

July 2009

**FEDERAL LAW  
ENFORCEMENT  
RETIREMENT**

**Information on  
Enhanced Retirement  
Benefits for Law  
Enforcement  
Personnel**



**GAO**

Accountability \* Integrity \* Reliability



Highlights of [GAO-09-727](#), a report to congressional requesters

## Why GAO Did This Study

From fiscal years 2000 through 2008, the number of persons employed by federal agencies who perform various law enforcement functions and receive either special pay or enhanced retirement benefits, in the form of a faster-accruing pension, has increased by 55 percent. In addition, as of September 2008, approximately 51,000 personnel were employed in law enforcement-related occupations that could seek enhanced retirement benefits in the future. GAO was asked to conduct a review of the retirement benefits provided to law enforcement personnel. This report addresses (1) the processes used to grant enhanced retirement benefits to federal law enforcement personnel, (2) the rationales and potential costs for extending benefits to additional occupations, and (3) the extent to which federal agencies used human capital tools to retain law enforcement and other related personnel. GAO reviewed relevant laws, regulations, and other documentation, such as agency reports describing the processes used to grant enhanced benefits, and interviewed officials from the Office of Personnel Management (OPM), Department of Homeland Security (DHS), Department of Justice (DOJ), and the Internal Revenue Service (IRS) because these entities employed approximately 84 percent of all law enforcement and law enforcement-related personnel in fiscal year 2008. In commenting on a draft of this report, DHS, DOJ and OPM generally concurred with the report. IRS stated that it had no comments on the report.

To view the full product, including the scope and methodology, [click on GAO-09-727](#). For more information, contact Eileen Larence at (202) 512-5555 or [larencee@gao.gov](mailto:larencee@gao.gov).

## FEDERAL LAW ENFORCEMENT RETIREMENT

### Information on Enhanced Retirement Benefits for Law Enforcement Personnel

#### What GAO Found

In order for certain employees to receive enhanced retirement benefits, agencies generally determine that a certain group of employees meets the statutory and regulatory definitions of a Law Enforcement Officer (LEO)—which includes such activities as conducting investigations—and submit the determination to OPM. As of the end of fiscal year 2008, about half of federal employees receiving enhanced retirement benefits met the statutory and regulatory definitions. In recent years, several employee groups and unions representing law enforcement personnel whose agencies and OPM have determined that they do not meet the LEO definitions have sought such benefits directly through legislation. Currently, about half of law enforcement personnel receiving enhanced benefits have obtained these benefits directly through legislation.

Law enforcement-related employee groups that sought enhanced retirement benefits directly through legislation have cited a number of rationales to justify receiving these benefits, including high attrition rates. The provision of such retirement benefits may result in additional costs to the agency and federal government because these costs are generally higher than providing retirement benefits to regular federal employees. GAO's analysis of available data showed that attrition for law enforcement-related personnel not receiving enhanced retirement benefits was higher than law enforcement personnel receiving such benefits but not as high as all other federal employees. While attrition data are available, when asked to provide such data, the employee groups and unions seeking enhanced retirement benefits did not consistently provide it to us. Analyzing attrition data alone may not fully indicate why personnel are leaving a particular agency because a variety of organizational and economic factors, as well as compensation, influence separation decisions. GAO's analysis also showed that such benefits increase agency short-term costs and could increase the government's long-term pension liability. Finally, providing such benefits to some groups but not others has created perceived inequities and DHS and DOJ acknowledge that it could affect their strategic workforce planning.

Federal agencies have the authority to use human capital tools, such as retention incentives, to assist with their efforts to address specific retention challenges. Some department and agency officials to whom we spoke said these tools are effective for retaining law enforcement personnel, while others maintained they need enhanced retirement benefits to effectively retain law enforcement-related personnel. The targeted use of these tools may present a cost-efficient alternative for retaining law enforcement-related personnel.

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### **Abbreviations**

ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
CBP	U.S. Customs and Border Protection
COPRA	Customs Officer Pay Reform Act
CPDF	Central Personnel Data File
CSRS	Civil Service Retirement System
DEA	Drug Enforcement Administration
DHS	Department of Homeland Security
DOJ	Department of Justice
EHRI	Enterprise Human Resources Integration program
EOUSA	Executive Office for United States Attorneys
FBI	Federal Bureau of Investigation
FERS	Federal Employees Retirement System
GS	General Schedule
IRS	Internal Revenue Service
JMD	Justice Management Division
LEO	law enforcement officer
MSPB	Merit Systems Protection Board
OMB	Office of Management and Budget
OPM	Office of Personnel Management
TSA	Transportation Security Administration

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United States Government Accountability Office  
Washington, DC 20548

July 30, 2009

The Honorable Robert A. Brady  
Chairman  
Committee on House Administration  
House of Representatives

The Honorable Stephen F. Lynch  
Chairman  
The Honorable Danny K. Davis  
Member  
Subcommittee on Federal Workforce, Postal Service,  
and the District of Columbia  
Committee on Oversight and Government Reform  
House of Representatives

From fiscal years 2000 through 2008, the number of persons employed by federal agencies who perform various law enforcement functions and receive either special pay or enhanced retirement benefits—including a faster-accruing pension—has increased by 55 percent, from approximately 82,000 in September of 2000 to approximately 127,000 in September of 2008.<sup>1</sup> In addition, approximately 51,000 persons were employed in law enforcement-related occupations as of September of 2008.<sup>2</sup> Federal law enforcement personnel might be provided with enhanced retirement benefits in different ways. First, enhanced retirement benefits are provided to those law enforcement personnel who are covered under the applicable Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS) statutory and regulatory definitions of a “law enforcement officer” (LEO). Coverage under CSRS and FERS LEO definitional criteria generally include those personnel whose duties have been determined by the employing agency and the Office of Personnel

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<sup>1</sup> Enhanced retirement benefits refers to provisions governing early retirement, faster accruing pension benefits, and post-retirement benefits received by certain law enforcement personnel.

<sup>2</sup> For the purposes of this report, we use a broad definition of the term “law enforcement related” that includes those who have already requested or those whose advocates told us that they may request enhanced retirement benefits or special pay in the future. In addition to the 51,000 personnel performing law enforcement-related duties who do not currently receive enhanced retirement benefits, there are also approximately 51,000 Transportation Security Officers who may seek enhanced retirement benefits in the future.

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Management (OPM) through an administrative process to be primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States. The FERS definition, however, also provides that a LEO position must be sufficiently rigorous that it is required to be filled only by young and physically vigorous individuals.<sup>3</sup> Second, over the years, other specific occupational groups that have not been determined to meet the LEO definitional criteria under the administrative process, such as U.S. Park Police within the Department of Interior, have been explicitly added to the CSRS or FERS statutory LEO definitions so that they are considered LEOs for retirement purposes and provided similar retirement benefits. Third, certain other law enforcement personnel groups, whose duties have not been determined by OPM and their employing agency to be within the scope of the definitional criteria of a “law enforcement officer” or explicitly added by amending the statutory LEO definitions, have been provided enhanced retirement benefits similar to that of LEOs directly through legislation. For example, the Consolidated Appropriations Act, 2008 authorized specified U.S. Customs and Border Protection (CBP) Officer positions to receive enhanced retirement benefits comparable to those received by LEOs.<sup>4</sup>

With increasing numbers of law enforcement-related personnel being added to agency ranks who may seek enhanced retirement benefits and other employee groups presently seeking enhanced retirement benefits, you asked us to conduct a review of the retirement benefits provided to law enforcement personnel and the processes by which these benefits are provided. This report addresses the following questions:

- What processes are being used to grant enhanced retirement benefits to federal law enforcement personnel?

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<sup>3</sup> OPM implementing regulations further provide details on various aspects of the LEO definition. Job activities where primary duties involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than those who are suspected or convicted of offenses against the criminal laws of the United States are generally not included in OPM’s regulatory LEO definition.

<sup>4</sup> See Consolidated Appropriations Act, 2003, Pub. L. No. 110-161, 121 Stat. 1844 (2007). About 20,000 CBP Officers received enhanced retirement benefits directly through legislation via the Consolidated Appropriations Act, 2008. These enhanced benefits were not retroactive. Rather, CBP Officers began receiving these benefits in July 2008.

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- What are the rationales and potential costs for extending such benefits to additional occupations or employee groups?
  - To what extent have federal agencies used human capital tools, such as retention incentives, to retain both law enforcement and other related personnel?

To answer these questions, we reviewed relevant laws, regulations, and reports by OPM, the Congressional Budget Office, and the Congressional Research Service that describe the current processes by which enhanced retirement benefits are provided, as well as six different pieces of legislation introduced in the 110th Congress that would have provided enhanced benefits to specified employee groups. We also reviewed CBP legislation that was enacted into law. As agreed upon with your office, our review focused on the Department of Homeland Security (DHS), Department of Justice (DOJ), and Department of the Treasury's Internal Revenue Service (IRS) because these federal entities employed approximately 84 percent of all law enforcement and law enforcement-related personnel in fiscal year 2008.<sup>5</sup> For the purposes of this report, we are defining the term "law enforcement personnel" in a manner that is broader in scope than the statutory and regulatory "law enforcement officer" definitions. Specifically, when we refer to "law enforcement personnel" in this report, we are including those employed in occupations that currently receive LEO or similar enhanced benefits.<sup>6</sup> In addition, we are defining "law enforcement-related personnel" as (1) those employed in occupations that do not currently receive LEO or similarly enhanced retirement benefits, but who perform some law enforcement-related job functions, including but not limited to, having arrest authority, carrying a weapon, or participating in some investigative or inspection capacity or (2) those who have previously expressed interest in obtaining enhanced retirement benefits directly through legislation. We did not include other

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<sup>5</sup> DHS, DOJ, and Department of the Treasury employed approximately 91 percent of all federal law enforcement personnel receiving LEO retirement benefits or similarly enhanced retirement benefits in fiscal year 2008, approximately 75 percent of personnel employed in law enforcement-related occupations not receiving enhanced retirement benefits, and approximately 51 percent of personnel employed in law enforcement-related occupations receiving special pay but not receiving enhanced retirement benefits. Special pay refers to the nonstandard basic pay system applied to certain law enforcement-related personnel that do not currently receive enhanced retirement benefits.

<sup>6</sup> LEO coverage can also pertain to those individuals who have been promoted to a management position or a supervisory or administrative position.

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specialized non law enforcement related annuity recipients, such as federal air traffic controllers and firefighters, in the scope of our review.

We obtained information on the benefits provided to law enforcement personnel from DHS, DOJ, and IRS, as well as OPM and select employee organizations and unions, and analyzed this information to determine the extent to which the benefits granted to employee groups and occupations vary. In addition, we analyzed data from OPM's Central Personnel Data File (CPDF) for the population of law enforcement and law enforcement-related personnel within DHS, DOJ, and the Department of the Treasury as well as on a governmentwide basis.<sup>7</sup> We have previously reported that government-wide data from CPDF for most of the key variables used in this study (agency, position occupied, retirement plan, work schedule, and occupation) were at least 99 percent accurate, and thus concluded that the data were sufficiently reliable for the purposes of this study.<sup>8</sup> Our analysis of the CPDF data separates these personnel into four different groups: (1) law enforcement personnel receiving LEO or similarly-enhanced retirement benefits, (2) law enforcement-related personnel not receiving enhanced retirement benefits or special pay, (3) law enforcement-related personnel receiving special pay but not receiving enhanced retirement benefits,<sup>9</sup> and (4) all other federal personnel. We used CPDF data for fiscal years 2004 through 2008 to determine the attrition rates (defined as resignations and transfers from one agency to another) for law

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<sup>7</sup> CPDF is a comprehensive federal personnel database that is maintained by OPM. We queried CPDF by department, agency, subagency, occupation series, and retirement plan as well as many other personnel variables to meet the needs of our analysis of law enforcement and law enforcement-related personnel. National security and intelligence agencies such as the Central Intelligence Agency (CIA) and the National Security Agency (NSA) do not submit personnel data to OPM's CPDF and, thus, law enforcement personnel in these agencies are not included in the total number of federal law enforcement personnel used in this report.

<sup>8</sup> GAO, *OPM's Central Personnel Data File: Data Appears Sufficiently Reliable to Meet Most Customer Needs*, GAO/GGD-98-199 (Washington, D.C.: September 30, 1998). Also, in a document dated February 28, 2008, an OPM official confirmed that OPM continues to follow the CPDF data quality standards and procedures contained in our 1998 report.

<sup>9</sup> We defined special pay as receiving pay through a non-General Schedule (GS) pay plan. We did not include those staff receiving special rates under a GS pay plan because these rates vary by location rather than covering an entire LEO group such as job series 0083 (police). Special rates do not change the rate of base pay.

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enforcement and law enforcement-related personnel.<sup>10</sup> Further, we analyzed CPDF data for fiscal years 2004 through 2007 to determine whether law enforcement-related personnel not receiving LEO or similarly enhanced retirement benefits were moving to other federal positions that offered the benefits.<sup>11</sup> We also reviewed and analyzed information provided to OPM on the extent to which federal agencies were utilizing human capital tools, such as retention incentives, to assist with retaining law enforcement and law enforcement-related personnel. In addition, we reviewed our previous reports that discuss the use and potential effectiveness of human capital tools to retain federal employees.

During this review we interviewed officials from OPM on their roles and responsibilities related to providing enhanced retirement benefits to personnel who perform law enforcement-related duties. We also met with representatives from six unions and other employee organizations who have advocated for enhanced retirement benefits for their respective groups to discuss the current process for qualifying for enhanced benefits, as well as the rationales that law enforcement-related personnel are using to seek enhanced benefits similar to those received by LEOs. Further, we discussed potential effects of providing enhanced retirement benefits to additional employee groups, such as potential costs and possible reductions in attrition if providing such benefits to other groups with DHS, DOJ, IRS, and OPM officials. We also reviewed our reports that discuss fiscal stewardship. In addition, we met with staff from the Merit Systems Protection Board (MSPB), the federal board that adjudicates federal employees' appeals of personnel actions, such as appeals from employees who believe they are entitled to LEO coverage, to discuss their views and opinions on the current criteria used to determine which federal personnel meet the statutory and regulatory LEO definitions. However, as agreed upon with your offices, we did not review the appropriateness of the statutory and regulatory definitions relating to LEOs nor did we determine criteria for evaluating the definitions or the determinations derived by the processes used by various agencies in implementing the definitions. Finally, we also discussed the use of human capital tools to retain law

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<sup>10</sup> For the purposes of this review, we analyzed CPDF data beginning with fiscal year 2004 because this was the first full fiscal year to include DHS personnel. Also, we analyzed CPDF data ending with fiscal year 2008 because this was the most recent fiscal year available.

<sup>11</sup> Fiscal year 2007 data were the latest available when we analyzed the moves from positions with enhanced retirement benefits to positions without enhanced retirement benefits.

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enforcement and law enforcement-related personnel and the statutory and regulatory definitions of a law enforcement officer with DHS, DOJ, and IRS human capital officials. More detailed information on our scope and methodology is contained in appendix I.

We conducted this performance audit from January 2008 through July 2009, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### Enhanced Retirement Benefits Have Been Extended to Various Groups over Time

Enhanced retirement benefits for certain law enforcement personnel began in 1947, when legislation was enacted into law providing the Federal Bureau of Investigation (FBI) Special Agents with a change in qualification for retirement benefits to help the FBI better manage its workforce.<sup>12</sup> In 1948, legislation was enacted that expanded the provision of enhanced retirement benefits to certain other federal officers whose duties were primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States and to certain law enforcement personnel who moved to a supervisory or administrative position.<sup>13</sup> In 1956, the enhanced retirement benefits definition was amended to specifically include within the term “detention” the duties of certain federal correctional employees, such as those in the Bureau of Prisons.<sup>14</sup> In 1974, legislation was enacted into law that provided a statutory definition of a LEO for retirement purposes within CSRS. This legislation also increased the accelerated annuity

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<sup>12</sup> See Pub. L. No. 80-168, 61 Stat. 307 (1947).

<sup>13</sup> See Pub. L. No. 80-879, 62 Stat. 1221 (1948).

<sup>14</sup> This definition includes those personnel, such as those in the Bureau of Prisons whose duties, in connection with detention of persons suspected or convicted of offenses against the criminal laws of the United States, require frequent contact with such persons in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of such persons.

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multiplier and contained mandatory retirement provisions.<sup>15</sup> The enhanced benefits attempted to provide a LEO with a retirement plan whereby it is economically feasible to retire at an earlier age with fewer years of service than regular civil service employees. Such benefits were also intended to assist the federal government with encouraging the maintenance of a young and vigorous law enforcement workforce through youthful career entry, continuous service, and early separation. According to OPM actuaries, as of April 2009, one out of five federal employees were covered by CSRS. At the end of fiscal year 2008, about 1.6 million persons were on the rolls of CSRS as retired and approximately 42,500 (about 3 percent) were receiving LEO retirement benefits.

In 1986, a new retirement system for federal employees, the Federal Employees Retirement System (FERS), was established which, among other things, included provisions relating to LEOs, such as a different pension accrual formula, a mandatory LEO retirement age, and a related requirement limiting LEO coverage to only those positions that are physically demanding. More specifically, while the definition of a LEO under FERS generally mirrors the definition under CSRS, the FERS definition introduced and currently includes a rigorous duty standard. This provides that LEO positions be limited to those positions that are sufficiently rigorous that employment opportunities must be limited to young and physically vigorous individuals, as determined by the Director of OPM considering the recommendations of the employing agency.<sup>16</sup> In 1988, the FERS LEO definition was amended to include two employee groups not determined by OPM to be covered by the definition, the Department of Interior Park Police and the U.S. Secret Service Uniformed Division. In general, neither the CSRS nor FERS LEO definitions have been interpreted by OPM to cover federal police officers.<sup>17</sup> Implementing OPM

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<sup>15</sup> The provision included mandatory retirement for law enforcement officers under CSRS upon reaching the age of 55 or the completion of 20 years of service if already over that age. Subsequent legislation raised the mandatory retirement age for LEOs to 57.

<sup>16</sup> The 1986 FERS legislation also contained language including those positions that are (1) primarily for the protection of officials of the United States against threats to personal safety, and (2) sufficiently rigorous that employment opportunities be limited to young and physically vigorous individuals, as determined by the Director of OPM considering the recommendations of the employing agency.

<sup>17</sup> Implementing OPM regulations for CSRS and FERS generally provide that the LEO definition does not include an employee whose primary duties involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than those who are suspected or convicted of offenses against the criminal laws of the United States.

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regulations for CSRS and FERS provide that the respective LEO regulatory definitions, in general, do not include an employee whose primary duties involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than those who are suspected or convicted of offenses against the criminal laws of the United States. At the end of fiscal year 2008, about 312,000 federal employees were retired and receiving benefits covered by FERS, with about 7,500 of them receiving LEO retirement benefits. Further elaboration on the history of the LEO definition can be found in appendix II.

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## Retirement Benefits Provided to Law Enforcement Personnel

Generally, the retirement benefits received by federal LEO and other law enforcement personnel receiving similar benefits are greater than those provided to most other federal employees, albeit over a shorter period of time due to mandatory retirement age. Under both CSRS and FERS, the law provides for a faster accruing pension for LEOs than that provided for most other federal employees. For example, CSRS LEO pension benefits accrue at 2.5 percent times the number of years of service for the first 20 years (50 percent) compared to an average of less than 2 percent per year (36.25 percent for regular federal employees) for that same 20 year period. At age 50 with 20 years of service, a CSRS LEO's annuity is about 38 percent higher than the annuity of a regular federal CSRS employee.<sup>18</sup> Under FERS, LEO benefits accrue at 1.7 percent per year for the first 20 years compared to 1 percent per year for regular federal employees (34 percent versus 20 percent).<sup>19</sup> Thus, for those under FERS, the total defined benefit is 70 percent higher for LEOs than for other federal employees at 20 years of service. See appendix III for additional information on the accrual rates of LEOs and regular federal employees.

The greater retirement benefits received by federal LEO and other law enforcement personnel receiving similar benefits may be because as a group, LEO occupations are higher graded than the more occupationally diverse regular civil service employee occupations. They also may get additional credit toward basic pay for annuity computation from special

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<sup>18</sup> This is a hypothetical example for illustrative purposes only. A non-LEO federal employee under CSRS is not eligible to retire until he or she has reached age 55 and has 30 years of creditable service.

<sup>19</sup> The percentages for the defined benefit under both CSRS and FERS are applied to an individual's highest 3 earning years to compute the benefit amount.

pay provisions. For example, as shown in table 1 below, for those persons retiring in fiscal year 2008, the estimated typical annuity of an average LEO employee under FERS was over \$17,000 more (more than double) than that of an average non-LEO FERS annuitant.

**Table 1: Retirement Benefits—LEO and Non-LEO Retirees Under CSRS and FERS with Voluntary Retirement—Fiscal Year 2008**

Employee type	Number retiring	Average age when retiring	Average years of service	Estimated average annuity <sup>a</sup>
LEO FERS <sup>b</sup>	1,266	53.3	24.5	\$33,264
Non-LEO FERS	15,141	63.2	20.9	\$15,754
LEO CSRS	881	53.6	29.8	\$59,910
Non-LEO CSRS	27,266	60.1	34.4	\$54,750

Source: GAO analysis of OPM CPDF data.

<sup>a</sup>We computed estimated using CPDF average age, average years of service, average 2008 salary data for fiscal year 2008 retirees and an estimated average high-3 salary calculated by adjusting the 2008 salary based on average cost of living increases for 2007 and 2006. Locality cost of living increases were not included in the estimates. On average, LEO CSRS retirees had salaries about \$1,760 higher than Non-LEO CSRS retirees. On average, LEO FERS retirees had salaries about \$18,400 higher than Non-LEO FERS retirees. FERS retirees also receive income from their Thrift Savings Plan (TSP) accounts and Social Security benefits that are not included in the estimated average annuity. CSRS retirees do not receive Social Security benefits for their federal service. The TSP is a retirement savings plan for civilians who are employed by the United States government and members of the uniformed services. CSRS retirees might have income from a TSP account but the federal government does not match contributions to TSP for CSRS employees. LEO annuities are understated because we did not have data on availability pay and uncontrollable overtime to use when estimating the annuity.

<sup>b</sup>Some LEOs retiring under FERS may also have time served under CSRS with a higher annuity accrual rate that is not reflected in the estimated annual annuity.

Along with the more rapid pension accrual, benefits are also generally available to LEOs earlier than other employees with no penalties for early retirement compared to the average federal employee under the same retirement system; and more favorable treatment of cost of living adjustments (under FERS).

### LEO Enhanced Benefits Include Mandatory Retirement Provisions under CSRS and FERS

LEOs under both CSRS and FERS are subject to mandatory retirement provisions, whereas most other federal civilian employees are not. Specifically, as a means to maintain a youthful and vigorous workforce, a law enforcement officer is subject to mandatory retirement when the officer becomes 57 years of age or, in some cases, older than 57 if needed to complete 20 years of service as a LEO. Both CSRS and FERS personnel

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receiving LEO benefits may be retained for a short time beyond the mandatory retirement age under certain circumstances.<sup>20</sup>

While allowing for an individual to obtain the full 20 years of coverage needed to qualify for LEO benefits, agencies also set maximum entry age requirements for LEOs based on the age and service requirements for LEO mandatory retirement. Thus, maximum entry age is typically 37 because it allows an employee to achieve 20 years of LEO service at age 57. Some agencies have extended their maximum hiring age for LEOs to around 40 to facilitate the hiring of certain highly-skilled armed services veterans who have completed a military career. For example, CBP has implemented a maximum entry age of 40 for its Border Patrol Agent positions.<sup>21</sup>

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### Special Pay Provisions Provided to LEOs and Law Enforcement-Related Personnel

In addition to retirement benefits, the pay of law enforcement personnel also varies. In general, federal white-collar jobs are assigned a General Schedule (GS) grade. Grades represent level of difficulty, responsibility, and qualifications required of the person who fills that job. Pay varies within a grade level on the basis of 10 steps; employees receive step increases within a grade if they perform acceptably and have satisfied the waiting period requirement established for each step. LEOs within the GS system are entitled to higher rates of basic pay at grades GS-3 through GS-10, which increase pay by 3 to 23 percent above the normal federal government general schedule depending on grade level.<sup>22</sup> Some LEOs are also entitled to law enforcement availability pay or administratively

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<sup>20</sup> First, if an agency head judges that the public interest so requires, that agency head may exempt such an employee from mandatory separation until that employee becomes 60 years of age. In addition, the President, by executive order, may exempt an employee (other than a member of the Capitol Police or Supreme Court Police) from mandatory separation if the President determines the public interest so requires. 5 U.S.C. §§ 8335(b), (e); 5 U.S.C. §§ 8425(b), (e).

<sup>21</sup> A recent MSPB case also affects agencies' hiring of preference eligible veterans beyond an agency's maximum entry age for a position. In *Isabella v. Department of State and Office of Personnel Management*, 109 M.S.P.R. 453 (2008), the MSPB held, in general, that a federal agency is required to waive a maximum entry age rule for a preference-eligible veteran unless the agency can establish that the entry age rule is essential to the performance of the duties of the position.

<sup>22</sup> Under certain circumstances, OPM also has the authority to establish higher minimum rates of basic pay, otherwise known as "special rates," for GS employees to address recruitment or retention problems. Such employees are entitled to the higher of the special rate or the applicable GS locality-adjusted rate of pay. According to OPM, only a small percentage of LEOs receive such OPM-established special rates, most of which are medical personnel working at correctional institutions. All FBI Police receive a special rate.

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uncontrollable overtime pay. Availability pay is a regular supplement equal to 25 percent of the recipient's adjusted rate of basic pay, subject to premium pay limitations.<sup>23</sup> It is compensation generally fixed at 25 percent of the rate of basic pay for the position for the first 2 overtime hours on a regular workday and for additional irregular overtime hours. At agency discretion, certain employees may receive administratively uncontrollable overtime pay equal to 10 percent to 25 percent of their basic pay, with most recipients receiving a rate of 25 percent based on working an average of at least 9 hours of irregular overtime hours per week. Both availability pay and administratively uncontrollable overtime pay are to be counted as basic pay for computation of annuities, and as a result can increase the dollar value of an individual's highest 3 earning years which are used to compute the annuity benefit amounts.

In 2003, OPM established special rates for many GS police officers not considered to be LEOs by definition, because their primary duties involved maintaining order and protecting life and property as opposed to primarily involving the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, which is a criterion in the definition. These special rates provide large increases at lower grades similar to the LEO special rates. At some grades and locations, the police special rates exceed the locality adjusted rates for LEOs at grades GS-3 through GS-10. As of fiscal year 2008, there were approximately 2,800 law enforcement personnel receiving special pay rates, without receiving enhanced retirement benefits. For additional information on some of the various pay systems that cover law enforcement personnel, see appendix IV.

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<sup>23</sup> Premium pay is subject to both biweekly and annual caps imposed by 5 U.S.C. 5547 (i.e., the biweekly or annual locality rate for GS-15, step 10, in most cases).

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## Enhanced Retirement Benefits Have Been Granted through OPM and Agency Administrative Processes as Well as through Separate Legislation for Select Employee Groups

Before a group of employees may receive enhanced retirement benefits through the administrative process, agencies must make an administrative determination whether this group meets the statutory and regulatory definitions relating to a LEO and submit it for OPM's determination. In recent years, several employee groups and unions representing law enforcement-related personnel who have not been found by their employing agencies and OPM to meet the applicable LEO definitions have sought to obtain enhanced retirement benefits directly through separate legislation.

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## Under the Administrative Process, Agencies and OPM Determine Which Employee Groups Meet the Statutory and Regulatory LEO Definitions and Are to Receive Enhanced Retirement Benefits

As part of the administrative process, agencies with law enforcement missions determine which occupations or employee groups are necessary for accomplishing their missions, taking into account the agency's overall authorized level of resources and appropriations. As part of this determination, an agency head decides whether a particular position should be approved for LEO retirement coverage.<sup>24</sup> If an agency determines the need for new positions that meet the statutory and regulatory definitions relating to a LEO (and therefore could receive enhanced retirement benefits, special pay, or salary provisions, and be subject to a mandatory retirement age), the agency sends a notice to OPM.<sup>25</sup> This notice is to consist of, for example, the title of the position, the number of incumbents, whether the position is a supervisory or administrative position, whether it is a rigorous position, and the maximum entry age of the position. With certain exceptions, OPM may, at its discretion, review the position description to determine if it meets certain aspects of the statutory LEO definition. According to OPM officials, there is no requirement for a discussion between the agency head and OPM prior to an agency head's decision and the issuance of a notice about such an administrative determination to OPM. OPM officials also

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<sup>24</sup> Under FERS, for example, an employing agency makes a determination whether the duties of a position are (1) primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, and (2) sufficiently rigorous that employment opportunities are required to be limited to young and physically vigorous individuals. Terms such as "primary duties" and "rigorous position" are defined in OPM regulations.

<sup>25</sup> 5 C.F.R. §§ 831.911(a) and 842.808(a).

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stated that OPM has received hundreds of LEO retirement coverage notices covering probably thousands of positions over the last 10 years, reviewing about six position descriptions a month. OPM officials stated that OPM rarely overrules an agency head's decision, but maintains the authority to do so. OPM officials noted a case in the late 1990s in which they had reviewed the Secretary of Energy's decision to grant Nuclear Materials Couriers LEO status and accompanying benefits and overturned the Secretary's decision because these positions did not meet the applicable LEO definitions.<sup>26</sup> OPM officials, however, could not provide us with data on how often OPM overrules an agency head's decision for granting LEO status and retirement benefits. As of fiscal year 2008, approximately half of federal employees receiving enhanced retirement benefits have been found to meet the applicable LEO definitions and are accruing such benefits as a result of the administrative process. Select employee groups that have been found to meet the LEO definitions and receive enhanced retirement benefits through agency determinations and OPM's administrative process are shown in table 2.

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<sup>26</sup> Nuclear Materials Couriers are responsible for performing or supervising the safe and secure transportation of sensitive nuclear materials owned or controlled by the Department of Energy.

**Table 2: Select Employee Groups That Have Been Found to Meet the LEO Definitional Criteria and Receive Enhanced Retirement Benefits through OPM’s Administrative Process**

Employee group <sup>a</sup>	Department	Agency	Occupation series	September 2008 total
Border Patrol Agents	DHS	CBP	1896	17,300
FBI Special Agents	DOJ	FBI	1811	12,700
Immigration Enforcement Agents and Detention/Deportation Officers	DHS	Immigration and Customs Enforcement	1801,1811	11,600
Drug Enforcement Administration (DEA) Special Agents	DOJ	DEA	1811	4,900
U.S. Marshals	DOJ	U.S. Marshals Service	0082,1811,1802	3,500
U.S. Secret Service Special Agents	DHS	U.S. Secret Service	1811	3,300
IRS Special Agents	Department of the Treasury	IRS	1811	2,600
U.S. Park Rangers <sup>b</sup>	Department of the Interior	National Park Service	0025	1,300
Federal Air Marshals	DHS	Transportation Security Administration	1801	Sensitive Security Information

Source: GAO analysis of OPM’s CPDF data.

<sup>a</sup>The list of these employee groups is not comprehensive.

<sup>b</sup>Not all U.S. Park Rangers meet the statutory definition of a LEO.

If individual employees feel that they have been wrongly excluded from LEO retirement provisions, the employee may, for example, appeal the final decision of an agency denying an individual’s request for approval of a position as rigorous, to the MSPB. <sup>27</sup> According to MSPB officials, they periodically review employee appeals related to LEO coverage but noted that the number of such appeals has decreased in the last couple of years. The employee may also appeal the final decisions of MSPB to the U.S. Court of Appeals for the Federal Circuit.

Overall, at the department level, DHS and DOJ human capital officials, as well as IRS officials, supported the use of the administrative process for determining who meets the LEO definitions and who receives LEO retirement benefits because they felt this process worked well and met the needs of their departments.

<sup>27</sup> MSPB’s statutory functions include (1) providing for independent adjudication of appeals of personnel actions for federal employees, and (2) conducting studies of Federal merit systems and related issues. According to MSPB, it serves as an independent, bipartisan guardian of the merit systems under which Federal employees work.

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## Employee Groups Have Sought Enhanced Retirement Benefits Directly through Legislation

Employee groups who have not been determined to meet the definitions of a LEO but believe they deserve similar benefits have sought these benefits directly through legislative action.<sup>28</sup> For example, as noted above, Nuclear Materials Couriers were denied LEO status by OPM but, with support from the Department of Energy, were eventually provided with enhanced retirement benefits similar to those received by LEOs directly through legislation.<sup>29</sup> In most cases, the recent efforts of those employee groups seeking enhanced retirement benefits have been led by unions or other organizations representing the interested employee groups, not the employing agencies. The employing departments and agencies generally have determined that the groups seeking LEO benefits through direct legislation do not meet the LEO definitions and do not qualify for the benefits. For example, various pieces of legislation were introduced in the 110th Congress that would have provided such benefits to approximately 25,000 additional employees. These employees include certain federal police who have not been found to meet the statutory LEO definition, Assistant U.S. Attorneys, CBP Agriculture Inspectors, and IRS Revenue Officers.<sup>30</sup>

In discussions with DHS human resource officials about their views on additional employee groups seeking enhanced retirement benefits directly through legislation, they expressed concern regarding such proposals. Human resources officials of the Justice Management Division (JMD) of DOJ stated that they found such proposals problematic due to high, unfunded costs and the fact that the positions do not meet the statutory definition of law enforcement officer. Specifically, in reference to

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<sup>28</sup> For example, bills introduced in previous sessions of Congress which, if enacted, would have provided law enforcement retirement coverage for (1) certain IRS employees whose duties are primarily the collection of delinquent taxes and the securing of delinquent returns, (2) federal employees not otherwise covered by the term “law enforcement officer” whose duties include the investigation or apprehension of suspected or convicted individuals and who are authorized to carry a firearm, and (3) Assistant U. S. Attorneys.

<sup>29</sup> See the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 Pub. L. No. 105-261, 112 Stat. 1920 (1998). With agency support, this legislation made Nuclear Materials Couriers eligible for immediate retirement after completing 25 years of qualifying service (or 20 years of qualifying service upon reaching 50 years of age), like the U.S. Capitol Police, the Supreme Court Police, firefighters, and “law enforcement officers.” Among other provisions, the legislation also made Nuclear Materials Couriers subject to (1) the annuity computation formula now also applicable to the U.S. Capitol Police, the Supreme Court Police, firefighters, and “law enforcement officers” and (2) mandatory separation provisions.

<sup>30</sup> See, e.g., H.R. 750, H.R. 2878, S. 1729, H.R. 1073, and S. 1354 from the 110th Congress.

proposed legislation that would have provided enhanced retirement benefits to Assistant U.S. Attorneys, these officials stated that the duties of Assistant U.S. Attorney positions are not primarily the investigation, apprehension, or detention of individuals nor related to the protection of officials of the United States against threats to personal safety. DOJ JMD officials added that Assistant U.S. Attorney duties also do not require young and vigorous personnel which is essential to a law enforcement officer workforce.<sup>31</sup> As of fiscal year 2008, approximately half of law enforcement personnel receiving enhanced retirement benefits did not receive these benefits through the application of the LEO definitional criteria from their employing agency and OPM via the administrative process, but received these benefits directly through legislation that either (1) provided benefits similar to those received by LEOs or (2) added their occupation to the statutory LEO definition. Select employee groups receiving enhanced retirement benefits through these two ways are listed in table 3.

**Table 3: Select Employee Groups' Currently Receiving Enhanced Retirement Benefits Directly through Legislation by Occupation Series, Fiscal Year 2008 Population, and Year of Legislation**

Employee group	Department	Agency	Occupation series	Year authority for benefits provided	September 2008 population
Bureau of Prisons Correction Institute Staff	DOJ	Bureau of Prisons	Multiple	1956	35,500
U.S. Secret Service Uniformed Division	DHS	U.S. Secret Service	0083	1988	1,250
Park Police	Dept. of Interior	National Park Service	0083	1987	500
Nuclear Materials Couriers	Dept. of Energy		0084	1998	360
CBP Officers <sup>a</sup>	DHS	CBP	1896	2008	19,600

Source: GAO analysis of OPM's CPDF data and GAO legal analysis.

Note: U.S. Capitol Police and U.S. Supreme Court Police (occupation series 0083) received enhanced retirement benefits through legislation in 1990 and 2000, respectively. However, data on these groups are not found within the CPDF (which covers executive branch personnel) and, therefore, are not included in this analysis.

<sup>a</sup>Prior to the Consolidated Appropriations Act, 2008, some CBP Officers were classified under occupation series 1811 and, therefore, were considered LEOs and received enhanced retirement benefits. The number of these officers is not reflected in table 3.

<sup>31</sup> Executive Office of U.S. Attorneys views on this subject are discussed later in this report.

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**Employee Groups Cite Various Rationales for Seeking Enhanced Retirement Benefits through Legislation; Considering Supporting Data for Rationales, Additional Costs, and Other Implications Could Inform Decisions**

Law enforcement-related employee groups that sought enhanced retirement benefits directly through legislation have cited the reduction of high attrition rates as a primary rationale for granting such benefits to those not currently receiving them. Other reasons cited include the need to provide equitable benefits to groups performing similar duties and how changing duties may have put the employees at more risk. Although data exist that could provide some insight into attrition in the federal workforce as a means to inform decisions on retirement benefits, the groups requesting these benefits have not consistently provided this data to us. The additional short-term costs to a federal agency for providing enhanced retirement benefits for LEOs under FERS is higher than the costs of providing benefits to regular federal employees, raising questions about the ability of agencies to cover increased costs if additional employee groups receive such benefits. In addition, while the long-term costs to the federal government of providing enhanced LEO or similar retirement benefits for CSRS-covered staff are important, such costs are not included in the Congressional Budget Office scoring process.<sup>32</sup> Finally, providing enhanced retirement benefits to certain employee groups directly through legislation has created perceived inequities across certain law enforcement-related occupations and some agencies report that future action to provide enhanced retirement benefits to certain employee groups could affect their strategic workforce planning.

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**Limited Evidence Is Provided to Support the Primary Rationale of the Additional Employee Groups Seeking Enhanced Retirement Benefits because Various Factors Influence Attrition**

In their petitions seeking benefits outside of OPM's administrative process, organizations have cited a number of rationales for providing enhanced retirement benefits to the employees they represent. The primary rationale used by additional groups seeking benefits is that law enforcement-related personnel have high rates of attrition because they are not currently receiving enhanced retirement benefits. However, when we asked the employee groups and unions seeking enhanced retirement benefits for those they represent for data to substantiate this rationale, they did not consistently provide these data. To examine the validity of this rationale, we analyzed attrition rates by law enforcement status governmentwide to determine if a relationship between attrition rates and enhanced

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<sup>32</sup> The Congressional Budget Office provides Congress with analysis to aid in economic and budgetary decisions for those programs covered by the federal budget. Interagency transfers and long-term costs to the government for bills beyond 10 years are not acknowledged directly in proposed bill scoring.

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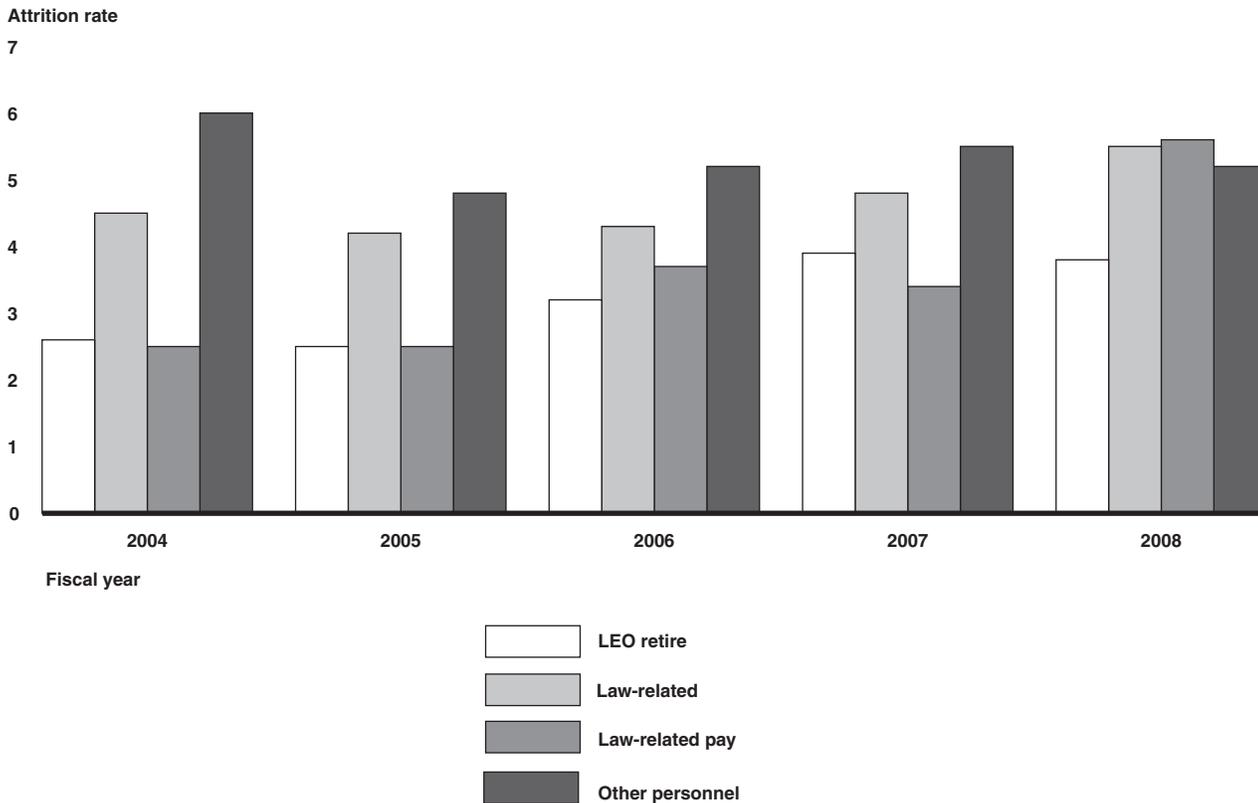
retirement benefits exists.<sup>33</sup> According to our analysis of CPDF data, law enforcement-related personnel not receiving enhanced retirement benefits typically have higher attrition rates than those law enforcement personnel receiving LEO or similarly enhanced retirement benefits, but lower than the attrition rates for general federal government employees. Specifically, the average government-wide attrition rate from fiscal years 2004 through 2008 for law enforcement-related personnel not receiving enhanced retirement benefits was 4.7 percent, compared to 3.2 percent for law enforcement personnel receiving enhanced retirement benefits and 3.5 percent for law enforcement-related personnel who received special pay and no enhanced retirement benefits.<sup>34</sup> The average governmentwide attrition rate for all other federal personnel (those not employed in law enforcement or related occupations) was 5.4 percent, higher than all of the governmentwide averages for law enforcement and related personnel. Figure 1, below, illustrates these comparative trends.

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<sup>33</sup> As previously stated, attrition consists of resignations and transfers from one federal agency to another. For more information on how we calculated attrition rates, see appendix I.

<sup>34</sup> The government-wide population of law enforcement-related personnel receiving special pay is approximately 2 percent of the total law enforcement and related population and totals approximately 2,800.

**Figure 1: Governmentwide Attrition Rates for Law Enforcement and Related Personnel, Fiscal Years 2004 through 2008 by Retirement Category**



Source: GAO analysis of OPM data.

Note: LEO retire refers to law enforcement personnel receiving enhanced retirement benefits; Law-related refers to law-enforcement related personnel not receiving enhanced retirement benefits; Law-related pay refers to law-enforcement related personnel receiving special pay and not enhanced retirement benefits; and Other personnel refers to all other federal personnel that are not employed in law enforcement or related occupations.

Further, our analysis revealed the following:

- Attrition rates vary by department and are influenced by type of occupation, challenging work conditions, and other factors.** For example, the average attrition rates from fiscal years 2004 through 2008 for law enforcement-related personnel not receiving enhanced retirement benefits for DHS and DOJ were 4.1 percent and 3.5 percent, respectively, while the average attrition rates for law enforcement

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personnel receiving such benefits for DHS and DOJ were 4.8 percent and 2.2 percent, respectively.<sup>35</sup> This difference in the average attrition rates for those law enforcement personnel receiving enhanced retirement benefits may be attributed to the types of occupations and their associated law enforcement-related functions. For example, DHS officials attributed some of the attrition within one of its component agencies, CBP, to the challenging work of some personnel, especially those stationed at remote U.S. border locations. In comparison, DOJ officials reported a high degree of employee satisfaction in the FBI Special Agent occupation, but some attrition challenges in relocating agents to high-cost urban areas or other undesirable areas. However, the FBI Police, consisting of approximately 250 officers, has experienced relatively high level of attrition in comparison to the department. Specifically, the average attrition rate of FBI Police in fiscal year 2008 was approximately 17 percent, which is more than 5 times higher than DOJ's average.<sup>36</sup> Meanwhile, the Department of the Treasury's law enforcement and law enforcement-related personnel have lower average attrition rates than similar personnel groups within DHS and DOJ. For example, the average attrition rate from fiscal years 2004 through 2008 for law enforcement-related personnel not receiving enhanced retirement benefits was 2.0 percent while the average attrition rate for law enforcement personnel receiving such benefits was 1.7 percent. For more information on the attrition rates by year and by department, see appendix V.

- **Attrition was higher for those law enforcement and law enforcement-related personnel with fewer years of service.** For example, governmentwide, the attrition rate for federal personnel with less than 5 years of service was 11.1 percent and the attrition rate for those with 5 or more years of service was 3.8 percent for fiscal year 2008. This trend remains consistent across law enforcement and related personnel and those departments employing the majority of these personnel. Law enforcement personnel receiving enhanced

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<sup>35</sup> Although not included in the governmentwide or DHS-wide analyses of attrition in law enforcement-related personnel, the Transportation Security Administration's Transportation Security Officer position accounted for approximately 51,000 employees in fiscal year 2008 and had an average attrition rate of 15.1 percent from fiscal years 2004 through 2008.

<sup>36</sup> According to the FBI, in fiscal year 2008, the FBI Police experienced a loss of 41 employees from the Unit. Of these 41 employees, 24 left for other Bureau positions, 4 left to receive a Special Agent position, 15 were promoted to other Bureau positions, and the remaining 5 went to positions in different career paths.

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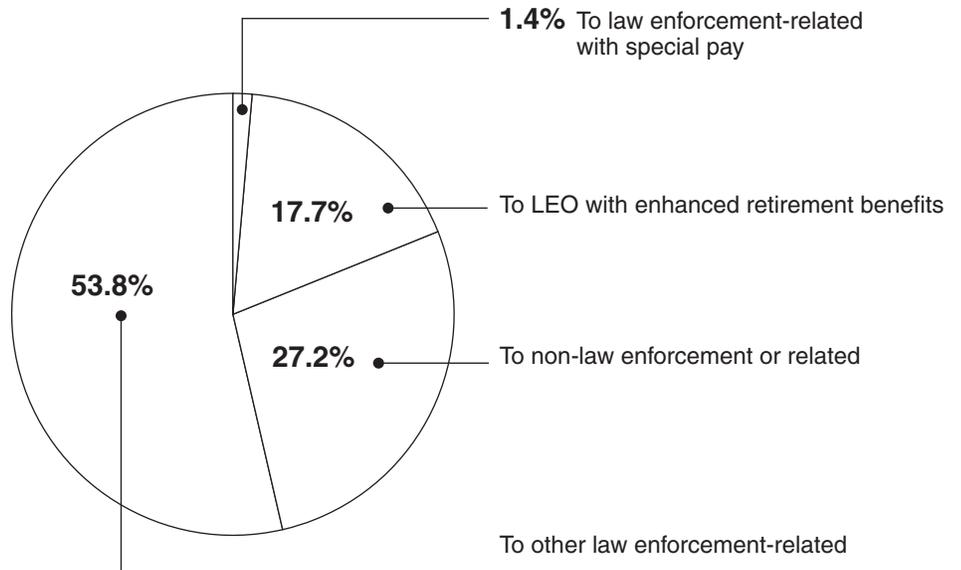
retirement benefits with less than 5 years of service had a 10.4 percent attrition rate, while those with 5 or more years of service had a 2.2 percent attrition rate for fiscal year 2008. Because the attrition rates are consistently higher for those with less than 5 years of service, the percentage of these personnel within a workforce may also affect the overall attrition rates. For example, in fiscal year 2008 personnel with less than 5 years of service accounted for approximately 34 percent and 17 percent of total personnel within the DHS and DOJ, respectively. The DHS-wide rate of attrition may be higher than the DOJ-wide rate of attrition for all personnel because DHS has a higher percentage of personnel with less than 5 years of service than does DOJ and those with less service have higher attrition. Both DHS and DOJ officials at the department level were aware that they have higher attrition among groups of employees with less than 5 years of service, but neither DHS nor DOJ officials indicated that this attrition was hindering their ability to meet their mission.

- **The majority of law enforcement-related personnel moving to other agencies are not receiving enhanced retirement benefits as a result of that move.** For example, from fiscal years 2004 through 2007, approximately 6,500 law enforcement-related personnel moved between federal agencies. As shown in figure 2, 54 percent remained in federal law enforcement-related occupations that do not receive enhanced retirement benefits, 18 percent moved into law enforcement occupations that do garner such benefits, and 27 percent moved into non-law enforcement-related occupations.<sup>37</sup>

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<sup>37</sup> Percentages presented above do not add up to 100 percent due to rounding.

**Figure 2: Governmentwide Moves among Law Enforcement-Related Personnel Not Receiving Enhanced Retirement Benefits, Fiscal Years 2004 through 2007 by Retirement Category**



Source: GAO analysis of OPM data.

Note: The percentages in this figure do not add to 100 percent due to rounding.

Overall, our analysis shows that the attrition rates vary when analyzed by different categories and factors (governmentwide, departmentwide, and by years of service). However, our analysis could not link attrition levels with the presence or absence of enhanced retirement benefits. This is consistent with what we reported with respect to metropolitan D.C. federal police forces. Specifically, in June 2003 we reported that no clear pattern existed regarding turnover among D.C. police forces receiving federal law enforcement retirement benefits and those receiving traditional retirement benefits.<sup>38</sup> Also, analyzing the trends in data alone does not determine whether the attrition rates for law-enforcement personnel are too high or problematic for the agencies or whether the rates are acceptable and manageable through the use of human capital tools.

<sup>38</sup> GAO, *Federal Uniformed Police: Selected Data on Pay, Recruitment, and Retention at 13 Police Forces in the Washington, D.C., Metropolitan Area*, GAO-03-658 (Washington, D.C.: June 13, 2003).

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However, for current and future data analysis, OPM has recently developed and implemented a new tool, the Enterprise Human Resource Integration (EHRI) program, which involves a standardized and centralized collection of federal personnel data that can be queried and analyzed for specific personnel. Using the analytic tools accompanying EHRI, executive branch departments and agencies can analyze their own data on attrition or seek OPM's assistance in providing such analysis.<sup>39</sup> However, analyzing attrition data alone may not fully indicate why personnel are leaving a particular agency because, as we have previously reported, a variety of organizational, personal, and economic factors, in addition to compensation, influence separation decisions.<sup>40</sup>

Two additional rationales offered by organizations advocating for enhanced retirement benefits for law enforcement related employees are that (1) employees are performing duties that are similar to those of law enforcement employee groups receiving enhanced retirement benefits; or (2) employees are performing high-risk duties related to homeland security activities, such as guarding the northern and southern borders from those illegally trying to enter the U.S. For example, representatives from DOJ's Executive Office of U.S. Attorneys stated that, in addition to addressing retention challenges, Assistant U.S. Attorneys should be afforded enhanced retirement benefits similar to those received by LEOs because of the risks they encounter working with defendants that are in pretrial status as well as convicted criminals. In addition, officials from the Executive Office of U.S. Attorneys noted that Assistant U.S. Attorneys work closely with law enforcement personnel who already receive such benefits. We did not address the validity of these rationales because we did not do a detailed analysis and comparison of the duties of the wide variety of different groups of employees who perform law enforcement-related functions across various agencies.

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<sup>39</sup> The EHRI is one of five OPM-led e-Government initiatives designed to leverage the benefits of information technology in line with the President's Management Agenda, which was announced in the summer of 2001. In support of this agenda, The Office of Management and Budget has mandated that all executive branch agencies eliminate paper personnel folders by October 2010. OPM's CPDF is to be phased out and completely replaced with EHRI by the end of fiscal year 2009, but plans are for EHRI to house the last 5 fiscal years of archived CPDF data. Legislative and judicial branch agencies also have the option of participating in EHRI.

<sup>40</sup> GAO, *Federal Workforce: Pay, Recruitment, and Retention of Federal Employees*, GAO/GGD-87-37 (Washington, D.C.: Feb. 10 1987).

**Costs of Providing Enhanced Retirement Benefits to Law Enforcement Personnel are Generally Higher Than Those for Regular Federal Employees**

Overall, the short-term costs to a federal agency for providing enhanced retirement benefits for law enforcement personnel under FERS are higher than providing retirement benefits to regular federal employees. As illustrated in Table 4 below, the mandatory agency contribution to the retirement fund for a LEO under FERS is 13.7 percent of basic pay more than for a regular FERS employee and 0.5 percent more for a LEO under CSRS than for a regular CSRS employee.<sup>41</sup>

**Table 4: Differences in Agency and Employee Contributions to Retirement Funds for Regular Federal Employees versus Law Enforcement Personnel**

	<b>CSRS regular employee</b>	<b>CSRS law enforcement personnel</b>	<b>FERS regular employee</b>	<b>FERS law enforcement personnel</b>
Retirement contributions-employee	7 percent of basic pay	7.5 percent of basic pay	0.8 percent of basic pay	1.3 percent of basic pay
Retirement contributions-agency	7 percent of basic pay	7.5 percent of basic pay	11.2 percent of basic pay <sup>a</sup>	24.9 percent of basic pay <sup>a</sup>

Source: GAO analysis of OPM information.

<sup>a</sup>Agencies also pay the employer portion of Social Security as well as a Thrift Savings match.

According to DHS and DOJ officials, if enhanced retirement benefits are provided directly through legislation, the department or component agencies may not have the resources immediately available to cover their increased contributions, and could likely seek additional funds for this purpose. For example, when CBP Officers were granted enhanced retirement benefits directly through legislation in CBP’s fiscal year 2008 appropriations act,<sup>42</sup> congressional appropriators directed \$50 million for fiscal year 2008 to help the agency implement the legislation.<sup>43</sup> In addition, congressional appropriators directed an additional \$200 million for fiscal year 2009 to cover the increased agency contributions to the retirement

<sup>41</sup> OPM periodically updates the “normal” actuarial costs and agency contributions necessary to cover pension costs. According to OPM actuaries, the actuarial costs and agency contributions were last updated in 2007 and the next update is scheduled to occur for fiscal year 2011.

<sup>42</sup> See Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, 121 Stat. 1844, 2075-78 (2007).

<sup>43</sup> H.Comm. on Appropriations, 110th Cong., Committee Print on H.R. 2764 / Public Law 110-161, Division E – Department of Homeland Security Appropriations Act at 1031 (2008), accompanying the Consolidated Appropriations Act, 2008.

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system.<sup>44</sup> This results in approximately \$10,000 more per position for fiscal year 2009.<sup>45</sup> In addition to the agency contribution costs, CBP officials stated that they incurred other expenses during the conversion process, including staffing and training costs. In subsequent years, CBP officials stated that they plan to include these increased costs in their annual budget requests. Specifically, for the fiscal year 2010 budget request, CBP's Office of Finance included \$225 million for the additional retirement benefits for that year. In contrast, 2002 legislation was enacted into law providing that the Director of the FBI may establish a permanent police force, with enhanced retirement benefits, to be known as the FBI Police.<sup>46</sup> However, according to the FBI, due, in part, to lack of funding to support this action, the FBI has not implemented these provisions and these benefits have not been provided.<sup>47</sup>

The majority of those personnel who may seek enhanced retirement benefits in the future are covered under FERS and, therefore, would have most of the costs of their enhanced benefits covered by increased agency contributions.<sup>48</sup> However, there are potential, unfunded long-term costs to the pension system of providing such benefits to any additional law enforcement personnel who are covered under CSRS. At the end of fiscal

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<sup>44</sup> H.Comm. on Appropriations, 110th Cong., Committee Print on H.R. 2638 / Public Law 110-329, Division D – Department of Homeland Security Appropriations Act at 627 (2008), accompanying the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009.

<sup>45</sup> Approximately 94 percent of the approximately 20,000 CBP Officers provided enhanced retirement benefits in fiscal year 2008 were under FERS and the remaining 6 percent were under CSRS. Although CBP Officers were provided enhanced retirement benefits beginning in July 2008, some employee groups have previously been legislatively provided with such benefits retroactively, which would be at a greater cost to the employing agency.

<sup>46</sup> 21st Century Department of Justice Appropriations Authorization Act (Pub. L. No. 107-273, 116 Stat. 1758, 1830 (2002)).

<sup>47</sup> There is a class action lawsuit, *King v. United States of America*, No. 07-589 C, currently pending in the United States Court of Federal Claims, regarding these provisions. The complaint alleges, among other things, that the 2002 act increased the plaintiffs' pay and benefits that the defendant has failed to provide. In its motion to dismiss, the defendant asserted, in general, that the 2002 act conveyed discretionary authority to establish such a permanent police force and that the FBI has not yet established such a permanent police force. The defendant's motion to dismiss further provides, in part, that the FBI determined that implementation would not be feasible given the potential fiscal impact that the retirement system issues created.

<sup>48</sup> According to OPM actuaries, as of April 2009, four out of five federal employees were covered by FERS.

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year 2008, approximately 51,000 federal personnel performing some law enforcement-related activities were not receiving enhanced retirement benefits. During the 110th Congress, at least six pieces of legislation were introduced, but not enacted into law, which would have extended enhanced retirement benefits to approximately 25,000 additional employees. Specifically, these various pieces of legislation would have provided enhanced retirement benefits similar to those received by LEOs to thousands of federal police not currently receiving LEO or similarly enhanced retirement benefits, as well as Assistant U.S. Attorneys and others. The cost for providing enhanced retirement benefits to the groups covered by CSRS and FERS under these pieces of legislation would have been approximately \$250 million for 1 fiscal year.<sup>49</sup> The long-term costs to the federal government for providing FERS employee pensions would be accounted for in higher agency contributions by the employing agency (and an additional 0.5 percent from individuals). However, this is not the case for CSRS employees and the long-term costs to the federal government of providing enhanced LEO or similar retirement benefits for CSRS staff are not acknowledged directly by the Congressional Budget Office process, or the requesting groups that sought additional benefits.

According to OPM's actuaries, they do, upon request, provide estimates of the effects of retirement coverage changes on the Civil Service Retirement and Disability Fund.<sup>50</sup> Specifically, as table 4 illustrates, agencies pay an additional 0.5 percent contribution for CSRS-covered LEO staff over regular federal employees (7.5 percent versus 7 percent) and LEO staff make a similarly increased contribution as well. However, the cost to the government of CSRS retirement benefits is greater than those combined agency and staff contributions.<sup>51</sup> Each CSRS position represents an unfunded liability to Treasury and CSRS LEOs represent a greater

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<sup>49</sup> This figure was calculated using fiscal year 2008 population data and assumed that approximately 25,000 personnel would have been granted enhanced retirement benefits if these pieces of legislation had passed. We also assumed that the employing agency would have had to contribute an additional \$10,000 for each position based on the funding appropriated for CBP Officer retirement benefits in fiscal year 2009.

<sup>50</sup> The Civil Service Retirement and Disability Fund is a trust fund covering the defined benefit components of CSRS and FERS.

<sup>51</sup> According to OPM actuaries, as of September 2007, the Civil Service Retirement and Disability Fund had net assets of \$706.4 billion available for benefit payments under both CSRS and FERS, as well as accrued liability under the plans of \$634.5 billion. In May 2009, OPM actuaries stated that the fund is not in danger of becoming insolvent and projected there is no point over the next 75 years at which the fund will become exhausted.

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unfunded liability than regular employees because the contributions do not meet the costs associated with benefits.

In January 2007 and again in December 2007 we reported on the importance of making policy decisions that take into consideration the need for fiscal stewardship.<sup>52</sup> Specifically, at that time we reported on the challenge facing Congress in making fiscally responsible policy decisions given our nation's growing fiscal imbalance. Although there is no question that law enforcement and related personnel play an invaluable role in securing this nation, granting enhanced retirement benefits to additional employee groups may or may not be the most cost-efficient solution for retaining this population. The federal government has many human capital tools that can be used to address attrition, which we discuss later in this report.

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## Awarding Retirement Benefits Directly through Legislation Has Potential Implications on Federal Agencies and Other Employee Groups Performing Law Enforcement-Related Duties

While providing enhanced retirement benefits to additional employee groups directly through legislation has been used as an alternative to OPM's administrative process, doing so has also resulted in some perceived inequities across certain federal occupations. For example, under OPM implementing regulations, federal police officers are generally excluded from the regulatory definition of a LEO to receive enhanced retirement benefits.<sup>53</sup> However, four federal agency police departments were provided with enhanced retirement benefits directly through legislation (Park Police, U.S. Secret Service Uniformed Division, Capitol Police, and Supreme Court Police)<sup>54</sup> while others do not receive such benefits (e.g. Veterans Affairs Police). DOJ officials at the department level expressed concern about the potential disparity in benefits provided

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<sup>52</sup> GAO, *Fiscal Stewardship: A Critical Challenge Facing our Nation*, [GAO-07-362SP](#) (Washington, D.C.: Jan. 31, 2007) and *A Call for Stewardship: Enhancing the Federal Government's Ability to Address Key Fiscal and Other 21st Century Challenges*, [GAO-08-93SP](#), (Washington, D.C.: Dec. 17 2007).

<sup>53</sup> OPM implementing regulations for employees covered by FERS generally provide, in part, that the definition of the term "law enforcement officer" does not include an employee whose primary duties involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than those who are suspected or convicted of offenses against the criminal laws of the United States. 5 C.F.R. § 842.802.

<sup>54</sup> In addition, as discussed earlier, in 2002, the 21st Century Department of Justice Appropriations Authorization Act provided that the Director of the FBI may establish a permanent police force, with specified enhanced retirement benefits, to be known as the FBI Police.

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to their personnel when other employee groups are provided with enhanced retirement benefits directly through legislation. In addition, some Detection Enforcement Officers within CBP Air and Marine Air Interdiction who do not receive enhanced retirement benefits told us that they are not being treated fairly in relationship to their co-workers who seemingly perform similar mission critical duties and are exposed to similar risks, but who receive enhanced retirement benefits.

Providing additional employee groups with enhanced retirement benefits could also affect an agency's strategic workforce planning. In the past, we have called on agencies to develop a long-term strategic workforce plan that considers the unique number, type, and competency levels of employees needed for the agency to meet its mission in the long run and the strategies it will use to recruit, hire, train, and retain these employees.<sup>55</sup> As part of this planning process, agencies are to determine tools they will, and can afford to, use to achieve their plan. Strategic workforce planning also focuses on developing long-term strategies for acquiring, developing, and retaining an organization's total workforce to meet the needs of the future. In 2002, we reported that each agency needs to ensure that its human capital program capitalizes on its workforce's strengths and addresses related challenges in a manner that is clearly linked to achieving the agency's mission and goals.<sup>56</sup> Thus, it is through its strategic workforce planning that an agency would determine the number, types, and duties of law enforcement personnel needed to perform its mission; whether it has any challenges recruiting or retaining personnel for these positions and, if so, what are the most cost-efficient tools it can use to address these challenges, such as retention incentives; and how to manage all of this within the agency's available budget.

When unions or employee groups seek legislation for enhanced retirement benefits outside of an agency's strategic workforce planning process, it could, according to DHS and DOJ human resource officials, affect the workforce strategies and resources an agency has devised. Individuals who become LEOs can also qualify for certain special pay provisions,

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<sup>55</sup> GAO, *Human Capital: Key Principles for Effective Strategic Workforce Planning*, [GAO-04-39](#) (Washington, D.C.: Dec. 11 2003).

<sup>56</sup> GAO, *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#) (Washington, D.C.: March 15, 2002).

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availability pay, or administratively uncontrollable overtime pay.<sup>57</sup> Such provisions may affect other payroll and matching benefit costs not accounted for in agencies' workforce plans. According to DHS and DOJ human resource officials, whose departments represent the majority of law enforcement and related personnel, their departments' strategic workforce planning may be affected if additional employee groups were provided with enhanced retirement benefits directly through legislation, especially if the departments were not allocated additional funds.

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## Using Human Capital Tools Could Offer A More Cost Efficient Alternative Than Granting Enhanced Retirement Benefits For Retaining Select Law Enforcement Related Personnel

Federal agencies, including those that employ law enforcement and law enforcement-related personnel, such as DOJ, DHS, and Treasury, can use a variety of human capital tools, such as student loan reimbursements and monetary retention incentives, to retain such personnel. However, DOJ and DHS officials at the department level stated that these tools are currently used to a limited extent due to a lack of sustained and available funding. Because such tools were specifically designed to address retention issues, these tools could provide a cost-efficient alternative to granting enhanced retirement benefits for those employee groups that seek such benefits directly through legislation and cite retention as the primary rationale.

In June 2004, we defined human capital tools as the policies and practices that an agency can implement in managing its workforce to accomplish its mission.<sup>58</sup> These tools can relate to recruitment, retention, compensation, position classification, incentive awards, training, performance management, and work-life policies, among others. For example, a federal agency may award a recruitment incentive to attract new employees or provide a relocation incentive to a current employee moving to a different geographic location to accept a position that the employing agency has

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<sup>57</sup> At agency discretion, certain employees may receive administratively uncontrollable overtime pay equal to 10 percent to 25 percent of their basic pay.

<sup>58</sup> GAO, *FBI Transformation: Human Capital Strategies May Assist the FBI in Its Commitment to Address Top Priorities*, [GAO-04-817T](#) (Washington, D.C.: June 3, 2004).

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deemed hard to fill.<sup>59</sup> In addition, an agency may pay a retention incentive to keep a current employee if the agency determines that the employee is has unusually high or unique qualifications or if the agency has a special need for the employee's services, making retention of the employee essential, and if the employee would be likely to leave the federal service in the absence of the incentive.<sup>60</sup> Table 5 below provides details on key human capital tools officials from DHS, DOJ, and the IRS told us they use to retain law enforcement and law enforcement-related personnel.

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<sup>59</sup> Accompanying some of these monetary incentives are service agreements for specified time periods and requirements that the incentive not exceed 25 percent of the employee's annual rate of basic pay multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). With OPM approval, this cap may be increased to 50 percent, based on a critical agency need, as long as the total incentive does not exceed 100 percent of the employee's annual rate of basic pay. A recruitment or relocation incentive may be paid as an initial lump-sum payment at the beginning of the service period, in installments throughout the service period, as a final lump-sum payment upon completion of the service period, or in a combination of these methods.

<sup>60</sup> In May 2009, the Director of OPM issued a memorandum requesting that department and agency heads review their use of recruitment, relocation, and retention incentives to ensure that ongoing and new authorizations for payments to employees are used only when necessary to support their mission and program needs. The memorandum further stated that the cost of using any of these pay flexibilities should be weighed against the benefits to be gained. In July 2009, the Director of OPM issued a second memo that, among other things, requests agencies to review, and if necessary, update their use of recruitment, relocation, and retention incentives. The memo also states that OPM is conducting a detailed review on the use of recruitment, relocation, and retention incentives in the agencies where the incentives are paid most often to identify ways to strengthen the effectiveness of the program.

**Table 5: Human Capital Tools and Special Pay Utilized by DHS, DOJ, and the IRS to Retain Law Enforcement and Law Enforcement Related Personnel**

<b>Retention tool or benefit</b>	<b>Description of retention tools and benefits</b>
Retention incentives	Continuing (i.e., biweekly or lump sum) payments of up to 25 percent of basic pay that an agency may pay to help retain an employee. In return, the employee must sign a service agreement with the agency if paid in other than biweekly payments. The eligible employee must have unusually high or unique qualifications or the agency must have a special need for the employee's service and the employee must be likely to leave the federal service.
Relocation incentives	Payments an agency may pay to a current employee who must relocate to accept a position in a different geographic location that would otherwise be difficult to fill. In return, the employee must sign a service agreement with the agency. Incentive payments cannot exceed 25 percent of annual basic pay multiplied by the number of years in a service period (not to exceed 4 years).
Student loan reimbursement	The federal student loan repayment program permits agencies to repay federally insured student loans for candidates or current employees of the agency.
Foreign language award	A monetary award paid for law enforcement agents with foreign language skills.
Special rate or critical position pay	A special rate is a rate of basic pay for employees in hard to fill or hard to retain occupations nationwide or in specific locations. Critical position pay is a rate of pay greater than would otherwise be payable for the employee's position because the position has been designated critical.
Alternative work schedules or job sharing	Agencies may establish hours of work and scheduling flexibilities to replace the traditional schedules of 8 hours per day and 40 hours per week, such as full-time and part-time, overtime hours, and flexible work schedules. Job sharing is a form of part-time employment in which one position is filled with two or more part-time employees.
Administratively uncontrollable overtime	As previously noted, certain employees may receive administratively uncontrollable overtime pay equal to 10 percent to 25 percent of their basic pay. Most recipients receive a rate of 25 percent based on working an average of at least 9 hours of irregular overtime hours per week.
Availability pay	Criminal investigators and certain similar law enforcement employees generally are entitled to receive law enforcement availability pay equal to 25 percent of their rate of basic pay. Availability pay is compensation for (1) all irregular overtime hours, (2) any regularly scheduled overtime hours that are part of the first 2 overtime hours on any regular workday, and (3) certain nonwork hours during which an employee is placed in availability status.

Source: GAO analysis of information provided by OPM, DHS, DOJ, and Treasury.

Officials in some DHS and DOJ component agencies as well as the IRS that employ LEOs report that they use human capital tools to retain personnel effectively. For example, according to officials from DOJ's Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), they use a variety of human capital tools, such as a Foreign Language Award Program and

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Health Improvement Program,<sup>61</sup> with some success to retain their agents already receiving enhanced retirement benefits. Officials from the IRS's Criminal Investigation Division, whose employees receive LEO retirement benefits, stated that they use retention incentives to retain corporate knowledge and expertise with some success. In addition, within DHS, the U.S. Secret Service provides retention and foreign language bonuses to retain LEOs.

Officials from some DHS and DOJ component agencies that employ law enforcement-related personnel also stated that they used human capital tools to retain such staff. However, these officials stated that they are continuing to experience some retention challenges for certain types of these personnel, even though they are utilizing human capital tools, to varying degrees, in an effort to retain them. Specifically, according to FBI Police officials, they are facing difficulties retaining their police force of 241 officers (as of August 2008), despite their use of human capital tools, such as student loan reimbursements. FBI Police officials noted that their agency loses a number of police officers to other positions within the FBI, particularly to the Special Agent position, which provides enhanced retirement benefits. FBI Police officials also said that it takes approximately 7 to 9 months to bring on a new police officer due to the detailed testing and background check required. Therefore, even a small amount of attrition would have an impact on the FBI Police's ability to meet its mission. Similarly, according to the Director of DOJ's Executive Office of U.S. Attorneys (EOUSA), the office is using retention incentives, student loan reimbursements, and monetary rewards up to \$7,500, but acknowledged that it is a challenge to retain their approximately 5,300 Assistant U.S. Attorneys, especially mid-career-level attorneys who could earn more money in the private sector, particularly in some major metropolitan areas. Officials from the FBI Police and EOUSA stated that they believe providing such personnel with enhanced retirement benefits may be an option for addressing their current retention challenges.

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<sup>61</sup> According to ATF, the bureau recognizes the contributions of its law enforcement covered personnel who conduct a substantial amount of their duties and responsibilities using foreign languages with monetary awards. As part of the Health Improvement Program, the agency maintains a fully-equipped fitness center at the National Headquarters Building and it partially funds the enrollment of employees stationed in other locations in local fitness centers. Employees covered by the law enforcement provisions are allowed to participate in physical fitness activities for up to 4 hours each week during their official duty hours. Non-law enforcement covered personnel can participate in physical fitness activities for up to 3 hours per week.

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Although some DOJ component agency officials cited challenges retaining their staff, DOJ JMD human resource officials stated that they do not feel that they face challenges retaining law enforcement-related personnel and would not support these personnel seeking enhanced retirement benefits directly through legislation. DOJ JMD human resource officials highlighted the fact that the department's average overall attrition rate from fiscal years 2004 through 2008 for law enforcement-related personnel (3.5 percent) is lower than average for all of the federal government (4.7 percent). In addition, DHS human resource officials acknowledged the department's difficulty in retaining some staff, but noted that this may be because the department is relatively new and, therefore, some higher than average attrition is to be expected.

According to OPM officials, enhanced retirement benefits are not intended to be a tool for retaining personnel and, thus, may not be appropriate in addressing the cited and related retention challenges. A possible option for addressing the retention challenges cited by some DOJ component agencies and DHS human resource officials is the use of human capital tools for these groups. According to our analysis of OPM's annual reports to Congress on agencies' use of retention incentives for calendar years 2006 and 2007, DHS and DOJ use human capital tools to retain their personnel to a lesser extent than other federal departments.<sup>62</sup> Specifically, DHS awarded an average of \$2,241 retention incentives to approximately 0.6 percent of all DHS employees (law enforcement and related personnel as well as other personnel), while DOJ awarded an average of \$3,279 to approximately 0.9 percent of all DOJ employees and Department of the Treasury awarded an average of \$13,467 to approximately 0.1 percent of all its employees for fiscal years 2006 and 2007.<sup>63</sup> In comparison, OPM reported that other reporting departments awarded an average retention incentive of \$5,629 to approximately 3.6 percent of its employees during

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<sup>62</sup> OPM, Report to Congress: *Recruitment, Retention, and Relocation Incentives Calendar Year 2007* (September 2008) and OPM, Report to Congress: *Recruitment, Retention, and Relocation Incentives Calendar Year 2006* (September 2007).

<sup>63</sup> For calendar year 2007, DHS's submission to OPM included data on the number of retention incentives paid in calendar year 2007 to GS-0080 (security specialists) and GS-0083 (police officers) for services performed in calendar year 2006. However, these incentives were terminated effective January 6, 2007.

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the same time frame.<sup>64</sup> For additional information on the use of human capital tools during calendar years 2006 and 2007, as reported to OPM, see appendix VI.

We have also previously reported on the effectiveness of providing cash incentives, such as retention incentives and special pay, to retain federal personnel.<sup>65</sup> Specifically, in July 2005, we reported that some deferred benefits, such as retirement, are not valued as highly as cash compensation (basic pay or special pay and monetary retention incentives) and that cash compensation is generally accepted as a far more efficient tool than deferred benefits for retaining certain personnel. Cash compensation has been used for various groups of law enforcement-related personnel. For example, what is known as the Customs Officer Pay Reform Act (COPRA) of 2003 and its implementing regulations provided revised and enhanced overtime compensation and premium pay provisions to a number of customs inspectors and supervisors.<sup>66</sup> In addition, our analysis of fiscal years 2004 through 2008 CPDF data indicated that the attrition rates for those law enforcement-related personnel receiving special pay were similar to those personnel receiving enhanced retirement benefits and were lower than those law enforcement-related personnel receiving neither enhanced pay nor enhanced retirement benefits. Specifically, the average governmentwide attrition rate for law enforcement-related personnel not receiving enhanced retirement benefits was 4.7 percent, compared to 3.2 percent for law enforcement personnel receiving enhanced retirement benefits and 3.5 percent for law enforcement-related personnel who received special pay and no enhanced retirement benefits. The use of special pay could therefore also be an

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<sup>64</sup> The other departments that reported their use of retention incentives in OPM's Recruitment, Retention, and Relocation Incentives reports for 2006 and 2007 included the Departments of Agriculture, Commerce, Defense, Education, Health and Human Services, Housing and Urban Development, Interior, Labor, State, Transportation, and Veterans Affairs. To compare DHS, DOJ, and Treasury's use of retention incentives to the other reporting departments, we used the average incentive awarded as reported to OPM and we compared the percentage of personnel awarded the incentives during fiscal years 2006 and 2007, based on our calculations.

<sup>65</sup> GAO, *Military Personnel: DOD Needs to Improve the Transparency and Reassess the Reasonableness, Appropriateness, Affordability, and Sustainability of Its Military Compensation System*, [GAO-05-798](#) (Washington, D.C.: July 19, 2005).

<sup>66</sup> Section 13811 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66, 107 Stat. 312, 668-70 (1993)), as amended, is commonly referred to as the Customs Officer Pay Reform Act (COPRA) but has also been referred to as the Customs Officers Pay Reform Amendments (COPRA), and the Customs Overtime Pay Reform Act (COPRA).

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option for addressing some of the retention challenges reported by some agencies employing law enforcement-related personnel not receiving enhanced retirement benefits.

If sustainable funding were available, agencies using human capital tools in a targeted manner for law enforcement related personnel could be a cost-efficient option (considering their relatively low cost to a federal agency when compared to enhanced retirement benefits). For example, as noted above, our analysis of CPDF data found that all federal employees, including law enforcement and law enforcement-related personnel, with less than 5 years of service had higher attrition rates than those with 5 or more years of service. Specifically, law enforcement personnel receiving enhanced retirement benefits with less than 5 years of service had a 10.4 percent attrition rate while those with 5 or more years of service had a 2.2 percent attrition rate for fiscal year 2008. For those law enforcement-related personnel with less than 5 years of service, targeted use of human capital tools or the use of special pay could be a more meaningful option for addressing their attrition.

According to DOJ officials, they do not currently have plans to target their use of human capital tools toward any specific personnel because they did not feel their department faces retention challenges. These officials also noted that these tools are available for all of their employees. DHS human resource officials acknowledged that the department faces challenges in retaining its employees, including those in law enforcement-related positions with less than 5 years of service and noted that they have a number of efforts under way to address attrition for this specific population. For example, they have implemented a program that seeks to retain employees by allowing them to explore different career paths within DHS rather than leaving the department altogether.

While the costs of providing retention incentives and special pay are not insignificant, they pose less of a potential financial liability to the federal government than providing enhanced retirement benefits. For example, according to OPM, the average annual retention incentive provided to federal employees in calendar year 2007 was \$5,573. We estimated that the average cost to CBP, for example, for providing increased agency contributions to fund enhanced retirement benefits to the approximately 20,000 CBP Officers, was about \$10,000 per position for fiscal year 2009—and these costs are expected to continue for the rest of each individual's career as a CBP Officer. Moreover, when we spoke to human resource officials from DHS, they stated that providing special pay, which is higher than that of a regular federal employee, may be a less costly option for

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addressing retention challenges than providing enhanced retirement benefits to additional employee groups.

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## Concluding Observations

Currently, there are approximately 51,000 federal law enforcement-related personnel who have not received enhanced retirement benefits because they have not been determined to meet the statutory and regulatory definitions relating to a LEO or have not been provided such benefits directly through legislation. Employees in several occupations have expressed interest in obtaining LEO or similar enhanced retirement benefits, and they will most likely seek them directly through legislation. Law enforcement-related personnel who have previously obtained or are seeking enhanced retirement benefits directly through legislation have used various rationales to justify their request, including high attrition rates, equity considerations, and the assertion that they are now performing more homeland-security-related functions than they had previously. However, in those instances where employee groups are seeking enhanced retirement benefits directly through separate legislation, data are not always provided to support the various rationales. Our analysis of available attrition data showed that while law enforcement-related personnel without enhanced retirement benefits generally have higher attrition rates than those with enhanced retirement benefits or special pay, their attrition rates are actually lower than the overall average for other federal employees. Therefore, it may be useful to evaluate such data when determining whether to provide expensive, enhanced retirement benefits in response to assertions of retention challenges.

In addition, our analysis indicates that considering the costs to agencies, and to the pension system as a whole, of providing these enhanced retirement benefits is important because it is a long-term commitment and may affect agency strategic workforce planning options. OPM's actuaries can provide estimates of the long-term costs to the government for the increased pensions, but if additional employee groups are granted enhanced retirement benefits directly through legislation, agencies may need short-term supplemental funding as well as longer-term additional funding to cover increased agency contributions to the retirement fund. Furthermore, assessing the impact of potentially unfunded liabilities to the treasury and the retirement system related to providing enhanced retirement benefits to employees still under CSRS may also be important when determining whether to provide enhanced retirement benefits to additional employee groups. Soliciting agencies' perspectives on their personnel needs, challenges, and available budgets would help to inform these benefit decisions as well, especially given that legislative requests

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for such benefits typically are not brought by agencies, but by unions or employee group representatives. Agencies' possible use of human capital tools in a targeted fashion (such as cash bonuses or special pay) are another potentially more cost-efficient means for addressing the human capital issues cited for law enforcement personnel than awarding enhanced retirement benefits, which may also result in unintended consequences such as perceptions of inequity

Finally, information on attrition, costs, agencies' strategic workforce plans and budgets, and other issues can help to inform whether requests for enhanced retirement benefits directly through legislation are justifiable, affordable, and cost-efficient. These are some of the challenges facing both agencies and Congress in making fiscally responsible policy decisions, especially given our nation's growing fiscal imbalance.

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## Agency Comments

We requested comments on a draft of this report from DHS, DOJ, IRS, and OPM. On July 24, 2009, we received written comments from OPM on the draft report, which are reproduced in full in appendix VII. OPM generally concurred with the report. DHS and DOJ did not provide written comments, but in e-mails received July 27, 2009 and July 28, 2009, DOJ and DHS liaisons stated that the departments generally agreed with the report. OPM, DHS, and DOJ also provided technical comments, which we have incorporated where appropriate. In an e-mail received July 24, 2009, the IRS liaison stated that IRS had no comments on the draft report.

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We will provide copies of this report to the Attorney General, the Secretary of the Department of Homeland Security, the Secretary of the Treasury, the Director of OPM, selected congressional committees, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

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Please contact Eileen R. Larence at (202) 512-6510 if you or your staff has any questions concerning this report. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix VIII.

A handwritten signature in cursive script that reads "Eileen R. Larence". The signature is written in black ink and is positioned above the printed name and title.

Eileen R. Larence  
Director, Homeland Security and Justice Issues

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# Appendix I: Scope and Methodology

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This report addresses the following questions: (1) What processes are being used to grant enhanced retirement benefits to federal law enforcement personnel? (2) What are the rationales and potential costs for extending such benefits to additional occupations or employee groups? (3) To what extent have federal agencies used human capital tools, such as retention incentives, to retain both law enforcement and other related personnel?

As agreed upon with your offices, our review focused on the Department of Homeland Security (DHS), Department of Justice (DOJ), and Department of the Treasury because these federal entities employed approximately 84 percent of all law enforcement and law enforcement-related personnel in fiscal year 2008.<sup>1</sup> For the purposes of this report, we are defining the term law enforcement personnel in a manner that is broader in scope than the statutory and regulatory law enforcement officer (LEO) definitions and we are not including other specialized non-law enforcement related annuity recipients, such as federal air traffic controllers and firefighters.

To identify the processes that have been used to grant enhanced retirement benefits to federal law enforcement personnel, we reviewed relevant laws, regulations, as well as legislation introduced in the 110th Congress that would have provided such benefits to additional employee groups. We also reviewed reports by the Office of Personnel Management (OPM), the Congressional Budget Office, and the Congressional Research Service that describe the current processes by which such benefits are provided. Also, we obtained information on the specific benefits provided to law enforcement personnel from DHS, DOJ, and the Internal Revenue Service (IRS) within the Department of the Treasury, as well as OPM and select employee organizations and unions. During this review, we also obtained information from OPM on its role and responsibilities related to providing enhanced retirement benefits to personnel who perform law enforcement-related duties.

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<sup>1</sup>DHS, DOJ, and Department of the Treasury employed approximately 91 percent of all federal law enforcement personnel receiving LEO retirement benefits or similarly enhanced retirement benefits in fiscal year 2008, approximately 75 percent of personnel employed in law enforcement-related occupations not receiving enhanced retirement benefits, and approximately 51 percent of personnel employed in law enforcement-related occupations receiving special pay but not receiving enhanced retirement benefits. Special pay refers to the nonstandard basic pay system applied to certain law enforcement-related personnel that do not currently receive enhanced retirement benefits such as U.S. Secret Service Police (occupation series 0083).

We also met with representatives from six unions and other employee organizations who have advocated for enhanced retirement benefits, to discuss the current process for obtaining enhanced benefits. In addition, we met with staff from the Merit System Protection Board (MSPB), which adjudicates federal employees' appeals of personnel actions such as appeals from employees who believe they are entitled to LEO coverage, to discuss their views and opinions on the current criteria used to determine which federal personnel meet the statutory and regulatory LEO definitions. We did not, however, review the appropriateness of the statutory and regulatory definitions relating to LEOs nor did we determine criteria for evaluating the definitions or the processes used by various agencies in implementing the definition.

To identify the rationales and potential costs for extending enhanced retirement benefits to additional occupations or employee groups, we met with representatives from six unions and employee organizations who have advocated for enhanced retirement benefits to discuss the rationales that law enforcement-related personnel are using to seek enhanced benefits similar to those received by LEOs. We also discussed potential effects of providing enhanced retirement benefits to additional employee groups that may be beneficial to consider, such as potential costs, when providing such benefits to others groups with DHS, DOJ, IRS, and OPM officials. Further, we reviewed previous GAO reports that discuss the importance of making policy decisions that take into consideration the need for fiscal stewardship. We also obtained information on the extent to which granting such benefits may affect other employees and agencies' workforce planning. During this review, we interviewed officials from DHS, DOJ, IRS, and OPM on the potential workforce planning effects of providing enhanced retirement benefits directly through legislation to those additional employee groups seeking such benefits.

Because one of the primary rationales provided was that law enforcement-related personnel not receiving enhanced retirement benefits exhibit high attrition, including moving to occupations that provide such benefits, we analyzed data from OPM's Central Personnel Data File (CPDF) for fiscal years 2004 through 2008 to calculate the attrition rates and to determine the extent to which these rationales can be substantiated with existing

data.<sup>2</sup> Our analysis focused on DHS, DOJ, and Treasury; however, we also analyzed these data on a governmentwide basis. Regarding CPDF, we have previously reported that governmentwide data from CPDF for most of the key variables used in this study (agency/sub-element, position occupied, retirement plan, work schedule, and occupation) were at least 99 percent accurate and thus concluded that the data were sufficiently reliable for the purposes of this study.<sup>3</sup> Our analysis of CPDF data included personnel that were:

- identified as permanent employees of all work schedules.
- identified as having separated from their agency of employment through resignation or transfer from one agency to another agency.

For the purpose of our analysis, we divided personnel into four different groups by LEO status. The first group, referred to as *law enforcement personnel*, included personnel that were:

- identified as having LEO enhanced retirement, and
- identified as personnel receiving enhanced retirement benefits similar to LEOs through separate legislation.

The second group, referred to as *law enforcement-related personnel*, included personnel that were:

- identified as personnel that have not been found to meet the LEO definition by their employing agency and OPM nor have they been provided with similar enhanced retirement benefits.
- identified as potentially performing certain law enforcement-related duties including but not limited to carrying a weapon, having arrest authority, or participating in some investigative capacity. Occupations

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<sup>2</sup> For the purposes of this review, we analyzed CPDF data beginning with fiscal year 2004 because this was the first full fiscal year to include DHS personnel. Also, we analyzed CPDF data ending with fiscal year 2008 because this was the most recent fiscal year available.

<sup>3</sup> GAO, *OPM's Central Personnel Data File: Data Appears Sufficiently Reliable to Meet Most Customer Needs*, GAO/GGD-98-199 (Washington, D.C.: September 30, 1998). Also, in a document dated February 28, 2008, an OPM official confirmed that OPM continues to follow the CPDF data quality standards and procedures contained in our 1998 report.

frequently thought of as being *law enforcement-related* may include personnel in the following occupations (if not covered by LEO): 0006, 0007, 0025, 0080, 0082, 0083, 0084, 1801, 1802, 1810, 1811, 1812, 1816, 1854, 1881, 1884, 1890, 1895, 1896, and 1899.

- Identified as having previously expressed interest in receiving such benefits through legislation. The following occupations were added to the *law enforcement-related* group because they have previously lobbied for passage of a bill to give them retirement benefits similar to LEO retirement: CBP Agricultural Inspectors (0401), Assistant U.S. Attorneys (0905), and IRS Revenue Officers (1169).

The third group, referred to as *law enforcement-related personnel receiving special pay*, also included those who have not been found to meet the LEO definition and are performing certain law enforcement-related duties but receive special pay.<sup>4</sup> The fourth group, referred to as *other federal personnel*, include those who do not function in a law enforcement capacity and do not perform law enforcement-related duties.

To calculate the rates of attrition for each fiscal year, we divided the total number of resignations and transfers from one agency to another by the average of the number of permanent employees. The average number of employees for a given fiscal year was calculated using the number of employees at the beginning and the end of each fiscal year. We calculated the rates of attrition for each of the previously described personnel groups on a governmentwide basis as well as on a departmentwide basis for DHS, DOJ, and the Department of the Treasury. We focused our analysis on these Departments because they employ 84 percent of federal law enforcement and law enforcement-related personnel. To calculate the average attrition rates from fiscal year 2004 through 2008, we added the total of each group's attrition rate for each fiscal year multiplied by the average population of the group and divided it by the total population of the 5 year time frame. We calculated the average rates of attrition for each of the previously described personnel groups on a governmentwide basis as well as on a departmentwide basis for DHS, DOJ, and the Department of the Treasury.

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<sup>4</sup> See appendix IV for more details regarding special pay.

Further, we analyzed CPDF data to determine whether law enforcement-related personnel not receiving LEO or similarly-enhanced retirement benefits were moving to other federal positions that offered these benefits (because such moves were another rationale from those unions and employee groups seeking enhanced retirement benefits). We totaled the number of employees that moved from a law enforcement-related occupation not receiving enhanced retirement benefits on a governmentwide basis from fiscal year 2004 through fiscal year 2007.<sup>5</sup> Then, we calculated the percentage of those employees who moved to a law enforcement occupation receiving such benefits under the same parameters.

To determine the extent to which federal agencies have used human capital tools to retain both law enforcement and law enforcement-related personnel, we reviewed and analyzed information reported to OPM on the extent to which DHS, DOJ, and Treasury were using retention incentives. We also obtained information on the use of human capital tools to retain law enforcement and law enforcement-related personnel from DHS, DOJ, and IRS human capital officials, various component agency officials, and union and employee representatives. In addition, we reviewed previous GAO reports that discuss the use and potential effectiveness of human capital tools to retain federal employees.<sup>6</sup>

We conducted this performance audit from January 2008 through July 2009, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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<sup>5</sup> Fiscal year 2007 data were the latest available when we analyzed the moves from positions with enhanced retirement benefits to positions without enhanced retirement benefits.

<sup>6</sup> GAO, *FBI Transformation: Human Capital Strategies May Assist the FBI in Its Commitment to Address Top Priorities*, [GAO-04-817T](#) (Washington, D.C.: June 3, 2004).and *Military Personnel: DOD Needs to Improve the Transparency and Reassess the Reasonableness, Appropriateness, Affordability, and Sustainability of Its Military Compensation System*, [GAO-05-798](#) (Washington, D.C.: July 19, 2005).

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# Appendix II: Definition of “Law Enforcement Officer” for Retirement Purposes

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The current definition of “law enforcement officer” can be traced back to as early as 1948. In 1948, legislation was enacted into law that, in general, provided enhanced retirement benefits to certain federal officers whose duties were primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States. This legislation expanded the coverage of enhanced retirement benefits governmentwide beyond the limited scope of legislation enacted 1 year earlier in 1947 covering only FBI agents. In comments on the then pending 1948 legislation, the Civil Service Commission noted that it was “not in favor of special legislation for individual groups of employees, but inasmuch as Congress has approved special legislation for the investigatory personnel of the Federal Bureau of Investigation it would not oppose benefits for similar groups of employees.” Committee report language noted that the “committee believes it is only fair to grant such retirement benefits as are provided for under the bill to law-enforcement agents in all parts of the Government at an earlier age, because it is physically impossible to carry on the necessary strenuous activities after reaching 50 years of age.”

Currently, law enforcement personnel performing certain specified types of duties can fall within the Civil Service Retirement System (CSRS)<sup>1</sup> and Federal Employee Retirement System (FERS)<sup>2</sup> statutory and regulatory retirement-related definitions of the term “law enforcement officer” (LEO) and thus be eligible for enhanced retirement benefits under the respective retirement plans. LEO retirement coverage does not depend on the classification of a position within an occupational series (e.g., Police Officer GS-0083) or the law enforcement mission of a particular agency.

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<sup>1</sup> The statutory definition of “law enforcement officer” for Civil Service Retirement System (CSRS) purposes is set out at 5 U.S.C. 8331(20). OPM’s implementing regulations are found at 5 C.F.R. Part 831, Subpart I.

<sup>2</sup> The Federal Employees Retirement System (FERS) definition of “law enforcement officer” is set out in 5 U.S.C. 8401(17). OPM’s implementing regulations are found at 5 C.F.R. Part 842, Subpart H.

For CSRS purposes, a LEO is defined in statute as an employee whose primary duties are the “investigation, apprehension, or detention<sup>3</sup> of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position.” OPM’s implementing regulations provide additional definitions. The term “primary duties”, for example, is defined, in part, as “those duties of a position that – (1) are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position; (2) occupy a substantial portion of the individual’s working time over a typical work cycle; and (3) are assigned on a regular and recurring basis.” The implementing regulations further provide, for example, that the definition of a LEO “does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.”

The main statutory provision of the FERS LEO definition generally parallels the CSRS LEO definition. Like the CSRS provision, the statutory FERS LEO definition includes an employee whose primary duties are the “investigation, apprehension, or detention<sup>4</sup> of individuals suspected or convicted of offenses against the criminal laws of the United States.” The statutory FERS LEO definition additionally includes an employee whose primary duties are the protection of officials of the United States against threats to personal safety. Like the CSRS definition, the FERS definition also includes employees primarily performing such duties who transfer to supervisory and administrative positions. However, the statutory FERS

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<sup>3</sup> The CSRS LEO definition additionally provides that the term “detention” includes the duties of certain specified prison support staff, such as employees of the Bureau of Prisons, whose duties in connection with individuals in detention suspected or convicted of specified criminal offenses “require frequent (as determined by the appropriate administrative authority with the concurrence of the Office [OPM]) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation.”

<sup>4</sup> Similar to the CSRS provisions, the FERS LEO provisions include the duties of certain specified prison support staff. Included under the FERS LEO provisions are certain specified prison support staff, such as employees of the Bureau of Prisons, whose duties in connection with individuals in detention suspected or convicted of specified criminal offenses require frequent direct contact with such individuals, and are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the head of the employing agency.

definition of a “law enforcement officer” is more restrictive than the CSRS LEO definition in that it expressly includes a rigorous duty standard. With respect to those employees described above, the statutory FERS LEO definition additionally requires, in general, that the duties of such positions be “sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals.”<sup>5</sup> As with CSRS, OPM implementing regulations provide additional FERS LEO-related definitions. The term “rigorous position”, for example, is defined under OPM FERS regulations to mean, in pertinent part, “a position the duties of which are so rigorous that employment opportunities should, as soon as reasonably possible, be limited (through establishment of a maximum entry age and physical qualifications) to young and physically vigorous individuals whose primary duties are investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States or protecting the personal safety of United States officials.”

The statutory FERS definition of “law enforcement officer” also specifically includes certain employees of the U.S. Park Police and members of the U.S. Secret Service Uniformed Division. OPM implementing regulations provide that the term “rigorous position” is deemed to include such positions in the Park Police and Secret Service Uniformed Division.

The CSRS and FERS implementing regulations relating to the definition of a LEO generally exclude an “employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.” In this regard, groups that are generally excluded from the CSRS and FERS definitions of “law enforcement officer” are police officers, guards, and inspectors.

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<sup>5</sup> Generally, under the FERS statutory provisions, this determination is to be made by the Director of OPM considering the recommendations of the employing agency.

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## Legislative Actions Related to the Definition of LEO

As discussed above, federal uniformed police typically do not have LEO retirement coverage because they are generally excluded from the CSRS and FERS definitions relating to a “law enforcement officer.” Legislation has been enacted into law, however, that extends enhanced retirement benefits to certain federal uniformed police groups within the broader law enforcement community.

For example, Congress has extended enhanced retirement benefits to certain employees of the U.S. Secret Service Uniformed Division officers, U.S. Park Police, U.S. Capitol Police, and U.S. Supreme Court Police. The officers of the U.S. Secret Service Uniformed Division and the U.S. Park Police were added in 1988 when legislation amended the statutory FERS LEO definition. Committee report language accompanying the 1988 legislation provided that “although these individuals are commonly thought to be law enforcement officers, the Office of Personnel Management says they do not meet the FERS definition of ‘law enforcement officer’ under section 8401(17) and thus do not qualify for FERS law enforcement officer benefits.”<sup>6</sup> In comparison, rather than amending the statutory LEO definition, legislation in 1990 and 2000 provided the U.S. Capitol Police and U.S. Supreme Court Police, respectively, with enhanced retirement benefits similar to those received by LEOs.<sup>7</sup>

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<sup>6</sup> H.R. Rep. No. 100-374 at 21 (1987).

<sup>7</sup> In addition, the CSRS and FERS definitions, in general, have been amended to include the duties of certain federal correctional employees, such as those in the Bureau of Prisons, whose duties in connection with persons in detention suspected or convicted of offenses against the criminal laws of the U.S. require frequent direct contact with such persons. The FERS provisions include the previously mentioned rigorous duty standard.

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## Administrative and Judicial Appeal Actions Related to Coverage Under the Definition of LEO

Both MSPB and the U.S. Court of Appeals for the Federal Circuit, for example, have issued decisions that affect, on an individual basis, which employees receive LEO. An individual employee asserting that his or her position duties are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, may, for example, appeal an agency’s final decision to the MSPB.<sup>8</sup> An employee may also appeal a final decision of the MSPB to the U.S. Court of Appeals for the Federal Circuit.

As discussed earlier, in general, in order to qualify for LEO coverage, an employee must show that the duties of his or her position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of crimes against the criminal laws of the United States. FERS has the additional statutory requirement that LEO positions are to be those that are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director of OPM considering the recommendations of the employing agency.<sup>9</sup>

OPM regulations set out a three-prong test to determine whether duties are considered primary duties of a particular position: (1) whether the duties are paramount in influence or weight, that is, constitute the basic reasons for the existence of the position; (2) whether the duties occupy a substantial portion of the individual’s working time over a typical work cycle; and (3) whether the duties are assigned on a regular and recurring basis. Under OPM regulations, in general, if an employee spends at least 50 percent of his or her time performing a duty or group of duties, they are his or her primary duties. In addition, duties that are of an emergency, incidental, or temporary nature cannot be considered “primary” even if they meet the substantial portion of time criterion, according to the OPM regulations.

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<sup>8</sup> The MSPB’s statutory functions include (1) providing for independent adjudication of appeals of personnel actions for federal employees, and (2) conducting studies of federal merit systems and related issues. According to MSPB, it serves as an independent, bipartisan guardian of the merit systems under which federal employees work.

<sup>9</sup> A 2007 MSPB decision, *Haut v. Department of the Interior*, 2007 MSPB 1366 (2007), notes that through case law, this “young and physically vigorous” requirement also applies to employees seeking law enforcement officer retirement credit under CSRS (citing *Houck, et al., v. Department of the Navy*, 82 M.S.P.R. 7, 10 (1999); *Bingaman v. Department of the Treasury*, 127 F.3d 1431, 1435 (Fed. Cir. 1997)).

In determining whether an employee meets the LEO definitional criteria for coverage, under pertinent case law, MSPB must examine all relevant evidence, including the position description.<sup>10</sup> The U.S. Court of Appeals for the Federal Circuit clarified its approach to law enforcement officer cases in a 2001 decision, *Watson v. Department of the Navy*, 262 F.3d 1292, 1299 (Fed. Cir. 2001), noting a legislative mandate for a position-oriented approach in cases of requests for law enforcement officer credit by requiring the “basic reasons” for the existence of the position must be the performance of law enforcement officer duties.<sup>11</sup> Under this approach, if the position was not created for the purpose of investigation, apprehension, or detention, then the incumbent of the position would not be entitled to law enforcement officer credit.<sup>12</sup>

The Court of Appeals for the Federal Circuit set out six factors, called the *Bingaman* factors, in a 1997 decision, *Bingaman v. Department of the Treasury*, 127 F.3d 1431 (Fed. Cir. 1997), that MSPB applies to an overall evaluation of the three OMB criteria for identifying primary duties.<sup>13</sup> Under this approach, MSPB considers whether the employee commonly (1) has frequent direct contact with criminal suspects, (2) is authorized to carry a firearm, (3) interrogates witnesses and suspects, (4) works for long periods of time without breaks, (5) is on call 24 hours a day, and (6) is required to maintain a level of physical fitness.<sup>14</sup> No single *Bingaman* factor is considered determinative and satisfaction of the *Bingaman* factors alone is insufficient to establish entitlement to LEO coverage because the *Bingaman* factors do not address the reason for the existence of the position, as required by the regulations.<sup>15</sup> The MSPB and the Federal Circuit Court have held that the most probative factors for determining whether a federal officer or law enforcement officer is eligible for early retirement credit are (1) whether the officer is merely guarding life and property, or whether he is instead more frequently pursuing or

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<sup>10</sup> See, *Ferrier v. Office of Personnel Management*, 60 M.S.P.R. 342, 345 (1994).

<sup>11</sup> *Watson v. Department of the Navy*, 262 F.3d 1292, 1299 (Fed. Cir. 2001) (citing S. Rep. No. 93-948, at 2 (1074), reprinted in U.S.C.C.A.N. 3698, 3699), cert. denied, 534 U.S. 1083 (2002).

<sup>12</sup> *Watson v. Department of the Navy*, 86 M.S.P.R. 318, 321 (2000).

<sup>13</sup> *Cole v. Department of the Interior*, 2007 MSPB LEXIS 4819 (2007).

<sup>14</sup> *Bingaman*, 127 F.3d at 1436.

<sup>15</sup> *Cole*, 2007 MSPB LEXIS 4819 (2007).

detaining criminals, (2) whether there is an early mandatory retirement age, (3) whether there is a youthful maximum entry age for the position, (4) whether the job is physically demanding so as to require a youthful workforce, and (5) whether the officer is exposed to hazard or danger.<sup>16</sup> In addition, determination of eligibility for LEO retirement coverage is strictly construed because the program is “more costly to the government than more traditional retirement plans and often results in the retirement of important people at a time when they would otherwise have continued to work for a number of years.”<sup>17</sup>

A 2005 decision of the Court of Appeals for the Federal Circuit Court, *Crowley v. United States*, 398 F.3d 1329, 1338 (Fed. Cir. 2005), noted that two factors predominate over all others in determining primary duties. The *Crowley* court noted that the most important consideration in its position-oriented approach of LEO determination is the physical vigorousness required by the position in question, followed by the hazardousness of a position.<sup>18</sup> The *Crowley* court stated that, while hazardousness was also important, it was secondary to physical vigorousness because the legislative history of the LEO statute emphasized physical vigor to a greater extent.<sup>19</sup>

The *Crowley* court stated that physical vigorousness is the “*sine qua non*” of LEO status determinations and that absent a showing of a position’s requirement of physical vigorousness, an employee cannot successfully show LEO status.<sup>20</sup> The *Crowley* court noted that the relevant considerations are whether or not the position contains (in order of importance) (1) strenuous physical fitness requirements, (2) age requirements (such as a mandatory retirement age or maximum entry age), or (3) a requirement that an employee be on call 24-hours a day.<sup>21</sup> The *Crowley* court explained that these sub-factors should be evaluated by

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<sup>16</sup> *Watson*, 262 F.3d at 1303.

<sup>17</sup> *Bingaman*, 127 F.3d 1431, 1435 (quoting *Morgan v. Office of Pers. Mgmt.*, 773 F.2d 282, 286-87 (Fed. Cir. 1985)).

<sup>18</sup> *Crowley v. United States*, 398 F.3d 1329, 1338 (Fed. Cir. 2005).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 1339.

applying the facts of a given case to the law to determine which sub-factors, if any, have been satisfied.<sup>22</sup> If the position in question is found to be vigorous, then the second major factor necessary to establish LEO status—hazardousness—must be considered.<sup>23</sup>

The second important consideration in LEO determinations cited by the *Crowley* court is the hazardousness of a position. To determine hazardousness, the *Crowley* court, in general, provided that a court should consider whether the position (in order of importance) requires frequent and consistent contact with criminal suspects on the part of the employee (including interrogation of suspects and pursuit or detention of criminals), or whether it authorizes the employee to carry a firearm.<sup>24</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

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# Appendix III: Annuity Computation Information

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An individual working in a position designated as a “law enforcement officer” position is typically covered either under special rules for CSRS or FERS. Under CSRS, LEOs pay a higher retirement contribution rate (7.5 percent of pay) for more generous retirement benefits and have the ability to retire at age 50 after 20 years of law enforcement officer-covered or other eligible service.<sup>1</sup> The benefits are to be computed based on 2.5 percent of the high three average salary for each of the first 20 years of covered service, and 2 percent per year of service (covered or not) thereafter. An individual is subject to mandatory retirement upon reaching the age of 57 or the completion of 20 years of covered service. Under FERS, there are also special benefits, but the rules are different. Like CSRS, the individual’s contribution rate is one-half percent more than for regular benefits. FERS also has different rules for when an individual may retire: at age 50 with 20 years of covered service (like CSRS), or with 25 years of covered service without a minimum age. Under FERS, the special benefit formula is 1.7 percent of the high three average salary for each of the first 20 covered years of FERS service, and 1 percent of pay per year of service thereafter. The FERS Cost of Living Adjustment is to begin at retirement instead of age 62, the age for regular retirees. In addition, law enforcement officer retirees are to receive the FERS Special Retirement Supplement until age 62, but the earnings test is not to be applied to the Special Retirement Supplement until the Minimum Retirement Age is reached. An individual is subject to mandatory retirement upon reaching the age of 57 or the completion of 20 years of covered service, if then over that age. The table below shows the annuity accrual rates.

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<sup>1</sup> For example, under CSRS, an employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer, firefighter, Nuclear Materials Courier, or Customs and Border Patrol officer, or any combination of such service totaling at least 20 years, is entitled to an annuity.

**Appendix III: Annuity Computation  
Information**

**Table 6: Annuity Accrual Rates**

Years of service	CSRS	FERS	FERS	CSRS	FERS
	Any age	Any age	Age 62 and 20 or more years service	LEO	LEO
1		0.0100			0.0170
2		0.0200			0.0340
3		0.0300			0.0510
4		0.0400			0.0680
5	0.0750	0.0500		0.1250	0.0850
6	0.0925	0.0600		0.1500	0.1020
7	0.1100	0.0700		0.1750	0.1190
8	0.1275	0.0800		0.2000	0.1360
9	0.1450	0.0900		0.2250	0.1530
10	0.1625	0.1000		0.2500	0.1700
11	0.1825	0.1100		0.2750	0.1870
12	0.2025	0.1200		0.3000	0.2040
13	0.2225	0.1300		0.3250	0.2210
14	0.2425	0.1400		0.3500	0.2380
15	0.2625	0.1500		0.3750	0.2550
16	0.2825	0.1600		0.4000	0.2720
17	0.3025	0.1700		0.4250	0.2890
18	0.3225	0.1800		0.4500	0.3060
19	0.3425	0.1900		0.4750	0.3230
20	0.3625	0.2000	0.2200	0.5000	0.3400
21	0.3825	0.2100	0.2310	0.5200	0.3500
22	0.4025	0.2200	0.2420	0.5400	0.3600
23	0.4225	0.2300	0.2530	0.5600	0.3700
24	0.4425	0.2400	0.2640	0.5800	0.3800
25	0.4625	0.2500	0.2750	0.6000	0.3900
26	0.4825	0.2600	0.2860	0.6200	0.4000
27	0.5025	0.2700	0.2970	0.6400	0.4100
28	0.5225	0.2800	0.3080	0.6600	0.4200
29	0.5425	0.2900	0.3190	0.6800	0.4300
30	0.5625	0.3000	0.3300	0.7000	0.4400
31	0.5825	0.3100	0.3410	0.7200	0.4500
32	0.6025	0.3200	0.3520	0.7400	0.4600
33	0.6225	0.3300	0.3630	0.7600	0.4700
34	0.6425	0.3400	0.3740	0.7800	0.4800

**Appendix III: Annuity Computation  
Information**

Years of service	CSRS	FERS	FERS	CSRS	FERS
	Any age	Any age	Age 62 and 20 or more years service	LEO	LEO
35	0.6625	0.3500	0.3850	0.8000	0.4900
36	0.6825	0.3600	0.3960	0.8000	0.5000
37	0.7025	0.3700	0.4070	0.8000	0.5100
38	0.7225	0.3800	0.4180	0.8000	0.5200
39	0.7425	0.3900	0.4290	0.8000	0.5300
40	0.7625	0.4000	0.4400	0.8000	0.5400
41	0.7825	0.4100	0.4510	0.8000	0.5500
42	0.8000	0.4200	0.4620	0.8000	0.5600

Source: OPM.

# Appendix IV: Selected Non Standard Pay Plans

The table below reflects selected information from Appendix C of the Office of Personnel Management’s (OPM) July 2004 report to Congress entitled, *Federal Law Enforcement Pay and Benefits*. The information pertains to selected non-standard pay plans provided to various law enforcement and law enforcement-related personnel as set out in OPM’s report.

**Table 7: Selected Non Standard Pay Plans**

Description of basic pay system	Statutory and regulatory citations
<p><b>Capitol Police Pay Plan</b> By law, the basic pay plan for Capitol Police is established and maintained by the Capitol Police Board. The plan covers police officers (all ranks). The pay schedule for Capitol police is significantly higher than that for GS police officers and is higher than the schedules for Secret Service Uniformed Division (SSUD) and Park Police officers.</p>	40 U.S.C. 207b(a) <sup>a</sup>
<p><b>DOD - Defense Protective Service (DPS) Pay Plan</b> The DPS police protect the Pentagon and surrounding areas. DPS police officers (AD-0083) are covered by a special pay system administered by the Secretary of Defense. (See section 1101 of Public Law 107-107, December 28, 2001.) DOD has administratively adopted the same pay plan that applies to SSUD officers.</p>	10 U.S.C. 2674(b)
<p><b>Nuclear Regulatory Commission (NRC) General Salary Schedule and Senior-Level (SN) Salary Schedule</b> The NRC General Salary Schedule is applicable to GS-equivalent NRC employees, including criminal investigator positions (GG-1811). The NRC General Salary Schedule is generally identical to the governmentwide General Schedule.</p>	Section 161.d of the Atomic Energy Act of 1954, Public Law 83-703, August 30, 1954
<p><b>Park Police Pay System</b> The Park Police Pay System is identical to the SSUD officer pay system.</p>	DC Code § 5-545.01 § 5-563.02
<p><b>Secret Service Uniformed Division (SSUD) Pay System</b> The SSUD officer pay system is established in the D.C. Code. (Same pay system applies to Park Police officers in the Department of the Interior.) Covers police officers (LE-0083) ranked from private to chief.</p>	DC Code § 5-545.01 § 5-563.02
<p><b>Supreme Court Police Pay Plan</b> The Supreme Court Police pay plan covers its police officers. The pay plan is identical to the pay plan for Capitol Police (comparing common ranks).</p>	28 U.S.C. 672(b)
<p><b>Transportation Security Administration (TSA) Pay Plans</b> <i>Core Compensation Plan</i> - This plan covers an unspecified number of Air Marshals (1801) and criminal investigators (SV-1811) in a specialized law enforcement job category with a specific banding structure.</p>	TSA law & administrative action under that law.

Source: Appendix C of OPM’s 2004 report to Congress, entitled *Federal Law Enforcement Pay and Benefits*. Given that the information is from OPM’s 2004 report, we did not verify the information and it does not reflect any subsequent programmatic changes or amendments to the legal citations.

<sup>a</sup>Revisions to the U.S. Code in 2002 transferred 40 U.S.C. 207b to 2 U.S.C. 1923 which relates to unified schedules of rates of basic pay and a leave system for the Capitol Police. Section 1921a of Title 2 pertains to Capitol Police Board and Chief of the Capitol Police pay system authority for members of the Capitol Police.

# Appendix V: Attrition Data

The following tables relate to attrition at the departmental level for Department of Homeland Security (DHS), Department of Justice (DOJ), and Department of the Treasury as well as government-wide for law enforcement, law enforcement-related, law enforcement special pay, and all other personnel from the Office of Personnel Management's (OPM) Central Personnel Data File (CPDF). For the purposes of this report, attrition is defined as resignations and transfers from the department of employment. The average attrition rates for each fiscal year were calculated by dividing the sum of the resignations and transfers for a given year by the mean number of employees on the first and last pay period of that fiscal year. The overall average attrition rate was calculated by multiplying the sum of each fiscal year's average attrition rate by each fiscal year's mean number of employees and dividing that number by the sum of each fiscal year's mean number of employees.

**Table 8: Attrition Rates for Law Enforcement Personnel Receiving Enhanced Retirement Benefits for Fiscal Year 2004 through Fiscal Year 2008**

<b>Attrition rates (%): law enforcement personnel receiving enhanced retirement benefits</b>						
	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>Average</b>
All	2.6	2.5	3.2	3.9	3.8	<b>3.2</b>
DHS	3.4	2.8	4.8	6.3	5.8	<b>4.8</b>
DOJ	1.8	2.1	2.3	2.4	2.3	<b>2.2</b>
Treasury	2.0	1.3	1.7	1.5	2.1	<b>1.7</b>

Source: GAO analysis of CPDF data.

**Table 9: Attrition Rates for Law Enforcement-Related Personnel Not Receiving Enhanced Retirement Benefits for Fiscal Year 2004 through Fiscal Year 2008**

<b>Attrition rates (%): law enforcement-related personnel not receiving enhanced retirement benefits</b>						
	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>Average</b>
All	4.5	4.2	4.3	4.8	5.5	<b>3.2</b>
DHS	3.7	3.7	3.7	4.3	4.7	<b>4.8</b>
DOJ	2.7	3.7	3.3	4.2	3.8	<b>2.2</b>
Treasury	1.6	1.8	1.8	2.3	2.3	<b>1.7</b>

Source: GAO analysis of CPDF data.

**Table 10: Attrition Rates for Law Enforcement Personnel-Related Receiving Special Pay but Not Receiving Enhanced Retirement Benefits for Fiscal Year 2004 through Fiscal Year 2008**

<b>Attrition rates (%): law enforcement-related personnel receiving special pay but not receiving enhanced retirement benefits</b>						
	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>Average</b>
All	2.5	2.5	3.7	3.4	5.6	3.5
DHS	0.8	1.2	3.1	3.4	4.7	2.8
DOJ <sup>a</sup>	-	-	-	-	-	-
Treasury	3.5	2.8	2.7	1.6	3.0	2.7

Source: GAO analysis of CPDF data.

<sup>a</sup> Although FBI Police receive special pay rates, DOJ does not employ any law enforcement-related personnel receiving special base pay who were the focus of our analyses of special pay.

**Table 11: Attrition Rates for Other Personnel Not Employed in Law Enforcement or Related Occupations for Fiscal Year 2004 through Fiscal Year 2008**

<b>Attrition rates (%): law enforcement-related personnel receiving special pay but not receiving enhanced retirement benefits</b>						
	<b>FY 2004</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>	<b>Average</b>
All	6.0	4.8	5.2	5.5	5.2	5.4
DHS	7.0	5.6	8.1	7.3	5.8	6.7
DOJ	2.8	2.9	3.0	3.7	3.4	3.2
Treasury	5.1	5.3	4.8	5.7	5.7	5.3

Source: GAO analysis of CPDF data.

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# Appendix VI: Federal Retention Incentives Utilization as Reported to OPM and Congress

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**Agency and OPM Authority** The Office of Personnel Management (OPM) is required to submit an annual report to certain congressional committees on agencies' use of the retention incentives (as well as recruitment and relocation incentives) authorized in Sections 5753 and 5754 of title 5, United States Code.<sup>1</sup> OPM requested that agencies not only submit a report on their use of retention incentives in each calendar year but also requested comments on any barriers faced in using these incentives.<sup>2</sup>

Under Section 5754, with OPM authorization an agency may provide a retention incentive to certain eligible employees currently in the federal service if the agency either deems that the employee's unusually high or unique qualifications or the agency's special need for the employee's services make the employee's retention essential and that the employee would likely leave the federal service in the absence of the incentive. The retention incentive may not exceed 25 percent of the employee's annual rate of basic pay (may not exceed 10 percent if authorized for a group or category of employees). With OPM approval and critical agency need, the incentive may reach up to 50 percent. For most payment options, including an initial lump-sum payment, installments during the service period, a final lump-sum payment, or in some combination, the employee must sign a service agreement.<sup>3</sup>

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**Incentives: All Reporting Agencies 2006 through 2007**

OPM reports that in 2007, 41 of the 97 responding agencies paid a total of 22,794 retention incentives that valued over \$127.0 million with an average incentive of \$5,573. In 2006, 47 of the 95 responding agencies paid a total

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<sup>1</sup> Section 101(c) of the Federal Workforce Flexibility Act of 2004 (Pub. L. No. 108-411, 118 Stat. 2305 (2004)) requires OPM to submit an annual report to specified committees of the House and Senate during calendar years 2005 through 2009. The act also requires that OPM include agencies' use of recruitment or relocation incentives; however, the scope of our analysis does not include these incentives.

<sup>2</sup> 5 U.S.C. §§ 5753 and 5754 use the term "bonus"; however, OPM uses the term "incentive" to differentiate the monetary incentive for an individual or group to accept a new position or to remain employed in the current position from the payments which are used to reward individual, or group, for quality of performance (the usual connotation of "bonus").

<sup>3</sup> Authorized under 5 U.S.C. 5754 and 5CFR, part 575, subpart C.

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of 17,803 retention incentives that valued over \$95.9 million with an average incentive of \$5,388.<sup>4</sup>

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**Incentives: Department of Homeland Security, 2006 through 2007**

OPM reports that in 2007, DHS paid a total of 656 retention incentives that valued over \$500,000 with an average incentive of \$885. In 2006, DHS paid a total of 1,098 retention incentives that valued over \$3.3 million with an average incentive of \$3,051. For both calendar years 2006 and 2007, DHS's average incentives awarded were lower than the average incentives awarded for all reporting agencies.

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**Incentives: Department of Justice, 2006 through 2007**

OPM reports that in 2007, DOJ paid a total of 1,528 incentives that valued over \$3.9 million with an average incentive of \$2,554, which was lower than the average incentive awarded for all reporting agencies. In 2006, DOJ paid a total of 281 incentives that valued over \$2.0 million with an average incentive of \$7,219, which was higher than the average incentive awarded for all reporting agencies.

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**Incentives: Department of Treasury, 2006 through 2007**

OPM reports that in 2007, the Department of the Treasury paid a total of 118 incentives that valued over \$1.8 million with an average incentive of \$15,280. In 2006, Department of the Treasury paid a total of 95 incentives that valued over \$1.0 million with an average incentive of \$11,215. For both calendar years 2006 and 2007, Treasury's average incentives awarded were higher than the average incentives awarded for all reporting agencies.

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**Agency Incentive Utilization**

Along with the submission of incentive usage data, OPM asked that agencies describe how they used the incentives and to discuss any perceived barriers to using retention incentives. In general, OPM reports that the agencies used the incentives most often to target specific occupations that present particular retention challenges (highly competitive market), to resolve retention challenges present in specific locations, and to meet a highly specified staffing challenge. Specifically, DOJ reported to OPM for calendar year 2007 that the Executive Office of

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<sup>4</sup> Because the new incentive authorities were not implemented until May 2005, the reporting period for the incentive use does not cover the entire 2005 calendar year. Therefore, valid comparisons of 2005 to 2006 and 2007 cannot be made and are thus not included in this appendix.

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**Appendix VI: Federal Retention Incentives  
Utilization as Reported to OPM and Congress**

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United States Attorneys (EOUSA) has found that retention incentives are effective in addressing attrition and shortages in EOUSA key positions.

# Appendix VII: Comments from the Office of Personnel Management



The Director

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

JUL 24 2009

Ms. Eileen R. Larence  
Director, Homeland Security and Justice  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Ms. Larence:

Thank you for providing the U.S. Office of Personnel Management (OPM) the opportunity to comment on the Government Accountability Office draft report titled "FEDERAL LAW ENFORCEMENT RETIREMENT: Information on Enhanced Law Enforcement Benefits for Law Enforcement Personnel," GAO 09-727. It was a pleasure working with your staff during their research. We appreciate the opportunity to provide comments on the report on the results of their investigation.

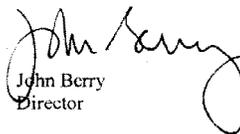
We believe that this report will provide extremely useful information to decision makers reviewing the various human resource management tools available to the Government to effectively manage this essential segment of the Federal workforce. While many groups have sought extension of the law enforcement officer retirement provisions, doing so is both expensive and may not even have the intended effects. We strongly support your conclusion that the use of other human resource management tools "may present a cost-effective alternative for retaining law enforcement-related personnel."

Technical comments to the draft report are enclosed. Unless otherwise noted, the suggested revisions are meant to provide technical accuracy and conform to terminology applicable to the Federal service.

Please contact Mr. David Cushing on (202) 606-4660 should your office require additional information.

Again, my thanks to your office for providing this opportunity to comment on the draft report.

Sincerely,

  
John Berry  
Director

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# Appendix VIII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Eileen R. Larence, (202) 512-6510

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## Acknowledgements

In addition to the contact named above, Steve D. Morris, Assistant Director, managed this assignment. Elizabeth Dunn, George Erhart, and Meg Ullengren made significant contributions to the work. Geoffrey Hamilton provided significant legal support and analysis. Gregory Wilmoth provided significant assistance with design and methodology, as well as the data analysis from OPM's Central Personnel Data File. Adam Vogt provided assistance in report preparation, and Ryan D'Amore made contributions to the work during the preliminary phase of the review.

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