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

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

Accessible Version

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

[5]Throughout this briefing, we refer to USCP sworn members as "officers."

[6]See 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.

Background

[7]We 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.

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

Source: GAO. | GA0-20-137R

- 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]

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

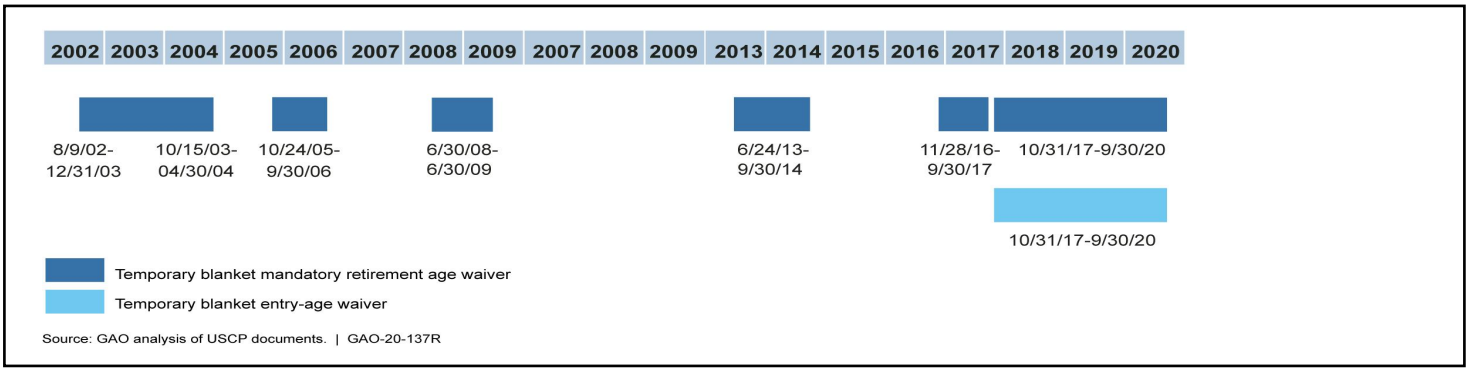
[8]USCP is an agency within the legislative branch.

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

[10]According 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)



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

Temporary blanket mandatory retirement age waiver	Temporary blanket entry-age waiver
8/9/02-12/31/03	
10/15/03-04/30/04	
10/24/05-9/30/06	
6/30/08-6/30/09	
6/24/13-9/30/14	
11/28/16-9/30/17	
10/31/17-9/30/20	10/31/17-9/30/20

Source: GAO analysis of USCP documents. | GAO-20-137R

- 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:
  - 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

[11]Some 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.

[12]See 5 U.S.C. § 8401(17).

[13]See 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.

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

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.)

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

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

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

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

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

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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]

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

[19]See 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.

[20]See 5 U.S.C. § 8425(e).

[21]See 5 U.S.C. § 3307(c)-(e).

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

- The LEO mandatory retirement age has changed over time, most recently from age 55 to age 57 in 1990.

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]

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[23]See 5 U.S.C. § 8425(c).

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

[25]Special 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.

[26]See 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 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.)

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

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

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