



**STATEMENT OF ANTHONY M. REARDON  
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“KEEPING PACE WITH TRADE, TRAVEL AND SECURITY: HOW DOES CUSTOMS  
AND BORDER PROTECTION PRIORITIZE AND IMPROVE STAFFING AND  
INFRASTRUCTURE”  
BEFORE THE HOUSE COMMITTEE ON HOMELAND SECURITY  
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY**

**April 19, 2016**

Chairman McSally, Ranking Member Vela, distinguished members of the subcommittee; thank you for the opportunity to provide this testimony. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 25,000 Customs and Border Protection (CBP) Officers and trade enforcement specialists stationed at 328 land, sea and air ports of entry across the United States (U.S.) and 16 Preclearance stations currently at Ireland, the Caribbean, Canada and United Arab Emirates airports.

NTEU supports the Administration’s Fiscal Year (FY) 2017 budget that provides \$12.9 billion for Customs and Border Protection (CBP), an increase of 5.2% over FY 2016. In FY 2017, CBP plans to have onboard 23,861 CBP Officers at the ports of entry—which achieves the hiring goal of 2,000 additional CBP Officers initially funded in FY 2014.

The most recent results of CBP’s Workload Staff Model (WSM) – factoring in the additional 2,000 CBP Officers from the FY 2014 appropriations-- **shows a need for an additional 2,107 CBP Officers through FY 2017. The Agriculture Resource Allocation Model (AgRAM) calculates a need for an additional 631 CBP Agriculture Specialists for a total of 3,045.** CBP’s FY 2017 budget submission seeks congressional approval to fund these 2,107 new CBP Officers through an increase in user fees, but includes no additional funding to address the current 631 Agriculture Specialist staffing shortage.

There is no greater roadblock to legitimate trade and travel efficiency than the lack of sufficient staff at the ports. **Understaffed ports lead to long delays in commercial lanes as cargo waits to enter U.S. commerce and also creates a significant hardship for CBP employees.**

An example of the negative impact staffing shortages have on CBP Officers can be found at the San Ysidro port of entry where CBP has instituted involuntary temporary duty assignments (TDYs) to address a staffing crisis there. At John F. Kennedy (JFK) Airport, CBP has granted overtime exemptions to over one half of the workforce to allow managers to assign overtime to

Officers that have reached the statutory overtime cap. **Both involuntary overtime--resulting in 12 to 15 hour shifts, day after day, for months on end--and involuntary work assignments far from home disrupt CBP Officers' family life and destroy morale. Ongoing staff shortages directly contribute to CBP's perennial ranking at the very bottom of the Partnership for Public Service's "Best Places to Work" Survey--314 out of 320 agency subcomponents on the latest survey.**

For years, NTEU has maintained that delays at the ports result in real losses to the U.S. economy. According to the U.S. Department of the Treasury, more than 50 million Americans work for companies that engage in international trade and, according to a University of Southern California (USC) study, "The Impact on the Economy of Changes in Wait Times at the Ports of Entry", dated April 4, 2013, for every 1,000 CBP Officers added, the U.S. can increase its gross domestic product (GDP) by \$2 billion, which equates to 33 new private sector jobs per CBP Officer added. This analysis was supplemented by USC in its update entitled "Analysis of Primary Inspection Wait Times at U.S. ports of Entry" published on March 9, 2014. This study found that by adding 14 CBP Officers at 14 inspection sites in 4 international airports, the potential total net impact would be to increase annual GDP by as much as \$11.8 million.

### **CBP Officer Hiring Challenges**

Of major concern to NTEU is that CBP continues to fall short in its authorized hiring efforts by approximately 800 of the 2,000 officers that were funded by Congress in 2014. According to CBP, they hope to have hired the 2,000 authorized by the second quarter of 2017. CBP contends that they are unable to find eligible applicants to fill the vacant positions.

One factor that may be hindering hiring is that CBP is not utilizing available pay flexibilities, such as recruitment awards and special salary rates, to incentivize new and existing CBP Officers to seek vacant positions at these hard to fill ports, such as San Ysidro.

NTEU and CBP are currently negotiating over the agency's proposal to draft CBP Officers to work involuntary TDYs at San Ysidro for longer than 90 days. CBP has made this proposal because its solicitation for volunteers to staff this TDY is no longer keeping up with what CBP believes to be its staffing requirements. Yet, while asserting that it would prefer to use volunteers and not involuntarily draft employees, CBP has rejected NTEU proposals that would incentivize employees to volunteer. For example, CBP has balked at offering any monetary incentives or seeking legislative changes to allow special hiring incentives such as student loan repayments to entice more individuals to apply to work in San Ysidro.

To help address staffing shortages, NTEU is also exploring whether our members would be interested in CBP offering an entry level age waiver of 40 years and a mandatory retirement age waiver of 60 years as a means to attract a larger pool of potential applicants and to reduce attrition rates due to the statutory mandatory retirement at age 57 years.

Finally, the best recruiters are likely current CBP Officers. Let me rephrase that and say that current CBP Officers could be the best recruiters. Unfortunately, based on their experiences with the agency, many officers would never encourage their family members or friends to seek

employment with CBP. That ought to be telling them something pretty important too. I have suggested to CBP leadership that they look at why this is the case.

In its FY 2017 budget submission, CBP offered several proposals to mitigate the ongoing staffing shortage of 2,107 CBP Officers that will continue into FY 2017 and beyond. One of these proposals is to backfill 50 CBP Officer attrition vacancies in FY 2017 with CBP Technicians in order to free up CBP Officers from administrative duties. **NTEU supports the hiring of additional CBP Technicians to free up CBP Officers from administrative duties as long as CBP is not reducing the current onboard goal of 23,821 CBP Officers. However, CBP’s proposal, as outlined in its FY 2017 budget submission, proposes a one for one replacement of 50 CBP Officer positions with 50 CBP Technicians. NTEU strongly opposes this proposal.**

CBP Technicians cannot “backfill” CBP Officer positions, because they are not qualified as CBP Officers. **With an ongoing shortage of 2,107 CBP Officers, hiring new CBP Officers should be CBP’s priority. NTEU supports hiring additional CBP Technicians to give administrative support to CBP Officers, but strongly objects to CBP replacing CBP Officer positions made vacant through attrition with CBP Technicians.**

A funding proposal in the FY 2017 CBP budget submission that NTEU strongly supports is for Congress to authorize a \$2.00 increase in immigration and customs user fees to fund the hiring of the 2,107 additional CBP Officers needed to end the current CBP Officer staffing shortage.

NTEU was disappointed that Congress, in last year’s highway bill, indexed customs user fees to inflation, but diverted this fee increase to serve as an offset for highway and infrastructure funding, rather than to hire additional CBP Officers.

By diverting the difference in the amount of customs user fees collected currently and the additional amount indexed to inflation to non-CBP related projects both increases the cost to the private sector by escalating the current level of customs user fees paid over the next ten years, and compels the private sector to separately fund--through Reimbursable Service Agreements (RSA) --CBP inspectional staffing and overtime. NTEU will work to redirect this \$400 million a year funding stream back to CBP for its intended use—to pay for CBP inspection services provided to the user.

### **Reimbursable Service Agreements (RSA)**

In recent years, in order to find alternative sources of funding to address serious CBP Officers and Agriculture Specialist staffing shortages, CBP received authorization and has entered into RSAs with the private sector as well as with state and local government entities. These organizations reimburse CBP for additional inspection services including overtime pay and the hiring of new personnel that in the past has been paid for entirely by user fees or appropriated funding. According to CBP, since the program began in 2013, CBP has entered into agreements with 21 stakeholders, providing more than 112,000 additional processing hours for incoming commercial and cargo traffic at a cost of nearly \$13 million to these public and private sector partners.

Section 560 of the FY 2013 DHS appropriations bill authorized CBP to enter into five reimbursable fee agreements for a 5-year term with the City of El Paso land port of entry; the City of Houston Airport System; Dallas/Fort Worth International Airport; Miami-Dade County; and the South Texas Assets Consortium (STAC.) It should be noted that agricultural inspectional services are not eligible for reimbursement under the Section 560 program, as it is limited to “customs and immigration” inspectional services such as salaries, benefits, relocation expenses, travel costs and overtime as necessary at the City of El Paso land ports and solely to overtime at the three air ports of entry.

An expansion of the Section 560 RSA CBP pilot program was authorized by Section 559 of the Consolidated Appropriations Act of 2014 (P.L. 113-76). Section 559 expanded on the Section 560 RSAs by allowing for increased services at newly selected ports, to include customs, immigration, agricultural processing and border security services. Because of the need for CBP Agriculture Specialists to process incoming produce, STAC quit the 560 program and applied for the 559 program. Under Section 560, RSAs were limited to CBP Officer overtime and staffing, **except in the air environment where only CBP Officer overtime reimbursement is allowed. Under both Section 560 and 559, reimbursement for the hiring of additional CBP Officer and CBP Agriculture Specialist positions is allowed at sea and land ports, but only overtime reimbursement is allowed at airports.**

The new Section 559 has no restriction on the number of RSAs for sea and land ports and no limits on the terms of agreement for customs, agricultural processing, border security services and immigrations inspection-related services. These costs may include salaries, benefits, administration, transportation, relocation expenses and overtime expenses incurred as a result of the services requested.

### **NTEU’s RSA Concerns**

**NTEU believes that the RSA program would be entirely unnecessary if Congress authorized user fees collected to be indexed to inflation, with the additional funding provided by indexing being used as set forth in existing statute.** NTEU also believes that the RSA program is a band aid approach and cannot replace the need for Congress to either authorize an increase in customs and immigration user fees indexed to inflation or to authorize increased appropriations to hire additional new CBP Officers to adequately address CBP staffing needs.

Further, NTEU strongly believes that CBP should not enter into a RSA if it would negatively impact or alter services funded under any Appropriations Acts, or services provided from any Treasury account derived by the collection of fees. **RSAs simply cannot replace CBP appropriated or user fee funding--making CBP a “pay to play” agency. NTEU remains concerned with CBP’s new Preclearance expansion program that also relies heavily on “pay to play”.**

NTEU also believes that the use of RSAs to fund CBP staffing shortages raises significant equity and other issues, which calls for an engaged Congress conducting active oversight.

For example:

- How does CBP ensure that RSAs are not only available to ports of entry with wealthy private sector partners? (When RSAs were first considered, there was a proposal to require 30% of the total RSA funds collected be reserved for ports with greatest need, not just those that have partners with the greatest ability to pay.)
- How does CBP ensure that RSA funds pay for the hiring of new CBP Officer and Agriculture Specialist personnel and are not simply used to pay for relocating existing CBP personnel from other ports (robbing from Port A to staff Port B without hiring additional staff)?
- How does CBP ensure a long-term public-private funding stream? (When RSAs were first considered, there was a proposal to have RSA pay up front for ten years over 3 installments.)

**There are also some port locations where staffing shortages are so severe currently, that even entering into a RSA program may be problematic.** In 2009, there were approximately 10.7 million international travelers processed at New York's JFK. By the end of 2015, it is estimated that JFK will process 14.5 million passengers, a 30% increase in mission critical work over a six year period. Over this same period, NTEU estimates that there has been a net gain of approximately 100 officers to process over 3.5 million additional travelers.

For the last two years JFK management has received overtime cap waivers for CBP Officers compelling these officers to work 12, 13 or 15 hour shifts day after day for months on end. Officers were required to come in additional hours before their standard shifts, to stay an indeterminate number of hours after their shifts (in the same day) and compelled to come in for more overtime hours on their regular days off as well.

The majority of CBP Officers are already working all allowable overtime, much of which is involuntary. I want to be clear that all CBP Officers are aware that overtime assignments are an aspect of their jobs. However, long, extensive periods of overtime hours can severely disrupt an officer's family life, morale and ultimately his or her job performance protecting our nation.

CBP is currently negotiating separate RSAs with British Airways and American Airways at JFK. In this situation where existing Officers' overtime at JFK is already stretched beyond their limits, the RSA should be restricted to hiring new CBP Officers, and not to simply expanding overtime hours.

Another concern is that CBP continues to be a top-heavy management organization. In terms of real numbers, since its creation, the number of new managers has increased at a much higher rate than the number of new frontline CBP hires. CBP's own FY 15 end of year

workforce profile (dated 10/3/15), **shows that the Supervisor to frontline employee ratio was 1 to 5.6 for the total CBP workforce, 1 to 5.7 for CBP Officers and 1 to 6.6 for CBP Agriculture Specialists.**

The tremendous increase in CBP managers and supervisors has come at the expense of national security preparedness and frontline positions. Also, these highly paid management positions are straining the CBP budget. With the increased use of RSAs to fund additional CBP Officer new hires, **NTEU urges that CBP return to a more balanced supervisor to frontline employee ratio.**

### **Agriculture Specialist Staffing**

CBP employees also perform critically important agriculture inspections to prevent the entry of animal and plant pests or diseases at ports of entry. For years, NTEU has championed the CBP Agriculture Specialists' Agriculture Quality Inspection (AQI) mission within the agency and has fought for increased staffing to fulfill that mission. The U.S. agriculture sector is a crucial component of the American economy generating over \$1 trillion in annual economic activity. According to the U.S. Department of Agriculture, foreign pests and diseases cost the American economy tens of billions of dollars annually. NTEU believes that staffing shortages and lack of mission priority for the critical work performed by CBP Agriculture Specialists and CBP Technicians assigned to the ports is a continuing threat to the U.S. economy.

NTEU worked with Congress to include in the recent CBP Trade Facilitation and Enforcement Act (P.L. 114-125) a provision that requires CBP to submit, by the end of February 2017, a plan to create an agricultural specialist career track that includes a "description of education, training, experience, and assignments necessary for career progression as an agricultural specialist; recruitment and retention goals for agricultural specialists, including a timeline for fulfilling staffing deficits identified in agricultural resource allocation models; and, an assessment of equipment and other resources needed to support agricultural specialists."

CBP's FY 16 AgRAM, shows a need for an additional 631 frontline CBP Agriculture Specialists and supervisors to address current workloads through FY 2017, however, even with the 2016 increase in AQI user fees, **CBP will fund a total of 2,414 CBP Agriculture Specialist positions in FY 2017, not the 3,045 called for by the AgRAM.**

NTEU urges the Committee to authorize the hiring of these 631 CBP Agriculture Specialists to address this critical staffing shortage that threatens the U.S. agriculture sector.

### **CBP Trade Operations Staffing**

CBP has a dual mission of safeguarding our nation's borders and ports as well as regulating and facilitating international trade. In FY 2015, CBP processed more than \$2.4 trillion worth of trade goods and collected \$46 billion in revenue. **Since CBP was established in March 2003, however, there has been no increase in CBP trade enforcement and compliance personnel even though inbound trade volume grew by more than 24 percent between FY 2010 and FY 2014.**

In 2011, CBP established the Centers of Excellence and Expertise (CEEs)—10 industry-specific Centers--requiring significant changes in CBP trade operations employees' workload and work practices.

In 2014, four of the CEEs began operating at an accelerated level of processing and became fully operational. On March 24, 2016, the remaining six CEEs came on board. Critical for supporting the CEE's virtually-managed and geographically dispersed workforce is the completion of the Automated Commercial Environment (ACE). Now three years behind schedule and more than \$1 billion over budget, CBP began rollout of the ACE "single window" for industry filing electronic trade entries on March 30, 2016. According to industry users, the ACE rollout has been challenging. Users have experienced network error and system-wide crashes.

The rollout of CEEs has raised many issues affecting trade operations staff at the ports including insufficient frontline staffing and insufficient training for both frontline employees and supervisors. **NTEU urges Congress to authorize the hiring of additional trade enforcement and compliance personnel, including Import Specialists, to enhance trade revenue collection.**

#### **Additional CBP Personnel Funding Issues**

NTEU commends the Department for increasing the journeyman pay for CBP Officers and Agriculture Specialists. Many deserving CBP trade and security positions, however, were left out of this pay increase, which has significantly damaged morale. NTEU strongly supports extending this same career ladder increase to additional CBP positions, including CBP trade operations specialists and CBP Seized Property Specialists. The journeyman pay level for the CBP Technicians who perform important commercial trade and administration duties should also be increased from GS-7 to GS-9.

NTEU also supports extending enhanced retirement that was granted to CBP Officers in 2008 to the approximately 120 CBP Seized Property Specialists, the only armed, uniformed officers at CBP that do not receive Law Enforcement Officer retirement.

#### **RECOMMENDATIONS**

Funding for additional CBP staff must be increased to ensure security and mitigate prolonged wait times for both trade and travel at our nation's ports of entry. The use of RSAs as an alternate source of funding is merely a band-aid approach and cannot replace the need for Congress to authorize an increase in customs and immigration user fees or to provide sufficient appropriations to hire 2,107 new CBP Officers to adequately address CBP staffing needs.

Therefore, NTEU urges the Committee to:

- **authorize increases in trade, travel and agriculture inspection and enforcement staffing to the level called for in CBP's most recent WSM that shows a need for 2,107 additional CBP Officers and an additional 631 CBP Agriculture Specialists through FY 2017;**
- **authorize an increase in journeyman pay to additional CBP personnel, including CBP Technicians, Import and other Commercial Operations Specialists, and enhanced retirement to armed, uniformed CBP Seized Property Specialists; and**
- **engage in robust oversight of RSAs to ensure that this program does not replace primary funding sources or result in inequitable distribution of CBP Officer resources.**

Lastly, NTEU asks Congress to support legislation to allow CBP to increase user fees to help recover costs associated with fee services and provide funding to hire additional CBP Officers. **If Congress is serious about job creation, then Congress should either authorize funding or raise immigration and custom user fees to hire the additional 2,107 CBP Officers as identified by CBP's own Workload Staffing Model.**

The more than 25,000 CBP employees represented by NTEU are proud of their part in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade, while ensuring that legal trade and travelers move expeditiously through our air, sea and land ports. These men and women are deserving of more resources to perform their jobs better and more efficiently.

Thank you for the opportunity to testify before the Committee on their behalf.