount of an annuity at the time of retirement. In the end, removing or modifying the premium pay caps will help ensure that those who willingly place themselves in harm’s way receive some credit for all of the long hours spent carrying out their sworn duty to protect and serve.

3. *Adjusting the calculation rate under FERS for purposes of determining a federal law enforcement officer’s pension annuity*—Most law enforcement officers today have been hired under FERS. Unlike its predecessor, FERS is a three-legged retirement program that relies on a more modest pension annuity than CSRS. Under current law, law enforcement officers may retire after 20 years of service at age 50 or 25 years of service at any age. Nearly all officers are also subject to a maximum hiring age of 37 years old and face mandatory separation from service at age 57; policies which FLEOA fully supports as paramount to ensuring that the law enforcement ranks are filled by individuals who are physically vigorous enough to meet the demands of the job. However, these requirements and the current annuity calculation rates mean that a law enforcement officer would be required to work a minimum of 36 years beginning at the age of 21 to achieve a pension annuity worth 50 percent of their pay at the time of retirement. That is because law enforcement officers receive 1.7% of their high-3 pay for the first 20 years of service and 1.0% of pay for every year of service in excess of 20 years. The reality is that most law enforcement officers do not get hired until they are in their late 20s or early 30s because these are positions which require a college education and prior military or work-related experience. Thus most law enforcement officer annuities end up at the level of 34-39% of pay at the time of retirement. This is far below what many state and local law enforcement agencies are able to offer and is a major factor for individuals determining whether to seek employment with a federal agency. We therefore recommend that the Subcommittee similarly look at the FERS system as a

major factor in recruitment and retention and consider revising the annuity calculation to increase the annuity level for federal law enforcement officers at the time of retirement.

In recent years, federal law enforcement officers have weathered a perfect storm of assaults on their jobs and their livelihoods through the government shutdown, sequestration, and hiring and pay freezes, to name just a few. While each of the workforce policy changes that have been considered during this timeframe may appear to have merit in the overall effort to reduce the federal budget, they have also negatively impacted both employee morale and the various missions law enforcement agencies are asked to perform. As such, they also have the potential to significantly impact the safety of both federal law enforcement officers and the public they serve. It is past time for Congress and the Administration to reverse course before the effects are irreversible. Serious consideration must be given to prioritizing both the human capital and operational needs of the agencies charged with protecting homeland security and public safety.

It is no easy, quick, or inexpensive thing to recruit, vet, train, and assign an individual to a federal law enforcement position; particularly if it is in response to an imminent threat or to a catastrophic natural or manmade disaster. That is why we hope that your hearing on improving pay flexibilities is the first of many examining ways to not only improve recruitment and retention, but also to strengthen our nation's federal law enforcement workforce. FLEOA looks forward to working with you and others to advance solutions for the benefit of the brave men and women who are asked to put their lives on the line to protect us each and every day.

Sincerely,

*Nate Catura*

Nate Catura  
National President

CC: Members, Subcommittee on Regulatory Affairs & Federal Management, Committee on Homeland Security & Governmental Affairs, United States Senate