



## FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

7945 MacArthur Boulevard ▪ Suite 201 ▪ Cabin John, MD 20818

Phone: 202-870-5503 ▪ Fax: 202-870-5504 ▪ [www.fleoa.org](http://www.fleoa.org)

October 15, 2018

Ms. Margaret Weichert  
Acting Director  
U.S. Office of Personnel Management  
1900 E Street, NW  
Washington, DC 20415-1000

Dear Acting Director Weichert:

I am writing on behalf of the more than 27,000 members of the Federal Law Enforcement Officers Association to request your assistance in overturning OPM's 2016 unpublished policy change concerning the division of a FERS Retiree Annuity Supplement (RAS) between a retiree and his or her former spouse. This policy change constituted an unwarranted reinterpretation of a 30-year old provision of the FERS statute and, more importantly, has caused real financial harm to federal law enforcement and other retirees for the more than two years that it has been enforced by the agency. It is an issue that FLEOA has raised with each of your three predecessors as OPM Director who, in turn, allowed the agency to institute the policy in secret, disregarded an OIG report (Management Advisory Letter L-2018-1, "Review of the U.S. Office of Personnel Management's Non-Public Decision to Prospectively and Retroactively Re-Appportion Annuity Supplements") which in part questioned the manner in which OPM promulgated the policy change, and then permitted the agency to appeal an MSPB decision overruling OPM's actions. And it is an issue that has raised concern on both sides of the aisle in Congress, particularly with respect to the fact that this policy change likely violated the Administrative Procedure Act (APA).

By way of background, beginning on or about July 2016, OPM implemented a revised policy with respect to the division of a RAS between a retiree and his or her former spouse based on a fundamental reinterpretation of 5 USC 8421(c) and 8467. In promulgating this policy change, however, OPM failed to notify the public or impacted retirees prior to its implementation, despite the fact that such a decision would have far-reaching financial implications for both retirees and their former spouses. Both the OPM-OIG and the MSPB have found that OPM's actions constituted a reinterpretation of current law that was outside of the agency's authority and was done absent a specific grant of authority from Congress or through a notice-and-comment rulemaking process. The OIG found in particular that OPM's reinterpretation of current law and subsequent actions against impacted retirees constituted an agency rulemaking action that violated the APA. This is a view shared not just by our organization, but by the Chairman of the Senate Homeland Security and Governmental Affairs Committee's Regulatory Affairs Subcommittee. In a May 9 letter to then-Director Pon, Sen. James Lankford also noted that OPM's reinterpretation of the FERS statute and retrospective application may have violated the APA, causing undue hardship to annuitants without providing adequate notice of the change or the opportunity for public input on it.

As Sen. Lankford, the OIG, and MSPB have concluded, this policy change was implemented in a clandestine fashion without any regard for the court-ordered and previously-litigated provisions of the specific divorce settlements of affected retirees. Instead, retirees and their former spouses only learned of OPM's actions when their annuity payments changed, in some cases years after the parties had divorced and a state court had ordered a former spouse's marital share.

In the more than two years since it implemented this revised policy, OPM has applied its reinterpretation retroactively and with little to no regard for the financial harm it has inflicted on retirees. It has created individual retiree debts due to the federal government of as much as \$28,389.96 (that we are aware of)—debts for which OPM has sought repayment in the form of prospective and retrospective assessments from annuitants' retirement benefits. Furthermore, as the MSPB intimated in its April 2018 decision overturning OPM's actions against a retired Air Traffic Controller who was directed to give back more than \$24,000 in earned retirement benefits, this reinterpretation of the divisibility of the RAS seems to have remained a closely-held secret. In fact, it is not clear that OPM has made publicly available any guidance or instructions to even current employees planning for retirement that their benefits are subject to reduction under this revised policy.

We recognize that OPM's efforts to penalize certain retired law enforcement officers and other federal retirees through this covert regulatory action occurred prior to you assuming the position of Acting Director. However, these actions—whether or not officially sanctioned by your predecessors—have been allowed to continue for far too long. As such, we respectfully request that you take immediate and public steps to rectify this situation by: (1) immediately rescinding any and all debt collection efforts against retirees; (2) restoring all improperly seized RAS and/or other retirement benefits to the affected retirees; and (3) repealing the policy guidance issued in violation of the APA by the Retirement Services division that apportions a divorced retiree's FERS annuity supplement where such division is not expressly provided for in a qualifying court order. Such actions on your part would be similar to Congress's recent successful effort to overturn OPM's other 2016 reinterpretation of the FERS statute that significantly reduced the pensions of and made debtors out of criminal investigator retirees at the TSA Office of Inspection. That legislation—enacted as Sec. 1908 of the FAA Reauthorization Act signed into law on October 5—clarified the law with respect to the retirement creditability of Law Enforcement Availability Pay (LEAP) compensation for these criminal investigators and directed OPM to provide full retroactive relief to the impacted retirees.

Thank you in advance for your attention to this request. FLEOA stands ready to work with you to ensure an equitable and speedy resolution to this matter.

Sincerely,

*Nathan R. Catura*

Nathan R. Catura  
National President

CC: The Hon. Ron Johnson, Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate  
The Hon. Trey Gowdy, Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives  
The Hon. Claire McCaskill, Ranking Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate  
The Hon. Elijah Cummings, Ranking Member, Committee on Oversight and Government Reform, U.S. House of Representatives  
Members, Committee on Homeland Security and Governmental Affairs, U.S. Senate  
Members, Committee on Oversight and Government Reform, U.S. House of Representatives