Frequently-Asked Questions on CBP Global Settlement

1. What was settled?
NTEU and CBP have reached settlement of a dozen pending national grievances filed on behalf of CBP Officers (CBPOs) and Agricultural Specialists (CBPASes) involving shift, scheduling and overtime issues. Eligible employees will receive a cash distribution and/or compensatory time.

CBP will pay $184 million into a settlement fund, which represents unspent salary and expense (S&E) appropriations for fiscal years 11, 12, 13, 14 and 15. A settlement administrator has been retained to calculate and make payments to individuals covered by the settlement agreement through a share-based system, based on years of service.

This was an extremely complex settlement following many years of litigation and months of challenging negotiations. Because of legal limitations on the funds CBP can use for this purpose and how those monies can be spent, the terms and the payout formula are unusually complicated.

2. Which grievances are covered?
The settlement covers a dozen pending national grievances filed on behalf of CBPOs and CBPASes concerning claimed violations of: (1) the scheduling requirements of 5 U.S.C. Section 6101 and Article 34, Section 5 of the contract; (2) the bid and rotations provisions of Article 13; (3) implementation of the Revised National Inspection Assignment Policy (RNIAP); and, (4) COPRA and/or the Fair Labor Standards Act (FLSA) for unpaid work. The settlement also covers local grievances making the same claims for the same time period.

3. Which employees are entitled to cash distributions under the settlement?
The settlement covers current and former bargaining unit GS-1895 CBPOs, including CBPOEs and canine officers, and GS-401 CBPASes who served in one of those positions between October 1, 2010 and September 30, 2015. It also includes retirees who were employed in one of these bargaining unit positions at some point in FY 11 – FY 15 (10/1/10 – 9/30/15).

4. Why must one have been a bargaining unit CBPO or CBPAS at some point between 10/1/10 and 9/30/15 to be eligible to receive a payment under the settlement?
By law, appropriated but unspent S&E funds may only be used to pay obligations "properly chargeable" to (i.e., incurred in) the fiscal year for which the funds were appropriated. Using the funds to pay back pay to employees who were not employed by CBP during the 10/1/10 – 9/30/15 timeframe would not comply with this limitation.

5. Why are CBPASes covered under the settlement?
Agriculture Specialists are covered by several of the settled grievances: a FLSA/COPRA grievance (filed in 2/08 and held in abeyance), and the Basham I and II 6101 grievances.

6. Why are other employees, like CBP Technicians, not included in the settlement?
The agreement only covers CBPOs and CBPASes because only grievances pertaining to them are being settled. We considered seeking to include national grievances filed on behalf of employees in other positions, but these grievances were for smaller amounts in total, which would have made a distribution formula much more complicated. Those grievances are still
being processed toward resolution. For example, we recently settled a grievance on behalf of a group of CBP Technicians for back pay. More information on the payments pursuant to that agreement will be forthcoming shortly.

7. What about employees who have retired?
Retired employees are eligible to receive payments from the settlement fund provided they occupied a bargaining unit CBPO or CBPAS position at some time between 10/1/10 and 9/30/15.

8. I will be retiring this calendar year. Will I be eligible for a payment under the settlement?
Assuming you currently hold a bargaining unit CBPO or CBPAS position, you are eligible to receive a payment from the settlement fund because you held a CBPO/CBPAS position between 10/1/10 and 9/30/15. You were also credited with 16 hours of compensatory time on or about September 30 that you should use between now and your retirement.

9. I was a bargaining unit member during the 10/1/10 – 9/30/15 time period but retired. Will I receive a payment at the same time as current eligible employees?
Yes. We expect that payments to all individuals covered by the settlement will be distributed at around the same time. Because payment calculations for tens of thousands of recipients will take some time, we do not expect payments to be sent until spring or summer, 2017.

10. Will employees who were detailed to supervisory or other non-bargaining unit positions be included?
Individuals will only receive length of service credit under the distribution formula for years served in a bargaining unit position.

11. Which employees are entitled to compensatory time?
All CBPOs and CBPASes employed in bargaining unit positions as of September 26, 2016, will receive 16 hours of compensatory time. CBPOs and CBPASes who do not receive their full payment under the settlement distribution formula because of the overtime cap will receive additional comp time. It is unlikely that additional comp time amounts will be determined and granted until next spring or summer.

12. May I use the comp time now?
We agreed to give CBP an extra two weeks from the effective date of the agreement to set up a system for recording comp time usage. After January 1, 2017, the comp time must be used before other leave.

13. Am I required to use the 16 hours of comp time?
The 16 hours of comp time must be used before other leave is taken after January 1, 2017. If it is not taken because CBP would not approve its use within 26 pay periods (1 year) from when it was granted, it will be cashed out.
14. What if I plan to retire within the next year? Will CBP cash out my unused comp time?

Section 7A of the settlement provides that comp time not taken because CBP has not approved all or a portion of its use will be cashed out. Therefore, you should ask to use the time before the effective date of your retirement. If CBP does not approve the time off, you should be cashed out.

15. Why must comp time be used before other leave after January 1, 2017?

Unused comp time must be cashed out if not used. The prospect of cashing out unused comp time for thousands of employees at the end of the fiscal year presents significant financial challenges for CBP. To avoid this, the parties agreed to require comp time usage before other leave. Since the amount of comp time for those who did not receive their full payment will likely not be determined until the spring, 2017, there is no expectation that the additional comp time be used before other leave after January 1.

16. How will cash distributions be determined?

Individual amounts will be determined using a share-based formula, with the number of individual shares based on years of service, including service preceding 10/1/10. Generally, those with more service will receive a larger share since they likely suffered more harm.

There are two limitations on payments; the annual overtime cap of $35K (or $45K if the individual received a waiver) and payments already made pursuant to covered national or local grievances.

17. Will the fact that I reached the annual OT cap in one or more of the fiscal years from FY 11 – FY 15 affect my payment under the settlement?

Possibly. Although NTEU does not agree that back OT payments should be subject to the annual OT earnings cap, we agreed to subject payments to the cap solely for this agreement because there was insufficient time to litigate our position. A distribution formula will be used that minimizes the number of employees who do not receive their full payment. Those who do not receive their full payment because of cap limitations are entitled to additional comp time.

18. How much additional comp time will be granted to employees who did not receive their full payment because of OT cap limitations?

Employees who came within $500 of the cap in fewer than 4 of the 5 years from FY 11-15 will receive comp time equivalent in value to the amount of their individual payment that was precluded by the cap up to an additional 24 hours. Employees who did not receive the full amount and who came within $500 of the cap in 4 of the 5 years will receive up to 40 additional hours. And employees who did not receive their full amount and came within $500 of the cap in all 5 years will receive up to 84 additional hours.

The additional comp time will be calculated using the COPRA OT hourly rate, or twice the employee’s regular hourly rate.
19. When must those who receive additional comp time due to OT cap limitations use the additional comp time?

Employees granted additional comp time because of OT cap limitations must use the comp time within 26 pay periods of when the additional comp time is granted. If CBP does not approve the use of the additional time within 26 pay periods, it will be cashed out.

20. Who will perform the distribution calculations and distribute the funds?

A firm, Brown/Greer (BG) in Richmond, Virginia, has been retained to serve as the special administrator (SA) of the settlement agreement to perform these functions. BG specializes in this type of work. The SA will communicate with individuals covered by the settlement and will resolve any disputes about payment amounts.

21. Is the settlement administrator being paid out of the settlement funds?

No, CBP is paying the costs of the services provided by BG separately.

22. How much of the $184 million will be paid to employees? What money comes out of the settlement fund?

CBP’s required employer contributions must be paid from the settlement fund. Deductions and withholding required of CBP, as the employer, are Medicare, FICA/Social Security, and retirement contributions. Retirement contributions are not required for OT earnings over $17,500 in a given year. Until we know how many CBPAses and CBPOs earned more than $17,500 in each year, it is not possible to determine how much of the settlement fund will be devoted to CBP’s retirement contributions, which makes up the largest portion of their required contributions.

23. What money comes out of the employee’s cash distribution?

By law, income taxes, Social Security, Medicare, and retirement contributions must be withheld from employees’ payments. Again, no retirement contributions will be withheld if an employee already earned more than $17,500 in OT in a given year.

24. Will the back pay I receive affect my high 3 year average for purposes of calculating my retirement annuity?

Back OT pay received under the settlement will be credited to a covered individual’s OT earnings for each fiscal year from FY 11 through FY 15 that the individual occupied a covered position. If the individual earned less than $17,500 in any of those years, the back payment will count towards the individual’s base salary for retirement purposes, up to $17,500 in total OT earnings each year. Although back pay received under the settlement will be paid in FY 17, it will not count towards an individual’s FY 17 OT earnings for OT cap or retirement purposes.

25. When and how will my cash distribution be paid?

The settlement administrator will calculate and issue the payments in the spring or summer of 2017. Payments will likely be made by check, not EFT.
26. If I received a payment under a national or local grievance that is included in the settlement, will I still receive a payment from the settlement fund?

Payments received pursuant to a grievance included in the settlement will be subtracted from payments made from the settlement fund. Check with your local chapter if you believe you may have received such a payment. Such payments do not affect one's entitlement to 16 hours of comp time under the agreement.

27. What does the agreement say about scheduling, which was the subject of several of the national grievances that were settled?

During these negotiations, we also worked to protect your rights under the contract and the law. One of the more contentious aspects of the negotiations was the scheduling requirements of 5 USC Section 6101 and Article 34 of the term contract.

In the last decision we received on whether CBP must comply with these scheduling requirements, an arbitrator ruled that CBP had established the need to deviate from several scheduling requirements to avoid a substantial increase in costs or being seriously handicapped in carrying out CBP functions. The arbitrator further ruled that these determinations must be made on a case-by-case basis and must be documented.

Working from that decision, we negotiated language that identifies the 3 scheduling requirements and the conditions under which deviations are permitted:

- Workweeks must be scheduled at least one week in advance unless a change is necessary to meet situations beyond CBP's control;
- Workweeks must include 2 consecutive days off unless it is necessary to respond timely to posed threats or to avoid substantially increased costs;
- Work hours in each day of the week must be the same, unless CBP has no control over the situation or to avoid substantially increased costs.

Upon request, CBP must explain why a deviation from scheduling requirements was necessary under the circumstances. We also identified four limited situations where deviation from the scheduling requirements is considered appropriate: (1) mandatory training; (2) court or litigation related activities; (3) AT-CET or PERT assignments; and (4) when an employee voluntarily requests a schedule change consistent with the terms of the contract.

NTEU may still challenge deviations from the general scheduling requirements if we do not believe the conditions for deviations are satisfied.

28. Will the new scheduling language in the contract affect employees on Compressed Work Schedules (CWS)?

No. The Article 34 and Section 6101 scheduling requirements apply to those working 40 hour workweeks. CWSes for uniformed officers are negotiated under a separate law, the Flexible and Compressed Work Schedules Act (FCWSA), and a different contract article. The FCWSA makes clear that Section 6101, including the authority to deviate from scheduling requirements, does not apply to CWS. The FCWSA allows an agency like CBP to seek to terminate or modify a CWS for certain reasons, but they must bargain with NTEU before implementing any changes.
Article 14, Section 5 of the current contract also allows CBP to temporarily suspend CWS to meet unexpected work requirements or changes in staffing levels, with 2 weeks advance notice.

29. What happens now?
The distribution formula will be finalized. CBP must also provide the SA with the employment data necessary to compute individual amounts due under the settlement, perform necessary withholdings from those amounts, and distribute individual payments. As noted earlier, it could take some months to complete this process.