U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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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.

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

[1]Throughout this report, we refer to USCP sworn members as "officers."

[2]See 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).

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

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 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]

[4]The 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

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.

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

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retirement characteristics was based entirely on OPM's EHRI database. Data provided by individual agencies sometimes differed from OPM's data.

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.

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