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December 18, 2019

The Honorable Cindy Hyde-Smith
Chairman
The Honorable Christopher Murphy
Ranking Member
Subcommittee on Legislative Branch
Committee on Appropriations
United States Senate

The Honorable Tim Ryan
Chairman
The Honorable Jaime Herrera Beutler
Ranking Member
Subcommittee on Legislative Branch
Committee on Appropriations
House of Representatives

CAPITOL POLICE: Potential Effects of Raising the Mandatory Retirement Age

Federal law generally requires federal law enforcement officers (LEOs) to separate from their LEO positions at the age of 57 if they have completed 20 years of service; however, agency heads may exempt officers from this requirement up to age 60 if they determine the public interest so requires. These mandatory separation provisions are commonly referred to as “mandatory retirement age” requirements.

The U.S. Capitol Police (USCP) is a legislative branch agency comprised of more than 2,300 officers and civilian employees, and has an annual budget of approximately \$450 million. USCP officers,¹ although not included in the definition of LEOs, are subject to similar mandatory retirement age requirements under the Capitol Police Retirement Act.² Over the past decade, USCP has approved multiple temporary blanket waivers that have in practice raised the mandatory retirement age to age 60 for USCP officers during certain periods of time. USCP’s current temporary blanket waiver was instituted in October 2017 and is set to expire in September 2020.

¹Throughout this report, we refer to USCP sworn members as “officers.”

²See Pub. L. No. 101-428, 104 Stat. 928 (1990). Subsequently, under separate legislation, USCP’s Hazardous Materials Response Team technicians (operational civilian personnel) were given LEO-equivalent retirement benefits under FERS, and also were made subject to the mandatory retirement age. See Pub. L. No. 108-83, § 1004, 117 Stat. 1007, 1022-23 (2003).

House Report 115-929, a conference report accompanying an appropriations bill enacted in September 2018,³ included a provision for us to review the feasibility and impact of permanently raising the mandatory retirement age from age 57 to age 60 for USCP officers. This report examines: (1) the potential effects of raising the USCP mandatory retirement age from 57 to 60 on both officers and the agency, (2) how the “young and vigorous” standard is applied by USCP, and (3) the potential effects of raising the mandatory retirement age across federal executive branch law enforcement agencies. On September 12, 2019, we provided your staff with a summary of the preliminary results of this study to satisfy the reporting provision. This report formally conveys that information, as well as relevant updates.

In summary, we found the following:

- **Raising the Mandatory Retirement Age for USCP:** If the USCP mandatory retirement age were raised, individual officers would experience some benefits and costs, and agency benefits and costs would depend on the number of officers choosing to work additional years.
- **Applying the Young and Vigorous Standard:** USCP primarily applies the “young and vigorous” standard through a maximum entry age and physical testing requirements for applicants and new recruits. On-the-job observation is used to monitor officer fitness to ensure officers have the ability to perform the essential functions of the job after hire.
- **Raising the Mandatory Retirement Age for Other Agencies:** The potential effects of raising the mandatory retirement age across federal executive branch law enforcement agencies would likely vary. Among the nine agencies we interviewed, mandatory retirement age exemptions were seldom used, “young and vigorous” practices for exempted officers varied, and agency perspectives on raising the mandatory retirement age varied.

For a more detailed discussion of our findings, see enclosure I (the finalized version of our briefing slides), enclosure II (a comparison of FERS retirement provisions for different types of federal employees), and enclosure III (data on eligible USCP officers’ use of the current waiver and their Thrift Savings Plan contributions).

To describe the potential effects of raising the mandatory retirement age for USCP officers and USCP’s application of the young and vigorous standard, we analyzed USCP data on officer retirement and attrition from 2012 to 2018; and obtained information regarding USCP’s use of mandatory retirement age waivers from 2002 to the present and USCP officers working beyond age 57. We also interviewed: (1) Office of Personnel Management (OPM) and USCP officials about possible financial and non-financial implications of officers working additional years; and (2) USCP labor union representatives to obtain employee perspectives on mandatory retirement age policies and practices. We also reviewed relevant federal laws, regulations, guidance and other agency documentation.

To describe how raising the mandatory retirement age might affect federal executive branch law enforcement agencies, we analyzed data from OPM’s Enterprise Human Resources Integration (EHRI) database on demographic and retirement characteristics. We also obtained information about policies and practices on allowing officers to work beyond age 57 from nine federal

³See H.R. Rep. No. 115-929, at 213-14 (2018) (Conf. Rep.).

agencies with large LEO populations within three departments: the Department of Justice (DOJ), the Department of Homeland Security (DHS), and the Department of the Interior (DOI).⁴

We assessed the reliability USCP's data on officer demographics, retirement, and attrition and OPM's Enterprise Human Resources Integration data on demographic and retirement characteristics using a combination of interview questions and electronic testing. We determined that both sets of data were sufficiently reliable for the purposes of our review.

We conducted this performance audit from February 2019 to December 2019 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Agency Comments

We provided a draft of this report for review and comment to USCP, OPM, DHS, DOJ, and DOI. USCP provided comments, which are reproduced in appendix IV. All of the agencies provided technical comments, which we incorporated, as appropriate.

In its comments, USCP expressed the view that our report does not address the operational implications of permanently raising the mandatory retirement age for USCP officers and does not take into consideration the impact such a change might have on USCP's ability to fulfill its core mission to protect the Congress. While the House Report pertaining to our study did not specifically reference "operational implications," it did refer to both the feasibility and impact of permanently raising the USCP mandatory retirement age, topics that our report discusses in some detail. Specifically, the report identifies concerns expressed by USCP about the implications of raising the mandatory retirement age. For example, USCP officials stated that they were concerned that a change in their mandatory retirement age could threaten their parity with LEO agencies, which the agency had worked hard to attain, and that it could potentially undermine the rationale for enhanced retirement benefits.

OPM officials also provided technical comments, which noted that changing mandatory separation rules may affect the overall scheme related to LEO employment and retirement provisions, and we have incorporated these additional comments from OPM in our report. We agree that such operational implications are a factor that should be considered as part of any decision to raise the mandatory retirement age. However, we maintain that USCP, consistent with its current practice of physically testing applicants and new recruits, could determine the appropriate physical requirements for officers after hire necessary to ensure its continued ability to fulfill its core mission to protect Congress, irrespective of a change to the mandatory retirement age.

⁴The nine federal agencies included the following—within DOJ: Federal Bureau of Investigation; Drug Enforcement Administration; U.S. Marshals Service; Bureau of Alcohol, Tobacco, Firearms, and Explosives; and Federal Bureau of Prisons; within DHS: Customs and Border Protection; Immigration and Customs Enforcement; and U.S. Secret Service; and within DOI: National Park Service. For comparability, our analysis of executive branch demographic and retirement characteristics was based entirely on OPM's EHRI database. Data provided by individual agencies sometimes differed from OPM's data.

In its comments, USCP also shared its view that our report fails to validate whether the young and vigorous basis of the mandatory retirement age requirement for USCP is acceptable in the present day, and that any determination to implement an across-the-board raise in the mandatory retirement age must be informed by supporting scientific evidence. In our report, we explain that federal law enforcement agencies generally apply what is referred to as the young and vigorous standard based on the definition of a LEO, which under FERS is generally defined as, among other things, an employee whose duties “are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals.” In discussions with OPM officials, we confirmed that there is no uniform young and vigorous standard across the federal government. Rather, under federal regulations located in 5 C.F.R. part 339, agencies generally may establish physical requirements that are essential to perform the duties of specific positions. In addition, agencies may establish medical standards, subject to OPM approval, that are necessary for the performance of certain positions.

In our interviews with selected federal law enforcement agencies, officials described the various physical requirements they have established to ensure their continued ability to fulfill their missions when considering exemptions to the mandatory retirement age. Scientific evidence may be helpful in informing an agency’s decision about the physical requirements and medical standards to establish for certain positions. However, in our interviews with selected federal law enforcement agencies, perspectives varied as to the potential effects of implementing an across-the-board increase in the mandatory retirement age, with some agencies viewing it as a positive change, and others viewing it as a negative, depending on the nature of their LEOs’ duties.

We are sending copies of this report to the appropriate congressional committees, the U.S. Capitol Police Chief of Police, the Director of the Office of Personnel Management, the Acting Secretary of Homeland Security, the Attorney General, and the Secretary of the Interior. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff members have any questions about this report, please contact me at (202) 512-7215 or jeszeckc@gao.gov. 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 enclosure V.



Charles A. Jeszeck
Director, Education, Workforce, and Income Security Issues

Enclosures - 5



Findings on the Potential Effects of Raising the USCP Mandatory Retirement Age

Briefing for Senate and House Committees on Appropriations, Legislative Branch Subcommittees

Introduction

Federal law generally requires federal law enforcement officers (LEOs) who have completed 20 years of service to separate from service at the age of 57; however, agency heads may exempt officers from this requirement up to age 60 if they determine the public interest so requires. These provisions are commonly referred to as mandatory retirement age requirements. Officers of the U.S. Capitol Police (USCP), although not included in the definition of LEOs, are subject to similar requirements.⁵ Over the past decade, the Capitol Police Board has approved multiple temporary blanket waivers that have in practice raised the mandatory retirement age to age 60 for USCP officers during various periods of time, with the current waiver in effect through September 2020.

House Report 115-929, a conference report accompanying an appropriations bill that was enacted in September 2018,⁶ included a provision for us to review the feasibility and impact of permanently raising the mandatory retirement age for USCP officers to age 60.

We examined the following:

1. The potential effects of raising the USCP mandatory retirement age from age 57 to age 60 on both officers and the agency.
2. How the “young and vigorous” standard is applied by USCP.
3. The potential effects of raising the mandatory retirement age across federal executive branch law enforcement agencies.

A preliminary version of this information was provided to cognizant congressional staff on September 12, 2019.

Summary of Findings

Raising the Mandatory Retirement Age for USCP

If the USCP mandatory retirement age were raised, individual officers may experience some benefits and costs, while benefits and costs to the agency would depend on the number of officers choosing to work additional years.

Applying the Young and Vigorous Standard

USCP primarily applies the “young and vigorous” standard through a maximum entry age and physical testing requirements for applicants and new recruits. On-the-job observation is used to monitor officer fitness to ensure officers have the ability to perform the essential functions of the job after hire.

Raising the Mandatory Retirement Age for Other Agencies

The potential effects of raising the mandatory retirement age across federal executive branch law enforcement agencies would likely vary. Among the nine agencies we interviewed, mandatory retirement age exemptions were seldom used, young and vigorous practices for exempted officers varied, and agency perspectives varied on raising the mandatory retirement age.

U.S. Capitol Complex, Washington, DC



Source: GAO. | GA0-20-137R

⁵Throughout this briefing, we refer to USCP sworn members as “officers.”

⁶See H.R. Rep. No. 115-929, at 213-14 (2018) (Conf. Rep.).

Methodology

To describe the potential effects of raising the mandatory retirement age for USCP officers and USCP's application of the young and vigorous standard, we:

- analyzed USCP data describing trends in officer retirements and attrition from 2012 to 2018;
- obtained specific information about USCP officers working beyond age 57;
- interviewed Office of Personnel Management (OPM) and USCP officials about possible financial and non-financial implications of officers working additional years;
- interviewed USCP labor union representatives for their perspectives; and
- reviewed relevant federal laws, regulations, guidance and other agency documentation.

To describe how raising the mandatory retirement age might affect federal executive branch law enforcement agencies, we:

- analyzed data from OPM's Enterprise Human Resources Integration (EHRI) database on executive branch federal law enforcement officers' (LEO) demographic and retirement characteristics; and
- obtained information about other federal law enforcement agencies' policies and practices on allowing officers to work beyond age 57 from nine federal agencies with large LEO populations within three departments, as follows:
 - Department of Justice (DOJ): Federal Bureau of Investigation; Drug Enforcement Administration; U.S. Marshals Service; Bureau of Alcohol, Tobacco, Firearms, and Explosives; and Federal Bureau of Prisons.
 - Department of Homeland Security (DHS): Customs and Border Protection; Immigration and Customs Enforcement; and U.S. Secret Service.
 - Department of the Interior (DOI) National Park Service.⁷

We assessed the reliability of the USCP and the OPM EHRI demographic and retirement characteristics data using a combination of interview questions and electronic testing. We determined that both sets of data were sufficiently reliable for the purposes of our review.

⁷We received responses from two units within the National Park Service's (NPS): United States Park Police, and Law Enforcement, Security, and Emergency Services, but we discuss the responses together as NPS for the purposes of our report unless otherwise noted.

Background

U.S. Capitol Police

USCP's Mission

USCP's mission is to protect the Congress—its members, employees, visitors, and facilities—so it can fulfill its constitutional and legislative responsibilities in a safe, secure, and open environment.⁸

Mission stances include assessing, preventing, and responding to possible threats; and improving the efficiency and effectiveness of the agency's internal processes.

USCP's Increased Responsibilities and Force Size

- Policing of U.S. Capitol Visitor Center beginning in 2008, and more recently, policing of the new Rayburn Garage in 2019.
- Increased number of demonstrations, which are approved for specific outdoor demonstration areas, as well as prohibited civil disturbances across the U.S. Capitol Complex.
- Increased risk of attacks in public places, such as the shooting of congressional members, staff, USCP officers, and members of the public at a congressional baseball game in 2017, has heightened the awareness of Members and staff leading to an increase in reporting of unusual activities and suspicious individuals.
- Increased number of investigations. According to USCP officials, from July 2018 to July 2019, the number of threat assessment cases USCP opened and investigated had more than doubled.
- Growing force size. Force size expanded from about 800 officers prior to the September 11, 2001, terrorist attacks, to more than 1,900 officers as of August 2019. This expansion was due, in part, to the merger with the Library of Congress Police, which took place from 2008-2009.⁹



Source: GAO. | GA0-20-137R

USCP's Use of Mandatory Retirement Age Waivers to Address Staff Shortages

- Authorization levels have been higher than staffing levels. As of August 2019, the authorized staffing level for sworn officers was 2,015, 98 positions more than the current staffing level.
- Faced with staff shortages and the expansion of USCP responsibilities, the Capitol Police Board has frequently approved temporary blanket waivers to the mandatory retirement age, allowing officers to work up to age 60.¹⁰ The Board has approved seven temporary blanket waivers of the mandatory retirement age

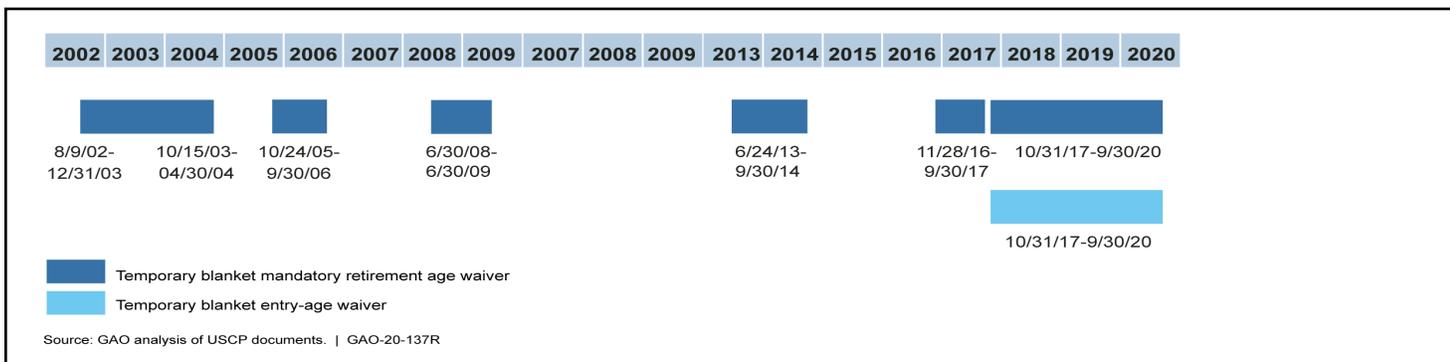
⁸USCP is an agency within the legislative branch.

⁹See U.S. Capitol Police and Library of Congress Police Merger Implementation Act of 2007, Pub. L. No. 110-178, 121 Stat. 2546 (2008).

¹⁰According to USCP officials, the waivers generally apply to all USCP officers while in effect. In this report, we refer to the waivers as temporary blanket waivers or temporary waivers unless otherwise clear from context.

since 2002, with the most recent waiver—approved in October 2017— extending through September 2020 (see fig. 1).

Figure 1: Timeline of U.S. Capitol Police (USCP) Temporary Blanket Waivers (2002-2020)



- Under a temporary blanket waiver of the mandatory retirement age, officers are allowed to work past age 57 and until age 60. According to USCP officials, officers do not have to request permission to do this; they simply keep working without putting in their paperwork to retire.

The Board’s rationale for approving the most recent mandatory retirement age waiver was to serve the public interest by maintaining a baseline of seasoned police officers and ensuring the highest level of congressional security possible. According to USCP officials, this waiver was specifically implemented to help manage staffing needs related to the immediate deployment of new security initiatives while new staff were recruited, hired, trained, and deployed.

- The Capitol Police Board also approved a temporary blanket waiver of the agency’s maximum entry-age requirement from October 31, 2017, through September 30, 2020. Under this waiver, applicants can be hired as officers after age 37 up to age 40. USCP requested this waiver to aid in the recruitment of qualified applicants by expanding the pool to older applicants, particularly those with prior active duty military experience.

LEOs and USCP Officers: Similarities and Differences

The Definition of a Federal Law Enforcement Officer (LEO) Does Not Include USCP Officers

- Under the Federal Employees Retirement System (FERS),¹¹ a LEO is generally defined as an employee whose duties are:

¹¹Some LEOs are still covered under the previous retirement system, the Civil Service Retirement System (CSRS). As of the end of fiscal year 2017, approximately 0.2 percent of all LEOs were under CSRS. There may also be some USCP officers under CSRS, however the number would also be small.

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- primarily the investigation, apprehension, and detention of individuals suspected or convicted of federal criminal offenses, or the protection of U.S. officials against threats to personal safety, and
 - sufficiently rigorous such that employment opportunities should be limited to young and physically vigorous individuals.¹²
- Under related federal regulations:
 - a LEO is defined as an employee occupying a rigorous position, with duties as described under FERS; and
 - a rigorous position is generally defined as a position that should be limited (through establishment of a maximum entry age and physical qualifications) to young and physically vigorous individuals.¹³
 - Federal law enforcement agencies generally apply what is referred to as the young and vigorous standard based on these definitions.

Despite Not Being LEOs, USCP Officers Have LEO-equivalent Retirement Provisions

Although not LEOs under FERS, USCP officers and officers at certain other agencies have been extended coverage under the same or equivalent LEO retirement provisions:

USCP officers were given LEO-equivalent retirement benefits under FERS by the Capitol Police Retirement Act in 1990.¹⁴ The U.S. Secret Service Uniformed Division and the U.S. National Park Service Park Police hired after January 1, 1984, were added to the definition of LEO and given LEO retirement benefits under FERS in 1988.¹⁵ Supreme Court Police officers were given LEO-equivalent retirement benefits under FERS in 2000.¹⁶ Customs and Border Protection officers were given LEO-equivalent retirement benefits under FERS in 2007.¹⁷ (For a side-by-side comparison of USCP and LEO retirement provisions, see enclosure II.)

¹²See 5 U.S.C. § 8401(17).

¹³See 5 C.F.R. § 842.802. The actual physical and medical standards established by federal law enforcement agencies are not uniform across the entire federal workforce, but are determined at the agency level and must be related to performance of the duties of a specific position. See 5 C.F.R. pt. 339.

¹⁴See Pub. L. No. 101-428, 104 Stat. 928.

¹⁵See Pub. L. No. 100-238, 101 Stat. 1744.

¹⁶See Pub. L. No. 106-553, 114 Stat. 2762.

¹⁷See Pub. L. No. 110-161, 121 Stat. 1844.

Enhanced Retirement Benefits

LEOs Have Enhanced Retirement Benefits under FERS

Enhanced retirement benefits enable LEOs to retire after fewer years of service compared to standard federal employees and LEO retirement annuities accrue at a faster rate than standard federal employee retirement benefits. LEOs are generally eligible to retire at age 50 if they have a minimum of 20 years of service and may retire at an earlier age if they have at least 25 years of service.

- Federal retirement annuities are calculated using a formula that averages the highest 3 years of consecutive earnings multiplied by a specific percentage, known as a “high-3 average pay” formula. LEO retirement annuities are calculated using a higher multiplier than that used for standard federal employees:
 - The LEO multiplier for FERS is 1.7 percent for the first 20 years and 1 percent for additional years. (An officer must complete 20 years in LEO service to receive the higher multiplier.)
 - The standard federal employees’ multiplier for FERS is 1 percent for those who retire before age 62, or age 62 or older but with at least 5, but less than 20 years of service; the multiplier is 1.1 percent for those who retire at age 62 or older with at least 20 years of service.
- LEOs receive a cost-of-living adjustment (COLA) each year during retirement. The COLA for standard federal employees who retire under FERS generally begins at age 62.
- Some LEOs are allowed to earn premium pay for certain types of overtime that may be added to their basic pay for the purposes of calculating retirement benefits—that is, it may be included in an officer’s highest 3 years of earnings used to calculate an officer’s retirement benefits. (For more on these types of retirement-creditable recurring fixed-amount overtime pay, see section below on Special Pay Provisions.)



Source: GAO. | GA0-20-137R

USCP Officers Also Have Enhanced Retirement Benefits under FERS

USCP officers have enhanced retirement benefits equivalent to the LEO benefits under FERS described above. However, USCP officers are not covered by the premium pay provisions applicable to LEOs, and the types of overtime pay that USCP officers can earn cannot be included in an officer’s highest 3 years of earnings used to calculate an officer’s retirement benefits.

FERS Annuity Supplement

Federal LEOs are eligible to receive a FERS retiree annuity supplement if they have at least 1 calendar year of FERS service and retire under one

of the special provisions that provide for enhanced retirement benefits.¹⁸ The retiree annuity supplement is payable until the retiree becomes age 62, or when the retiree would be eligible for Social Security. The supplement amount is calculated based on an estimate of the employee's full Social Security benefit and years of service under FERS.

Mandatory Retirement Age

LEOs' Mandatory Retirement Age Requirements under FERS

- Generally, when LEOs reach age 57 and they have completed at least 20 years of service, they must separate from service (retire or continue to work in a non-LEO capacity);¹⁹ however, if they have not completed 20 years of service, they may keep working beyond age 57 until they have completed their 20 years.
- An individual officer may be exempted from these mandatory retirement age requirements in certain circumstances:
 - If the agency head determines that the public interest so requires, the agency head may exempt an individual employee from mandatory retirement up to age 60.
 - If the president determines that the public interest so requires, the president, by executive order, may exempt an employee from mandatory separation, including past age 60.²⁰
- LEO agencies may set a maximum entry age for hires, and some set the entry age at 37 to ensure that new hires may complete 20 years of service by the time they reach age 57.²¹ In addition, OPM guidance notes that in light of a 2008 decision from the U.S. Merit Systems Protection Board, veterans who qualify for veteran's preference may apply and be considered for vacancies for positions in executive branch agencies regardless of whether they meet the maximum age requirements.²²
- The LEO mandatory retirement age has changed over time, most recently from age 55 to age 57 in 1990.

¹⁸Standard federal employees also may be eligible to receive a FERS annuity supplement (see enclosure II for details).

¹⁹See 5 U.S.C. § 8425(b)(1). Officers must separate from positions covered by the mandatory retirement age but they may be reemployed in a position not subject to such restrictions.

²⁰See 5 U.S.C. § 8425(e).

²¹See 5 U.S.C. § 3307(c)-(e).

²²See *Isabella v. Dep't of State*, 109 M.S.P.R. 453 (M.S.P.B. 2008).

USCP Officers' and LEOs' Mandatory Retirement Age Requirements Are Equivalent

USCP officers are generally subject to mandatory retirement age provisions that are equivalent to the LEO provisions described above,²³ with the following exceptions:

- The Capitol Police Board may exempt a USCP officer up to age 60, but unlike LEOs within executive branch agencies, the president may not exempt a USCP officer from mandatory separation.
- As a legislative branch agency, USCP also is not subject to the decisions of the Merit Systems Protection Board, and therefore is not subject to the decision on veterans. However, the USCP has a temporary waiver of its maximum entry-age currently in effect, which, according to the waiver, will help ensure consideration and selection of the highest qualified individuals, including older applicants with military experience.²⁴

Special Pay Provisions

LEOs Have Special Pay Provisions

Special basic pay rates for federal LEOs enable them to receive higher minimum entry-level salaries than standard federal employees.

- Some agencies' LEOs are covered by the standard General Schedule (GS) basic pay plan, which includes a special rate table of base salaries for LEOs that are higher than the base salaries for standard federal employees.²⁵ For example:
 - The base salary for standard federal employees at the GS-9, step 1, grade level in the Washington, DC, area in 2019 was \$57,510.
 - The base salary for LEOs at the GS-9, step 1, grade level in the Washington, DC, area in 2019 was \$59,426.
- Other agencies' LEOs are covered by non-standard basic pay plans that are different from the standard GS basic pay plan. Under these non-standard plans, agencies have the ability to offer LEOs higher base salaries than the base salaries provided in the GS rate tables for either standard federal employees or LEOs.²⁶

²³See 5 U.S.C. § 8425(c).

²⁴The Capitol Police Board has approved a temporary blanket waiver of USCP's maximum entry-age until the end of fiscal year 2020.

²⁵Special base salaries for LEOs begin at GS-3 and continue only through GS-10. LEO base salaries for GS-1, GS-2, and GS-11 through GS-15 are equivalent to standard federal employee base salaries.

²⁶See GAO, *Capitol Police: Retirement Benefits, Pay, Duties, and Attrition Compared to Other Federal Police Forces*, [GAO-12-58](#) (Washington, D.C.: January 24, 2012).

Regardless of the basic pay plan, LEOs generally also have the ability to receive premium pay for certain types of overtime worked. These special overtime payments are generally paid as a fixed percentage of the LEO's basic pay on a recurring basis (up to 25 percent). For example:

- Law Enforcement Availability Pay (LEAP) can be paid to criminal investigators and other approved LEOs and is a fixed supplement at 25 percent of base pay.²⁷
- Administratively Uncontrollable Overtime (AUO) can be paid at agency discretion to certain LEOs, primarily in DHS.²⁸ AUO is a recurring payment that is generally fixed at a percentage of basic pay ranging from 10 to 25 percent.

(LEO premium pay for these two types of overtime pay may be used in the calculation of retirement benefits for LEOs.)

USCP Officers Have Different Special Pay Provisions

USCP officers have a non-standard basic pay plan and different overtime provisions:

- The starting salary for a newly-hired USCP officer in 2019 was \$61,991.
- Though not covered by LEO premium pay provisions, USCP officers have parallel rules for holiday, Sunday, and night premium pay. However, USCP rules for premium pay caps are different. For example, at the rank of lieutenant or higher, no overtime pay is allowed (only compensatory time off), unless approved by the USCP Chief of Police under certain rules.²⁹

(However, USCP premium pay for these types of overtime may not be used in the calculation of retirement benefits for USCP officers.)

²⁷See 5 U.S.C. § 5545a and 5 C.F.R. §§ 550.181 through 550.187.

²⁸See 5 U.S.C. § 5545(c)(2) and 5 C.F.R. §§ 550.151 through 550.163.

²⁹See Office of Personnel Management, *Federal Law Enforcement Pay and Benefits, Report to the Congress* (Washington, DC: July 2004).



Raising the USCP Mandatory Retirement Age

Overview

If the USCP mandatory retirement age were raised from 57 to 60, individual officers would experience some benefits and costs, and agency benefits and costs would depend upon the number of officers choosing to work additional years.

- Officers who work longer could increase their earnings and retirement benefits, but younger officers may have fewer opportunities for promotion.
- The agency would have additional costs related to pay and benefits for higher earning officers and may also experience certain savings and other nonfinancial benefits, including retention of experienced officers.
- Overall, the potential effects on the agency would depend on the number of officers who continue to work additional years after they turn 57, but predicting trends in officers' future retirement decisions is difficult.

USCP Officers' Use of Mandatory Retirement Age Waivers

Although most officers reaching age 57 under USCP's most recent temporary blanket waivers continued to work, the number of officers continuing to work was small: 10 or fewer each year.

- In November 2016, the Capitol Police's Board approved a temporary waiver of the mandatory retirement age provisions, allowing its officers to work until they reach age 60 or until the temporary waiver expires on September 30, 2020, whichever occurs first.
- During fiscal years 2017 through 2019 (as of 8/31/19), a total of 31 officers reached age 57 and could choose to continue to work due to the agency-wide temporary waiver. Of these 31 officers, 25 chose to continue working. (See table 1.)

Table 1: USCP Officers Eligible for and Continuing to Work under Temporary Blanket Waiver, as of 8/31/19

	FY 2017	FY 2018	FY 2019	FY 2020 (projected)	Total
USCP officers who reached age 57 during the waiver period	6	10	15	18	49
USCP officers who turned 57 and continued to work longer under the temporary blanket waiver	6	9	10 ^a (to date)	TBD	25 (to date)

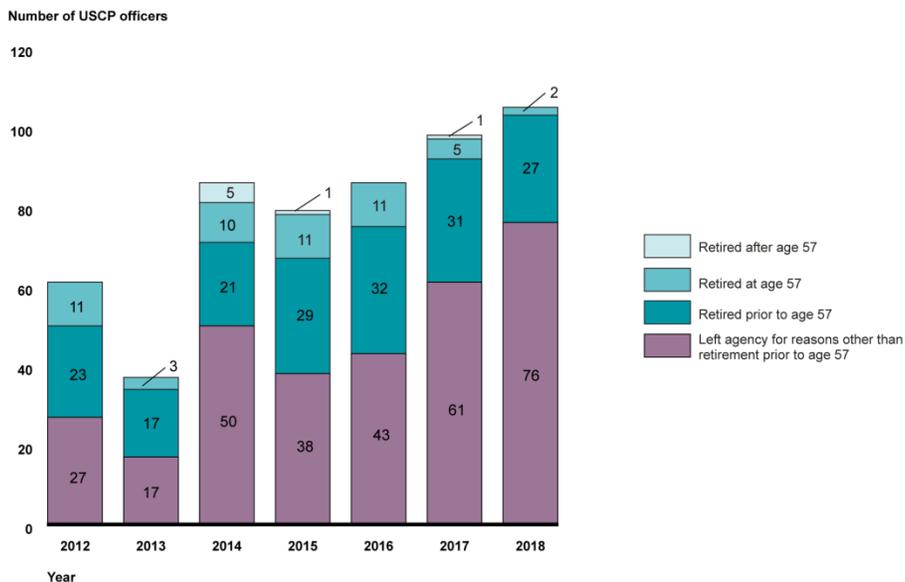
Source: US Capitol Police (USCP). I GAO-20-137R

Note: The US Capitol Police's temporary blanket waivers of the mandatory retirement age of 57 were in effect 11/28/2016 through 9/30/2017, and 10/31/2017 through 9/30/2020. For further details about officers continuing to work under the most recent waiver, see enclosure III. (Due to the way the data were provided by USCP, we were not able to include a breakdown by age of all currently working officers.)

Based on USCP data, from 2012 through 2018, more officers left before reaching age 57 than retired at age 57 or later (see fig. 2).

- On average, about 11 USCP officers per year retired at or after age 57 or took advantage of the blanket waiver and continued to work.
- On average, about 26 officers per year retired prior to reaching age 57 and about 45 discontinued their service as USCP officers annually for other reasons, such as resigning from federal employment, transferring to another federal agency, being terminated, and transferring to a non-officer position within USCP.

Figure 2: Separated and Retired USCP Officers by Age, 2012 through 2018



Source: GAO analysis of US Capitol Police (USCP) data. | GAO-20-137R

Note: The US Capitol Police’s temporary blanket waivers of the mandatory retirement age of 57 were in effect 6/24/2013 through 9/30/2014, 11/28/2016 through 9/30/2017, and 10/31/2017 through 9/30/2020. In addition, USCP officers may work past age 57 if they have not yet completed 20 years of service.

Few USCP officers have requested or been approved for individual mandatory retirement age exemptions.

- Since 2009, during the periods not covered by blanket waivers, USCP reported that 20 officers had requested individual exemptions.
- USCP approved one of those requests for a period of 90 days.
- USCP officials told us that they rarely approve individual exemptions from the mandatory retirement age requirements because exemptions are meant to address the requirements of the public interest, as required by law, rather than the needs of individuals.

Potential Effects on USCP Officers

Potential Benefits for Officers

If the USCP mandatory retirement age was raised from 57 to 60, individual officers who work longer due to a higher mandatory retirement age could increase their earnings and retirement benefits. Additional years of work would provide individual officers with the potential for:

- Additional years of earnings.
- Additional income from overtime pay (although it is not a factor in calculating basic pay for retirement benefits).

- Increases in retirement benefits with formulas based on salary. For example,



Source: GAO. | GA0-20-137R

Higher FERS annuity benefit. Any increase in the high-3 for calculating retirement benefits under FERS would result in higher annuity benefits. Additional years of service would also result in higher annuity benefits. GAO previously reported that the FERS basic annuity formula would provide 1 percent of average pay for each additional year of service after 20 years. (GAO-12-58)

- Higher Social Security benefit. Working longer has the potential to increase earnings used to calculate Social Security benefits.
- Additional opportunities to contribute to their Thrift Savings Plan (TSP) accounts and benefit from employer matching contributions. See enclosure III, Eligible USCP Officers' Use of Current Waiver and Their Thrift Savings Plan Contributions, for additional information about USCP officer TSP contributions.

Potential Costs for Officers

There may be some costs for officers under certain circumstances. For example:

- Although delaying retirement could increase annuities for officers, those working between age 57 and 60 would forego the FERS annuity supplement that they would have otherwise received during that period if they had retired.
- Younger officers may have reduced opportunities for promotion if more senior officers continue to work, which could affect the morale and, therefore, retention of new officers.

In addition, OPM officials noted that if the mandatory retirement age was increased, the original rationale behind why officers should pay higher employee deductions and receive enhanced benefits may be undermined because officers would be permitted to work until an age where a regular, financially viable retirement annuity would be payable.

Potential Effects on USCP

Potential Benefits and Costs for the Agency

Raising the mandatory retirement age would likely result in somewhat higher salary and benefit costs to the agency; however, the agency may experience temporary savings in recruitment and training of new hires.

Agency costs include the continued payment of salary and benefits for officers working additional years:

- Salary. USCP would be responsible for any salary and any salary or cost-of-living increases for officers working past age 57.

- Benefits. In 2012, CBO estimated that non-retirement benefits for all federal employees were equal to 24.4 percent of average wages.
- Retirement annuity contributions. OPM estimated that FERS normal cost for congressional employees (including for USCP officers) ranged from 19.4 percent to 25.2 percent of pay for fiscal year 2020, depending on hiring date and FERS formula.³¹
- TSP contributions. Federal agencies also contribute 1 to 5 percent of pay, depending on employee contribution, to the employee's TSP account.

The agency costs would be higher, on average, to the extent that the agency retained more experienced officers rather than hiring new officers.

In general, a higher mandatory retirement age could be expected to result, over time, in a workforce that has a slightly higher average age and years of service—and therefore a slightly higher average rate of pay—than would be the case with the current mandatory retirement age of 57.

- With an age 57 mandatory retirement age, the USCP workforce ranges in age from approximately ages 21 to 57, a 36-year age range.
- With an age 60 mandatory retirement age, the workforce could range in age from approximately ages 21 to 60, a 39-year age range, which would raise the mid-point age by about 4 percent (age 40.5 vs. age 39).

Higher agency costs for officer salary and benefits could be offset by the following:

- Short-term savings from the delayed hire of replacements and their associated recruitment and training costs.³²
- The possibility of savings, albeit small, from lower agency contributions to FERS due to reduced costs associated with the FERS supplement, to the extent that officers continued to work during some of the years they would have received this supplement if they had retired.³³

³¹Although the normal cost paid for USCP officers is the same as for other congressional employees, OPM officials noted that if treated as a separate category, the normal cost for USCP officers would exceed these stated percentages.

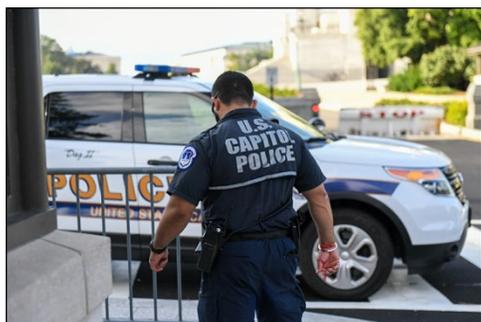
³²According to USCP officials, the Department of Homeland Security pays for USCP's recruit officer training at the Federal Law Enforcement Centers; however, USCP would incur on-the-job training costs.

³³The FERS supplement, payable under 5 U.S.C. §§ 8421 and 8421a, would be paid to retired officers until they reach age 62, when they would become eligible for Social Security. Both the FERS basic annuity and the FERS annuity supplement are funded by the Civil Service Retirement and Disability Fund through agency contributions. There could be savings to USCP if OPM revised the assumed probabilities of retirement applicable to the USCP workforce in response to actual or expected changes in retirement behavior as a result of raising the mandatory retirement age.

- There may be other nonfinancial benefits for USCP. According to USCP officials, USCP may experience benefits from certain officers continuing to work past age 57:
 - Greater retention of experienced officers with institutional knowledge and the ability to mentor and train junior officers.
 - A larger candidate pool, with the option to hire older more experienced officers (USCP expects to raise their maximum entry age from 37 to 40, if the mandatory retirement age is raised).

Overall, agency costs would depend on the number of officers who continue to work until age 57 and may wish to work additional years; however, predicting trends in future retirement decisions of officers is difficult.

- Based on OPM retirement assumptions, fewer than 24 percent of USCP officers who are eligible to retire at age 50 are assumed to retire at age 57 or later.³⁴ (OPM estimates retirement costs for USCP based on the behavior of LEOs.)
- However, officers' behavioral reactions to raising the mandatory retirement age are unknown.
 - If other provisions under FERS remain the same, USCP officers will still have the opportunity to retire at age 50 with 20 years of service or at any earlier age with 25 years of service, which may mitigate the behavioral effects of raising the mandatory retirement age to age 60.
 - Evidence from the effects of the delayed Social Security retirement credits suggests that some retirement incentive effects may be minor. For example, Social Security benefits increase by 8 percent per year when retirees delay claiming past their full retirement age up until age 70. However, most retirees claim benefits at either the early Social Security retirement age (62) or their full Social Security retirement age (66 to 67).³⁵
 - On the other hand, raising the mandatory retirement age could have a "signaling" effect that could influence retirement behavior, leading some officers to retire later than they otherwise would have.³⁶



Source: GAO. | GAO-20-137R

³⁴To determine agency contribution rates for the FERS annuity benefit, OPM actuaries must make assumptions about how long officers will remain in service. These assumptions are currently based on data from LEOs who have worked for executive branch agencies during the 20-year period from 1996 through 2015, as recommended by an independent Board of Actuaries.

³⁵See GAO, *Retirement Security: Challenges for Those Claiming Social Security Benefits Early and New Health Coverage Options*, [GAO-14-311](#) (Washington, DC: April 23, 2014).

³⁶Pension experts view a pension plan's stated retirement ages as potentially having an effect on plan participants' retirement behavior. See, for example, American Academy of Actuaries, "Rethinking Normal Retirement Age for Pension Plans," 2013,

Regardless, even if a relatively high percentage of officers were to take advantage of the higher mandatory retirement age, it may result in only a modest increase in the average age and rate of pay compared to keeping the mandatory retirement age at 57. Raising the mandatory retirement age by 3 years will increase the age distribution of officers from approximately ages 21 to 57 to 21 to age 60. Even if a relatively high percentage of officers were to take advantage of the higher mandatory retirement age, it may result in only a modest increase in the average age and service of USCP's workforce, and therefore only a modest increase in the average rate of pay compared to keeping the mandatory retirement age at 57.

USCP and Union Officials Varied in Their Assessment of Potential Effects

- USCP agency officials expressed concerns about raising the mandatory retirement age.
 - USCP officials stated that they were concerned that a change in their mandatory retirement age could threaten their parity with other LEO agencies, which the agency had worked hard to attain,³⁷ and that it could potentially undermine the rationale for enhanced retirement benefits.
 - USCP officials also stated that they believe a change in the USCP mandatory retirement age would have an effect on LEOs in other federal agencies.
 - USCP officials said that they did not foresee any additional benefits from increasing the mandatory retirement age to age 60 because their board is able to approve individual or temporary blanket waivers to the mandatory retirement age if the mission/operational needs of the department warrant it.
 - USCP also noted that it is important to evaluate older officers' ability to continue to perform the essential functions of the position, based on scientific evidence, to determine the appropriate mandatory retirement age.
- USCP union representatives from the Capitol Police Labor Committee stated that they believed that USCP officers would support raising the mandatory retirement age.

https://www.actuary.org/sites/default/files/files/Normal-Retirement-Age_Issue-Brief_March_2013.pdf.

³⁷In response to the Federal Law Enforcement Pay and Benefits Parity Act of 2003, OPM published a report to Congress recommending strategies for addressing the discrepancies across agencies concerning LEOs' job classifications, pay, and benefits, including officers in agencies, such as USCP, who have been granted LEO-equivalent benefits. See U.S. Office of Personnel Management, Federal Law Enforcement Pay and Benefits: Report to the Congress (OPM, Washington, DC: July 2004).

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- Union officials said that raising the mandatory retirement age would help the agency to remain competitive and continue to attract and retain experienced officers in the force.
 - Union officials noted that people are living longer and remain healthy enough to continue to work longer.
 - Union officials also said that raising the mandatory retirement age would be helpful to officers preparing for retirement because it would give them greater latitude in choosing the length of time between the end of their service as a USCP officer and when they can claim early retirement benefits from Social Security.



Applying the Young and Vigorous Standard

Overview

When asked how USCP applies the young and vigorous standard, officials described:

- Applicants' maximum entry age,
- Applicants' and new recruits' physical testing requirements, and
- Specialty assignments' additional physical testing requirements.

USCP does not generally require any further physical testing of officers on an ongoing basis after hire, and instead uses on-the-job observation is used to monitor officer performance.

Requirements for Applicants

USCP Suitability Standards: Maximum Entry Age

USCP employment suitability standards are similar to LEO requirements and set a maximum age requirement at entry.

- USCP requires all applicants to be at least 21 years of age at the time of appointment, but not have reached their 37th birthday at the date of appointment (up to their 40th birthday under the waiver currently in effect through September 2020).
- The USCP Chief of Police may waive the maximum entry age based on prior, qualifying federal law enforcement experience.

USCP Suitability Standards: Physical Readiness Test

USCP employment suitability standards require all applicants to pass the Physical Readiness Test (PRT) before hire.

- USCP's 2019 report to Congress noted that the PRT was designed to ensure recruit applicants could successfully complete post-employment physical training.
- The PRT consists of the following:
 - 1) Illinois Agility Test: To measure the applicant's ability to get up from the ground and sprint while changing directions. The maximum allowable time is based on the applicant's gender, age, and weight on the day of testing.
 - 2) One Repetition Bench Press: To measure the applicant's upper body strength for one repetition using a free weight bench lying down and lifting the weight straight up until the arms are locked. The weight lifted is determined by the applicant's gender, age, and weight on the day of testing.
 - 3) 1.5 Mile Run: To measure the cardio/respiratory fitness of the applicant. The maximum allowable time is based on the applicant's gender and age on the day of testing.

USCP Suitability Standards: Other Requirements

USCP employment suitability standards also require applicants to be evaluated on passing and completing six examinations, among other things.³⁸

- the Police Officer Selection Test,
- medical examination,
- psychological examination,
- polygraph examination,
- personal history/background investigation, and
- oral board interview.

Requirements for New Recruits

USCP generally requires new recruits to complete three trainings in the following order before becoming officers:

- 2 weeks of initial training at the USCP Training Academy.
- 12 weeks of training in the Uniformed Police Training Program at the Federal Law Enforcement Training Centers, the same training generally attended by all entry-level LEOs.
- 12 weeks of specialized training based on USCP needs and the most frequent officer assignments at the USCP Training Academy.



Source: GAO. | GA0-20-137R

USCP then requires all new recruits to pass the post-employment Recruit Officers Physical Ability Test (ROPAT). ROPAT occurs one time before graduation from officer training. According to USCP Academy Training Rules, ROPAT is intended to ensure recruit officers are prepared for the rigors of the position requirements.

ROPAT is a physical test during which officers have to complete an obstacle course consisting of 5 exercises in 3 minutes and 52 seconds. Briefly described, these are:

- 1) Starting Position: Recruit begins in the kneeling position in a simulated weapon fire stance. On command, the stopwatch is started, and the recruit must rise into standing position without touching the ground with their hands.
- 2) Shuttle Run: Recruit jogs to agility poles and completes five runs weaving between agility poles to reach the stair climb.

³⁸Other requirements for USCP applicants include having U.S. citizenship, a valid motor vehicle license, a competent financial history over the last 10 years, and a diploma or general equivalency diploma (GED), as well as at least one of the following: a) minimum of 60 semester hours of college credits from an accredited college or university; b) 2 years of active duty military service with a general discharge (under honorable conditions) or honorable discharge; or c) 5 years of prior creditable law enforcement experience as determined by the USCP Chief of Police.

- 3) Stair Climb: Recruit completes four ascent and descent round-trips on the stairway to reach the rescue dummy.
- 4) Victim Rescue: Recruit must move the rescue dummy a total of 40 feet across the finish line.
- 5) Trigger Pull: Recruit runs to the trigger pull where they are handed an inert pistol and must complete a round of 15 trigger pulls in each hand. The stopwatch is stopped on the 30th trigger pull.

Specialty Assignment Requirements

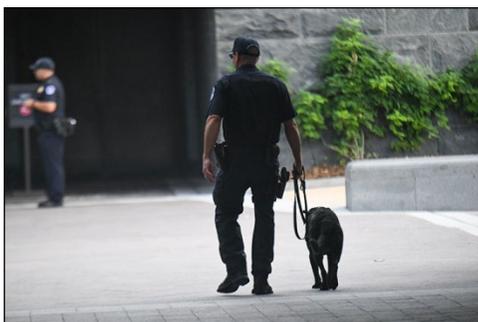
USCP requires specialty assignment candidates to pass additional physical requirements before assuming their assignments. As of March 2019, USCP had 293 officers in sworn specialty assignments with additional physical requirements.

According to USCP physical requirements:

- Tests vary by assignment and can include physical fitness and physical health requirements.
- Some specialty assignments require regular reevaluations.

Examples of specialty assignments with physical agility test requirements:

- Canine Unit: Includes a variety of exercises with a simulated dog weighing 65lbs. Required annually.
- Dignitary Protection Division: Includes ascending and descending 4 flights of stairs, hurdling a 3-foot parade barricade and dragging a dummy 6 feet. No annual or ongoing physical fitness requirement.
- Training Services Bureau (Firearms Instructor): Includes lifting and carrying at least 80lbs of weight over distances of 50+ yards, demonstrating tactical courses of fire, and accurately firing all department weapons from various positions. No annual or ongoing physical fitness requirement.



Source: GAO. | GA0-20-137R

Practices Regarding Physical Testing and Services after Hire

USCP does not generally require any further physical testing of officers on an ongoing basis after hire.

- USCP's 2019 report to Congress stated, "The Department has not implemented a mandatory ongoing fitness requirement for incumbent officers due to the legal and contractual challenges that are presented by changing the working conditions for onboard personnel."
- USCP noted two key exceptions: (1) testing for specialty assignments and (2) testing prompted by a supervisor's observation of behaviors or circumstances that reasonably lead the supervisor to question an employee's ability to perform the essential functions of the position.

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- USCP said that they monitor officers' fitness and may reevaluate low performers' vigor based on supervisors' observations, and they support officer fitness by offering wellness services to those who voluntarily wish to improve their physical fitness.

Supervisor Observation

USCP officials said the agency relies on supervisors' observations for notable issues and evaluations of officer suitability. For example, reevaluations may be prompted by:

- Excessive tardiness, absenteeism, a medical issue requiring a lot of sick leave, or an officer's inability to perform the essential functions of the position.
- Physical fitness issues observed during a retraining, such as active shooter training.

Voluntary Health and Wellness Services

- USCP officials said the agency aims to prevent issues that may compromise an officer's ability to serve by offering voluntary services to help the officer maintain his or her health and psychological fitness.
- USCP's 2019 report to Congress, dated January 18, 2019, noted that the agency
 - had one fitness coordinator who divided his time between supporting physical fitness training for recruit officers and supporting voluntary services for incumbent officers;
 - did not have nutritional guidance available to employees, which USCP believed was necessary to support a full integration of wellness; and
 - believed that a wellness program would be a holistic approach for supporting officer health and wellness.
- USCP officials said the agency has partnered with the U.S. House of Representative's Wellness Center to provide USCP officers access to a variety of web-based wellness, physical fitness, nutritional and mindfulness programs, as well as trainings, webinars and fitness fairs.
- USCP officials also said they have continued efforts to provide access to onsite facilities and work toward formally adopting a wellness and resiliency program, hiring a wellness coordinator, expanding contracted physical fitness trainers, and implementing limited contractual nutritional guidance for employees.
- In addition, USCP officials noted that effective October 20, 2019, a new Employee Wellness and Resiliency Division was established to coordinate health and wellness activities and programs for USCP.



Raising the Mandatory Retirement Age for Other Agencies

Overview

The effects of raising the mandatory retirement age across federal executive branch law enforcement agencies would likely vary.

We analyzed OPM data on LEOs across the federal executive branch of government and selected nine agencies for more detailed study. We selected agencies from a range of federal departments that had large LEO populations. The nine selected agencies accounted for almost 85 percent of the total federal executive branch LEO workforce. We interviewed officials from these nine agencies about their use of individual exemptions and temporary blanket waivers to the mandatory retirement age and their perspectives on the potential effects of raising the mandatory retirement age. We found that, according to these officials:

- They generally used individual mandatory retirement age exemptions rather than temporary blanket waivers to allow some LEOs to work after age 57 (in addition to those allowed to work after age 57 to complete their 20 years of service).
- They varied with respect to their requirements to ensure exempted LEOs continued to meet the young and vigorous standard beyond age 57.
- They had varying perspectives on the potential effects of raising the mandatory retirement age.

Characteristics of the LEO Population

To identify the number and characteristics of federal executive branch LEOs, we analyzed OPM's Enterprise Human Resources Integration (EHRI) database, which includes data on LEOs' age and years of service.³⁹ We identified federal executive branch LEOs based on their coverage by a retirement plan with LEO enhanced retirement benefits and their occupations.⁴⁰ Our analysis found:

- The EHRI data indicate that more than 100,000 LEOs were employed by federal executive branch agencies as of the end of fiscal year 2017 (the most recent data available at the time of our review). Most LEOs were employed by agencies within DHS and DOJ (see table 2).

Table 2: Number of Federal Law Enforcement Officers (LEOs), by Age Group, as of the End of Fiscal Year 2017

Selected agency	Number of LEOs		
	Total	Age 57 and under	Over age 57
Selected agencies within the Department of Homeland Security (DHS)			
Customs and Border Protection	23,904	21,395	2,568
Immigration and Customs Enforcement	12,446	12,446	*
US Secret Service	3,636	3,636	*
Selected agencies within the Department of Justice (DOJ)			
Federal Bureau of Prisons	19,418	19,418	*
Federal Bureau of Investigation	13,662	13,528	150
Drug Enforcement Administration	4,416	4,382	34
US Marshals Service	3,672	3,660	12
Bureau of Alcohol, Tobacco, Firearms, and Explosives	2,012	2,012	*
Selected agency within the Department of Interior (DOI)			
National Park Service	1,771	1,771	*
All other agencies	15,270	15,190	80
TOTAL	100,207	97,438	2,844

Source: GAO analysis of Office of Personnel Management (OPM) data. | GAO-20-137R

Note: * Indicates fewer than 11 LEOs. We defined age 57 as the date up to 1 month before or after the LEO turned 57. For comparability, our analysis was based entirely on OPM data and does not reflect data provided by individual agencies, which sometimes varied from OPM's data. We also excluded individuals in positions that are not traditionally defined as LEOs, such as firefighters and nuclear materials couriers.

³⁹EHRI data do not include information on whether LEOs working beyond age 57 did so because they received an exemption or waiver or for another reason. Also, EHRI data only include executive branch employees, not legislative branch employees. As a result, this analysis does not include USCP officers.

⁴⁰Our analysis included both LEOs covered by plans with enhanced retirement benefits under FERS, as well as those covered by plans with enhanced retirement benefits under

- The EHRI data also indicate that of the 2,959 LEOs who retired during fiscal year 2017, 2,200 were under age 57, and 392 (13.0%) were over age 57. Among our nine selected agencies, most of the LEOs retiring over age 57 were from DHS’s Customs and Border Protection. Six of our nine selected agencies had fewer than 11 officers retiring over age 57 (see table 3).

Table 3: Number of Federal Law Enforcement Officer (LEO) Retirements, by Age Group, during Fiscal Year 2017

Selected agency	Number of LEO Retirements			
	Total	Before age 57	At age 57	Over age 57
Selected agencies within the Department of Homeland Security (DHS)				
Customs and Border Protection	446	128	12	306
Immigration and Customs Enforcement	363	286	77	*
US Secret Service	124	124	*	*
Selected agencies within the Department of Justice (DOJ)				
Federal Bureau of Prisons	799	687	112	*
Federal Bureau of Investigation	585	454	60	71
Drug Enforcement Administration	195	151	29	15
US Marshals Service	140	116	24	*
Bureau of Alcohol, Tobacco, Firearms, and Explosives	123	98	25	*
Selected agency within the Department of Interior (DOI)				
National Park Service	11	*	11	*
All other agencies	173	156	17	*
TOTAL	2,959	2,200	367	392

Source: GAO analysis of Office of Personnel Management (OPM) data. | GAO-20-137R

Note: * Indicates fewer than 11 LEOs. We defined age 57 as the date up to 1 month before or after the LEO turned 57. For comparability, our analysis was based entirely on OPM data and does not reflect data provided by these individual agencies (that sometimes varied from OPM’s data). We also excluded individuals in positions that are not traditionally defined as LEOs, such as firefighters and nuclear materials couriers.

Federal LEO Policies on Exemptions Vary

Federal Agency Policies on Use of Exemptions

Our nine selected agencies said they generally used individual mandatory retirement age exemptions rather than temporary blanket waivers to allow a limited number of LEOs to work after age 57 (in addition to those allowed to work after age 57 to complete their 20 years of service). According to the officials we spoke with:

the predecessor federal government employee retirement program, the Civil Service Retirement System (CSRS). Also, throughout this section, references to LEOs include Customs and Border Protection officers. Most Customs and Border Protection officers generally are not included in the definition of LEOs under FERS, but similar to USCP officers, receive enhanced retirement benefits equivalent to LEO benefits.

- None of the nine agencies had offered a temporary blanket waiver in the last 10 years.
- Few officers request exemptions, but requests for exemptions were generally approved if they met certain criteria (see table 4). For example, officials said that exemptions from the mandatory retirement age were granted to ensure continuity of operations or because the officer’s duties were tied to work that served the public interest, such as concluding an investigation.⁴¹

Table 4: Individual Exemptions Requested and Granted to Federal Law Enforcement Officers, Reported by Federal Selected Agencies (2008-2019)

Selected agency	Number of individual exemptions		Duration of approved exemptions
	Requested	Approved	
Selected agencies within the Department of Homeland Security (DHS)			
Customs and Border Protection	NA ^a	19 (since 2014)	6 months to 1 year 5 months
Immigration and Customs Enforcement	49 ^b	45	12 - 36 months
US Secret Service	NA ^c	NA ^c	1 or 2 years
Selected agencies within the Department of Justice (DOJ)			
Federal Bureau of Prisons	160	103	1 year
Federal Bureau of Investigation	1,156	1,032	Up to 1 year
Drug Enforcement Administration	361 ^d	300 ^d	12 months
US Marshals Service	150 (est.)	120 (est.)	6 or 12 months
Bureau of Alcohol, Tobacco, Firearms, and Explosives	40	36	1 year
Selected agency within the Department of Interior (DOI)			
National Park Service	60 (est.) ^e	58 (est.) ^e	NA ^e

Source: GAO analysis of data provided by the selected agencies, as indicated. GAO was unable to verify these figures independently, as some agencies reported collecting the data manually. | GAO-20-137R

^aCustoms and Border Protection (CBP) officials said exemption records to the mandatory separation provisions from 2008 through 2013 are not available (NA).

^bImmigration and Customs Enforcement (ICE) officials reported that one exemption request was denied and two decisions are pending. ICE officials also stated that any requests for exemptions typically originate from officers’ supervisors.

^cUS Secret Service did not know the number of requested exemptions but said all exemptions were approved.

^dDrug Enforcement Administration (DEA) officials provided us with the number of requested exemptions from 2008 through 2019, but noted that they only had records for years 2011 through 2019. The number for years 2008-2010 was based on estimates.

^eWe received separate responses from National Park Service’s United States Park Police (USPP) and Law Enforcement, Security, and Emergency Services (LESES). USPP officials said that they did not know the number of requested or approved exemptions, but estimated that since 2008, about five officers had requested exemptions and three of the requests had been approved. LESES reported that each year since 2008, their agency had an estimated five officers request exemptions and an estimated less than five officers were approved for exemptions. Neither component was able to provide information related to the length of time exemptions were approved.

⁴¹Between 2004 and 2011, the Federal Bureau of Investigation was able to exempt employees from mandatory retirement age requirements up to age 65. See 5 U.S.C. § 8425(b)(2).

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- Most exemptions were granted for a year or less. Officials from five of nine agencies said LEOs had to reapply if they wanted additional exemptions to age 60.
 - Mandatory retirement age exemptions are rarely revoked. Agency officials we spoke with said that in the last 10 years, at least 1,700 exemptions had been approved, and most reported none had been revoked. One agency official said the director of his agency had revoked one exemption without providing a reason. An official from another agency said they were unaware if any exemptions had been revoked, but said that reasons for revocations would include disciplinary issues and issues with fitness.
 - None of the nine agencies we spoke with requested or received presidential exemptions in the last 10 years. (As noted earlier, approval from the president is required for any exemptions allowing executive branch LEOs covered under FERS to work past 60 years of age.)

Federal Agency Policies on Maintaining a Young and Vigorous Workforce

Agency officials we spoke with described varying practices for maintaining the young and vigorous standard as part of their approval processes for granting exemptions to the mandatory retirement age.⁴² For example:

- Five agencies required officers requesting exemptions to complete fitness or medical examinations, the same as they require periodically of all their officers.
- Two agencies required officers to submit documentation from their health care provider clearing them to perform their duties.
- Three agencies had additional exemption requirements, such as
 - being reassigned to administrative duties; and
 - being in good standing regarding their performance or conduct.

Potential Effects of Raising the Mandatory Retirement Age

Officials at our nine selected agencies described various potential benefits and costs to raising the mandatory retirement age, depending on the nature of their LEO's duties.

- Potential benefits to raising the mandatory retirement age cited by some agency officials included:

⁴²Although there is no uniform standard that LEO agencies follow to ensure a young and physically vigorous workforce, agencies are able to prescribe physical requirements and medical standards for certain positions. According to one agency official, a validated physical-requirement assessment under 5 C.F.R. part 339 is the best evaluation of a LEO's physical ability to perform the requirements of a LEO position.

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- retaining experienced officers for their institutional knowledge and to assist in on-the-job training for more junior officers, and
 - delaying retirement benefit payments.
 - Potential costs to raising the mandatory retirement age cited by some agency officials included:
 - retaining LEOs with higher salaries;
 - continued eligibility for promotions, raises, and cost-of-living increases for LEOs working past age 57; and
 - relatively higher contributions to the retirement benefits for higher earning LEOs, despite being able to delay paying out retirement benefits.

As we noted earlier with respect to the USCP, the potential effects of raising the mandatory retirement age across federal law enforcement agencies would depend on the number of officers who continue to work until age 57 and who may wish to work additional years. However, predicting trends in future retirement decisions of officers is difficult and officials in our selected nine agencies expressed varying perspectives on the potential effects of increasing the mandatory retirement age to age 60:⁴³

- Officials from five of the nine agencies we spoke with said they would view raising the mandatory retirement age to age 60 as a potentially positive change, generally citing the benefits of retaining a more experienced workforce. For example, officials from one agency we spoke with said that the ability to retain more experienced officers would contribute to the agency's mission by providing leadership and mentoring to junior officers.
- However, officials from another agency said they would view increasing the mandatory retirement age to age 60 as a potentially negative change, because officers at or near retirement age are typically at the top of the pay scale.
- Officials from four of the nine agencies offered no opinions, stating that they had no comment or that they would follow whatever the statutes require.

⁴³Ten responses are tabulated below because we received differing responses from two subagencies within DOI's National Park Service: United States Park Police (USPP) and Law Enforcement, Security, and Emergency Services (LESES).

Federal Employee Retirement Provisions

Enhanced retirement benefits under the Federal Employee Retirement System (FERS) enable federal law enforcement officers (LEO) and US Capitol Police (USCP) officers to retire after fewer years of service compared to standard federal employees and their LEO retirement annuities accrue at a faster rate than standard federal employee retirement benefits. LEOs and USCP officers are generally eligible to retire at age 50 if they have a minimum of 20 years of service, and may retire at an earlier age if they have at least 25 years of service.

Table 5: Comparison of FERS Provisions for Different Types of Federal Employees

Retirement benefits under FERS		
Standard federal employees	Federal law enforcement officers	US Capitol Police officers
<p>FERS formula</p> <p>The standard federal employees' multiplier for FERS is 1 percent for those who retire before age 62, or age 62 or older but with at least 5, but less than 20 years of service; and 1.1 percent for those who retire at age 62 or older with at least 20 years of service.</p>	<p>FERS formula for enhanced benefits</p> <p>The law enforcement officer (LEO) multiplier for FERS is 1.7 percent for the first 20 years and 1 percent for additional years. (An officer must complete 20 years in LEO service to receive the higher multiplier.)</p>	<p>FERS formula for enhanced benefits.</p> <p>The US Capitol Police (USCP) officers' multiplier is LEO-equivalent.^a</p>
<p>COLA</p> <p>Cost-of-living adjustment (COLA) for standard federal employees each year during retirement, generally beginning at age 62.</p>	<p>COLA</p> <p>COLA each year during retirement.</p>	<p>COLA</p> <p>LEO-equivalent.</p>
<p>Additional pay for overtime</p> <p>Overtime pay cannot be included in an employee's highest 3 years of basic pay used to calculate an employee's retirement benefits.</p>	<p>Additional pay for overtime</p> <p>Some LEOs are allowed to earn premium pay for certain types of overtime that is paid as a recurring fixed amount and may be included in their highest 3 years of basic pay used to calculate retirement benefits.</p>	<p>Additional pay for overtime</p> <p>Unlike for some LEOs, the types of overtime pay that USCP officers can earn cannot be included in the officer's highest 3 years of earnings used to calculate an officer's retirement benefits.</p>
<p>FERS annuity supplement</p> <p>Standard employees are eligible to receive a FERS retiree annuity supplement if they have at least 1 calendar year of FERS service and they retire either at or after their minimum retirement age with at least 30 years of service, or at age 60 with at least 20 years of service. The retiree annuity supplement is payable until age 62, or when they would be eligible for Social Security. The supplement amount is calculated based on an estimate of the employee's full Social Security benefit and years of service under FERS.</p>	<p>FERS annuity supplement</p> <p>LEOs are eligible to receive a FERS retiree annuity supplement if they have at least 1 calendar year of FERS service and retire under one of the special provisions for enhanced retirement benefits. The retiree annuity supplement is payable until age 62, or when they would be eligible for Social Security. The supplement amount is calculated based on an estimate of the employee's full Social Security benefit and years of service under FERS.</p>	<p>FERS annuity supplement</p> <p>LEO-equivalent.</p>

Mandatory retirement age under FERS		
Standard federal employees	Federal law enforcement officers	US Capitol Police officers
<p>Mandatory retirement age No mandatory retirement age for standard federal employees.</p>	<p>Mandatory retirement age LEOs generally must separate from service (retire or continue to work in a non-LEO capacity) when they reach age 57 if they have completed at least 20 years of service. If they have not completed 20 years of service, they may keep working beyond age 57 until they have completed their 20 years.</p>	<p>Mandatory retirement age LEO-equivalent.</p>
<p>Exemption process NA</p>	<p>Exemption process If the agency head determines that the public interest so requires, the agency head may exempt an individual employee from mandatory retirement up to age 60. If the president determines that the public interest so requires, the president, by executive order, may exempt an employee, from mandatory separation, including past age 60.</p>	<p>Exemption process If the Capitol Police Board determines that the public interest so requires, the Board may exempt an individual employee from mandatory retirement up to age 60. The president may not exempt a USCP officer from mandatory separation.</p>

Source: GAO analysis of agency documents on the Federal Employees Retirement System (FERS) . I GAO-20-137R

^aUSCP officers were given LEO-equivalent retirement benefits under FERS by the Capitol Police Retirement Act in 1990. See Pub. L. No. 101-428, 104 Stat. 928.

Eligible USCP Officers' Use of Current Waiver and Their Thrift Savings Plan Contributions

On October 31, 2017, the U.S. Capitol Police (USCP) approved a temporary blanket waiver of the mandatory retirement age through September 30, 2020. The approval letter notes that “the exemption to allow USCP police officers to work until they reach 60 years of age” would “permit up to 56 officers to remain within the Department for up to 3 additional years.”

On August 21, 2019, the U.S. Capitol Police provided data regarding the age and retirement dates for the 56 officers identified as expected to turn 57 and be retirement eligible prior to October 2020.⁴⁴ In addition, they provided those officers' annual Thrift Savings Plan (TSP) contributions from 2012 through 2018.

Costs for USCP Would Depend on the Number of Officers Continuing to Work under the Waiver

Raising the mandatory retirement age would likely result in somewhat higher salary and benefit costs to the agency; however, overall agency costs would depend on the number of officers who continue to work until age 57 and may wish to work additional years.

As of August 2019, 21 (37 percent) of the 56 officers that USCP identified as qualified to work additional time beyond age 57 chose to do so (see table 6). Of the 21 officers, 5 retired after working an additional 10.2 months, on average. However, most (16) were still working under the waiver. This group had worked an additional 11.4 months, on average, as of August 2019.

Table 6: Eligible USCP Officers' Use of the Agency's Temporary Blanket Waiver of the Mandatory Retirement Age, as of August 2019

	Number of officers	Percent ^a	Average number (and range) of additional months worked
Officers identified in October 2017 by USCP as potentially eligible to work additional years under the waiver	56	100	
• Retired before or when turning age 57	14	25	N/A
• Retired after age 57, working some additional time under the waiver	5	9	10.2 (2 to 20 months)
• Not retired and age 57 or over, continuing to working under waiver as of August 2019	16	29	11.4 (1 to 33 months)
• Not retired and under age 57, but potentially eligible for the waiver prior to its end in September 2020	21	38	N/A

Source: GAO analysis of U.S. Capitol Police (USCP) data. | GAO-20-137R

^aTotal does not sum to 100 percent due to rounding.

⁴⁴The data were provided to us without names, specific birthdates, or other potentially identifying information.

The Opportunity for Continued Contributions to TSP Is a Potential Benefit for Officers

If the mandatory retirement age were raised from 57 to 60, officers who work past 57 could increase their retirement benefits through, in part, continuing to contribute to TSP and benefiting from TSP's employer matching contributions. Federal agencies contribute 1 percent of employees' basic pay to TSP, regardless of the employee's contribution (referred to as the agency automatic contribution). In addition, agencies match a portion of the employee's contributions for a possible total agency contribution of 5 percent of basic pay, including the agency automatic contribution. Therefore, employees contributing less than 5 percent of their salary do not maximize agency contribution.

To get a sense of the potential effect raising the mandatory retirement age might have on USCP officers' retirement savings, we examined the annual TSP contributions for 56 USCP officers near the age of 57.⁴⁵ We found that during the years 2012 through 2018, some of these officers made no contributions, while others made significant contributions (see table 7). For example, between 9 and 16 percent of the officers made no TSP contributions in any given year. In contrast, between 11 and 20 percent of the officers made contributions at or above the annual effective deferral limit, and between 4 and 13 percent made the maximum contribution of the elective deferral limit and catch-up contribution limit combined.⁴⁶

Table 7: Thrift Savings Plan (TSP) Contributions of Eligible USCP Officers, 2012 through 2018

	2012	2013	2014	2015	2016	2017 ^a	2018 ^b
Annual contribution limits (in dollars)							
TSP annual elective deferral limit	17,000	17,500	17,500	18,000	18,000	18,000	18,500
TSP annual catch-up contribution limit	5,500	5,500	5,500	6,000	6,000	6,000	6,000
Total	22,500	23,000	23,000	24,000	24,000	24,000	24,500
Eligible officers' annual contributions							
Average annual contribution (in dollars)	10,143	10,139	10,375	11,035	11,038	12,209	12,596
Percent of officers making no contributions	9	11	14	11	16	15	13
Percent of officers with contributions at or above elective deferral limit ^c	11	13	14	18	18	20	18
Percent of officers with contributions at maximum (combined elective deferral limit plus catch-up contribution limit) ^c	4	4	5	5	11	13	9

Source: GAO analysis of U.S. Capitol Police (USCP) data. | GAO-20-137R

^aTwo (2) officers were omitted from the 2017 calculation because they did not work a full year and therefore did not contribute over a full year.

^bEleven (11) officers were omitted from the 2018 calculation because they did not work a full year and therefore did not contribute over a full year.

^cCertain officers (22) turned 50 in 2013 and were not eligible to make catch-up contributions in 2012.

⁴⁵Officers included were born in 1959 through 1963.

⁴⁶TSP participants who are or will turn 50 in the calendar year can make catch-up contributions up to the annual limits. For 2019, the annual elective deferral limit was \$19,000 (\$25,000 including catch-up contributions).

Comments from the US Capitol Police



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November 20, 2019

Charles A. Jeszeck
 Director, Education, Workforce, and Income Security Issues
 U.S. Government Accountability Office
 Washington, D.C. 20548

Dear Mr. Jeszeck:

On behalf of United States Capitol Police Chief Steven A. Sund, I thank the Government Accountability Office (GAO) for the opportunity to comment on its draft report to the Committees on Appropriations Subcommittees on Legislative Branch for the United States House of Representatives and the United States Senate titled *CAPITOL POLICE: Potential Effects of Raising the Mandatory Retirement Age* (GAO-20-137R).

Throughout its engagement with the GAO pertaining to its analysis on the potential impact of raising the Mandatory Retirement Age (MRA) for officers, the United States Capitol Police (USCP or Department) has shared and maintains its concerns that the analysis and subsequent draft report do not address what we believe are two significant analyses requested by the subcommittees in House Report 115-929. It should be noted however that the Department is not advocating against raising the MRA for our sworn personnel; rather that before decisions are made a full analysis should be done to ensure informed decision making.

First, the analysis and subsequent draft report does not address the operational implication of permanently raising the MRA for USCP officers and specific civilian personnel covered by the Capitol Police Retirement Act, including the Department's Hazardous Materials Response Team technicians. Though it covers certain financial implications as requested, it does not take into consideration what, if any, impact such a change would have on the Department's ability to fulfill its core mission to protect the Congress. Nor does it take into account the potential financial and resource impact that would likely accompany life and safety implications should the Department falter in fulfilling its core mission on account of an officer over the age of 57 not being able to perform essential functions as required. Furthermore, from a more holistic view, the analysis fails to address operational implications of raising the mandatory retirement age for all federal law enforcement officers that adhere to the same "young and vigorous" standard.

Second, House Report 115-929 required the GAO, in consultation with the Office of Personnel Management (OPM), to validate whether the "young and vigorous" basis of the mandatory age requirement for USCP and federal law enforcement officers is still acceptable provided present-day health and wellness standards. The report includes no such validation and it is unclear if OPM was consulted and provided insight on this matter. USCP does not dispute that certain individuals over the age of 57 can meet the "young and vigorous" standard. As highlighted by the draft report, USCP and various federal law enforcement agencies currently provide waivers to the MRA. However, the

Department strongly believes that any determination to implement an across-the-board raise in the current MRA must be informed by supporting scientific evidence.

Further, the Department would like to highlight two GAO report conclusions that it finds of particular interest. They pertain to the disparities between how the compared agencies administer MRA waivers and how they validate the maintained physical fitness of officers seeking a waiver. USCP has historically implemented blanket waivers to ensure its ability to execute new, immediate security initiatives while new officers are recruited, hired, trained, and deployed. By comparison, the report indicates that the identified nine federal agencies administer waivers on an individual case-by-case basis. Additionally, the report states that the majority of the identified federal agencies require officers requesting exemptions to complete fitness or medical examinations, whereas USCP does not currently have such a requirement. The Department believes that these finding may warrant additional review of its waiver processes, including an individual's physical fitness and ability to perform essential functions.

Again, thank you for the opportunity to comment on the draft report. For your consideration, technical comments and clarifications have been submitted separately. Should you need additional information from the Department, please do not hesitate to contact my office at (202) 593-3500.

Very respectfully,



Richard L. Braddock
Chief Administrative Officer

GAO Contact and Staff Acknowledgments

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Staff Acknowledgments

In addition to the contact above, Margie K. Shields (Assistant Director), Margaret J. Weber (Analyst-in-Charge), Justine E. Augeri, David J. Forgosh, and Adam C. Wendel made key contributions to this report. Also contributing to this report were Rachel E. Beers, Deborah Bland, Orice W. Brown, Dana Z. Hopings, Sheila R. McCoy, Jonathan S. McMurray, Meredith T. Moles, Mimi Nguyen, Corinna A. Nicolaou, Joseph J. Silvestri, Christopher C. Stone, Jeff M. Tessin, Frank Todisco, and Walter K. Vance.

Related GAO Products

U.S. Customs and Border Protection: Progress and Challenges in Recruiting, Hiring, and Retaining Law Enforcement Personnel. [GAO-19-419T](#) (Washington, DC: March 7, 2019).

The Nation's Retirement System: A Comprehensive Re-evaluation Needed to Better Promote Future Retirement Security. [GAO-18-111SP](#) (Washington, DC: October 2017).

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