



**STATEMENT OF COLLEEN M. KELLEY  
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**ON**

**CUSTOMS AND BORDER PROTECTION ISSUES  
AT THE PORTS OF ENTRY**

**BEFORE**

**THE SENATE SUBCOMMITTEE ON HOMELAND SECURITY  
APPROPRIATIONS OF THE U.S. SENATE  
APPROPRIATIONS COMMITTEE**

**May 13, 2009**

Chairman Byrd, Ranking Member Voinovich, distinguished members of the Subcommittee; I would like to thank the Subcommittee 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 22,000 Customs and Border Protection (CBP) Officers and trade enforcement specialists who are stationed at 327 land, sea and air ports of entry (POEs) across the United States. CBP employees make up our nation's first line of defense in the wars on terrorism and drugs.

In addition, CBP trade compliance personnel enforce over 400 U.S. trade and tariff laws and regulations in order to ensure a fair and competitive trade environment pursuant to existing international agreements and treaties, as well as stemming the flow of illegal contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money. CBP is also a revenue collection agency, expecting to collect an estimated \$29 billion in federal revenue according to FY 2009 revenue estimates.

### **FUNDING FOR LAW ENFORCEMENT ENHANCED RETIREMENT**

First, NTEU would like to thank the Committee on Appropriations for rejecting the previous Administration's FY 2009 budget request to repeal the law and rescind the FY 2008 appropriated funding to implement a new enhanced retirement benefit for all eligible CBP Officers. The Committee also included \$200 million in its FY 2009 funding bill to cover the conversion costs associated with this enhanced retirement benefit.

NTEU members are extremely grateful that, despite then-President Bush's request, the Committee remained firmly committed to this new enhanced retirement program. NTEU commends the Committee on its forethought and perseverance in enacting and funding this vital legislation. Nothing that the Committee has done since the creation of the Department of Homeland Security (DHS) has had a more positive effect on the morale of the CBP Officer.

The new Administration in its FY 2010 budget request seeks an increase of \$25 million to provide enhanced retirement benefits to CBP Officers. An additional \$25 million is required in FY 2010 (for a total of \$225 million) as a final increment that will fully fund the new retirement coverage. NTEU fully supports this final installment of federal funding of the CBP of Officer enhanced retirement package and asks the Committee to include this funding in its FY 2010 DHS appropriations bill.

### **FUNDING FOR DHS HUMAN RESOURCES MANAGEMENT SYSTEM**

NTEU also commends the Committee for adding a provision, Section 522, in the Consolidated Security Disaster and Continuing Appropriations Act for FY 2009. Section 522 prohibits spending of any appropriated fund for implementation of this DHS human resources management system (formerly known as MaxHR) to employees eligible for inclusion in a bargaining unit. Because of this funding prohibition, DHS announced that the agency would rescind application of this new human resources system as of October 2, 2008.

The Department's FY 2010 budget request proposes deletion of Section 522 of the DHS FY 2009 appropriations bill. NTEU has great concerns about deleting this language. Even though DHS has rescinded the application of the human resource system and DHS has no authority to issue any new regulations, regulations remain in place for adverse actions, appeals, performance management, and pay and classification and can be reactivated if the funding prohibition is lifted.

If the appropriations prohibition language were dropped from the FY 2010 appropriations bill, DHS would be free to revive the regulatory provisions of MaxHR that were not enjoined by the courts. Though DHS could not modify the regulations (since the authority to do that expired in January 2009) these regulations remain on the books as originally promulgated and could be given effect, if DHS were allowed to spend appropriated funds to make them effective.

Even though the FY 2010 budget request states that old section 522 is no longer necessary because "the department has withdrawn its coverage under 5 U.S.C. 9701." DHS by itself cannot withdraw "its coverage under 5 U.S.C.9701." Title 5, Section 9701 by its terms covers DHS and only Congress can change that. To the extent that DHS has decided not to implement MaxHR, as noted above, that decision could be revisited if the appropriations ban were lifted.

In the 110<sup>th</sup> Congress, the full House voted to repeal Title 5, Chapter 97 in its entirety, and any regulations issued under its authority. NTEU is working with both the House and Senate DHS authorizing committees to achieve enactment of this title 5, Chapter 97 repeal by the 111<sup>th</sup> Congress. **Until this statutory authority is repealed by Congress, inclusion of the of section 522, the FY 2009 appropriations prohibition language, in the DHS FY 2010 appropriations bill remains necessary. NTEU therefore requests that identical language to Section 522 prohibiting the use of appropriated funds to implement any part of the regulations promulgated pursuant to Title 5, Chapter 97 is again included in the FY 2010 DHS funding bill.**

## **FUNDING FOR CBP SALARIES AND EXPENSES AT THE PORTS OF ENTRY**

### **Staffing Southbound Inspections at U.S.-Mexico Land Ports:**

In the last year, an epidemic of violence has erupted right across the U.S. southern border in Mexico due to an increase in Mexican drug cartel activity there. Drug violence in northern Mexico has skyrocketed with more than 6,000 homicides since January 2008. This violence is fueled by arms smuggling and bulk cash drug proceeds transiting south from the U.S.

The last Administration fell down on the job of inspecting outbound traffic through U.S. land ports and not all U.S.-Mexico passenger vehicle, rail and truck port crossings are staffed or equipped to conduct southbound inspections. Rightfully, the new Administration is focused on putting more resources into southbound inspections to help curb arms and bulk cash trafficking into Mexico.

NTEU is providing information to Congress and the Administration to help formulate this new policy and to assess security equipment and other needs to address the increased threat to CBP personnel at the southern border. Safety of CBP Officers at the ports of entry is a major concern. Appropriate facilities, staffing and equipment are necessary at the southern land ports to ensure CBP Officers' safety.

NTEU supported an amendment offered by the Chairman and Ranking Member of the Senate Homeland Security and Government Affairs Committee Senators Joe Lieberman (I-CT) and Susan Collins (R-ME), to the FY 2010 budget resolution, to provide an additional \$550 million to fight drug violence along the border. **This budget amendment, approved by Congress, includes \$260 million for Customs and Border Protection to hire, equip, train and deploy 1,600 additional personnel and 400 canine teams to the border to increase the number of inspections of vehicles heading south into Mexico.**

This increase in CBP staffing at the ports of entry called for in the budget resolution, however, must be in addition to the increase in staffing called for in CBP's own staffing allocation models.

**The Department's FY 2010 budget request includes \$8.1 million for 65 CBP Officers and 8 support staff positions to be dedicated to "Combating Southbound Firearms and Currency Smuggling."**

**NTEU believes that this staffing increase is insufficient to address the staffing needs at southern ports of entry and well below the 1,600 additional personnel and 400 canine teams sought by the Senate authorizing committee. NTEU asks the Committee to increase funding for salaries and expenses at the ports of entry to fight drug violence along the southern border and increase the number of inspections of vehicles and travelers heading south into Mexico.**

### **CBP Officer Staffing:**

NTEU was very grateful that the Committee, in its FY 2007 DHS appropriations conference report, directed CBP to submit a resource allocation model for current and future year staffing requirements. For years, NTEU has said that CBP needs several thousand additional CBP Officers and CBP Agriculture Specialists at its ports of entry; that insufficient staffing and scheduling abuses are contributing to morale problems, fatigue, and safety issues for CBP Officers and CBP Agriculture Specialists, and that CBP is losing personnel faster than it can hire replacements.

CBP's 2007 staffing model concluded "that the agency needs 1,600 to 4,000 more officers and agricultural specialists at the nation's air, land and sea ports, or a boost of 7 to 25 percent, the GAO reported." (Washington Post, November 6, 2007)

NTEU is grateful that the Committee, in its FY 2009 DHS Appropriations bill, provided funds for 1,373 U.S. Customs and Border Protection Officers and CBP Agriculture Specialists at the ports of entry — an increase of 834 beyond those requested by the Bush Administration.

Also, CBP announced in January 2009 that it is hiring 11,000 new CBP employees; however, the majority of these hires are to keep up with attrition, not to address optimal staffing levels as determined by CBP's own Resource Allocation Model. According to CBP, there are currently 19,726 CBP Officers of which nearly 3,400 are non-frontline supervisors—**a ratio of one supervisor for every 5 CBP Officers.**

NTEU is disappointed that the Department's FY 2010 budget outline includes increasing new hires for CBP Border Patrol Agents from 17, 499 to 20,000--an increase of 1,500, **but no increase at all in the number of frontline CBP Officer or CBP Agriculture Specialist new hires other than the 65 CBP Officers as part of the "Combating Southbound Firearms and Currency Smuggling" initiative.**

NTEU agrees with the observation of Senate Homeland Security and Governmental Affairs Committee Chairman Lieberman in his March 13, 2009 letter to the Senate Budget Committee. Chairman Lieberman states that "[t]he Border Patrol has almost doubled in the last three fiscal years, while the number of CBP officers at ports of entry has remained basically stable despite long wait times at the border. If this trend continues, it could lead to a misalignment of resources and the under-funding of critical border security priorities, in particular this nation's efforts to enhance the security of our ports of entry through the deployment of programs such as the Western Hemisphere Travel Initiative (WHTI), the Electronic System for Travel Authorization (ESTA), and US-VISIT."

**Again NTEU calls on the Committee to fund staffing levels for CBP Officers at the ports of entry as specified in CBP's own workforce staffing model by at least 1,000 new hires in the FY 2010 appropriations bill, in addition to sufficiently funding an increase in CBP Officer staffing needed to expand outbound inspection and address the increasing violence at the U.S.-Mexico border.**

### **Agriculture Specialists Staffing:**

NTEU was certified as the labor union representative of CBP Agriculture Specialists in May 2007 as the result of an election to represent all CBP employees that had been consolidated into one bargaining unit by merging the port of entry inspection functions of Customs, INS and the Animal, Plant and Health Inspection Service as part of DHS' One Face at the Border initiative.

According to GAO (GAO-08-219, page 31), CBP's staffing model "showed that CBP would need up to several thousand additional CBP Officers and agriculture specialists at its ports of entry." And GAO testimony issued on October 3, 2007 stated that, "as of mid-August 2007, CBP had 2,116 agriculture specialists on staff, compared with 3,154 specialists needed, according to staffing model." (See GAO-08-96T page 1.) According to CBP, the current number of CBP Agriculture Specialists staff is 2,277, of which 312 are non-frontline supervisors. This is unacceptable.

The Department's FY 2010 budget request includes no additional funding for CBP Agriculture Specialist new hires. CBP needs to dramatically increase frontline Agriculture

Specialist staffing levels to address current needs as stated in its own workforce allocation model. **NTEU therefore requests that the Committee include funding in its FY 2010 appropriations bill to increase the number of CBP Agriculture Specialists by at least 500 new hires.**

NTEU also recommends that Congress, through oversight and statutory language, make clear that the agricultural inspection mission is a priority. NTEU would support asking DHS to report on how it is following U.S. Department of Agriculture procedures on agriculture inspections. The report should include wait times for clearing agricultural products and what measures could be implemented to shorten those wait times.

### **One Face at the Border and Training:**

In 2006, Congress requested that the Government Accountability Office (GAO) evaluate the One Face at the Border initiative and its impact on legacy customs, immigration and agricultural inspection and workload. GAO conducted its audit from August 2006 through September 2007 and issued its public report, Border Security: Despite Progress, Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry (GAO-08-219), on November 5, 2007. The conclusions of this report echo what NTEU has been saying for years:

- CBP needs several thousand additional CBP Officers and Agriculture Specialists at its ports of entry.
- Not having sufficient staff contributes to morale problems, fatigue, and safety issues for CBP Officers.
- Staffing challenges force ports to choose between port operations and providing training. In these instances...training is often sacrificed.
- CBP's onboard staffing level is below budgeted levels, partly due to high attrition, with ports of entry losing officers faster than they can hire replacements.

The Homeland Security Appropriations Committee added report language to the FY 2007 DHS Appropriations bill that, with regard to CBP's One Face at the Border initiative, directs "CBP to ensure that all personnel assigned to primary and secondary inspection duties at ports of entry have received adequate training in all relevant inspection functions." NTEU asks the Committee to again seek this information in report language to its FY 2010 DHS Appropriations bill.

NTEU's CBP members have told us that CBP Officer cross-training and on-the-job training continues to be woefully inadequate. In addition, staffing shortages force managers to choose between performing port operations and providing training. In these instances, it is training that is sacrificed.

It is apparent that CBP sees its One Face at the Border initiative as a means to "increase management flexibility" without increasing staffing levels. **NTEU again calls for Congress to end the failed One Face at the Border experiment and ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions at CBP.**

## **Trade Operations Staffing:**

When CBP was created, it was given a dual mission of not only safeguarding our nation's borders and ports from terrorist attacks, but also the mission of regulating and facilitating international trade; collecting import duties; and enforcing U.S. trade laws. In 2005, CBP processed 29 million trade entries and collected \$31.4 billion in revenue. In 2009, the estimated revenue collected is projected to be \$29 billion—a drop of over \$2 billion in revenue collected.

To insure the proper focus by CBP of trade operations staffing needs, Congress included Section 402 in the SAFE Port Act of 2006. This provision required CBP to prepare a Resource Allocation Model (RAM) every two years to determine optimal staffing levels needed to carry out the commercial operations of CBP, including commercial inspection and release of cargo. The first RAM was delivered to Congress in June of 2007 and proposed significant increases from the Homeland Security Act's section 412(b) floor of 2,263 customs revenue function employees, which includes Fine, Penalty and Forfeiture Specialists, Import Specialists, International Trade Specialists, Customs Attorneys, Customs Auditors, Chemists and CBP Technician positions. The next RAM, as mandated by the SAFE Port Act, is due on June 30, 2009 and NTEU expects to see similar numbers in terms of CBP trade operations staffing needs.

The Department's FY 2010 budget request seeks an increase of \$9.3 million to hire a total of 103 new positions that includes 12 scientists, 1 paralegal, 34 international trade specialists, 32 auditors, 10 attorneys, 3 import specialists and 11 support personnel. This increase is well below the number of new hires needed for many of these CBP trade operation occupations.

According to CBP's 2007 RAM, in FY 2010, 1100 Import Specialists are needed to adequately staff CBP's trade enforcement mission. The current number of non-supervisory Import Specialists is 799. The Administration's request for 3 additional Import Specialists is well below the number of new hires needed according to CBP's own data.

And, according to the 2007 RAM, 295 International Trade Specialists are needed for optimal performance in FY 2010. The current number of non-supervisory International Trade Specialists is 54. The Department's request in its FY 2010 budget is only 34 International Trade Specialists new hires, bringing this to a total of only 88 non-supervisory positions, well below the 295 optimal performance staffing number.

**NTEU, therefore, urges the Committee to ensure that trade compliance personnel is increased to the FY 2010 staffing levels that CBP itself states in the 2007 RAM are sufficient to ensure effective performance of customs revenue functions.**

## **Conclusion:**

Each year, with trade and travel increasing at astounding rates, CBP personnel have been asked to do more work with fewer personnel, training and resources. The more than 22,000 CBP employees represented by the NTEU are capable and committed to the varied missions of DHS from border control to the facilitation of legitimate trade and travel. They are proud of their part

in keeping our country free from terrorism, our neighborhoods safe from drugs and our economy safe from illegal trade. These men and women are deserving of more resources and technology to perform their jobs better and more efficiently. Thank you for the opportunity to submit this testimony to the Committee on their behalf.