Representative [INSERT NAME]

[REPRESENTATIVE ADDRESS]

[REPRESENTATIVE CITY, STATE ZIP]

[DATE]

Dear [INSERT NAME],

I am one of your constituents as well as a retired federal agent. I served over 25 years as a Special Agent of the Federal Bureau of Investigation and retired under FERS Special (for law enforcement, air traffic controllers, and Members of Congress) and receive both the FERS Basic Annuity and the FERS Annuity Supplement that is intended to bridge the gap between retirement date and when an annuitant is eligible to receive Social Security (usually age 62**). I am asking for your assistance, for me and many other federal retirees, in calling for the Office of Personnel Management (OPM) Director to respect the November 28, 2023 ruling of the Merit Systems Protection Board (MSPB) and to quickly take action to stop apportioning the FERS Annuity Supplement in cases where the court order doesn’t expressly divide the supplement, and to reimburse the affected parties.**

In July 2016 OPM made an internal decision to change the way it had been processing annuity payments for the past 30 years (for retirees with divorce decrees on file) by automatically including the Annuity Supplement in the calculation for apportionment of the FERS Basic Annuity for the former spouse. The change was a great surprise to annuitants, learning only of the policy change after finding that their monthly direct deposit was significantly lower than usual. OPM also applied the policy retroactively to the date of retirement and created a substantial unpaid obligation for the retirees (over $10K in my case). Many annuitants (myself included) unsuccessfully appealed the decisions to OPM.

On February 5, 2018 the OPM Office of Inspector General released a Management Advisory (Report L-2018-1) that reviewed the issue made clear that:

1. OPM was incorrect in the legal interpretation they relied upon in creating this policy change
2. OPM lacked statutory authority to seek retroactive repayments of the Annuity Supplement, and
3. OPM failed to follow the Administrative Procedures Act

Although OPM disagreed with the findings of the IG report, they ceased collection of the retroactive portion of the “annuity overpayment” in 2017 and refunded the collected amount to me in 2020 pending the outcome of appeals at MSPB and the US District Court for the District of Columbia. They advised that their decision was final however I has the right to appeal to MSPB. The apportioning of my prospective Annuity Supplement has continued to this day (approximately $15K to date).

I filed an appeal of OPM’s final decision with MSPB in 2020 where the case has been on hold pending the outcome of similar cases that were positioned ahead of mine. In May 2018, MSPB Administrative Law Judge James Kasic issued a ruling on the case of a retired air traffic controller involving this same issue (Moulton vs. OPM). The Judge ruled in favor of Moulton but delayed implementation of his order so that OPM had the opportunity to have the decision reviewed by the full MSPB Board, which OPM elected to do. Unfortunately, the MSPB Board was without a quorum and unable to review the request for five years (January 2017 – March 2022). On November 28, 2023 the three Judge MSPB panel affirmed the initial decision in Moulton (case 2023-MSPB-26) which directed OPM to stop apportioning the annuity supplement in this case, to reimburse all previously apportioned funds to Moulton, and to complete the action within 20 days. This decision is available on the MSPB website under precedential decisions, which indicates the decision should be relied upon in determining the outcome of similar cases.

I am saddened and frustrated to learn that OPM requested a stay from MSPB on December 18, 2023 while they determine if they wish to appeal the MSPB decision to the US Court of Appeals, Federal Circuit. The legality and appropriateness of OPM’s strained interpretation of existing retirement statutes has been extensively reviewed, first by the OPM Inspector General (Management Advisory Report L-2018-1), then by Judge Kasic in 2018 and now by the three-judge MSPB panel. Justice has been delayed (seven years and counting) for many, many federal annuitants affected by this improper action by OPM. OPM’s actions are supposed to be “strictly ministerial in nature” and they are required to execute the court orders as written. They have strayed far from these rules and need to follow the orders of the MSPB Judges without delay. As the administrator of the pensions of the nation’s civilian workforce, they have a very important obligation - somewhat similar to that of the Veteran’s Administration in caring for our servicemen and women. It appears that OPM has strayed from this obligation and has been advocating for the former spouses in these matters, to the detriment of the retired federal employees. Their advocacy of the former spouses was raised in their response to the IG report, in their case filings in the 70+ MSPB cases pending on this issue, and in their request for a stay of the MSPB order (a copy of their email is available at the FERSGUIDE.com website). I’ve also witnessed the disparity in treatment in my case with detailed advanced notice to my former spouse of when and why she would receive more money each month and delayed notice to me until after I noticed my monthly direct deposit was substantially lower than usual. The explanation to me was simply that they were required by law to take this action, which clearly was up for debate.

**This is why I am asking for your assistance**, in calling for OPM to respect the ruling of the MSPB and to quickly take the actions to stop apportioning the annuity supplement in cases where the court order doesn’t expressly divide the supplement and to reimburse the affected parties. I believe that the appropriate congressional oversight committees should review the actions of OPM in this matter and ask some probing questions of the OPM Director in how and why OPM took it upon themselves to go down this path and reinterpret retirement law without notice to the public or Congress.

While researching the history of this issue I noted that the current OPM Director, Kiran Ahuja, was also the OPM Chief of Staff from 2015-2017. I would expect her to have a very good understanding of the issue from OPM’s perspective. I also noted her Wikipedia page where she identifies an as activist in the first sentence of her description of herself. The Wiki also quoted her as leaving employment at the Department of Justice because change “happened too slowly there.” I believe she should be asked if she still considers herself as an activist and if so, how this view shapes her leadership of such an important federal agency.

I am one of your newer constituents in Virginia’s seventh District and I enjoy receiving your weekly wrap-up emails. I appreciate the good work you do for Virginians, Federal employees and members of our military. I ask that you take these actions in support of your constituents and for retired federal employees elsewhere who have been and are continuing to be affected by this issue. I suspect many annuitants are unaware of the controversy surrounding this issue since OPM has maintained they are required by law to take these actions for the past seven years.

Thank you again for your service to this great nation.

Sincerely,