FEDERAL LAW ENFORCEMENT PERSONNEL IN THE POST SEPTEMBER 11 ERA: HOW CAN WE FIX AN IMBALANCED COMPENSATION SYSTEM?

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION

AND THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

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FEDERAL LAW ENFORCEMENT PERSONNEL IN THE POST SEPTEMBER 11 ERA: HOW CAN WE FIX AN IMBALANCED COMPENSATION SYSTEM?

WEDNESDAY, JULY 23, 2003

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION, JOINT WITH THE SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES, COMMITTEE ON GOVERNMENT REFORM,

Washington, DC.

The subcommittees met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Jo Ann Davis (chairwoman of the Subcommittee on Civil Service and Agency Organization) presiding.

Present from the Subcommittee on Civil Service and Agency Organization: Representatives Davis of Virginia, Mica, Souder, Davis of Illinois, Van Hollen and Norton.

Present from the Subcommittee on Criminal Justice, Drug Policy and Human Resources: Representatives Souder, McHugh, Mica, Davis of Virginia, Carter, Cummings, Davis of Illinois and Norton.

Staff present: Ron Martinson, staff director; Chad Bungard, deputy staff director and chief counsel; Vaughn Murphy, legislative counsel; Chris Barkley, legislative assistant/clerk; Robert White, director of communications; John Landers, detailee from OPM; Stuart Sims, legal intern; Steven Isbister and Taylor Copus, interns; Tony Haywood, minority counsel; Christopher Lu, minority deputy chief counsel; Tania Shand, minority professional staff member; Earley Green, minority chief clerk; and Teresa Coufal, minority assistant clerk.

Mrs. DAVIS OF VIRGINIA. The Subcommittee on Civil Service and Agency Organization and the Subcommittee on Criminal Justice, Drug Policy and Human Resources will come to order.

We are going to have a series of votes somewhere around 10:30, so we are going to go ahead and start; and hopefully by the time I finish my opening statement we will have the rest of the panelists. If not, we will start with the distinguished Members that we have.

I want to thank you all for being here, and especially I want to thank Chairman Mark Souder for agreeing to hold this joint-hearing. Unfortunately, he is called to the floor, but he will be here shortly.

Law enforcement compensation is a very important subject; and there is great interest in today's hearing, as evidenced by the number of witnesses that we've scheduled. Due to time constraints, I would remind witnesses that their entire prepared statements will be entered into the record and ask them to keep their opening statements to 5 minutes or less if possible. We're also going to ask that only the chairman and the ranking members of the subcommittees make oral statements, and other Members who have statements will be submitted into the record.

I want to begin by thanking everyone for being here today and especially again thank Chairman Mark Souder for agreeing to hold this joint hearing. Our subject today is a vitally important topic, one that is of great concern to me: How do we make sure we are paying our Federal law enforcement agents properly?

On one hand, it is impossible to address adequate compensation for people who put their lives on the line for the American public every day. There's no proper monetary reward for such work. But, at the same time, we must recognize that members of the FBI, Border Patrol, Customs and Immigration, Secret Service and all our other Federal law enforcement agencies do not live and work in a monetary vacuum. There are thousands of local and State police forces and sheriff's offices out there, and there is a market for skilled officers, agents and criminal investigators. In this area, as in so many others, we must make sure that the Federal Government is not falling behind in the race for talent.

Several factors complicate the question of pay for Federal law enforcement officers. First is the question of whether the current pay scale is meeting the needs of law enforcement officers in high-cost of living areas such as San Francisco, southern California, Boston, New York and the Washington, DC, area. There is strong anecdotal evidence that we are having difficulty keeping or recruiting talented officers in those high-cost metropolitan areas. This is very worrisome, especially given the importance of our big cities in fighting crime and terrorism.

Second, there is a larger question of who is considered a law enforcement officer, who is not and who should be. Federal law enforcement officers [LEOs], receive enhanced pay and retirement benefits. FBI agents, DEA agents, Customs criminal investigators, Border Patrol agents and Secret Service criminal investigators are among those defined as LEOs. Customs inspectors, Immigration inspectors and Department of Defense police are among those who are not.

The benefits given to "law enforcement officers" began with FBI agents in 1947 and were quickly expanded to include any Federal employee whose position primarily deals with the investigation, apprehension or detention. It now also includes anyone who comes in frequent and direct contact with Federal inmates and, in some cases, agents who protect Federal officials.

The designation of law enforcement officer, however, is clearly a flawed term. The enhanced benefits were—and are—a management tool designed to strike a balance between helping certain agencies maintain a young and vigorous work force while compensating those agents adequately for being required to retire early.

But the end result is that many people who are clearly law enforcement officers by the plain meaning of that term do not meet the standards of law enforcement officer in terms of earning these enhanced benefits. That is confusing—if not insulting—to a Federal agent who carries a gun and who risks his life everyday but is told that he or she does not deserve the same benefits that many other officers receive.

Fortunately, the creation of the Homeland Security Department crystallizes these issues in a way that may lend itself to reform. To site just one example, the merging together of Customs inspectors from the former Customs Service, Immigration inspectors from the former INS and the agriculture inspectors from APHIS into the new Bureau of Immigration and Customs Enforcement has created situation where coworkers progress up the GS scale differently and work under different overtime and availability rules. Homeland Security also has a large number of those Federal agents who are not considered law enforcement officers but who do have arrest authority.

DHS is working with the Office of Personnel Management to determine a solution to these disparities and is scheduled to come back by the end of the year with some recommendations, a process that I hope will help us solve some of these complex problems.

We are joined by the ranking member of Chairman Souder's Subcommittee on Criminal Justice and Drug Policy, and I would like to recognize Elijah Cummings to see if he would like to give an opening statement.

[The prepared statement of Hon. Jo Ann Davis follows:]

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Chairwoman Jo Ann Davis
Subcommittee on Civil Service and Agency Organization
"Federal Law Enforcement Personnel in the Post 9/11 Era:
How Can We Fix an Imbalanced Compensation System?"
Opening Statement
July 23, 2003

I want to begin by thanking everyone for being here today, and especially Chairman Mark Souder for agreeing to hold this joint hearing. Our subject today is a vitally important topic, one that is of great concern to me: How do we make sure we are paying our federal law enforcement agents properly?

On one hand, it is impossible to address "adequate compensation" for people who put their lives on the line for the American public every day. There is no proper monetary reward for such work. But at the same time, we must recognize that members of the FBI, Border Patrol, Customs and Immigration, Secret Service, and all our other federal law enforcement agencies, do not live and work in a monetary vacuum. There are thousands of local and state police forces and sheriff's offices out there, and there is a market for skilled officers, agents and criminal investigators. In this area, as in so many others, we must make sure the federal government is not falling behind in the race for talent.

Several factors complicate the question of pay for federal law enforcement officers. First is the question of whether the current pay scale is meeting the needs of law enforcement officers in high cost-of-living areas, such as San Francisco, southern California, Boston, New York and the Washington, D.C. area. There is strong anecdotal evidence that we are having difficulty keeping or recruiting talented officers in those high-cost metropolitan areas. This is very worrisome, especially given the importance of our big cities in fighting crime and terrorism.

Second, there is a larger question of who is considered a law enforcement officer, who is not, and who should be. Federal law enforcement officers, or LEOs, receive enhanced pay and retirement benefits. FBI agents, DEA agents, Customs criminal investigators, Border Patrol agents and Secret Service criminal investigators are among those defined as LEOs. Customs inspectors, Immigration inspectors and Department of Defense police are among those who do not.

The benefits given to "law enforcement officers" began with FBI agents in 1947 and were quickly expanded to include any federal employee whose position *primarily* deals with the "apprehension, investigation and detention of known or suspected violators of federal law." It now also includes anyone who comes in "frequent and direct" contact with federal inmates, and in some cases, agents who protect federal officials.

The designation of "law enforcement officer," however, is clearly a flawed term. The enhanced benefits were – and are – a management tool designed to strike a balance between helping certain agencies maintain a young and vigorous workforce and compensating those agents adequately for being required to retire early.

But the end result is: Many people who are clearly law enforcement officers by the plain meaning of that term do not meet the standards of "law enforcement officer" in terms of earning these enhanced benefits. That is confusing – if not insulting -- to a federal agent who carries a gun and who risks his life every day but is told that he or she does not deserve the same benefits many other officers receive.

Fortunately, the creation of the Homeland Security Department crystallizes these issues in a way that may lend itself to reform. For example, the merging together of Customs inspectors from the former Customs Service, Immigration inspectors from the former INS, and the agricultural inspectors from APHIS into the new Bureau of Immigration and Customs Enforcement has created a situation where co-workers progress up the GS scale differently and work under different overtime and availability rules. Homeland Security also has a large number of those federal agents who are not considered law enforcement officers but who have arrest authority.

DHS is working with the Office of Personnel Management to determine a solution to these disparities, and is supposed to come back by the end of the year with some recommendations – a process that I hope will help us solve some of these complex problems.

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Mr. CUMMINGS. Thank you very much, Madam Chairlady.

Chairwoman Davis and Chairman Souder, the Federal Government's response to the attacks of September 11, 2001, and the readjustment of agency priorities to address future threats to our Nation's security have involved major changes for civilian and Federal employees. Personnel who perform law enforcement functions have especially been affected.

In hearings before the Criminal Justice Subcommittee, we have heard testimony concerning the massive amounts of overtime work by Customs and Border Patrol officers manning our Nation's borders and ports of entry in the months following the attacks. We know of the migration of law enforcement personnel to the Transportation Safety Administration as well as the congressionally mandated transfer of 22 agencies to the Department of Homeland Security.

Not all of these employees receive the same compensation and benefits. For example, there are stark differences in pay among the 13 uniformed Federal police agencies examined in the testimony we will hear from GAO on this subject.

Of particular interest to the committee is the disparity in the retirement benefits among different classes of Federal employees who perform similar functions. In order to provide for a young, vigorous personnel pool for Federal law enforcement agencies, Congress enacted—required early retirement for positions defined as, "law enforcement officers." As compensation for having to retire earlier than other Federal employees, LEOs accrue benefits at a faster rate than other Federal employees. Once retired, they receive annual cost of living adjustments, regardless of age. By contrast, other Federal employees do not receive COLA's under the Federal employee's retirement system until age 62.

For purposes of determining retirement benefits, the U.S. Code defines a law enforcement officer as an employee the duties of whose position are primarily the investigation, apprehension or detention of individuals suspected or convicted of offenses against the criminal laws of the United States of America. Some employees who have the power of arrest, the authority to carry firearms and duties to enforce laws are not authorized or required to investigate, apprehend or detain individuals. The employees are not classified as law enforcement officers and do not receive enhanced law enforcement retirement benefits.

Even before the September 11 attacks, inequities in our Federal employees benefit system existed. Meeting the challenges of homeland security has brought into sharper focus the importance of recruitment and retention with regard to certain agencies.

There have been a number of proposals introduced in the House and Senate to remedy the problem agencies face in the area of recruitment and retention. We will hear from the sponsors of several of those bills today. These are not simple issues to resolve, and no legislation will provide us a silver bullet.

Today's hearing also offers us a valuable opportunity to hear about ongoing efforts within agencies to tackle the post-September 11 challenges of recruiting and retaining highly competent and motivated work force personnel and the extent to which they are using the tools already at their disposal. In many cases, the em-

ployees are talking about help to form our first line of defense on the war against terror. Our Nation's security will depend in part upon our ability to recruit and retain employees to perform vital homeland security functions.

With that, Madam Chairlady, I look forward to hearing from our witnesses today; and I thank you.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Cummings.

I would like to recognize Mr. McHugh from New York for an opening statement.

Mr. MCHUGH. Thank you, Madam Chairwoman. I do have a prepared statement, Madam Chairwoman, that I ask be submitted in its entirety for the record without objection.

Mrs. DAVIS OF VIRGINIA. Without objection.

Mr. MCHUGH. I will make a few brief comments.

First of all, I want to add my words of appreciation and compliments to you, Madam Chairwoman, and Chairman Souder for recognizing the very important nature of this challenge.

I am hopeful, as I know you are, that the testimony we'll hear today from our esteemed colleagues, my good friend and kind of neighbor from the great "island of long," as in Long Island, Mr. King; Mr. Filner, who has been working on this issue for quite some time; and I have been honored to work with his permission this year on H.R. 2442, the Law Enforcement Officers Equity Act, which tries to respond, I think, in a very effective way to these problems. He's a leader. And Mr. Rogers, a good friend and someone who obviously is deeply concerned with this issue, as we all are.

I have the distinct pleasure of representing a district that borders both the Canadian provinces of Ontario and Quebec, and I have four designated border crossings and literally hundreds of miles of undesignated crossings across the waters of the St. Lawrence River and Lake Ontario. Part of that distinct pleasure is the opportunity and honor to represent many of these fine, dedicated, hard-working Federal officials that thankfully are the topic of this hearing here today. Whether they be in Customs or border protection or Bureau of Immigration enforcement inspectors again and Customs, these are folks who put their lives on the line for us.

As the hearing title suggests, September 11 has certainly caused us to take a new focus on that reality that I agree with Mr. Cummings that in fact existed before September 11. But if we can take that devastating day and at least begin to correct some oversights with respect to these fine officers that has gone on too long, at least we will have learned a very valuable lesson.

I look forward to the testimony of our colleagues, Madam Chairwoman; and again I thank you for your leadership and look forward to the testimony.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. McHugh.

[The prepared statement of Hon. John M. McHugh follows:]

Opening Statement of John McHugh
Federal Law Enforcement Personnel in the Post 9/11 Era: How can We fix an Imbalanced Compensation System?
July 23, 2003

Mr. Chairman and Chairwoman Davis, I want to thank you for holding this hearing today on an issue of great importance to our Federal law enforcement officers and to those in the communities that they protect. I believe this hearing will provide Members with a comprehensive understanding of the existing challenges in personnel issues affecting federal law enforcement officers. I would like to welcome the witnesses that have been invited here today to testify, with a particularly warm welcome to the senior Senator from our great State of New York, Senator Schumer, and Representative Filner, with whom I have had the great privilege of working on H.R. 2442, the Law Enforcement Officers Equity Act. Mr. Chairman, I appreciate that you have invited a panel of our colleagues to discuss the legislative remedies that are being proposed to address the disparity in pay, benefits, and retirement among officers, in addition to recruitment, retention, work conditions, and quality of life issues related to federal law enforcement personnel.

On a personal level, I am pleased to be a lead sponsor, along with Mr. Filner, on the Law Enforcement Officers Equity Act. I appreciate all of Mr. Filner's efforts and am delighted that he has been invited to speak on behalf of this noteworthy legislation today. This bill has already proven, in the past, to be a widely supported bipartisan bill, boasting of over 200 co-sponsors last Congress. Our efforts are continuing to garner the same level of support for this meaningful legislation in this Congressional session. I deeply appreciate that this measure has been recognized by Committee leadership and is receiving the careful attention and review that it deserves. This legislative process appears to be moving forward, and I am happy to have long been on board for efforts that redefine the term "law enforcement officer," for retirement benefit purposes to include Customs Inspectors, Canine Enforcement Officers, and IRS Revenue Officers.

I have the honor and distinction of representing a district that borders Canada. Many of my constituents are employed by the newly formed Department of Homeland Security. They are federal officers working in the Bureau of Customs and Border Protection and Bureau of Immigration and Customs Enforcement Inspectors. I also represent many of the mothers, fathers, sons, daughters, wives, and husbands of these Officers. We all know that we live in a much different world post 9/11. Like most other federal officers, these officers are issued firearms and body armor to wear while performing their duties protecting the borders of our country. Unlike nearly all other federal officers, however, they are not eligible for early retirement and other benefits designed to acknowledge the danger of this work and maintain the vigorous workforce needed to combat those who spread terror and risk to our society. I am convinced that H.R. 2442, as well as other efforts that will be discussed today, can increase yield, decrease recruitment and development costs, and enhance the retention of a well-trained and experienced workforce. I am committed to achieving these goals by recognizing and properly compensating those Officers who daily risk their lives and personal safety in order to protect and enhance the quality of life and the public safety of those who live and work in my District and the surrounding areas.

Thank you again, Mr. Chairman and Chairwoman Davis for holding this hearing. I look forward to hearing the testimony of our witnesses.

Mrs. DAVIS OF VIRGINIA. I would like to again say thank you to Chairman Souder for agreeing to hold this joint hearing, and I would like to recognize Chairman Souder for an opening statement.

Mr. SOUDER. Thank you, Chairman Davis.

Today's hearing addresses one of the most significant issues facing the Federal Government: how to bring the law enforcement pay system into balance. Resolving this problem is not simply a matter of ensuring fairness to the thousands of Federal law enforcement agents who labor to protect us everyday is absolutely imperative to our national security. I therefore commend the distinguished chairwoman of the Civil Service and Agency Organization Subcommittee, Mrs. Jo Ann Davis, for joining me in convening this hearing.

I want to add a personal note that last year and the year before, particularly last year, we tried to work with Chairman Wolf on the Commerce, State and Justice appropriations bill to address this matter and worked closely with Chairman Weldon to try to get a waiver. We decided to forego this process and focus on it. And when Congresswoman Davis took over the subcommittee she has been focused in trying to address the question. We saw this particularly under on-border patrol where we were losing agents faster than we could add them. When Congress was mandating that we add border control, here we were losing more than we could add because of some of these inequities, which is what Chairman Wolf focused on, this committee focused on and the gentleman before us focused on this issue.

I don't think I exaggerate when I say the present-day law enforcement pay system is a hopelessly confusing labyrinth of outdated and often irrational rules and regulations. Indeed, it is probably misleading to call it a system. It is really just the result of decades of haphazard and uncoordinated rulemaking. The rapid growth of the Federal law enforcement work force over the second half of the 20th century was not matched by a careful development and reformulation of civil service pay scales and rules. Instead, both Congress and the executive branch applied old rules or drafted new ones on an ad hoc basis to deal with new or expanded law enforcement agencies.

This became abundantly clear to my subcommittee, the Subcommittee on Criminal Justice, Drug Policy and Human Resources, during the last Congress when we held a series of hearings on Federal law enforcement and border security. Our study revealed these three key issues that must be addressed:

First, we must come up with a principled set of rules for disparities in retirement pay. At present, the so-called law enforcement retirement pay system created decades ago applies to some law enforcement officials but not to others, often with little or no justification. Fairness to our law enforcement agents demands that the Congress and the administration develop a rational, uniform retirement pay system.

Second, it is clear that the locality pay adjustment system, which was intended to ensure that agents living in areas with high costs of living be sufficiently compensated, must be updated. At present, the system simply fails to take into account the rapid rise in housing and related costs in many key areas. For example, the cost of living in California, our most populous State, is driving many

agents either to seek a transfer to another location or to leave Federal employment altogether. Many of the places which most need Federal law enforcement protection—major population centers, busy port cities and border regions—are often the most expensive to live. The Federal Government must find a way to ensure that local costs do not leave vital areas unprotected.

Finally, we must ensure that individual Federal agencies, in their eagerness to hire and expand their ranks, do not simply poach on other Federal and even State and local law enforcement agencies. As we saw in the months after September 11, 2001, the Federal sky marshals program expanded quite rapidly but at the expense of the Border Patrol, the Customs Service and numerous other agencies. The higher pay and benefits offered by the sky marshals program simply could not be matched by these other agencies, leaving many of them seriously depleted at a time when they and the American people they protect could least afford it. Congress and the administration must ensure that we don't end up playing another game of agency musical chairs. Rather, we must seek ways to expand the entire pool of law enforcement agents.

This hearing will allow us to address these and other related issues, and I again thank Chairwoman Davis for her leadership for convening it. I commend the various Members of the House and Senate here to testify today, all of whom have introduced legislation that could help resolve some of these problems. I further thank the members of the executive branch and the organizations representing our Federal law enforcement agents for taking the time to join us, and I look forward to your testimony.

Mrs. DAVIS OF VIRGINIA. Thank you, Chairman Souder.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement

Chairman Mark Souder
Subcommittee on Criminal Justice, Drug Policy, and Human Resources

Joint Hearing with the Subcommittee on Civil Service and Agency Reorganization, Committee on Government Reform

"Federal Law Enforcement Personnel In The Post 9/11 Era: How Can We Fix An Imbalanced Compensation System?"

July 23, 2003

Good morning. Today's hearing addresses one of the most significant issues facing the federal government today: how to bring the law enforcement pay system into balance. Resolving this problem is not simply a matter of ensuring fairness to the thousands of federal law enforcement agents who labor to protect us every day; it is absolutely imperative to our national security. I therefore commend the distinguished Chairwoman of the Civil Service and Agency Reorganization Subcommittee, Mrs. Jo Ann Davis, for joining me in convening this hearing.

I don't think I exaggerate when I say that the present-day law enforcement pay system is a hopelessly confusing labyrinth of outdated and often irrational rules and regulations. Indeed, it is probably misleading to call it a "system"; it is really just the result of decades of haphazard and uncoordinated rulemaking. The rapid growth of the federal law enforcement workforce over the second half of the twentieth century was not matched by a careful development and reformulation of civil service pay scales and rules; instead, both Congress and the executive branch applied old rules or drafted new

ones on an ad hoc basis to deal with new or expanded law enforcement agencies.

This became abundantly clear to my Subcommittee, the Subcommittee on Criminal Justice, Drug Policy and Human Resources, during the last Congress when we held a series of hearings on federal law enforcement and border security.* Our study revealed three key issues that must be addressed. First, we must come up with a principled set of rules for disparities in retirement pay. At present, the so-called "law enforcement" retirement pay system created decades ago applies to some law enforcement officials, but not to others – often with little or no justification. Fairness to our law enforcement agents demands that Congress and the Administration develop a rational, uniform retirement pay system.

Second, it is clear that the locality pay adjustment system, which is intended to ensure that agents living in areas with high costs of living be sufficiently compensated, must be updated. At present, the system simply fails to take into account the rapid rise in housing and related costs in many key areas. For example, the cost of living in California – our most populous state – is driving many agents either to seek a transfer to another location, or to leave federal employment altogether. Many of the places which most need federal law enforcement protection – major populations centers, busy port cities, and border regions – are also the most expensive to live. The federal government must find a way to ensure that local costs do not leave vital areas unprotected.

Finally, we must ensure that individual federal agencies, in their eagerness to hire and expand their ranks, do not simply poach on other federal or even state and local law enforcement agencies. As we all saw in the months after September 11, 2001, the federal "sky marshals" program expanded quite rapidly, but at the expense of the Border Patrol, the Customs Service, and numerous other agencies. The higher pay and benefits offered by the sky marshals program

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* The Subcommittee's report, *Federal Law Enforcement at the Borders and Ports of Entry: Challenges and Solutions* (H. Rprt. No. 107-794), can be found on the Government Printing Office's website, at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_reports&docid=f:hr794.pdf.

simply could not be matched by these other agencies, leaving many of them seriously depleted at a time when they, and the American people they protect, could least afford it. Congress and the Administration must ensure that we don't end up playing another game of agency "musical chairs"; rather, we must seek ways to expand the entire pool of law enforcement agents.

This hearing will allow us to address these and other related issues, and I again thank Chairwoman Davis for her leadership in convening it. I commend the various Members of the House and the Senate here to testify today, all of whom have introduced legislation that could help resolve some of these problems. I further thank the members of the executive branch and the organizations representing our federal law enforcement agents for taking the time to join us, and I look forward to your testimony.

Mrs. DAVIS OF VIRGINIA. I ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record and that any answers to written questions provided by the witnesses also be included in the record. Without objection, so ordered.

I ask unanimous consent that all exhibits, documents and other materials referred to by Members and the witnesses may be included in the hearing record and that all Members be permitted to revise and extend their remarks. Without objection, it is so ordered.

I ask unanimous consent to enter into the record a memorandum that was sent to members of the Subcommittee on Civil Service and Agency Organization regarding law enforcement compensation and retirement issues. Without objection, it is so ordered.

[The information referred to follows:]

MEMORANDUM

TO: Members, Subcommittee on Civil Service and Agency Organization

FROM: Jo Ann Davis
Chairwoman

RE: Law Enforcement Retirement and Compensation Background

DATE: July 22, 2003

I. Preface

The purpose of this memorandum is to provide both a historical perspective on the federal government's statutes and regulations governing personnel matters for the federal law enforcement workforce and an overview of their current retirement benefits and compensation.

I am looking forward to the July 23, 2003, joint hearing with the Subcommittee on Criminal Justice, Drug Policy, and Human Resources. I believe it will provide important insight on how the federal government can best recruit and retain a highly skilled and motivated law enforcement workforce and enable these individuals to provide a decent standard of living and retirement for their families. I am hopeful that this Subcommittee can reach a bipartisan consensus on legislative priorities for the 108th Congress for federal law enforcement personnel[1], and I want to work with you toward that objective.

This document will first address the status of what is usually described as "6(c) retirement" for law enforcement officers, which generally allows for retirement upon reaching the age of 50 and completing 20 years of eligible law enforcement officer service. The memorandum will briefly examine its legislative history, current definition, development in case law, and estimated costs of additional coverage.

[1] For purposes of this document, the term "law enforcement personnel" shall refer to individuals in the federal government engaged in a protective occupation. "Law enforcement officers" shall refer to individuals engaged in law enforcement functions who have been granted the enhanced retirement benefit, otherwise known as "6(c) retirement."

The paper will also provide an overview of compensation statistics for law enforcement personnel, with summaries of past analyses and recommendations provided by the Office of Personnel Management (OPM) and the 1993 National Advisory Commission on Law Enforcement.[2] Finally, the document will conclude with a brief synopsis of law enforcement-related legislation currently before the Subcommittee.

II. Retirement Benefits for Law Enforcement Officers

A. Introduction

The term "6(c) retirement" is a colloquial expression that refers to retirement with full benefits for law enforcement officers (LEO's) after 20 years of service under either the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS).[3] Under CSRS, an employee who qualifies for LEO retirement credit is eligible to retire upon attaining the age of 50 and after completing 20 years of eligible LEO service.[4] FERS employees may retire at age 50 with 20 years of eligible service, and may also retire at any age with 25 years of service.[5] Most civilian federal employees who began their careers before 1984 are covered by CSRS. Federal employees first hired in 1984 or later are covered by FERS.

An employee qualifying for LEO retirement receives a larger annuity than ordinary civil service employees, but is subject to larger salary deductions during his or her employment[6] (however, the larger salary deductions cover only a small fraction of the cost differential[7]). An employee can qualify for LEO retirement credit either by serving in a position that has been approved as such, or by applying for LEO credit and satisfying the employing agency, the Merit Systems Protection Board (MSPB), or the federal court that he or she is entitled to LEO retirement credit because his or her actual duties primarily are as described in Section C, *supra*.[8]

B. Legislative History of the LEO Retirement Benefit

In 1947, Congress approved legislation which extended retirement eligibility at age 50 after at least 20 years to FBI agents. The purpose was to simultaneously provide an incentive for FBI personnel to remain in the federal service while maintaining a young, vigorous workforce. The new retirement provision also acknowledged the difficult and often hazardous nature of the work.[9]

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[2] *See* Appendix A for data on compensation and retirement benefits as provided by OPM.
[3] The term "6(c) retirement" is a shorthand expression for 5 U.S.C. § 8336(c).
[4] 5 U.S.C. § 8336(c) (2001).
[5] 5 U.S.C. § 8412(d)(2) (2001).
[6] 5 U.S.C. § 8334(c); 5 U.S.C. § 8422(a)(3).
[7] See 5 C.F.R. § 841.413.
[8] 5 U.S.C. § 8331(20) (2000); *Bingaman v. Dept. of the Treasury*, 127 F. 3d 1431, 1436 (Fed. Cir. 1997).
[9] Pub. L. No. 80-168 (Jul. 11, 1947). See 5 U.S.C. § 8336(c) (2001); *See U.S Department of the Interior's Firefighter and Law Enforcement Special Retirement Resource Center*, (revised Jun. 5, 2002) <http://www.doi.gov/training/flert/milh.html>.

In 1948, Congress approved a measure that extended the 50/20 retirement benefit to other federal employees with similar duties. The law covered employees "whose primary duties were the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States (including any officer or employee engaged in such activity who had been transferred to a supervisory or administrative position)."[10] The head of each agency was responsible for recommending individuals for the preferential retirement based upon their job duties. OPM's predecessor, the Civil Service Commission, was to then determine if the applicant met the legal criteria, taking into consideration the degree of hazard of the individual's duties.[11]

In 1974, the law enforcement retirement benefit was significantly changed by federal legislation. Major changes included the following: the "hazard" requirement was deleted; the benefits formula was changed to 2.5% of high-three years average salary for the first 20 years, and 2% for each year exceeding 20 years; the required employee retirement contribution was raised .5%; and employees were permitted to retire at age 50 after 20 years of LEO-eligible service regardless of the employee's job at the time of retirement. Effective January 1, 1978, LEO-eligible employees became subject to mandatory separation at age 55 if they had completed 20 years of service. Finally, agency heads were permitted to fix a minimum and maximum age for original appointment into an LEO position, with OPM's concurrence.[12]

Congress changed the criteria for LEO's in the Federal Employee Retirement System (FERS) effective January 1, 1987. Changes in the statute and implementing regulations included the following: LEO retirement determination authority was delegated to agency heads with very limited re-delegation authority; coverage would be based primarily on position coverage, rather than individual coverage; and more emphasis on the requirement of "rigorous" duties for primary positions.[13] In addition, this legislation added personnel previously under the DC government by adding those who provide "protection of officials of the United States against threats to personal safety."[14] The new law also created a special FERS annuity formula for LEO-eligible personnel of 1.7% of high-three years average salary for the first 20 years, and 1% for each year exceeding 20 years.[15] CSRS definitions of law enforcement officer and firefighters, as well as CSRS regulatory procedures, continued to apply to all service prior to January 1, 1987.[16]

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[10] Pub. L. No. 80-879, (Jul. 2, 1948).
[11] *Id.*
[12] Pub. L. No. 93-350, (Jul. 12, 1974). It should be noted that two years previous, in 1972, Federal firefighters obtained 6(c) retirement in P.L. 92-382.
[13] *See U.S Department of the Interior's Firefighter and Law Enforcement Special Retirement Resource Center*, (revised Jun. 5, 2002) <http://www.doi.gov/training/flert/milh.html>.
[14] Pub. L. No. 99-335, (Jun. 6, 1986).
[15] *Id.*
[16] *Id.*

In 1990, Congress changed the mandatory retirement for LEO's to age 57. It also added special pay for positions at grades GS-10 and below, which meet the LEO definitions in 5 CFR § 550.103.[17] A 1993 regulatory change authorized agency heads to determine position coverage, individual service credit appraisals, and individual position coverage requests for CSRS employees.[18]

C. "Law Enforcement Officer" Benefit Eligibility

1. CSRS Definition of a "Law Enforcement Officer" and Service Requirements

A "law enforcement officer," for CSRS purposes, is defined in 5 U.S.C. § 8331(20) as "an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position." "Detention" is defined as certain employees[19]

> whose duties in connection with individuals in detention suspected or convicted of offenses against the criminal laws of the United States or of the District of Columbia or offenses against the punitive articles of the Uniformed Code of Military justice (chapter 47 of title 10) require frequent (as determined by the appropriate administrative authority with the concurrence of the Office) direct contact with these individuals in their detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation[.][20]

Capitol Police and Supreme Court Police have the same enhanced retirement benefit as LEO's under 5 U.S.C. § 8336(m) & (n).

Under CSRS, federal law enforcement officers receive the retirement benefits provided in 5 U.S.C. § 8336(c)(1) after becoming 50 years of age and completing 20 years of qualifying service. According to this section, "[a]n employee who is separated from the service after becoming 50 years of age and completing 20 years of service as a law enforcement officer, firefighter, or nuclear materials courier, or any combination of such service totaling at least 20 years, is entitled to an annuity."[21]

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[17] Pub. L. No. 101-509, (Nov. 5, 1990).
[18] 5 C.F.R. § 831.903 (a), (b) (2002).
[19] Includes employee of the Bureau of Prisons and Federal Prison Industries, Inc.; employees of the Public Health Service assigned to the field service of the Bureau of prisons or of the Federal Prison Industries, Inc.; employees in the field service at Army or Navy disciplinary barracks or at confinement and rehabilitation facilities operated by any of the armed forces; and employees of the Department of Corrections of the District of Columbia, its industries and utilities. 5 U.S.C. § 8331 (20) (2001).
[20] 5 U.S.C. § 8331(20) (2001).
[21] 5 U.S.C. § 8336(c)(1) (2001).

2. FERS Definition of a "Law Enforcement Officer" and Service Requirements

An LEO is defined in 5 U.S.C. § 8401(17), for FERS purposes, as

> an employee, the duties of whose position – (i) are primarily – (I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or (II) the protection of officials of the United States against threats to personal safety; and (ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency[.]

The statutory definition also designates the following as LEO's: 1) certain employees that perform LEO functions for 3 years and then move to a supervisory or administrative position; 2) Park Police and Uniformed Secret Service employees that, but for the enactment of FERS, would be subject to the District of Columbia Police and Firefighters' Retirement System; and 3) federal prison guards whose detention duties with federal and military criminal offenders "require frequent direct contact with these individuals in their detention and are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the head of the employing agency."[22]

For workers under the FERS system, 8412(d)(2) states that, an employee, "after becoming 50 years of age and completing 20 years of service as a law enforcement officer, member of the Capitol Police or Supreme Court Police, firefighter, or nuclear materials courier, or any combination of such service totaling at least 20 years, is entitled to an annuity." A FERS employee is entitled to an annuity at any retirement age after 25 years of service.[23]

3. Procedures for Securing a "Law Enforcement Officer" Designation

There are three methods for federal law enforcement personnel to obtain the LEO designation. First, it may be specifically granted in statute for a specific group.[24] Second, it may be designated by the employing agency in the official position description, based upon the standards set forth by OPM in 5 CFR § 831.901 *et seq.* and 5 CFR § 842.801 *et seq.*

Finally, a person in federal law enforcement seeking the designation may appeal to the MSPB seeking credit for previous work that meets the requirements set forth in the

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[22] 5 U.S.C. § 8401(17) (2001).
[23] 5 U.S.C. § 8412(d)(1) (2001).
[24] As previously noted, Capitol Police and Supreme Court police are also LEO's pursuant to 5 U.S.C. § 8336(m) & (n).

statute and regulations. An appellant files an appeal with the appropriate MSPB regional or field office having geographical jurisdiction. An administrative judge issues an initial decision. Unless a party files a petition for review with the Board, the initial decision becomes final 35 days after issuance. Any party, or OPM or the Office of Special Counsel, may petition the full Board in Washington to review the initial decision.[25]

An unfavorable decision by the Board can be appealed to the Court of Appeals for the Federal Circuit, and the "court shall review the record and hold unlawful and set aside any agency action, findings, or conclusions, found to be 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; 2) obtained without procedures required by law, rule, or regulation having been followed; or 3) unsupported by substantial evidence."[26]

4. Regulatory Development of the Definition of a "Law Enforcement Officer"

OPM further developed the definition of a LEO for both CSRS and FERS in 5 CFR § 831.901 *et seq.*, and 5 CFR § 842.801 *et seq.*, respectively. Both provisions clarify the statutory definition by stating: "the definition does not include an employee whose primary duties involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than those who are suspected or convicted of offenses against the criminal laws of the United States."

5. Development of the Definition of "Law Enforcement Officer" in Case Law

In *Bingaman v. Department of the Treasury*, the Court described the factors that the Merit Systems Protection Board had extrapolated from the statutory and regulatory language to determine whether an employee qualified as a LEO, "captur[ing] the essence of what Congress intended."[27] A LEO "commonly (1) has frequent direct contact with criminal suspects; (2) is authorized to carry a firearm; (3) interrogates witnesses and suspects, giving *Miranda* warnings when appropriate; (4) works for long periods without a break; (5) is on call 24 hours a day; and (6) is required to maintain a level of physical fitness."[28]

6. Merit Systems Protection Board Application of LEO Retirement Credit Statutory and Regulatory Standards

In *Watson v. Department of the Navy*, the MSPB began a new approach for analyzing LEO credit appeals that emphasized the reasons for the creation and existence of the positions rather than the officers' actual (even if incidental or occasional) duties as

[25] 5 C.F.R. § 1201.114(a)(1) (2002).
[26] 5 U.S.C. § 7703(c)(1)–(3) (2001).
[27] 127 F.3d 1431 (Fed.Cir.1997)
[28] *Id.*

had been done in the past.[29] This new emphasis on a "position-oriented approach" focuses on the employer's purpose in creating the position, rather than a "fact-specific" or "frequent duties" approach to LEO classification.[30] In *Watson*, the MSPB noted that the OPM guide for the police officers at issue stated that the "primary mission and purpose" of the positions was "to enforce law, maintain law and order, preserve the peace, and protect the life and civil rights of persons," and, based in part on that job description, LEO credit was denied.[31]

The U.S. Court of Appeals for the Federal Circuit affirmed the MSPB decision to use a "position-oriented approach" in *Watson.*[32] The Court noted that an employer, when assessing why a position exists, should factor in early mandatory retirement age and a maximum entry age characteristic of LEO's to determine whether the "basic reasons for the existence of the position" consists of duties that will make the employee LEO-eligible.[33]

The Court noted that the Board's approach included consideration of both the position documentation and actual duties.[34] The Board would examine the actual duties of an employee largely to determine if the purpose for the position's existence has changed since its creation. Thus, an employee could show, by evidence of his actual duties, that the written description of the position no longer accurately reflects the purpose for the position's existence, and that the employee should consequently be deemed entitled to LEO credit.[35]

D. Estimated Costs of Extending "6(c) Retirement" to Additional Federal Police Personnel

The major policy barrier to extending LEO coverage to additional federal personnel would be its immediate and long-term costs.

OPM Associate Director for Retirement and Insurance Services William Flynn testified at the September 9, 1999 Subcommittee on the Civil Service hearing titled "Law Enforcement Retirement Coverage" that "adding police officers, other than those who are currently covered, Inspectors at Immigration and Naturalization Service, Customs Inspectors, park rangers, ATF Inspectors, and a few other groups would cost $1½ billion plus future additional agency employee contributions at the higher rates."[36]

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[29] 86 M.S.P.R. 318 (2000).
[30] *Id.* at 321.
[31] *Id.* at 324.
[32] *Watson v. Dept. of the Navy*, 262 F.3d 1292 (2001).
[33] *Id.* at 1300.
[34] *Id.*
[35] *Id.* at 1302.
[36] *Law Enforcement Retirement Coverage: Hearing before the Subcomm. on Civil Service of the House Comm. on Government Reform*, 106th Cong. 62, at 62 (September 9, 1999) (statement of William E. Flynn, Assoc. Director, Retirement and Insurance Services, Office of Personnel Management).

The Department of Justice estimated that including Assistant United States Attorneys (AUSA's) in LEO retirement coverage would add close to $600 million in the first year alone. John Vail, Deputy Assistant Attorney General for Management, testified at the aforementioned 1999 Civil Service Subcommittee hearing about DOJ's concern that attorneys over the age of 37 would be ineligible to become AUSA's if they are included in LEO coverage because of maximum age requirements designed for law enforcement personnel. DOJ statistics show that 28.5% of new AUSA hires in 1998 were 37 years of age or older. Moreover, since obtaining LEO status would force attorneys to retire at the age of 57, at the time of the testimony over 500 AUSA's would have been eligible for mandatory or voluntary early retirement, which could have led to a dramatic loss of experienced litigators.[37]

LEO retirement possesses an accelerated accrual rate, as it assumes the benefit will need to be accumulated earlier to account for the stressful and demanding nature of the job. Despite the fact that law enforcement personnel are required to contribute a greater percentage of their salary into retirement, federal government agencies still shoulder higher proportionate costs of early retirement when compared to non-LEO federal employees, as indicated by the following tables.

[37] *1999 Civil Service Hearing,* at 81, (statement of John Vail, Deputy Assistant Attorney General for Management, Department of Justice).

CSRS

Regular	LEO
Retirement at age:	**Retirement at age:**
55 w/ 30 years	50 w/ 20 years LEO
60 w/ 20 years	
62 w/ 5 years	
Annuity:	**Annuity:**
w/ 30 years - 56.25% of high 3	w/ 30 years - 70% of high 3
w/ 20 years - 36.25%	w/ 20 years - 50%
w/ 5 years - 7.5%	w/ 5 years - 7.5% (not LEO)
Contribution:	**Contribution:**
7% by the employee	7.5% by the employee
18% by the Government	31.5% by the Government

FERS

Regular	LEO
Retirement at age:	**Retirement at age:**
55 w/ 30 years	50 w/ 20 years LEO
60 w/ 20 years	Any age w/ 25 years LEO
62 w/ 5 years	
Annuity:	**Annuity:**
w/ 30 years - 30% of high 3 (33% if 62 years of age)	w/ 30 years - 44% of high 3
w/ 20 years - 20% (22% if 62 years of age)	w/ 20 years - 34%
w/ 5 years - 5%	w/ 5 years - 5% (not LEO)
Contribution:	**Contribution:**
0.8% by the employee	1.3% by the employee
10.7% by the Government	22.7% by the Government

III. Compensation of Federal Law Enforcement Officers

A. Introduction

In addition to retirement benefits for federal law enforcement personnel, policymakers are naturally concerned about the adequacy of pay to attract and retain a high quality workforce. In response to a March 2003 request by Government Reform Committee Chairman Tom Davis, OPM provided substantial statistical information regarding federal employees with law enforcement duties.

In addition to OPM's response to Chairman Tom Davis' request, in June, 2003, GAO issued *Federal Uniformed Police: Selected Data on Pay, Recruitment, and Retention at 13 Police Forces in the Washington, D.C., Metropolitan Area.* A year earlier, CRS prepared detailed tables on compensation for specific groups of federal law enforcement personnel in a memorandum, responding to a request from a congressional committee.[38]

According to the 2003 OPM report, "[e]ntry-level pay and retirement benefits varied widely across the 13 police forces. Annual pay for entry-level police officers ranged from $28,801 to $39,427, as of September 30, 2002."[39] This disparity exists despite the fact that "[a]ccording to officials, all 13 police forces performed many of the same types of general duties, such as protecting people and property and screening people and materials entering and/or exiting buildings under their jurisdictions."[40] The report also stated that "[o]fficials from 9 of the 13 police forces reported that they were experiencing at least a little or some difficulty recruiting police officers. Officials at 4 of these police forces...reported that they were having a great or very great deal of difficulty recruiting officers and cited pay as a major contributor to their recruitment difficulties."[41]

Statistics provided to the Subcommittee by OPM in response to Chairman Tom Davis' letter indicate that the same salary disparities present among federal uniformed police in the Washington Metropolitan Area are present across the federal agencies nationwide.

Two comprehensive analyses of law enforcement pay have been performed in the recent past, the 1990 *National Advisory Commission on Law Enforcement* and a 1993 *OPM Report to Congress*, both summarized *supra*.

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[38] Memorandum from Sharon Gressle, Congressional Research Service (Jun. 3, 2002).
[39] *Federal Uniformed Police: Selected Data on Pay, Recruitment, and Retention at 13 Police Forces in the Washington, D.C., Metropolitan Area* , GAO-03-658, at 9 (2003).
[40] *Id.*
[41] *Id.* at 4.

B. 1990 National Advisory Commission on Law Enforcement

1. Overview

The Anti-Drug Abuse Act of 1988 established the National Advisory Commission on Law Enforcement (NACLE), charging it with studying pay, benefits, and other issues related to the recruitment, retention, and morale of federal law enforcement officers.[42] The scope of the study was limited to occupations meeting the definition of LEO under both CSRS (5 U.S.C. § 8331(20)) and FERS (5 U.S.C. § 8401(17)).[43] The Commission's two major objectives were to "study methods and rates of compensation for law enforcement officers in federal, state, and local agencies and...to develop recommendations to ensure competitive compensation, enhance ability to recruit and retain qualified personnel, and ensure uniform compensation practices among federal law enforcement agencies."[44]

2. Findings

NACLE issued its report in April of 1990, with some of the major findings regarding the pay and benefits of federal public safety officers listed below:

- Entry-level pay was inadequate when measured against state and local law enforcement personnel pay, and was inadequate for many federal public safety officers in particular high-cost cities. Lack of adequate pay deterred quality applicants and increased attrition among existing personnel.

- While state and local law enforcement entities routinely paid time and half for overtime, only GS-10 and below federal employees were paid for scheduled overtime. Retirement, life insurance, and health insurance also lagged behind state and local entities.

- "Significant pay gaps were found in certain high-wage areas, with state and local salaries being 10 to 15 percent greater for all types of federal law enforcement."[45]

3. Recommendations

Some major recommendations of NACLE were as follows:

- "Upgrade entry-level salaries for federal law enforcement personnel."

- "Introduce locality pay differentials (from 5 to 25 percent depending on the city) to alleviate the pay disparities facing federal officers in high-wage areas."

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[42] *Report of the National Advisory Commission on Law Enforcement*, OCG-90-2 (April 1990).
[43] *Id.* at 38.
[44] *Id.*
[45] *Id.* at 9-17.

- "Provide relocation payments using market-sensitive housing bonuses in high-cost areas."
- "Develop a consistent policy for all federal law enforcement agencies regarding overtime pay."
- "Ensure that foreign language bonuses be made available for all federal law enforcement officers who are required to speak a foreign language."
- "Have OPM and law enforcement agencies collect better and more comprehensive recruitment and retention data."[46]

With some changes, the immediate pay enhancements recommended by NACLE were enacted as part of the Federal Employees Pay Comparability Act of 1990 (FEPCA).[47] FEPCA required that OPM conduct a study of a new pay and job evaluation system for federal law enforcement officers, and OPM released its report in September 1993.

C. 1993 OPM Report to Congress: A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers

1. Overview

In developing a separate pay and job evaluation plan for law enforcement personnel per the FEPCA mandate, OPM stated that it had two related objectives: "to develop targeted solutions to specific weaknesses in the government's compensation program for Federal law enforcement officers" and "to maintain an appropriate balance between the interests of the law enforcement workforce and the need for equity with other Federal employees."[48]

Like the NACLE study, OPM's mandate was limited to law enforcement occupations with LEO status, but it also included U.S. Park Police and Secret Service Uniformed Division officers and other executive branch occupations in which employees have arrest or detention authority but do not qualify as LEO's[49].

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[46] *Id.* at 18-19.
[47] *A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers*, U.S. Office of Personnel Management (Sept. 1993).
[48] *Id.* at 1.
[49] *Id.* at 2.

2. Summary of 1990 FEPCA Enhancements

The OPM report first noted that, in response to the NACLE recommendations, FEPCA included several pay enhancements for LEO's and certain other law enforcement personnel. These included:

- Special salary rates for officers in grades GS-3 through GS-10. At the time of the study, it raised salaries from a range of about 20% for GS-3,4, and 5 to 3% for GS-10.
- Geographic adjustments for officers in eight high-cost metropolitan areas ranging from 4% to 16%.
- A capped overtime rate guaranteed to equal at least the employee's rate of basic pay, rather being capped at 1.5 times the GS-10, step 1 rate.
- Foreign language bonuses not to exceed 5% were made available to officers.[50]

Also in 1990, caps were lifted for administratively unauthorized overtime for officers with basic pay in excess of GS-10, step 1.[51]

3. Findings

OPM's study reached the following conclusions:

- **Job evaluation-** the GS classification was unsuitable for ranking law enforcement-type work. The law enforcement community did not believe the GS system, appropriate for a white-collar workforce, was adequate for classifying law enforcement work, which involved physical demands, life-and-death decision-making and use of deadly force, nor did it have provisions for recognizing special skills such as canine handling or EMT certifications.
- **Basic Pay-** OPM found that since passage of FEPCA, entry level federal pay still lagged behind that of state and local officers by about 12 to 16%, but should improve as local comparability payments were implemented. The study also showed that, though entry level pay was low, "all types of Federal law enforcement officers…tend to have greater maximum pay potential in nonsupervisory jobs than their State and local counterparts."

  OPM drew two conclusions regarding basic pay: 1) "the current nationwide basic pay rates for Federal law enforcement officers are adequate and that any remaining pay disparities would be addressed most effectively through locality pay adjustments rather than through additional nationwide increases," and 2) "any attempt to measure the competitiveness of Federal law enforcement pay must

[50] *Id.* at 6.
[51] *Id.*

consider career progression patterns and maximum pay potential, not just entry pay."

- **Retention-** OPM measured pre- and post-FEPCA attrition rates for federal law enforcement officers and found that, following passage of FEPCA, "overall law enforcement turnover and quit rates were low relative to the rates for other Federal employees. OPM also found that the levels of turnover and quits vary significantly among the various law enforcement occupations."

- **Overtime Pay-** OPM found that despite the enhancements in federal overtime pay for officers, employees remained concerned about the following: 1) overtime pay was still viewed as inadequate when compared to the overtime pay of state and local officers, and 2) there were significant differences between the overtime pay policies among federal agencies.[52]

4. Recommendations

OPM made the following recommendations for a new pay and job evaluation system:

- **Incorporate FEPCA Pay Enhancements Within Any New System-** OPM believed that the higher entry level pay rates and special geographic adjustments should be continued until superseded by a permanent locality pay mechanism.

- **A New, Separate Job Evaluation System for Federal Law Enforcement Officers-** "OPM proposes to develop a new, specially tailored job evaluation system for Federal law enforcement officers based on factors directly related to law enforcement work, such as hazard level, physical requirements, scope of arrest authority, and instantaneous decision-making on the use of deadly force."

- **A Separate Pay System Linked to the General Schedule-** According to OPM, this proposed schedule "would band GS grade ranges at the lower levels, where some disparities with non-Federal pay exist and where there are some recruitment and retention problems; and...agencies would be given blanket authority to hire above the minimum rate where needed to compete in the marketplace. As already stated, existing special rates for lower-level law enforcement officers would be incorporated within the new system."

- **Authorize "Technician Bonus" of Up to $1,500 Per Year for Special Skill and Certification Requirements in Law Enforcement Jobs-** "[T]echnician categories would be approved by OPM, and the bonuses would be paid at agency discretion based on its judgment as to (1) the value of the skill, and (2) the degree to which payment of the premium would have a positive impact on mission accomplishment."

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[52] *Id.* at 8-13.

- **Incorporate Uniform Overtime Provisions Into New System-** OPM made the general recommendation that "Federal law enforcement officers in the new system should be subject to a uniform set of overtime provisions. While this does not necessarily mean that different forms of overtime pay might not be used for different situations (e.g., uncontrolled overtime versus scheduled overtime), it does mean that overtime rules should be properly and consistently applied across all agencies to ensure that all Federal law enforcement officers are treated equitably."

- **Scope of System Coverage for the New Job Evaluation and Pay System Coverage Would Include All Executive Branch Employees Who Meet the Retirement Definitions, Except Personnel in Correctional Institutions Whose Primary Occupation Is Not Law Enforcement, plus all Positions Properly Classified As Police Officers That Are Not Now Covered.** OPM determined that the retirement definition of law enforcement was too narrow for a proposed separate pay and job evaluation system, and created a "primary duty" requirement for inclusion in the new system. OPM concluded that most corrections personnel, as well as Customs and Immigration Inspectors, would not meet the law enforcement as a "primary duty" requirement, but would still merit a differential of up to 25% of basic pay in certain dangerous positions and locales. Categories that were not included in the retirement definition of law enforcement but were recommended by OPM for inclusion in the new system included "Park Rangers and other land management employees (e.g., certain Bureau of Land Management Rangers and Department of Agriculture forestry technicians) who perform law enforcement work (including police-type work) as a primary duty."[53]

5. Conclusions

OPM determined that, though it should be linked to the General Schedule to maintain internal equity and minimize administration cost, a separate law enforcement job evaluation and pay system should be created "specifically designed to take into consideration the elements that distinguish law enforcement work, such as the hazards, the physical skills, the need to be trained in the use of deadly force, and the need to be prepared to make instantaneous, life-and-death decisions."[54]

IV. Legislation Introduced in the House of Representatives During the 108th Congress

H.R. 466, S. 985 (Congressman King (NY), Senator Dodd) – These proposals would revise the special pay adjustments for certain classes of federal law enforcement personnel in 31 specified metropolitan statistical areas and the remaining "rest of the U.S."

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[53] *Id.* at 14-16.
[54] *Id.* at 19-20.

H.R. 1676 (Congressman Mike Rogers (MI)) – The legislation would modify levels of special pay adjustments for certain classes of federal law enforcement personnel in particular regions of the country. This bill covers cities that were the original statutorily designated cities from the 1990 Law Enforcement Pay Reform Act; and, cities where the cost of living is ten percent or more above the national average and that are not specific metropolitan statistical areas but are covered under the general "rest of the U.S. provision."

H.R. 2276 (Congressman Van Hollen) – This proposal would make the National Institutes of Health (NIH) a permanent police force. These officers would be considered LEOs for retirement purposes as long as they are not appointed above a standard maximum age.

H.R. 2442, S. 819 (Congressman Filner, Senator Mikulski) – These bills would redefine the term "LEO" to include any federal employee not otherwise covered by such term whose duties include the investigation or apprehension of suspected or convicted individuals and who are authorized to carry a firearm; and employees of the IRS whose duties include the collection of delinquent taxes and the securing of delinquent returns.

H.R. 2260 (Congresswoman Ros-Lehtinen) – The legislation would include assistant United States attorneys (AUSAs) within the definition of a LEO. Individual AUSAs would have the option to decide whether or not they wanted to be deemed a LEO for retirement benefits. If they so choose, retirement benefits would be applied retroactively as though the AUSA had received LEO retirement benefits from the outset.

H.R. 2060 (Congressman Todd Platts) - This legislation would amend the Law Enforcement Pay Equity Act of 2000 to permit United States Park Police and United States Secret Service Uniformed Division retirees to receive the adjustments in pension benefits they would otherwise have been entitled to as a result of the salary increases of active members of the United States Park Police and United States Secret Service Uniformed Division received in the aforementioned Act.

Appendix A

Annual Quit Rates for LEOs and Non-LEOs With Arrest Authority

Selected LEO Occupations

Occupation Series	Series Title	Annual Quit Rate (Percent)	
		FY 2001	FY 2002
0006	Correctional Institution Administration	0.40	0.28
0007	Correctional Officer	3.86	3.27
0082	U.S. Marshal*	8.70	3.07
1811	Criminal Investigator	0.63	0.65
1896	Border Patrol Agent**	5.57	5.83

Selected "Non-LEO" Occupations
(includes subset of LEOs in GS-0083 and GS-1816 series)

Occupation Series	Series Title	Annual Quit Rate (Percent)	
		FY 2001	FY 2002
0083	Police***	5.62	5.92
1816	Immigration Inspection	1.52	1.95
1890	Customs Inspection	1.20	1.39

All Occupation Series (General Schedule and Related)	2.10	1.69

Note: Annual quit rates were determined by taking the number of voluntary resignations from Federal service and dividing by the average number of employees employed during that fiscal year. The term "quit" is defined as a voluntary resignation from the Federal service, including any resignations during a probationary or trial period. Quits exclude such actions as reassignments to other series, transfers to other Federal agencies, involuntary separations, retirements, and deaths.

* The GS-0082 series applies primarily to Deputy U.S. Marshals in grades GS-5, 7, or 9. There are about 15 GS-15 U.S. Marshals who are Presidential appointees; however, since they have temporary appointments, they are not included in OPM's standard reports on turnover rates. The normal career path for GS-0082 Deputy U.S. Marshals includes movement to the GS-1811 criminal investigator occupation at grade GS-11; thus, these GS-0082 employees have not reached the normal career journey level. As a result, quit rates for the GS-0082 series are higher than they would be if journey-level employees with lower quit rates were included.

** The quit rates for GS-1896 Border Patrol Agents are in the 41-46 percent range at GS-5 and at the 10-12 percent range at GS-7, which reflects high quit rates during the first year of employment, which are largely attributable to failure to successfully complete basic training or probationary period. At grades 9 and higher, the average quit rate for Border Patrol Agents was 1.7 percent in FY 2001 and 1.1 percent in FY 2002.

*** Effective in January 2003, OPM established higher special rates for GS-0083 police officers in most agencies. Similar special rates were established for Department of Defense GS-0083 police officers effective in April 2003. OPM anticipates that quit rates for the GS-0083 police officers will be lower in FY 2003 as a result of these special rates.

Source: U.S. Office of Personnel Management, Central Personnel Data File

LEOs by Selected Agencies

LEOs
"LEOs" are law enforcement officers (LEOs) who are covered by the special retirement provisions for law enforcement officers in the Civil Service Retirement System or the Federal Employees Retirement System.

Selected Agencies	Number of LEOs	Percent of LEOs
Department of Justice	54,681	56.878%
Department of Homeland Security	28,679	29.831%
Department of the Treasury	3,239	3.369%
Department of the Interior	3,171	3.298%

Source: *U.S. Office of Personnel Management, Central Personnel Data File*

LEOs by Selected Agencies

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Source: *U.S. Office of Personnel Management, Central Personnel Data File*

Appendix G1

STANDARD GOVERNMENTWIDE PAY AND BENEFITS PROVISIONS

Basic Pay Systems	Overtime Pay and Other Premium Pay Authorities	Other Pay Provisions	Retirement	Other Benefits
• General Schedule (GS), including special rates under 5 U.S.C. 5305 and retained grade or pay under 5 U.S.C. 5361-5365 • Senior Executive Service • Senior-Level (SL/ST) • Executive Schedule • Administrative Law Judges • Contract Appeals Boards • Senior Biomedical Research Service • Federal Wage System • Experts & consultants paid under 5 U.S.C. 3109	• Premium pay under 5 U.S.C. 5541-5550a • Fair Labor Standards Act as administered by OPM (5 CFR part 551)	• Awards under 5 U.S.C. chapter 45 • SES awards under 5 U.S.C. 5384 • Recruitment, relocation, and retention payments under 5 U.S.C. 5753-5754 • Student loan repayment benefits under 5 U.S.C. 5379	• Civil Service Retirement System (5 U.S.C. chapter 83) • Federal Employees Retirement System (5 U.S.C. chapter 84)	• Leave under 5 U.S.C. chapter 63 (including annual leave lump-sum payments under 5 U.S.C. 5551-5553) • Holidays under 5 U.S.C. 6103 • Severance pay under 5 U.S.C. 5595 • Workers' compensation under 5 U.S.C. chapter 81 • Life insurance under 5 U.S.C. chapter 87 (FEGLI) • Health benefits under 5 U.S.C. chapter 89 (FEHB) • Long-term care insurance under 5 U.S.C. chapter 90

LEOs By Selected Agencies and GS Occupations

"LEOs" are law enforcement officers (LEOs) who are covered by the special retirement provisions for law enforcement officers in the Civil Service Retirement System or the Federal Employees Retirement System. Examples include criminal investigators, border patrol agents, and correctional officers.

SELECTED AGENCIES	SELECTED GS OCCUPATIONS	NUMBER OF LEOs
Department of Defense	GS-1811—Criminal Investigators	1,699
Department of Homeland Security	GS-1801—General Inspection, Investigation, and Comp.	1,305
	GS-1802—Compliance Inspection and Support	2,015
	GS-1811—Criminal Investigation	9,001
	GS-1896—Border Patrol Agents	10,212
Department of the Interior	GS-0025—Park Ranger	1,418
Department of Justice	GS-0006—Correctional Institution Administration	1,665
	GS-0007—Correctional Officer	14,875
	GS-0082—U.S. Marshal	716
	GS-0101—Social Science*	1,518
	GS-0318—Secretary*	1,008
	GS-1811—Criminal Investigator	20,517
Department of the Treasury	GS-1811—Criminal Investigator	3,135

* The majority of employees listed in these positions work in the Bureau of Prisons and have LEO status based on having frequent and direct contact with criminals.

Source: U.S. Office Personnel Management, Central Personnel Data File (CPDF)

Appendix H1

SUMMARY OF NONSTANDARD PAY AND BENEFITS BY TYPE OF PAY OR BENEFIT

A. Law Enforcement Officers (LEOs)

Type of Pay or Benefit	Description of Nonstandard Pay and Benefits	Statutory and Regulatory Citations
Basic Pay System		
Basic pay system	**Judicial Branch Pay Plans** *Court Personnel System* – This system covers probation and pretrial services officers and assistants serving in Federal court units. *Judiciary Salary Plan* – This system covers chief and deputy chief probation officers and pretrial services officers. *Administrative Office Classification, Compensation and Recruitment Systems (AOCCRS)* – This system covers probation administrator/special assistant positions in the Office of Probation and Pretrial Services in the Administrative Office of the U.S. Courts (AOUSC).	18 U.S.C. 3153 and 3672 18 U.S.C. 3153 and 3672 28 U.S.C. 602 note, Public Law 101-474
	Transportation Security Administration (TSA) Pay Plans *Core Compensation Plan* – TSA has a pay banding system for GS-equivalent employees, including law enforcement officers. This plan covers air marshals and criminal investigators in a specialized law enforcement job category with a specific banding structure. This TSA system, which is modeled after the FAA pay plan, has higher pay ranges than the GS system. Also, the cap on locality-adjusted rates is EX-III (compared to EX-IV for GS employees). *TSA Senior Executive Service Plan (TSES)* – TSA has a pay plan for LEO senior executives that provides higher pay levels than the Governmentwide SES pay plan. The cap on locality-adjusted rates is EX-II (compared to EX-III for regular SES officials).	TSA law & administrative action under that law.
	U.S. Postal Inspection Service (USPIS) Pay Plans *Inspection Service Law Enforcement (ISLE)* – The ISLE pay plan covers Postal inspectors (ISLE-2335) in the USPIS. The ISLE schedule mirrors the General Schedule (GS). Postal inspectors receive the same locality payments as GS employees. Under 39 U.S.C. 1003, the compensation and benefits for Postal inspectors must be comparable to those provided for comparable levels of work in the Executive branch outside of the Postal Service. (See Public Law 104-208, div. A, title I, sec. 101(f) (title VI, sec. 662(c)(2), September 30, 1996.) The Postal Service implemented this law by making the Postal inspector pay provisions parallel to those for GS criminal investigators. *Inspection Service Executive Schedule (ISES)* – The ISES pay plan covers USPIS senior executives (ISES-2335). Consistent with 39 U.S.C. 1003, this schedule mirrors the Governmentwide SES schedule (including locality payments).	39 U.S.C. 1003(c)
	U.S. Postal Service – Office of Inspector General (IG) Pay Plan The USPS IG pay plan includes coverage of criminal investigators. By law, the compensation and benefits of USPS IG employees must be	39 U.S.C. 1003(b)

	comparable to those provided for comparable levels of work in other IG offices in the Government. The USPS IG implemented this law by creating a broad-banding system with pay ranges directly linked to GS or SES pay ranges. For example, Band II, which is the normal journey level for IG criminal investigators, covers the pay ranges for GS-13 and GS-14. Similarly, the IGES band covers the same range as the SES pay rates.	
	Secret Service Uniformed Division (SSUD) Pay System The SSUD officer pay system is established in the DC Code. (Same pay system applies to Park Police officers in the Department of the Interior.) Covers police officers ranked from private to Chief. The SSUD officer pay system provides higher pay than is available for GS police officers. Basic pay is based on rank and years of total service.	DC Code § 5-545.01 § 5-563.02
	U.S. Park Police Pay System The Park Police Pay System is identical to the SSUD officer pay system.	DC Code § 5-545.01 § 5-563.02
	Internal Revenue Service (IRS) Broad-Banding System The IRS Restructuring and Reform Act of 1998 authorized the Secretary of the Treasury to establish one or more broad-banding systems to cover IRS employees under criteria established by OPM in a Federal Register notice. Using this authority, Treasury established a broad-banding system for IRS senior managers, including criminal investigators. By law, pay bands are linked to GS ranges.	Public Law 105-206 & 5 U.S.C. 9509 65 FR 79433, December 19, 2000
	Nuclear Regulatory Commission (NRC) General Salary Schedule and Senior Level (SN) Salary Schedule The NRC General Salary Schedule has been adopted by the Executive Director for Operations and the Inspector General and is applicable to GS-equivalent NRC employees, including criminal investigator positions. The NRC General Salary Schedule is generally identical to the Governmentwide General Schedule. The NRC Senior Level Salary Schedule is generally identical to the Governmentwide Senior Level (SL) Schedule.	Section 161.d of the Atomic Energy Act of 1954, Public Law 83-703, August 30, 1954
	Federal Deposit Insurance Corporation (FDIC) Pay Plan FDIC's Corporate Graded (CG) pay plan covers special agents as well as most other FDIC employees. All of the special agents are employed in the FDIC Office of Inspector General. By law, the FDIC pay plan must be comparable to the pay plans for other financial regulatory agencies. (See Public Law 101-73, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 or "FIRREA.") Pay levels are generally more generous than found in the GS system.	12 U.S.C. 1819
	National Credit Union Administration Credit Union (CU) Pay Plan The CU pay plan covers senior special agents. The NCUA is one of the financial regulatory agencies with an independent pay setting authority. These agencies are required to maintain comparability in pay and benefits with one another.	12 U.S.C. 1766(j)(1) and 1833b
	Securities and Exchange Commission (SEC) Pay Plan The SEC pay plan for GS-equivalent employees includes coverage of senior investigators who are LEOs. By law, SEC is required to maintain comparability in pay and benefits with other Federal financial regulatory agencies. (See the Investor and Capital Markets Fee Relief Act, Public Law 107-123, January 16, 2002.) Thus, pay levels are generally higher than GS pay levels.	Public Law 107-123; 5 U.S.C. 4802
	Farm Credit Administration (FCA) Pay Plan The FCA pay plan for GS-equivalent employees includes coverage of criminal investigators. The FCA is one of the financial regulatory agencies with an independent pay setting authority. These agencies are required to maintain comparability in pay and benefits with one another.	12 U.S.C. 2245
	Government Printing Office (GPO) Pay Plan	44 U.S.C. 305

	The GPO has a special pay schedule that covers criminal investigators. The GPO criminal investigator pay schedule has grades that correspond to GS grades, each with 10 steps like the GS. The pay schedule in effect on June 1, 2003, provides rates 10% higher than corresponding GS rates; however, these investigators do not receive availability pay like GS criminal investigators. The normal journey level is grade 12.	
	Commerce – Foreign Service Salary Schedule The Foreign Service salary schedule includes coverage of agents within the U.S. Foreign and Commercial Service, Export Control Attaché, who are LEOs. Although most Foreign Service officers are covered by the Foreign Service retirement system and therefore do not meet the definition of LEO, these agents are covered by title 5 retirement systems and therefore meet the LEO definition. (See the Export Administration Act of 1979.)	50 U.S.C. 2401-2420
	DOD – Defense Protective Service (DPS) Pay Plan DPS police officers are covered by a special pay system administered by the Secretary of Defense. (See section 1101 of Public Law 107-107, December 28, 2001.) DOD has administratively adopted the same pay plan that applies to SSUD officers (see above). While DPS police generally do not have LEO status, DOD reports that some officers have such status.	10 U.S.C. 2674(b)
	DOD - Defense Civilian Intelligence Personnel (DCIP) System* The DCIP system is established under title 10 but uses the General Schedule pay ranges and rules. It covers employees classified in the Intelligence occupational series and in the Senior Intelligence Executive Service, including some LEOs.	10 U.S.C. 1601-1614
	DOD – Demonstration Projects DOD has several demonstration projects with broad-banding systems. DOD reported having a small number of LEOs covered by such projects: - *DOD Civilian Acquisition Workforce Demonstration Project:* Covers some LEO positions. (See sec. 4308 of Public Law 104-106, National Defense Auth. Act for FY 1996, as amended by sec. 845 of Public Law 105-85, National Defense Auth. Act for FY 1998.) - *DOD Scientific and Technical Laboratories:* - NAVSEA/SYSCOM Warfare Centers covers some LEO positions. - Army demonstration projects cover some LEO positions. (Statutory authority for the DOD Labs is found in sec. 342 of Public Law 103-337, Oct. 5, 1994, National Defense Auth. Act for FY 1995, as amended by sec. 1114 of Public Law 106-398, Oct. 30, 2000, National Defense Auth. Act for FY 1995.)	5 U.S.C. 4701-4705 and DOD laws (see left column)
Overtime and Other Premium Pay		
Overtime (OT) pay	**SSUD and Park Police Officers** OT rate = 1.5 x basic rate at lower ranks; straight rate at higher ranks (Lieutenant and above).	DC Code § 5-1304(d)(1)
Sunday pay	**TSA LEOs** Same as under title 5, except that TSA employees receive 25% Sunday pay only for nonovertime hours that actually fall on Sunday. (Same as FAA rule.) (Note: The TSA rule is less generous than the title 5 rule in 5 U.S.C. 5546(a) which provides 25% Sunday pay for each nonovertime hour that is part of a tour that falls in whole or in part on Sunday.)	TSA law and requirement to follow FAA rules unless TSA modifies.
Night pay	**TSA LEOs** Same as under title 5, except that TSA employees may not receive 10%	TSA law and requirement to

	night pay during paid leave hours. (Same as FAA rule.) (Note: The TSA rule is less generous than the title 5 rule in 5 U.S.C. 5545(a), which provides night pay for paid leave hours during night hours as long as total hours of paid leave during the pay period are less than 8 hours.)	follow FAA rules unless TSA modifies.
Holiday work pay	**SSUD and Park Police Officers** 100% premium for nonovertime holiday work; same as title 5 except that 30 minutes or more is rounded to full hour. (These officers are also covered by title 5 holiday pay under 5 U.S.C. 5541(2)(iv)(II). SSUD reported that is applied the DC code rule.)	DC Code § 5-521.01-03
Premium pay caps	**TSA LEOs** TSA generally follows title 5 premium pay caps, but has grandfathered some employees who were hired before it decided to apply those caps. (Note: FAA does not have premium pay caps. TSA initially followed that FAA policy, but then modified it.)	TSA law and administrative application.
	SSUD and Park Police Officers SSUD officers are subject to a premium cap in the DC Code, which follows the old rules for LEOs in 5 U.S.C. 5547 before that section was amended—lower of EX-V or 150% of GS-15, step 1, rate (including locality pay).	DC Code § 5-1304(b)(3)
	Secret Service Employees Performing Protective Duties A special *annual* premium pay cap applies to Secret Service agents and certain other employees who perform protective duties under 18 U.S.C. 3056(a). The cap is at the same dollar level as the standard title 5 premium cap in 5 U.S.C. 5547 but is mandatory rather than permissive.	Section 118 of the Treasury General Appropriations Act, 2001 (section 1(3) of Pub.L. 106-554).
Availability pay	**TSA Investigators** TSA investigators are entitled to retirement-creditable availability pay on the same basis as criminal investigators under the regular title 5 rules (but administered by TSA instead of OPM). Thus, title 5 caps now apply, but TSA is paying above those caps for a grandfathered group.	TSA law and administrative application.
Compensatory time off	**SSUD and Park Police Officers** Similar to title 5 except that fractional hours are rounded to the nearest hour.	DC Code §5-1304(d)(2) & (f)
Premium Pay (General)	**Postal Inspectors** USPIS Postal inspectors receive premium pay (including availability pay) in the same manner as GS criminal investigators. Also, Postal inspectors are subject to premium pay caps that parallel those in 5 U.S.C. 5547. (While parallel to the entitlements for GS criminal investigators, the Postal Service administers these pay provisions for Postal inspectors, instead of OPM.)	39 U.S.C. 1003(c)
	Postal Service IG Criminal Investigators These investigators receive premium pay (including availability pay) in the same manner as GS criminal investigators, subject to the same caps.	39 U.S.C. 1003(b)
	TSA LEOs TSA has independent authority (like FAA) to establish premium pay rules for its employees; however, except as noted above, TSA is following rules that parallel title 5 premium rules with respect to its LEOs.	TSA law and administrative application.
Leave		
	TSA LEOs TSA senior executives may be placed in the 8-hour leave accrual category and given a starting leave balance of 40 hours, regardless of the amount of Federal service. (Same as FAA.)	TSA law and requirement to follow FAA rules unless modified.
Retirement		
DC police retirement plan	**SSUD Officers & Secret Service Agents** While most SSUD officers and Secret Service agents are covered under FERS, a closed group of non-FERS officers/agents are covered under the DC police retirement plan. Before FERS, SSUD officers were covered by the DC police retirement plan. Also, CSRS-covered Secret Service agents are eligible to transfer to the DC police retirement plan (based on having	DC Code § 5-701(1) & 5-703

	10 years or more of time directly related to the protection of the President). Secret Service retirees under the DC police retirement plan are not subject to the reemployed annuitant offset that applies (absent a waiver) to CSRS/FERS retirees who are employed by the Federal Government. Secret Service retirees in the DC police retirement plan are entitled to annuity adjustments based on changes in salary for active employees (equalization provision), while CSRS/FERS retirees receive cost-of-living adjustments (COLAs). (Note: Formerly DC police were covered by such an equalization provision; however, all DC police who retired on or after February 15, 1980, receive COLAs instead of an equalization adjustment.)	

B. Other Employees (Non-LEOs) With Arrest Authority

Type of Pay or Benefit	Description of Nonstandard Pay and Benefits	Statutory and Regulatory Citations
Basic Pay System		
Basic pay system	**Postal Security Officers** The USPIS employs US Postal Security Force personnel; bargaining unit employees are compensated under the Postal Police Officers' (PPO) schedule and supervisors/managers are compensated under the standard Postal Service Executive and Administrative Schedule (EAS).	USPS law.
	Veterans Affairs (VA) Police Officers VA employs GS-0083, police officers. While these officers are covered by the General Schedule, many are covered by higher special salary rates established by VA under a title 38 authority.	38 U.S.C. 7455
	Capitol Police Pay Plan By law, the basic pay plan for Capitol Police is established and maintained by the Capitol Police Board. The plan covers police officers (all ranks). The pay schedule for Capitol police is significantly higher than that for GS police officers and is higher than the schedules for SSUD and Park Police officers. (Note: Capitol Police officers receive retirement benefits equivalent to those for LEOs. See Retirement section below.) (Note: Under Public Law 108-7, Division H, Title I, Section 1015, Library of Congress police officers will be eventually transferred to the Capitol Police.)	40 U.S.C. 207b(a)
	Bureau of Engraving and Printing (BEP) and U.S. Mint Police Officers Bureau of Engraving and Printing and U.S. Mint (in Treasury) police officers are covered under a pay system administered by the Secretary of the Treasury. The rate of basic pay for these police may not be less than the minimum rate for GS-7 or more than the maximum rate for GS-15. The current BEP/Mint police pay schedule sets pay significantly above GS rates for comparable police officers but below the rates for SSUD officers and Park Police officers).	5 U.S.C. 5378
	Department of Defense – Defense Protective Service (DPS) Pay Plan The DPS police protect the Pentagon and surrounding areas. By law, DPS police officers are covered by a special pay system administered by the Secretary of Defense. (See section 1101 of Public Law 107-107, December 28, 2001.) DOD has administratively adopted the same pay plan that applies to SSUD and Park Police officers. The DPS pay plan also covers the Protective Service manager and the Deputy Chief.	10 U.S.C. 2674(b)
	National Security Agency (NSA) Police Officers* All NSA civilian employees, including police officers, are covered by a NSA-administered pay plan that mirrors the General Schedule.	10 U.S.C. 1601 et seq.

	Supreme Court Police Pay Plan The Supreme Court Police pay plan is identical to the pay plan for Capitol Police (comparing common ranks). The pay range for Supreme Court Police Chief matches the rates for the Capitol Police Deputy Chief except at steps 13-16. (Note: Supreme Court Police officers receive retirement benefits equivalent to those for LEOs. See Retirement section below.)	28 U.S.C. 13f and 672(b)
	Supreme Court Marshals* The Supreme Court Marshal, Chief Deputy Marshal, and Deputy Marshal for Security are covered under the Supreme Court Pay Schedule.	28 U.S.C. 672(a) and (b)
	Government Printing Office (GPO) Police Officers The GPO police officer pay schedule has grades that correspond to GS grades, each with 10 steps like the GS, but pay levels are higher. The normal journey level for GPO police officers is grade 5.	44 U.S.C. 305
	National Institute of Standards and Technology (NIST) Police Officers The National Institute of Standards and Technology (in Commerce) Alternative Personnel Management System is a broad-banding system linked to the GS that includes coverage police officers and supervisory emergency management specialists.	Public Law 99-574 Section 10 of Public Law 104-113, March 7, 1996
	National Zoological Park Police* By law, the Secretary of the Smithsonian Institute is authorized to fix the rates of basic pay for officers in the National Zoological Park police force. The maximum pay rates for various ranks are statutorily linked to the maximum GS rates for specified grades (e.g., GS-7 for privates) as opposed to using GS classification standards. The pay rates are identical to GS rates for corresponding grades.	5 U.S.C. 5375
	DOD - Defense Civilian Intelligence Personnel (DCIP) System* The DCIP system is established under title 10 but uses the General Schedule pay ranges and rules. It covers police officers.	10 U.S.C. 1601-1614
	DOD – Demonstration Projects DOD has several demonstration projects with broad-banding systems. The following projects are reported as covering some police officers: *- NAVSEA-SYSCOM Warfare Centers Project* *- Department of the Navy Alternative Personnel System ("China Lake"):*	Sec. 342 of Public Law 103-337, Oct. 5, 1994, National Defense Auth. Act for FY 1995, as amended by sec. 1114 of Public Law 106-398, Oct. 30, 2000, National Defense Auth. Act for FY 1995
	Department of State - Foreign Service - Diplomatic Security Service The Foreign Service is a rank-in-person rather than rank-in-position system. There are 9 classes in the Foreign Service (FS), with 14 steps within each class. Classes begin at the FS-09 level and rise to FS-01. The FS has two primary pay plans: FO for Foreign Service Officers and FP for Foreign Service Specialists. There are three classes within the Senior Foreign Service (SFS), but pay is broken out into 6 levels, to match the structure of the Senior Executive Service (SES). The final grade structure for FS positions was set at a somewhat higher level than the GS to account for the increased complexity of working in an overseas environment and other elements unique to FS work. Senior foreign service personnel and special agents are non-LEOs with arrest authority—all employed by the Diplomatic Security Service. (Note: These Foreign Service personnel are covered by the Foreign Service Retirement System and, thus, are not covered as LEOs under CSRS and FERS. See Retirement section below.)	22 U.S.C. chapter 52
	U.S. Agency for International Development - Foreign Service* AID employs special agents who are covered by the Foreign Service pay and retirement systems.	Public Law 96-465

Special Pay Supplements		
Foreign language bonus	**Customs Inspectors and Canine Enforcement Officers** Customs officers (in DHS) may receive up to 5% of basic pay to compensate for use of foreign language as part of job. (Same as foreign language award for LEOs under 5 U.S.C. 4523.)	Title 5 (5 U.S.C. 4523) and COPRA
Special differential	**U.S. AID Commissioned Foreign Service Special Agents** These special agents receive special differential of 15% of their basic pay instead of availability pay. They are covered by the Foreign Service pay and retirement systems.	Public Law 96-465
Overtime and Other Premium Pay		
Overtime pay	**Customs Inspectors and Canine Enforcement Officers** Customs officers (i.e., GS-1890 customs inspectors and GS-1801 canine enforcement officers): OT rate = 2 x basic rate.	COPRA
	Immigration Inspectors Immigration inspectors (in DHS) (for certain inspection work): OT rate = 4 hours at basic rate for each 2 OT hours or fraction thereof, if at least 1 hour is worked between 5:00 pm and 8:00 am (double time plus possible credit for time not worked due to use of 2-hour blocks).	1931 Act (covers immigration inspection work only)
	Postal Security Force (PSF) Officers Overtime pay rules for nonsupervisory PSF officers (PPO plan) are established by collective bargaining. PSF supervisors at EAS level 18 or below are eligible for additional straight-time pay when they are authorized to work more than 8.5 hours per scheduled work day, or at any time on a non-scheduled work day. All time worked that exceeds the normal work schedule will be paid at straight time rate if the authorized work exceeds one half-hour per day. All authorized time worked on a non-scheduled work day will receive additional straight time pay.	USPS law
	Capitol Police Officers At the rank of Lieutenant or higher, current policy allows for earning of compensatory time off, but no overtime pay. (Note: Under section 1009 of division H of Public Law 108-7, Feb. 20, 2003, the Capitol Police Chief may provide for overtime compensation for officers at rank of lieutenant and above, consistent with the overtime rules for SSUD and Park Police officers.)	40 U.S.C. 207b(a)
	Note: Under the standard title 5 overtime provisions, FLSA-covered employees receive 1.5 times the hourly regular rate for overtime hours and FLSA-exempt employees receive 1.5 times the GS adjusted basic hourly rate (subject to a cap equal to 1.5 times the GS-10, step 1, adjusted rate of basic pay).	
Commuting time pay	**Customs Inspectors and Canine Enforcement Officers** Credited with 3 hours at basic rate when called back within 16 hours of last regular shift, as long as OT does not start within 2 hours of next regular shift. (Note: Regular commuting time is not creditable under standard title 5 overtime provisions.)	COPRA
Sunday pay	**Customs Inspectors and Canine Enforcement Officers** 50% premium for Sunday work, which is defined as nonovertime hours in any daily tour that overlaps Sunday.	COPRA
	Immigration Inspectors When performing certain inspection work, immigration inspectors receive Sunday pay as follows: 2 days' pay at basic rate for any amount of time less than 9 hours worked on a Sunday (roughly 100% premium plus possible credit for hours not worked).	1931 Act
	Note: Under standard title 5 provisions applicable to most employees, Sunday pay is 25 percent of the GS adjusted hourly rate of basic pay for each nonovertime hour that is part of a tour that falls in whole or in part on Sunday.	
Night pay	**Customs Inspectors and Canine Enforcement Officers** 15% or 20% premium, depending on hours/shifts based on a majority-of-	COPRA

	hours-in-tour concept. Note: Under standard title 5 provisions, the night pay differential is 10% for regularly scheduled overtime hours between 6:00 pm and 6:00 am. See 5 U.S.C. 5545(a). Blue collar employees under the Federal Wage System, receive 7.5% or 10% night differential depending on hours/shifts based on majority-of-hours-in-tour concept.	
Holiday work pay	**Customs Inspectors and Canine Enforcement Officers** 100% premium for nonovertime holiday work (same as title 5 but not subject to title 5 premium pay caps).	COPRA
	Immigration Inspectors When performing certain inspection work, immigration inspectors receive holiday pay as follows: 2 days' pay at basic rate for any amount of time less than 9 hours worked on holidays (roughly 100% premium plus possible credit for hours not worked).	1931 Act
Premium pay caps	**Customs Inspectors and Canine Enforcement Officers** $30,000 annual cap on COPRA overtime and premium pay. COPRA overtime and premium pay are not subject to title 5 cap.	COPRA & appropriations law
	Immigration Inspectors $30,000 annual cap on all forms of overtime pay and 1931 Act premium pay. This cap covers all INS employees, not just inspectors.	1931 Act & appropriations law
	Capitol Police Officers Normally subject to a biweekly cap. Premium pay may not be paid to the extent it causes the sum of basic pay and premium pay to exceed $5,758.77 (which is the biweekly rate for the annual rate of $149,728). (Note: Under section 1012 in division H of Public Law 108-7, the cap is to be applied on an annual basis, not a pay period basis, during emergencies as determined by the Capitol Police Board.)	40 U.S.C. 207b(a)
Premium pay (general)	**Capitol Police Officers** These officers are not covered under the standard title 5 premium pay provisions. However, they are currently subject to parallel rules for holiday, Sunday, and night premium pay. The Capitol Police overtime rules for FLSA-exempt employees and their premium pay caps are different than the standard title 5 provisions and, therefore, are described above. (Note: Library of Congress police are covered under the standard title 5 premium pay provisions until they are transferred to the Capitol police. See 5 U.S.C. 5541(1)(D).)	40 U.S.C. 207b(a)
	Postal Security Force Officers These officers are not covered under the standard title 5 premium pay provisions. Information on overtime pay is provided above.	
	Supreme Court Police Officers* These officers are not covered under the standard title 5 premium pay provisions. No information on premium pay entitlements provided.	
Retirement		
Retirement-creditable basic pay	**Customs Inspectors** For customs inspectors and canine enforcement officers only, the first $15,000 of **variable** overtime pay in a year is treated as retirement-creditable basic pay. (Note: Certain law enforcement officers receive **regular** overtime supplements as retirement-creditable basic pay—AUO pay and availability pay.)	COPRA
DC police retirement plan	**Secret Service Special Officers** A closed group of Secret Service Special Officers otherwise covered under CSRS have transferred to the DC police retirement plan (based on having 10 years or more of time directly related to the protection of the President). (For more detailed discussion of the DC police retirement plan, see part A of this table.)	DC Code § 7-703
Foreign Service Retirement System	**Diplomatic Security Service Agents** Most (90%+) Diplomatic Security Service special agents are covered by	Public Law 105-382

	the Foreign Service Pension Plan (FSPS) and FICA (Foreign Service equivalent of FERS). A small number are covered by old Foreign Service Retirement and Disability System (FSRDS) or a transitional system with special law enforcement provisions.	
	AID Special Agents These special agents are covered by one of Foreign Service retirement plans.	
LEO-equivalent retirement benefits	**Capitol Police*** While not under the CSRS or FERS definition of LEO, Capitol Police officers are entitled to CSRS/FERS retirement benefits that are equivalent to those for LEOs. Under CSRS, Capitol Police officers are eligible for the enhanced annuity computation for Congressional employees, but with a limit so that no more than 20 years may be multiplied by 2.5% of average pay (same as LEOs—compare to 5 U.S.C. 8339(d)). May retire at age 50 with 20 years of service (same as LEOs—compare to 5 U.S.C. 8336(c)). Generally subject to mandatory separation at 57 (same as LEOs—compare to 5 U.S.C. 8335(b)). Under FERS, Capitol Police officers are eligible for same early and enhanced annuity benefits as LEOs.	5 U.S.C. 8335(c), 8336(m), and 8339(b) and (q) 5 U.S.C. 8412(d), 8415(d), and 8425(c)
	Supreme Court Police* While not under the CSRS or FERS definition of LEO, Supreme Court Police officers are entitled to retirement benefits that are equivalent to those for LEOs. Under CSRS, Supreme Court Police officers are entitled to the same annuity computation as LEOs. May retire at age 50 with 20 years of service (same as LEOs). Generally subject to mandatory separation at 57 (same as LEOs). Under FERS, Supreme Court Police officers are eligible for the same early and enhanced annuity benefits as LEOs.	5 U.S.C. 8335(d), 8336(n), and 8339(d) and (r) 5 U.S.C. 8412(d), 8415(d), and 8425(d)

Glossary:

1931 Act	Act of March 2, 1931, dealing with premium pay of immigration inspectional duties (46 Stat. 1467), which is codified at 8 U.S.C. 1353a and 1353b; applies to all INS employees who perform covered immigration inspection duties.
AID	Agency for International Development (in State Department)
AUO	Administratively Uncontrollable Overtime under 5 U.S.C. 5545(c)(2)
COPRA	Customs Officer Pay Reform Amendments, part II of subchapter D of title XIII of Public Law 103-66 (August 10, 1993), which amended section 5 of the 1911 Act (19 U.S.C. 261 and 267) and 5 U.S.C. 8331(3); applies to "Customs officers" who are defined as Customs inspectors and canine enforcement officers.
CPDF	Central Personnel Database File administered by the Office of Personnel Management
CSRS	Civil Service Retirement System (5 U.S.C. chapter 83)
DC Code	Statutory code for the District of Columbia Government
DOD	Department of Defense
DHS	Department of Homeland Security
DPS	Defense Protective Service (in DOD)
EX	Executive Schedule
FAA	Federal Aviation Administration (in Department of Transportation)
FERS	Federal Employees Retirement System (5 U.S.C. chapter 84)
GS	General Schedule
INS	Immigration and Naturalization Service (in DHS)
IRS	Internal Revenue Service
ISLE	Inspection Service Law Enforcement pay system for Postal inspectors in USPIS
LEO	Law enforcement officer as defined in CSRS or FERS law (5 U.S.C. 8331(20) or 8401(17), respectively) plus any Secret Service agent, SSUD officer, or Park Police officer covered by the DC Police and Firefighters Retirement and Disability System
OPM	U.S. Office of Personnel Management
OT	Overtime
PPO	Postal Police Officer in bargaining unit. Also, code for pay plan covering these officers.
SES	Senior Executive Service (as established in 5 U.S.C. 3131 and 3151)
SSUD	Secret Service Uniformed Division (in DHS)
TSA	Transportation Security Administration (in DHS)
TSA law	Section 114 of Public Law 107-171, November 19, 2001.
USPIS	United States Postal Inspection Service
USPS law	Law providing U.S. Postal Service (USPS) with independent authority governing pay for its employees—i.e., title 39 of the U.S. Code. In particular, see 39 U.S.C. 1005 as enacted by Postal Reorganization Act, Public Law 91-375, August 12, 1970, and 5 U.S.C. 2105(e), which excludes USPS employees from title 5 definition of "employee" for most purposes.

Appendix G2

SUMMARY OF SPECIAL LAW ENFORCEMENT PAY ENTITLEMENTS UNDER STANDARD TITLE 5 PAY SYSTEMS

(Note: Except as otherwise noted below, entitlement to the special pay provisions described below is based on the definition of "law enforcement officer" (LEO) in 5 U.S.C. 5541(3), which is linked to the definition in the retirement laws at 5 U.S.C. 8331(20) and 8401(17). See also the regulatory definition of LEO at 5 CFR 550.103.)

Summary of Pay Provisions in the Federal Law Enforcement Pay Reform Act of 1990 (FLEPRA) (Sections 401-412 of Section 529 of Public Law 101-509, November 5, 1990)

(Note: See Appendix G3 for copy of FLEPRA, as amended.)

Higher Base Pay Rates at Grades 3-10

Higher rates of basic pay apply to LEOs at grades GS-3 through 10. The rates are 3 to 24 percent higher than regular GS rates of basic pay. The increases are larger at the lower grades and then are gradually phased out. These higher rates are used as the base in computing locality payments and special geographic adjustments. (See section 403 of FLEPRA.)

Special Geographic Adjustments

In one locality pay area—Boston—LEOs receive a 16 percent geographic adjustment instead of the regular GS locality payment (i.e., 15 percent in Boston). (See section 404 of FLEPRA and 5 CFR 531.301-304. Originally, LEO geographic adjustments applied in seven other metropolitan areas; however, regular GS locality payments have now surpassed the LEO geographic adjustments in those other areas. The LEO geographic adjustments were designed to be temporary adjustments that provided immediate relief in addressing LEO staffing problems while the regular GS locality payments were being phased in more slowly.)

Higher Overtime Hourly Rate Cap

Under title 5, most FLSA-exempt employees are subject to a cap on their overtime hourly rate. A non-LEO's overtime hourly rate may not exceed the overtime hourly rate for GS-10, step 1. Thus, a higher-graded employee's overtime hourly rate may fall below his or her regular rate of basic pay. However, for an FLSA-exempt LEO, the overtime hourly rate may not fall below the LEO's regular rate of basic pay. (See 5 U.S.C. 5542(a)(4) and 5 CFR 550.113(b). Section 410 of FLEPRA was the source of this provision.)

Higher Relocation Bonus Cap

Relocation bonuses under 5 U.S.C. 5753 are capped at 25 percent of basic pay for most employees. However, for LEOs, the bonus may exceed 25 percent of basic pay as long as the dollar amount is no more than $15,000. (See section 407 of FLEPRA and 5 CFR 575.205(b).)

Foreign Language Bonus

Agencies may pay LEOs a cash award of up to 5 percent of basic pay for use of one or more foreign languages. (See 5 U.S.C. 4521-4523. Section 408 of FLEPRA was the source of this provision. Entitlement to these foreign language bonuses is based on the definition of "law enforcement officer" in 5 U.S.C. 4521, which parallels the definition in 5 U.S.C. 5541(3) while adding groups covered by section 405 of FLEPRA.)

Other Special Pay Provisions for LEOs

Law Enforcement Availability Pay

Criminal investigators generally are entitled to availability pay as a regular part of their compensation. Availability pay equals 25 percent of basic pay and is compensation for performing an average of at least 2 hours of unscheduled duty per workday. Availability pay is subject to the biweekly premium pay cap described in 5 U.S.C. 5547; thus, an investigator at high pay levels may receive less than 25 percent of basic pay. Availability pay is basic pay for purposes of retirement benefits, life insurance, and severance pay. (This means it generally increases an LEO's retirement annuity by 25 percent.) (See 5 U.S.C. 5545a and 5 CFR 550.181-187.)

Administratively Uncontrollable Overtime Pay

Certain other law enforcement officers (e.g., Border Patrol Agents) are entitled to administratively uncontrollable overtime (AUO) pay, generally equal to 25 percent of basic pay. While non-LEOs may receive AUO pay, it is basic pay for retirement and life insurance purposes only for LEOs. (See 5 U.S.C. 5545(c)(2) and 8331(3)(D) and 5 CFR 550.151-163. Entitlement to retirement-creditable AUO pay is based strictly on the definition in the retirement laws at 5 U.S.C. 8331(20) and 8401(17).)

LAW ENFORCEMENT OFFICER RETIREMENT

OPM Explanation of CSRS and FERS Law Enforcement Officer Retirement Benefits

This appendix explains the statutory provisions applicable to law enforcement officer retirement and the factors which have created differences in law enforcement officer retirement coverage.

EMPLOYEES WITH LAW ENFORCEMENT DUTIES
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EMPLOYEES WITH LAW ENFORCEMENT DUTIES
REPORT TO CONGRESS

OVERVIEW OF LAW ENFORCEMENT OFFICER RETIREMENT

I. Introduction

Special retirement eligibility and computational provisions were first enacted in 1947 for FBI agents. Over the years, the provisions have been modified on a number of occasions. In general, the current special retirement eligibility and computation provisions for law enforcement officers (LEOs) apply to employees primarily engaged in the "investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States." In addition, an employee in a LEO position who transfers directly from a primary or rigorous LEO position to a secondary supervisory or administrative LEO position retains LEO coverage in the secondary position. The current statutory definition of "law enforcement officer" is discussed in more detail below.

The stated purpose for the special provisions for law enforcement officers has been to make it possible for the Government to maintain a young and vigorous workforce through youthful career entry, continuous service, and early separation. Several provisions in the law work in combination to accomplish these goals. These provisions include the authority for agency heads to set a maximum entry age[1] for law enforcement officers, early retirement[2] of law enforcement officers with an enhanced annuity computation,[3] and a mandatory separation age.[4] Furthermore, the FERS definition of

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[1] The authority of an agency head to establish maximum entry age for law enforcement positions is set out at 5 U.S.C. 3307(d) and (e). In addition, the FERS definition of law enforcement officer states that duties of a law enforcement officer must be "sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals." See 5 U.S.C. 8401(17)(A)(ii).

Agencies typically set age 37 as the maximum entry age for law enforcement officer positions because it allows an employee to achieve 20 years of law enforcement officer service at age 57, the mandatory retirement age. However, under section 105(a) of Public Law 107-71, 49 U.S.C. 44917(a)(8), the Tranportation Security Administration may hire experienced retirees as Air Marshals regardless of age if the individual otherwise meets the background and fitness qualifications required for Federal air marshals.

There are approximately 900 LEOs age 57 or older working in the Federal Government (i.e., approximately 0.9% of the total LEO workforce). The group of LEOs who are age 57 or older is composed of LEOs working beyond age 57 under a waiver of mandatory separation, individuals hired beyond the maximum entry age of 37, and reemployed annuitants.

[2] Under CSRS, an employee can retire at age 50 with a minimum of 20 years of law enforcement officer, firefighter, or nuclear materials courier service. 5 U.S.C. 8336(c). Under FERS, an employee can retire at age 50 with a minimum of 20 years service as a law enforcement officer, member of the Capitol or Supreme Court Police, firefighter, or nuclear materials courier, or at any age with 25 years of such service. 5 U.S.C. 8412(d).

[3] Under CSRS the LEO annuity formula is 2.5% of average pay multiplied by service up to 20 years, plus 2% of average pay multiplied by service over 20 years. 5 U.S.C. 8339(d)(1). By contrast, regular CSRS employees receive 1.5% of the high-3 average pay multiplied by service up to 5 years; plus 1.75% of the high-3 average pay multiplied by the number of years of service between 5 and 10; plus 2% of the high-3 average pay multiplied by all service over 10 years. 5 U.S.C. 8339(a).

"law enforcement officer" provides that the duties of a law enforcement officer position "must be sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals...." See 5 U.S.C. 8401(17)(A)(ii). Under the FERS law enforcement officer regulations, agencies must establish a maximum entry age and physical qualifications for any position that is covered as an LEO position. See definition of "rigorous position" at 5 CFR § 842.803, and the evidence requirements at 5 CFR § 842.804(a). Under CSRS, physical and medical standards are not required, but agencies may establish a maximum entry age for a position covered as a law enforcement officer position, as discussed above. The effect that maximum entry age, physical requirements, early retirement, and mandatory separation have on the age distribution of Criminal Investigator groups is shown in Charts 5, 7, and 8 (pgs. 17, 19, and 20).

The special provisions for law enforcement officers have never been intended as a reward or compensation to employees for having performed a certain type of work. Consistent with the purpose of providing a management tool to maintain a young and vigorous work force, the enhanced annuity computation for law enforcement officers was designed to make early retirement economically feasible. Under both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), the law provides a higher annuity for law enforcement officers than that provided for regular employees. At age 50 with 20 years of service, the annuity is about 38 percent higher than under the normal formula (See Chart 1, pg. 13). Under FERS, the defined benefit is 70 percent higher (See Chart 2, pg.14). These percentages are based on the annuity calculation formula only and do not take into account the higher average salary resulting from the inclusion of certain overtime or premium pay that law enforcement officers may count as basic pay for retirement. Further, these early benefits are not reduced for age, as they would be for a regular employee retiring under an early retirement provision. The enhanced annuity formula was added to the law in 1974 to enable application of a mandatory retirement requirement without economic hardship to affected individuals.

Under FERS the LEO annuity formula is 1.7% of average pay multiplied by service up to 20 years, plus 1% of average pay multiplied by service over 20 years. 5 U.S.C. 8415(d). By contrast, the annuity formula for regular FERS employees is 1% or 1.1% of average pay multiplied by total years and months of creditable service under FERS. 5 U.S.C. 8415(a) and (g).

[4] In 1974, Public Law 93-350 established age 55 as the mandatory retirement age for CSRS law enforcement officers. The mandatory retirement age for law enforcement officers was raised by Public Law 103-283 to age 57. In order to be subject to mandatory retirement, an employee must have at lease 20 years of law enforcement service for eligibility for the law enforcement officer annuity computation. An agency head may retain a law enforcement officer until age 60 if he or she finds that it serves the public interest. See 5 U.S.C. 8335(b) and 5 U.S.C. 8425(b). A CSRS law enforcement officer may be retained beyond age 60 with OPM's permission. See section 1(3) of Executive Order 11228 (June 14, 1965). (The authority of the President under 5 U.S.C. 8335(e) to exempt an employee covered by the Civil Service Retirement System from automatic separation was delegated to the Civil Service Commission, the predecessor of OPM.) A FERS law enforcement officer may be retained beyond age 60 with the permission of the President.

Originally, OPM made CSRS LEO retirement coverage determinations. OPM used its authority over LEO retirement coverage determinations to ensure that the statutory requirements for coverage were appropriately applied and to monitor the costs of the program. The cost of CSRS LEO coverage is substantial because a CSRS law enforcement officer pays only 7.5% of pay, with a matching agency payment of 7.5% of pay. The CSRS normal cost for a law enforcement officer is 39.0%; therefore, the retirement benefits for a law enforcement officer are underfunded by 24.0%.

As part of its efforts to decentralize personnel functions and to place the decision-making responsibility in agencies that have the greatest interest in such determinations, OPM delegated FERS LEO decision-making authority to agency heads with the inception of FERS in 1987. Under this delegated authority, agencies ensure that the statutory requirements for FERS LEO coverage are met. In addition, this delegation was considered appropriate given the cost structure of FERS LEO coverage. With the passage of FERS, a pay-as-you-go system, retirement benefit costs are fully funded by employee and agency contributions. Under FERS, a law enforcement officer contributes 1.3% of basic pay, and the agency contributes 22.7% (for a total normal cost of 24.0%) of basic pay for retirement benefits.[5] Because the full cost of FERS retirement benefits is paid for by employee and agency contributions, with the primary financial burden on the agency, the agency must account for the costs of LEO benefits. CSRS LEO coverage decision making authority was extended to agencies in 1993.

II. Differences in Retirement Benefits Provided to Federal Employees Stem Primarily From Three Sources

The differences in retirement benefits provided to Federal employees stem primarily from three sources: the application of the statutory definition of "law enforcement officer"; legislation that has extended LEO retirement benefits to certain employee groups; and disparities in LEO retirement coverage as a result of litigation. Each of these sources is discussed in the paragraphs below.

II. A. The Statutory Definition of "Law Enforcement Officer"

The definition of "law enforcement officer" for the purpose of retirement does not include all occupations typically associated with law enforcement work. The definition of "law enforcement officer" has a narrow meaning. The requirements for law enforcement officer coverage are stated in the statutory definitions of "law enforcement officer" at 5 U.S.C. 8331(20) for CSRS, and 5 U.S.C. 8401(17) for FERS. Under these definitions the duties of a "law enforcement officer" must consist primarily of "investigation, apprehension, or detention of individuals suspected or convicted of

[5] In addition, under FERS an agency is obligated to match up to 5% of an employee's pay in defined contributions to the Thrift Savings Plan.

offenses against the criminal laws of the United States." Under the FERS definition, the duties of the position must also be "sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals...." The definition of "law enforcement officer" also includes an employee who moves directly (i.e., without a break in service exceeding 3 days) from a primary LEO position to a secondary position. Under FERS, LEO coverage in a secondary LEO position also requires 3 years of experience in a FERS rigorous LEO position.

To receive LEO coverage, the primary duties of an employee's position must meet the statutory and regulatory definitions of "law enforcement officer." Primary duties are those duties of a position that are paramount in influence or weight—that is, constitute the basic reasons for the existence of the position, occupy a substantial portion of the individual's working time over a typical work cycle, and are assigned on a regular and recurring basis. An employee who is occasionally or incidentally involved in investigation or apprehension is not a law enforcement officer for the purposes of retirement.

In addition, duties such as routine patrolling, securing crime scenes, and interviewing or detaining witnesses for interrogation are not criminal investigation duties included under the definition of "law enforcement officer." The term "detention," for example, has often been misinterpreted as meaning the temporary or preliminary detention of witnesses or offenders. However, the term "detention" in the statutory definition of "law enforcement officer" has been consistently interpreted as referring exclusively to the detention duties performed at a Federal correctional facility or otherwise guarding prison inmates and incarcerated persons.

The statutory definition of "law enforcement officer" has a limited meaning because Congress used FBI agents and Federal prison guards[6] as the principal models for the definition when it initially established the statutory requirements for law enforcement officer coverage. Furthermore, when Congress amended the LEO retirement provisions in 1974, it indicated that certain individuals, such as police officers, building guards, and inspectors are excluded from the definition because their primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States. *See* 119 Cong. Rec. H8193-94 (Sept. 20, 1973) (See Attachment 1, Tab 13). This exclusion is incorporated in sections 831.902 and 842.802 of title 5, Code of Federal Regulations. Most police

[6] Federal Prison Guards were granted enhanced retirement benefits by Public Law 80-879, when the term "detention" was added to the eligibility provisions for enhanced benefits. See Attachment 1, pg. 23-24 and Attachment 1, Tabs 4-6. Special retirement benefits were extended to non-custodial correctional employees (e.g., cooks, plumbers, electricians, etc.) subject to frequent and direct contact with prisoners by Public Law 84-854 in 1956. See Attachment 1, pg. 24, and Attachment 1, Tabs 9-12. An explanation of the history and rationale for this change is contained in the July 19, 1956, report of the House Post Office and Civil Service Committee (Report No. 2796) on S. 65, the language of which became part of 84-854. See Attachment 1, Tab 10.

officers, building guards, and inspectors in the Federal Government receive the same non-enhanced retirement benefits as other Federal employees.

II. B. Legislation has Extended LEO Retirement Benefits to Specific Employee Groups

Employees of Secret Service Uniformed Division (SSUD) and U.S. Park Police (USPP) are the subject of special statutory provisions. Duties involving the protection of officials of the United States against threats to personal safety are not included in the CSRS definition of "law enforcement officer" under 5 U.S.C. 8331(20). In general, the duties of a Secret Service Uniformed Division employee or a U.S. Park Police employee are the protection of life and property, duties that are outside the definition of a CSRS law enforcement officer. Prior to the establishment of FERS, Secret Service Uniformed Division and U.S. Park Police employees were covered by the D.C. Police Officers' and Firefighters' Retirement Plan. SSUD and USPP employees first hired before 1984 remain covered under the D.C Police Officers' and Firefighters' Retirement Plan; however, this is a closed group.[7] With the enactment of FERS, service in the Secret Service Uniformed Division and U.S. Park Police was made creditable as FERS law enforcement officer service by specific statutory provision at 5 U.S.C. 8401(17)(B). In addition, the FERS definition of "law enforcement officer" includes an employee whose primary duties are the protection of officials of the United States against threats to personal safety,[8] which is applicable to SSUD officers. SSUD and USPP employees hired after 1983 are covered under FERS LEO provisions.

[7] The provisions of D.C Police Officers' and Firefighters' Retirement Plan (DCPOFRP) applicable to SSUD and USPP officers are the provisions for Tier 1 member (i.e., an officer hired before February 15, 1980) and Tier 2 members (i.e., an officer hired on or after February 15, 1980, but before November 10, 1996).

A Tier 1 member can retire at any age with at least 20 years under DCPOFRP, and average base pay of a Tier 1 member is the average highest base pay during any 12 consecutive months. The regular annuity formula for a Tier 1 member is 2.5% of average pay multiplied by SSUD or USPP service up to 20 years, plus 3% of average pay multiplied by SSUD or USPP service over 20 years, plus 2.5% of average pay multiplied by other service over 20 years.

A Tier 2 member can retire any time after he or she turns age 50, with at least 25 years of service under the DCPOFRP. The average base pay of a Tier 2 member is the average highest base pay during any 36 consecutive months. The regular annuity formula for a Tier 2 member is 2.5% of average pay multiplied by SSUD or USPP service up to 25 years, plus 3% of average pay multiplied by SSUD or USPP service over 25 years, plus 2.5% of average pay multiplied by any remaining service.

[8] The CSRS definition of "law enforcement officer" at 5 U.S.C. 8331(20) does not include an employee whose duties are primarily the protection of officials of the United States.

However, with the enactment of FERS, employees engaged in protection of officials of the United States were expressly included in the FERS definition "law enforcement officer" under 5 U.S.C. 8401(17)(A)(i)(II):

(17) the term "law enforcement officer" means--

Since the duties of SSUD and USPP officers may be comparable in some respects to the duties of other Federal police officers, there is a difference between the FERS retirement benefits of SSUD officers, and various other police officers, including DOD police, VA police, Federal Protective Service officers, GPO police, Bureau of Engraving and Printing police, and Mint police. This difference is the result of the special statutory provisions discussed above.

II. C. Differences in Law Enforcement Officer Retirement as a Result of Litigation

Differences have arisen within groups of employees due to individual law enforcement officer determinations. At one time law enforcement officer coverage was decided solely on the duties assigned to a position. Due to certain administrative adjudications and judicial decisions, law enforcement officer coverage has shifted more to individual, case-by-case coverage determinations. This shift to individual determinations can be traced back to the decision in *Ellis v. United States,* 610 F.2d 760 (Ct.Cl.1979) (The Court of Claims overturned the longstanding policy that special retirement eligibility could only be based on official duties of an employee's position of record). Agencies make thousands of individual service credit determinations. Since these determinations are made on an individual, case-by-case basis and are fact-intensive, the resulting decisions tend to be inconsistent when viewed across employee groups. For example, GSA has four FPS Police Officers who have been granted law enforcement officer retirement through appeals to the U.S. Merit Systems Protection Board, while other FPS Police Officers do not receive law enforcement officer retirement coverage.

III. Basic Pay for Retirement

Law enforcement officer retirement coverage issues and pay issues are interrelated. Therefore, changes in the law enforcement officer retirement coverage of an employee group can have far reaching effects on pay and retirement benefits.

Retirement benefits are calculated by multiplying an employee's high-3 years' average salary by a percentage representing length of service. An employee's high-3 average salary is computed from the employee's basic pay under 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4). Basic pay for retirement includes regular salary and locality pay, and may

---

(A) an employee, the duties of whose position--
(i) are primarily--
(I) the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or
(II) the protection of officials of the United States against threats to personal safety; and
(ii) are sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals, as determined by the Director considering the recommendations of the employing agency. . . . [emphasis added]

include some types of premium pay. Increases in basic pay used to calculate the high-3 years' average salary result in increases in the retirement benefit.

In general, basic pay for retirement does not include bonuses, allowances, overtime pay, military pay, uniform allowances, lump-sum leave payments, or other pay given in addition to base pay of a position. For example, a regular employee who receives overtime pay may not include that pay as basic pay for retirement. However, the statutory definition of "basic pay" at 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4) includes specific types of additional pay that count as basic pay for retirement purposes under the Civil Service Retirement System and the Federal Employees Retirement System. These basic pay enhancements include availability pay under 5 U.S.C. 5545a paid to a Criminal Investigator, overtime pay under 19 U.S.C. 267 paid to a Customs Officer (currently capped at $15,000), standby pay under 5 U.S.C. 5545(c)(1), and administratively uncontrollable overtime (AUO) pay under 5 U.S.C. 5545(c)(2) paid to a law enforcement officer.

Therefore, the inclusion of overtime pay or premium pay in an employee's basic pay for retirement depends on the type of pay received by the employee and whether the employee is a criminal investigator, customs officer, or law enforcement officer.

IV. Factors Affecting Law Enforcement Officer Retirement

A number of groups of employees in the broad law enforcement community are not covered by the LEO retirement provisions. These groups include, but are not limited to, police officers and various inspectors (e.g., customs and immigration). These groups lack "law enforcement officer" retirement coverage because they do not meet the statutory definition of "law enforcement officer" under CSRS and FERS. Extending LEO retirement coverage to these groups cannot be accomplished administratively. Hence, from time to time, proposals are advanced to accomplish such extension by legislative action. A conscientious analysis of the impact of any such proposal must necessarily consider several factors.

IV. A. Governmentwide Effect

Law enforcement officer retirement is a Governmentwide program. Therefore, any proposed changes in the statutory LEO provisions would have to be examined for their Governmentwide effects, particularly with respect to the Federal Government's ability to compete with non-Federal employers. For example, if the definition of "law enforcement officer" were to be amended to include police officers, police at all agencies would be covered, including DOD, which has over 4,000 police officers, or VA, which has 2,300 police officers. Attempting to address that issue by limiting a legislative proposal to a particular agency, or agencies, could establish and perpetuate disparities within the rest of the Executive branch. Experience suggests that this would lead to an inevitable cycle in

which agencies independently and continually seek enhanced benefits in order to compete with other Federal agencies, as opposed to non-Federal employers.

IV. B. Prospective vs. Retroactive Application

If LEO retirement coverage were to be granted to new groups of employees, it would have to be decided whether coverage is to be granted on a prospective basis or on a retroactive basis. Generally, when designing or adjusting employee benefits provisions, it is considered a well-established principle that any changes should be made prospective only. However, in the case of retirement provisions, we face a particular design challenge in this regard.

Under the current retirement eligibility provisions, a law enforcement officer must have at least 20 years of LEO service for entitlement to the enhanced LEO annuity computation. Further, an agency cannot mandatorily retire an employee until the employee has completed 20 years of LEO service. If LEO retirement coverage were to be granted on a prospective basis to a class of employees, absent other significant statutory changes, most employees in the class would have to work an additional 20 years to accrue sufficient LEO service for entitlement to LEO annuity computation.

Because of the impact of the current mandatory retirement provisions noted above, if LEO retirement coverage were to be granted retroactively to a class of employees, some portion of the class would be immediately subject to mandatory separation (i.e., age 57 with 20 years of law enforcement service), or would be eligible for early retirement with a significantly enhanced benefit. This could result in an unintended loss of experienced personnel. See Non-LEO Age Distribution, Charts 6-8 (pgs. 18-20).

In addition, if LEO retirement coverage were to be granted to a class of employees under FERS, the employees in the class would be immediately and prospectively subject to physical and medical standards applicable to law enforcement officers. The imposition of physical and medical standards could result in a certain number of employees being deemed physically or medically unfit for further service as a law enforcement officer, which could also result in the unintended loss of experienced personnel.

IV. C. Cost

The cost of providing retroactive coverage could be high. In the past, OPM has estimated the cost of legislative proposals that would provide retroactive LEO coverage to various employee groups. Although the most recent estimate prepared by OPM is based on 1999 employee data and should not be considered as precisely accurate, it is still most illustrative of the scale of the costs involved. OPM's estimate indicates that extending LEO coverage to currently on-board Customs Inspectors, Customs Canine Enforcement Officers, Customs Operations Enforcement Officers, Customs Air Crews, DOD Police

Officers, Bureau of Engraving and Printing Police Officers, DEA Diversion Investigators, FPS Police Officers, Immigration Inspectors, and Secret Service Special Officers would increase the unfunded liability of the Retirement Fund by roughly $625 million. (This presumes full retroactive coverage for past service and full retroactive payment of additional agency and employee contributions would be provided. If retroactive payments were not provided, the increase in unfunded liability would be roughly $ 1.2 billion.) Extending LEO coverage to on-board employees in these groups would increase the agency annual payroll cost by about $38 million in the first year. The present value of additional agency contributions required in the future for the group of currently on-board employees would be roughly $938 million. For CSRS employees, the extra agency contribution would be 0.5% of basic pay (7.5% - 7.0%). For FERS employees, the extra agency contribution would be 12% of basic pay (22.7% - 10.7%). (The FERS costs more accurately capture the long-term future effect on agency budgets, since eventually all employees will be covered under FERS.)

The Administration has indicated its support for dynamic funding of employee benefits. Full funding requires that the cost of future benefits be funded at the time service is performed by the employee. If law enforcement officer retirement were to be extended to new employee groups, any unfunded benefits would be amortized over a specific period of years. FERS retirement benefits are already subject to dynamic funding with agencies bearing the full costs of retirement benefits not covered by employee contributions. In the case of CSRS, if law enforcement officer coverage were to be extended to new employee groups, dynamic funding would mean that agencies would bear the full normal cost for the enhanced CSRS LEO retirement benefits provided to agency employees (after taking into account employee contributions). Thus, agency CSRS contributions would increase significantly if CSRS employees were to obtain LEO retirement coverage under a dynamic funding approach.

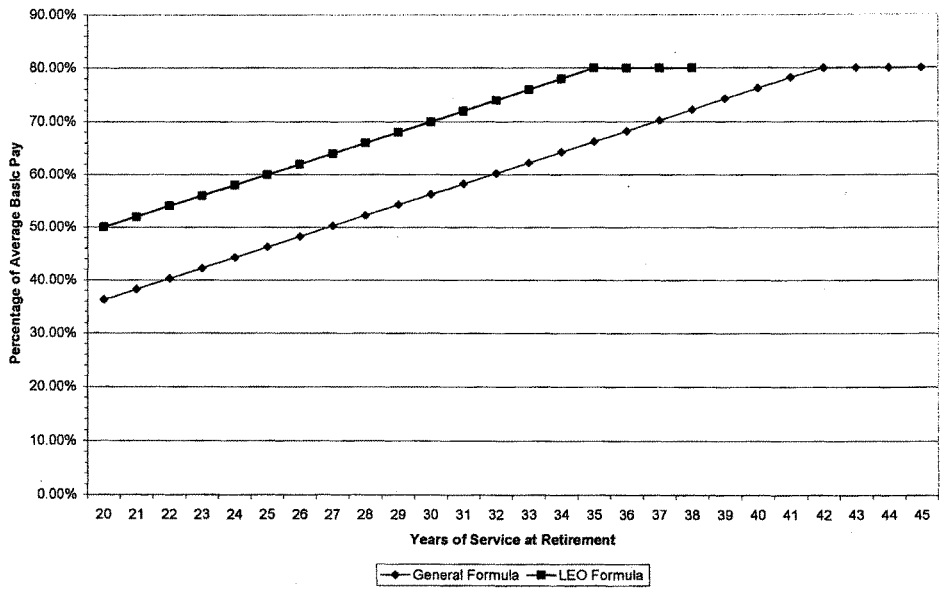
IV. D. Retirement-Related Pay Issues

LEO retirement coverage issues and pay issues are interrelated. Certain special pay provisions apply to employees who are covered under the LEO retirement provisions. (See definition of "law enforcement officer" in 5 U.S.C. 5541(3), which is used in determining eligibility for certain LEO pay entitlements in the premium pay law as well as other pay provisions.) General Schedule employees who have LEO retirement coverage are entitled to special LEO statutory special rates at grades 3 through 10. In the Boston locality pay area, employees with LEO retirement coverage are entitled to 16-percent LEO geographic adjustments, which is higher than the regular locality pay percentage. Thus, if law enforcement officer retirement coverage were to be extended to new employee groups, an affected employee's retirement-creditable basic pay could increase, which would result in a higher high-3 average salary. Also, for employees who receive Administratively Uncontrollable Overtime (AUO) pay, coverage under the LEO retirement provisions means that the AUO pay becomes retirement-creditable basic pay. (See 5 U.S.C. 8331(3)(D).) This could result in an employee's retirement benefits being

25 percent higher due to LEO retirement coverage even before considering the effect of the enhanced LEO annuity computation formula. The effect that premium pay has on annuity rates is illustrated by Charts 3 and 4 (pgs. 15-16), which illustrate hypothetical examples of how premium pay increases the annual annuity of a law enforcement officer.

EMPLOYEES WITH LAW ENFORCEMENT DUTIES
REPORT TO CONGRESS
CHART 1

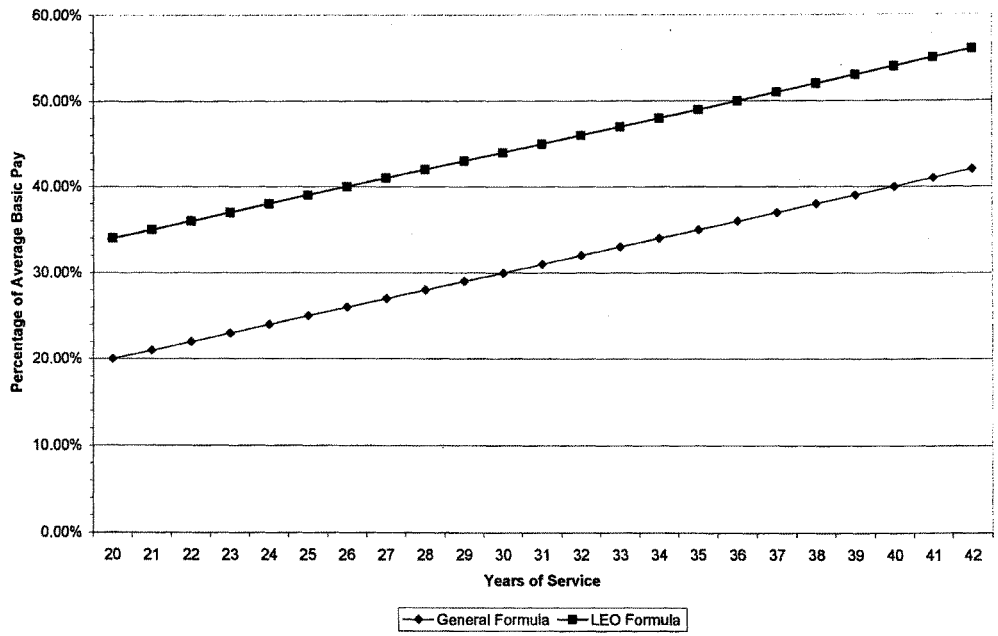
CSRS General Formula vs. CSRS LEO Formula



EMPLOYEES WITH LAW ENFORCEMENT DUTIES
REPORT TO CONGRESS

CHART 2

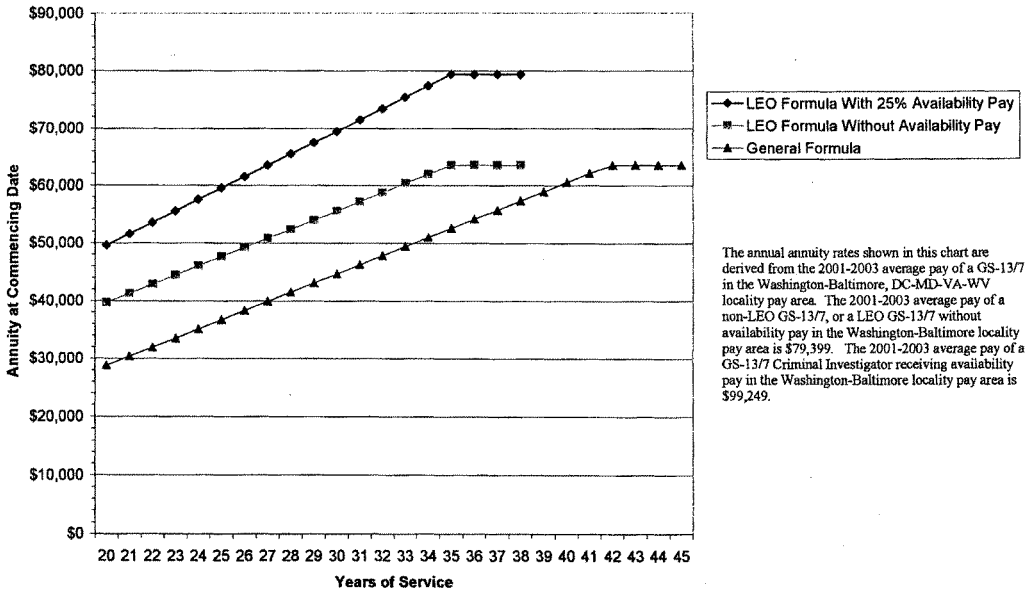
FERS General Formula vs. FERS LEO Formula



EMPLOYEES WITH LAW ENFORCEMENT DUTIES
REPORT TO CONGRESS

CHART 3

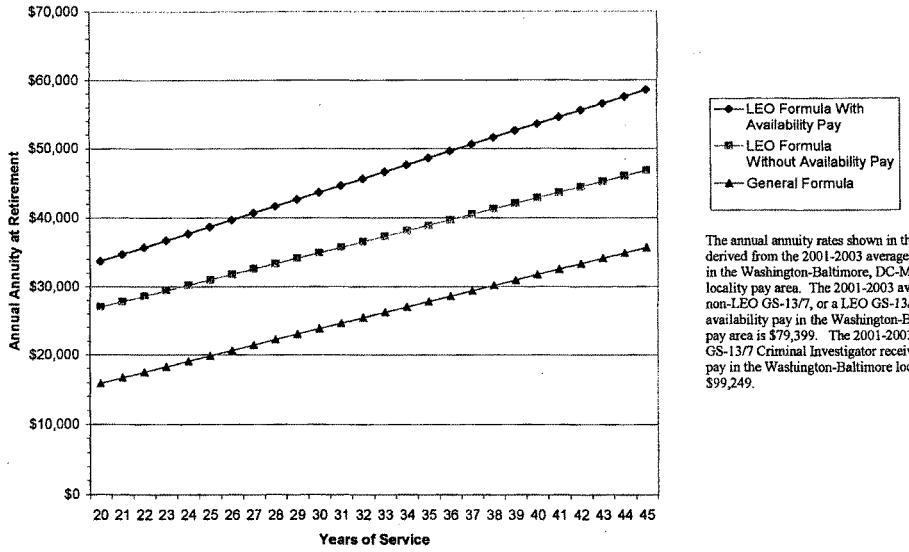
CSRS Annuity Rates: LEO Formula With 25% Availability Pay, LEO Formula Without Availability Pay, General Formula



The annual annuity rates shown in this chart are derived from the 2001-2003 average pay of a GS-13/7 in the Washington-Baltimore, DC-MD-VA-WV locality pay area. The 2001-2003 average pay of a non-LEO GS-13/7, or a LEO GS-13/7 without availability pay in the Washington-Baltimore locality pay area is $79,399. The 2001-2003 average pay of a GS-13/7 Criminal Investigator receiving availability pay in the Washington-Baltimore locality pay area is $99,249.

CHART 4

FERS Annuity Rates for a GS-13/7: LEO Formula With Availability Pay, LEO Formula Without Availability Pay, General Formula

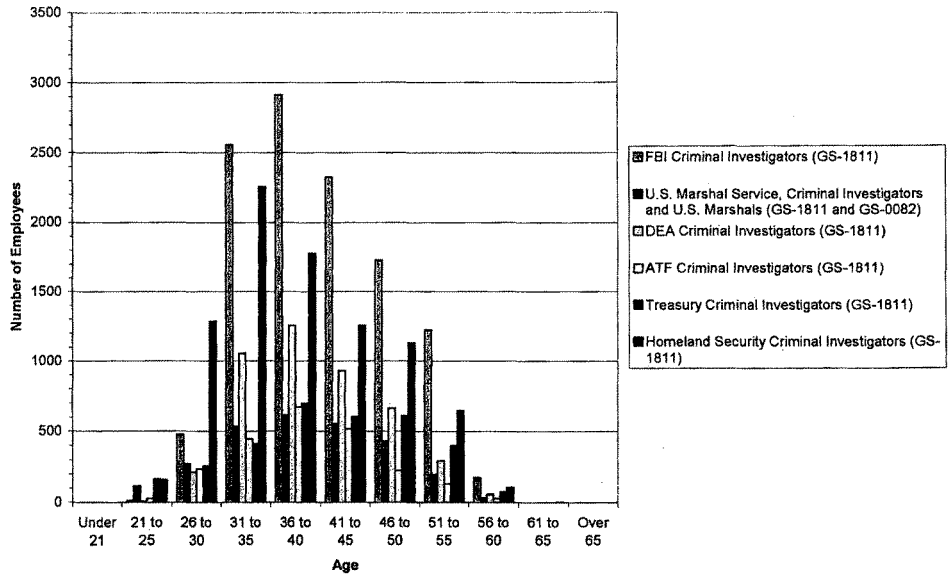


The annual annuity rates shown in this chart are derived from the 2001-2003 average pay of a GS-13/7 in the Washington-Baltimore, DC-MD-VA-WV locality pay area. The 2001-2003 average pay of a non-LEO GS-13/7, or a LEO GS-13/7 without availability pay in the Washington-Baltimore locality pay area is $79,399. The 2001-2003 average pay of a GS-13/7 Criminal Investigator receiving availability pay in the Washington-Baltimore locality pay area is $99,249.

EMPLOYEES WITH LAW ENFORCEMENT DUTIES
REPORT TO CONGRESS

CHART 5

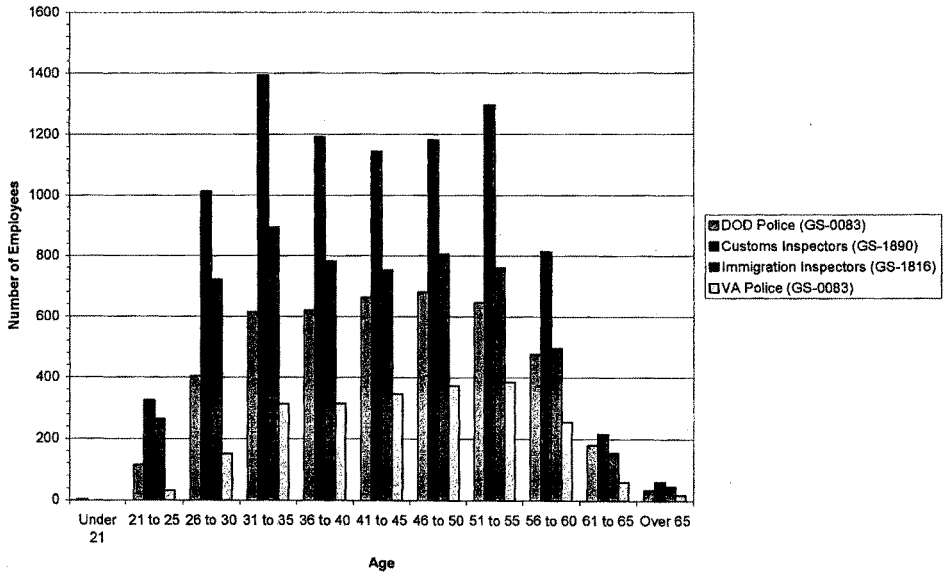
Age Distributions of Relevant Selected Employee Groups With LEO Coverage



EMPLOYEES WITH LAW ENFORCEMENT DUTIES
REPORT TO CONGRESS

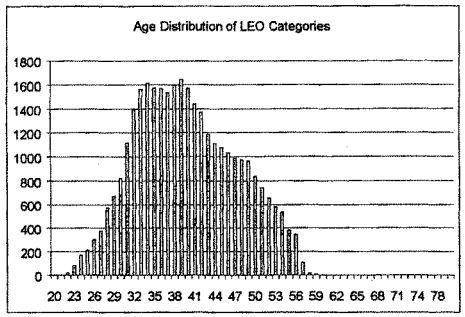
CHART 6

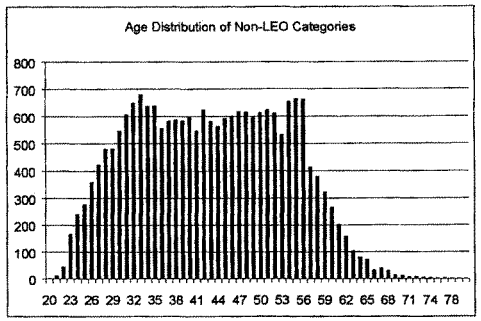
Age Distributions of Selected Relevant Employee Groups Without LEO Retirement



EMPLOYEES WITH LAW ENFORCEMENT DUTIES
REPORT TO CONGRESS

Chart 7: Statistical Analysis of Combined Age Distribution Charts



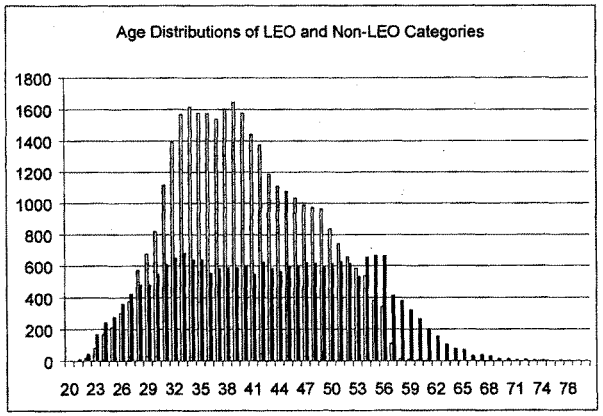


Category	N	Mean	Std. Deviation	Std. Error Mean	Skewness	Kurtosis
LEO	32,764	39.86204	7.538695	0.041648	0.203	-0.69585
Non-LEO	20,992	42.88215	10.60515	0.073196	0.078355	-0.90559

The table and charts above present certain statistical characteristics of selected relevant employee groups with LEO retirement coverage (LEO's) and without LEO retirement coverage (non-LEO's). While the sample is quite large, it is not the entire universe of LEO's and non-LEO's. The table indicates that individuals in the LEO category have an average age of nearly 40 years, while individuals in the non-LEO category have an average age of nearly 43 years. Three-fourths (75.1 percent) of the LEO group is 45 or younger, while just over one-half (57.4 percent) of the non-LEO group is 45 or under.

A *t*-test was conducted to examine the differences between the average ages of the two groups. Given such a large sample, the variance of individual cases around the average age can not necessarily be assumed to be equal between the two groups (and statistically they are not), and their averages ages are statistically different. An examination of the distribution of ages within the two groups is necessary to determine how the groups differ. See Chart 8.

Chart 8: Statistical Analysis of Combined Age Distribution Charts



It is apparent that the two groups have two distinctly different age distributions. The LEO group appears more clustered around a central point, but the distribution is also skewed away from a normal distribution to the left. The non-LEO group shows less clustering but also shows a more level distribution overall, born out statistically by its skewness statistic (completely normal distributions have a skewness statistic of zero).

The LEO group has an age standard deviation of 7.5, and the non-LEO group has a standard deviation of 10.6. The standard deviation is another measure of the spread of the ages in the distribution, with the LEO group being more closely clustered around the mean age than the non-LEO group. This point of divergence between the two groups further indicates dissimilarity in the distribution of ages. Examination of the age distribution charts suggests that individuals in the LEO category are skewed overall toward being younger, while individuals in the non-LEO are more evenly distributed across the range of ages. The distinctions in the two patterns are more evident when the distributions are shown together.

MEMORANDUM

To: Chairwoman Jo Ann Davis Subcommittee on Civil Service and Agency Organization

From: Staff of the Subcommittee on Civil Service and Agency Organization

Date: July 23, 2003

Re: Lessons Learned from Staff Visits to Various Federal Law Enforcement Agencies

Overview

On June 16 and 18, 2003, four staff members of the U.S. House of Representatives Committee on Government Reform Subcommittee on Civil Service and Agency Organization traveled to Los Angeles, Long Beach, San Diego, San Ysidro, and Otay Mesa, California, to explore personnel management issues affecting federal law enforcement agencies.[1]

June 16, 2003

Staff Visit to the Los Angeles International Airport

The staff of the Subcommittee met with officials from the Department of Homeland Security (DHS) at the Los Angeles International Airport (LAX) for an initial briefing. Larry Fetters, Acting Federal Security Director at LAX, provided an overview of DHS operations at the airport, which is the largest origination/destination airport in the world, and performs the most screening of any airport in the system. It handles 30 million passengers per year and 155,000 pieces of luggage per day.

Although DHS has authority for 2,405 screeners at LAX, it has only about 2,200 employed, all of whom have fixed, full-time schedules. DHS managers expect to receive authority to hire part-time employees to increase scheduling flexibility. They added that the Department now has about 55,000 airport screeners nationwide and that this number is expected to be reduced by about 6,000. Some of the reductions will result from new background reviews now being conducted on new employees who were hired during the rush to staff up. The Department is also removing people at LAX for excessive absenteeism and abuse of the traveling public. When DHS fires a screener, it places him or her on administrative leave while the human resources office considers any disciplinary action, but the employee has no formal appeal rights besides filing complaints of discrimination. Department officials stated, however, that there is a "quasi-grievance" procedure where the employee has the opportunity to explain and discuss the issues before being finally dismissed. Screeners enjoy whistleblower

[1] A minority staff member from the U.S. House of Representatives Committee on Government Reform participated in the activities that took place on June 16, 2003.

protections, like other Federal employees, and may file complaints with the Office of Special Counsel.

Screeners are not law enforcement officers within the meaning of title 5 of the United States Code. Mr. Fetters explained that local law enforcement officers, from both the LAX police force and the Los Angeles Police Department, have performed arrest and apprehension duties. DHS offers a $5,000 stipend for employees to relocate to California. The Lockheed Martin company has the training contract for all of the Transportation Security Administration and maintains an offsite training center near LAX.

One problem in managing the screener work force has been that some 100 screeners are assigned to support duties, including the human resources office. TSA has only two full-time human resources professionals to service the entire screener work force.

The Department's Bureau of Immigration and Customs Enforcement (BICE) includes the investigative agents of the legacy Customs Service and Immigration and Naturalization Service. The Associate Special Agent in Charge of legacy INS and Resident Agent in Charge of legacy Customs described their operations and stated that the transition to the Department of Homeland Security was going smoothly. Their units are comprised of investigative law enforcement officers and they have not had any particular staffing problems, but they noted that the cost of housing in California is a major concern. Agents are usually hired at grade 5 or 7 of the General Schedule (sometimes higher, depending on qualifications) and work their way up to the journeyman level of grade 13. Their appraisal process uses a pass/fail system. Both officials said they believe there are no morale or attrition problems due to pay issues. However, it was stated that the organization would benefit from a pay for performance system because it would allow management to use pay to encourage good workers and motivate lower performers.

The LAX Port Director for the Bureau of Customs and Border Protection (BCBP), described the vast challenge facing her organization: it must deal with three types of activity at LAX: air cargo, international air mail, and international passengers. Last year, 7.3 million international passengers passed through customs and immigration inspections. This number was down from the previous year's 8.1 million, but is expected to grow in the near future.

BCBP at LAX employs about 1000 inspectors among legacy Customs (about 350), INS (about 350), and Agriculture (about 150), all of whom are represented by unions as members of separate bargaining groups. Managers confirmed that the differences in overtime pay entitlements for these groups presents a challenge to unifying them under the new organization. Also, the performance appraisal system for BCBP employees at LAX varied by legacy organization: Customs uses a pass/fail system, INS a 5-level system, and Agriculture a point system. At present this organization's staffing is slightly over the authorized level because BCBP has been hiring for projected attrition.

Management is not opposed to the creation of a pay for performance system, but would be concerned about the potential for an increase in grievances and EEO complaints that might arise. At least half of the inspector work force at LAX are dues paying members of unions.

Following this briefing, staff members were given a tour of DHS operations at LAX, observing primary and secondary customs and immigration inspections of passengers, as well as agricultural inspections and pre-flight baggage and passenger screening operations. In particular, staffers were given a demonstration of the x-ray machinery that is used for passengers who do not want to be touched during secondary inspections. The machinery uses a low level of radiation to allow inspectors to see through the traveler's clothing and detect contraband. Other methods are used for interdiction of contraband that has been swallowed or otherwise concealed inside the traveler's body.

Staff Visit to the Port of Long Beach

In the afternoon of June 16, 2003, officials escorted the staff members to the Port of Long Beach, for a demonstration of the VACIS equipment used to inspect for contraband inside containerized cargo. Without having to enter the container, inspectors can view an image created by the equipment – scanning from outside the container – and displayed on a computer screen. The inspectors can recognize anomalies in the cargo that may reflect contents that are not as described on the lading document, triggering the need for manual inspection of the entire contents of the container. The Port is a vast operation covering thousands of acres of freight containers, presenting clear problems for the Department and its ability to cover a large amount of freight.

Staff Visit to the FBI Office on Long Beach, California

On the evening of June 16, 2003, Subcommittee staff members met with about 25 FBI Special Agents from the Long Beach, Los Angeles, San Diego, and San Francisco offices to discuss what they termed an "immediate crisis" in the high-cost-of-living areas. Each agent discussed his or her particular financial difficulty, most of which stemmed from being unable to purchase a home without obtaining significant help from friends or family or having a working spouse. An informal survey taken of agents in the San Francisco office revealed that the majority of San Francisco agents rent rather than own their own property.

A look at the San Francisco area serves as a telling example of the disparity in pay between federal and state and local law enforcement agencies. The highest salary a starting FBI Agent in San Francisco can make is $59,200 (this includes locality and availability pay); whereas, the starting salary for a rookie at the San Francisco Police Department is $75,000. Moreover, unlike San Francisco police officers, FBI agents are not permitted to moonlight. The median cost of a single-family home in San Francisco, as of May of 2002, is $439,000. The maximum amount a family can afford with an

income of about $59,000 is approximately $205,000, more than half of the going rate for an average small home.

The agents described how they are sinking into debt and compromising their retirement plan by not putting in the full amount in order to make ends meet. Most of the agents are living month to month and cannot save any money. Moreover, because of the great financial constraints put on the agents in these high cost of living areas, many of them are forced to commute long distances. Not only do long commutes strain family life since the agents are already working ten plus hours a day in this post September 11th era, but they can also result in delayed response time to an emergency situation. In addition, because the FBI requires highly trained individuals with special skills and advanced degrees, most agents are hampered with significant student loans.

The agents all agreed that the locality pay method is "outdated" and "egregious." The agents explained that agents in some cities, like Houston, get a larger amount of locality pay than the agents in San Francisco even though the cost of living is not as high as it is in San Francisco. The agents pointed out that although there may not be a demonstrated retention problem yet, many agents in these high-cost of living areas are contemplating transferring to a different office or leaving the FBI altogether. Moreover, the agents stated that in the high-cost metropolitan areas the experience level drops dramatically because experienced agents are transferring to less costly areas. The agents further explained that this "brain-drain" is particularly disturbing since the FBI depends heavily on experience. One San Francisco agent said that the FBI couldn't even get people to manage in the San Francisco office. Although the recruitment numbers may not demonstrate such a problem, the agents stated that they are having a very difficult time recruiting "star performers," who would like to work for the FBI but could not take a significant cut in pay.

The agents clearly demonstrated a significant morale problem. The agents made clear that they are not trying to get rich – but just trying to make a decent living and "provide for our families." The agents just want to be able to live the "American dream" by being able to purchase a home and not live "paycheck to paycheck." The agents pleaded that something needed to be done and all seemed to endorse H.R. 1676, which was introduced this Congress (108th) by Congressman Mike Rogers (Michigan).

June 18, 2003

Staff Visit to the San Ysidro and Otay Mesa Point of Entry

On Wednesday, June 18, 2003, Subcommittee staff began the day at the San Ysidro Point of Entry with officials under the Border Transportation Security Directorate headed by Undersecretary Asa Hutchinson. We met with personnel from both the Bureau of Customs and Border Protection (BCBP) and the Bureau of Immigration and Customs Enforcement (BICE).

BICE enforces the immigration and customs law within the interior United States. It combines the enforcement and investigative arms of the former Customs Service, INS, and Federal Protective Services.

BCBP combines the former APHIS agricultural inspection program, elements of the INS inspection services and Customs Service, including canine enforcement officers. BCBP focuses its operations on the movement of goods and people across the nation's borders.

BCBP officials indicated that the hiring of new officers is slow because of necessary background checks. The agency is experiencing a 10-20% attrition rate per year, which they attributed to the high cost of living in the San Diego division and the absence of LEO retirement coverage. Much of the attrition can be attributed to internal movement of officers to other positions in DHS that offer better pay or LEO coverage, or to BCBP positions in other parts of the country that enjoy a lower cost of living.

Some entry-level BCBP officers commuted as much as 100 miles one way because they could not afford the housing costs in the San Diego division. Officials said that the high concentration of military in the San Diego area skewed cost of living measures for the area. Specifically, the military presence depressed salary averages for the area, and since the military subsidizes housing or provides on-base living quarters, the salary averages for San Diego are not commensurate with the high housing costs for the region.

Officials informed the Subcommittee that the inspection job at the border is dangerous, with officers encountering criminals on a daily basis. There are approximately 10 "port runners" a month (someone who drives through the border checkpoint without stopping), with an average of eight or nine being apprehended.

Staff Visit to the San Ysidro Border Patrol Headquarters

Work Hazards

Subcommittee staff visited with Border Patrol officers in San Ysidro to discuss their work conditions and standard of living. Staff also toured the border around San Ysidro by helicopter and by vehicle.

Officers noted that they faced danger from two major factors. First, a study has shown that 15-18% of the individuals illegally crossing the Southern border are criminals, and this has added to the danger of apprehending suspects. Border agents are sometimes pelted with rocks by illegal aliens and drug smugglers. Their attempts to stem the illegal drug trade also put them at the risk of violent confrontation.

The second risk factor they face is the rugged terrain around the SanYsidro Mountains. Though they have four-wheel drive vehicles, two have turned over in recent years, killing the agents inside.

Pay and Cost of Living

They also noted that the cost of living in the San Diego sector was very high, with median housing costs averaging about $350,000. Locality pay for the San Diego sector is 8%, while locality pay in Orange County is 16%. Patrol Agents claimed that homes cost less in Orange County. The cost of living results in a high attrition rate for the San Diego sector.

The San Ysidro Border Patrol commander suggested that joining the Border Patrol should be identified as a career path into more lucrative positions in other agencies, such as special agents for the BICE and FBI. The commanders said they had worked with BICE Special Agents who had been hired with no previous law enforcement experience, and that they had trouble with the apprehension and detention of criminals. They had difficulty "projecting authority," and would benefit from the experience gained as a Border Patrol agent.

The commanders stated that giving Border Patrol agents hiring preference for FBI and BICE positions would help stabilize the Border Patrol workforce in the San Diego region as it would be a clearly identified career path for agents entering the service in that area. As it stands, most entry-level Border Patrol agents do not have enough income potential for them to make a longer-term commitment to the San Diego region.

Regarding the new DHS human resources management system, they stated that they face a "sophisticated foe" in the drug smugglers on the Mexican border, and that any new paybanding system should reflect the differences in job responsibilities of the various Border Patrol agents.

The commanders also stated that with the new focus on intercepting agents of terrorism, the Border Patrol job was becoming more investigative in nature, and that the Patrol needed more personnel trained and identified as "investigative" in character.

Recruitment and Force Quality

One of the commanders of the San Ysidro office complained that they are required to admit too many unqualified applicants for their academy. "Unqualified applicants" would include those that do not meet the physical requirements, or who have little or no law enforcement experience or general work experience. They are getting pressure from their Washington headquarters to accept lower quality applicants to create the perception that there is an adequate flow of candidates available to fill vacant positions. They said it cost them too much to filter out unqualified individuals at the academy and it also impacts the quality of the force. Using www.usajobs.opm.gov, some applicants are being approved for the academy via the internet. These candidates often have no significant job experience, and lack adequate security checks.

Mrs. DAVIS OF VIRGINIA. Finally, I ask unanimous consent that a memorandum prepared by my staff be entered into the record within 14 days of this hearing. The memorandum will detail the lessons learned from the trip that my subcommittee staff took to California last month to speak with Federal law enforcement officials. The minority staff will have 14 additional days to submit its views. Without objection, so ordered.

I would like to thank our very distinguished first panel consisting of Members of Congress and to say that we may be joined by a couple of gentlemen from the other side of the Capitol, Senator Dodd and Senator Schumer. It is clear that this issue is quite important to a large number of people by the number of folks that called and wanted to be witnesses. Since we have three large panels, I will urge everyone to please wrap up in 5 minutes or less so we can have plenty of time for everyone.

The subcommittee is fortunate to have four Members of the House: Representative Peter King from New York, Representative Bob Filner from California, Representative Mike Rogers from Michigan and the fourth Member, who should be joining us shortly, Representative Chris Van Hollen, who is also a member of the subcommittee, from Maryland.

I would like to thank you first, Representative King, for coming; and we will begin with you.

STATEMENT OF HON. PETER KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. KING. Thank you very much, Madam Chairlady, Chairman Souder, Mr. Cummings, Mr. McHugh. I will take your admonition, and I will submit my statement in the record and make some very brief remarks on an issue which is extremely important to me.

I want to identify myself with all of the comments that were made by the members on the panel, especially Chairman Souder when he was talking about the problems resulting from the pay differentials. I certainly see it in New York. And, as Chairman Souder said, the areas of the country that most require cooperation between Federal law enforcement officials and local law enforcement officials are often the most expensive and the highest cost-of-living.

My father was a New York City police officer for over 30 years so I have a some idea how tough the job is, both at the Federal and at the local level. I also realize how important morale is. I also realize that since September 11 how local police departments all over the country are actively recruiting to get the very best they can. Their pay scales often are much higher than what is being paid at the Federal level, and yet there is extraordinary pressure being put on our Federal law enforcement.

As Congressman McHugh was pointing out, the whole idea of border patrols, the FBI, Secret Service, all of the Federal law enforcement officials whose job was tough enough on September 10, 2001, has increased exponentially since September 11. If we are going to have the quality Federal law enforcement we need, if we are going to maintain the morale that's needed to have effective Federal law enforcement and if we are not going to be losing people by attrition or going to other agencies, I believe it is absolutely essential we update the locality pay adjustments.

As Chairman Souder said, we have gone more than a decade where really nothing of consequence has been done. Instead, we have this hodgepodge of different regulations, different rules.

Certainly from Federal law enforcement officials I have spoken to there is a definite decline in morale. I know of cases in the New York area where Federal law enforcement officials have left to join local police departments. I can certainly understand it, but it is something we can ill afford at the Federal level, to be losing this type of talent and this type of ability.

We see it here in our own Capitol Police. You saw the hours they were putting in after September 11. So I would ask you certainly to give my legislation consideration.

Obviously, there is other legislation that's needed. Something has to be done. The issue of locality pay adjustments just has to be confronted and has to be met. I am proud there are 225 cosponsors of my legislation and, I think, 33 members of the Government Reform Committee. It does not have to be one particular bill or one particular piece of legislation. The important thing is we move forward.

My colleagues have important things to say. There are other Members who feel strongly about this issue, and I know Senator Dodd has introduced a companion bill to mine in the Senate. He certainly feels strongly about this.

Again, this is a bipartisan issue. It is an issue that affects our entire country. So I would just ask that this legislation be considered.

I thank you for chairing this hearing, Chairman Souder for his work, and I yield back the balance of my time.

Mrs. DAVIS OF VIRGINIA. Thank you, Representative King.

[The prepared statement of Hon. Peter King follows:]

Testimony Of
Congressman Peter King (R-NY)

"Personnel Issues Affecting Federal Law Enforcement & Pay Reform"

House Committee on Government Reform

Subcommittees on:

Civil Service and Agency Reorganization

&

Criminal Justice, Drug Policy and Human Resources

July 23, 2003

Chairwoman Davis, Chairman Souder, Ranking Members Davis and Cummings, Members of the Subcommittees, I appreciate the opportunity to testify before you today on an issue that is very important to the men and women serving to protect us from terrorism and crime.

I will be certain to keep my remarks short and concise as I am sure members from other organizations, such as the Federal Law Enforcement Officers Association, will be able to answer and testify to the day-to-day personnel issues that confront federal law enforcement.

As the son of a New York City Police Officer, I believe it is imperative that law enforcement officers have a livable wage. We need to draw dedicated and talented professionals to perform the difficult work that keeps us safe and secure. It should be a

priority of Congress that the best and brightest are working in federal law enforcement.

Unfortunately, federal law enforcement agencies are not only combating crime they are confronting serious retention and recruitment problems within their departments. It should trouble many to see federal law enforcement agencies in high cost areas with zero applicants for supervisory positions or a job announcement without a closing date.

We must face the reality that many detectives on the local and state level are paid substantially more than their federal law enforcement counterparts. This disparity presents numerous problems - especially for recruitment and retention.

To counter this, I have introduced H.R. 466, the Federal Law Enforcement Locality

Pay Adjustment Act, which to date, has 225 cosponsors, including 33 members of the Committee on Government Reform.

H.R. 466 will ease the pay disparities for federal agents, including our own U.S. Capitol Police, by increasing the locality pay adjustments paid to them and by allowing supervisory personnel to make more than their subordinates – a must if we are to attract experienced candidates for supervisory positions. In fact, under the current system, many mid and high-level supervisors do not make more than their subordinates. It would be foolish to continue under the assumption that a law enforcement agency, especially in a high cost of living area, would be able to attract qualified candidates for managerial positions which involve added responsibilities with no additional pay. To address this, H.R. 466 will allow mid and high-level supervisors to earn 25% of their salaries in overtime. We

cannot continue to run the risk of having experienced, senior law enforcement agents seek employment in the private sector solely because they are at or near the pay cap – with no incentive to remain.

At the other end of the spectrum, we are seeing young, qualified recruits leaving federal law enforcement agencies to seek other employment, more often than not, in the more lucrative private sector. Disillusionment with pay and concern of a possible transfer to a high-cost area creates an atmosphere where agents have quit or are looking to get out. In the case of the Federal Bureau of Investigation (FBI), some sources have indicated that since September 11th, of the more than 1,000 agents hired and trained, 125 have since resigned. What must also be factored into these departures and compounds the loss, is the time and funding law enforcement agencies spent on training these recruits.

To ensure that the men and women in our federal law enforcement agencies and our U.S. Capitol Police are compensated fairly and equally for the service that they provide, I firmly believe that H.R. 466 is the solution.

I thank you for providing me with the opportunity to speak before you on this critical issue.

Mrs. DAVIS OF VIRGINIA. Representative Filner, you will be recognized for 5 minutes.

STATEMENT OF HON. ROBERT FILNER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. FILNER. Thank you, Madam Chairwoman, for your commitment to our law enforcement community throughout the Nation.

I especially appreciate your opening remarks, Madam Chairwoman; and I would underline them with a tragic irony. That is, when Customs inspectors or INS inspectors—at least that is what they used to call them before the new agencies—are killed in the line of duty, their names are inscribed here in Washington on the National Law Enforcement Officers Memorial, which I know you have all been to. It is a very moving memorial. Their names are inscribed as law enforcement officers when they die.

When they are alive, we don't call them law enforcement officers; and that is a tragic irony I think we should correct. My bill, introduced jointly with Mr. McHugh of New York, which I greatly appreciate, is simply stated: Give law enforcement status to law enforcement officers.

Many Federal officials, as you outlined in your opening remarks, all of you, are classified as law enforcement officers [LEOs], with certain salary and retirement benefits, but there are other officers who are trained to carry weapons, who wear body armor, who face the same daily risk as law enforcement officers who are just not so classified. These officers may be in the Bureau of Customs and Border Protection and Bureau of Immigration Customs Enforcement inspectors at the Department of Homeland Security. There are U.S. Mint police officers, U.S. Internal Revenue Service officers in two dozen other agencies. They are not eligible, as you know, for early retirement and other benefits designed to maintain a young and vigorous law enforcement work force. We need to combat those who pose risks to our society.

As Mr. McHugh represents the New York-Canadian border, my district encompasses the entire California-Mexico border and is home to two of the busiest crossings in the world. So both of us are very aware of the work that Border and Customs inspectors do at our borders. They wear bulletproof vests, they carry firearms, and they have to use them. They are subject to the same risk as other officers with whom they serve by side by side and who do have the benefits of that law enforcement status.

I know you have probably had the same experience. I have met with severely injured inspectors who had to face border shoot-outs or border drive-throughs, masked attempt to cross the border in armed vehicles. I have met with families of inspectors who were killed in the line of duty.

This is something, I think, we have to correct; and H.R. 2442 I think makes important strides to do that. Any cost that is created by this act—and this is very important—is offset by the savings and training costs and increased revenue collection.

I know that you have mentioned that also, that if we have good morale, if we have good benefits, if we have good salary, if we have a good workplace environment, we do not have to go through the same training costs as we would—as this group may move on to

better jobs. So a 20-year retirement for those employees will reduce that turnover, increase the yield, decrease recruitment, enhance the retention of a well-trained and experienced work force.

Madam Chairwoman, when this bill was introduced last year, we had 212 cosponsors, a bipartisan group, including yourself, Madam Chairwoman. I hope we can end the tragic irony that I started off with. Let us make sure that those who do law enforcement work have that classification.

Mrs. DAVIS OF VIRGINIA. Thank you, Representative Filner.

Representative Rogers, you will be recognized for 5 minutes.

STATEMENT OF HON. MICHAEL ROGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. ROGERS. Thank you, Madam Chairwoman. Thank you for your leadership on this issue, in bringing this to the forefront. Very important. Thanks to my fellow panel members as well and all the members on the committee. Thank you for your concern.

I had the great fortune and privilege to serve as a Special Agent with the FBI for over 5 years. I know these people as friends and as colleagues, and now they are spread—all the people I worked with are all over the country—New York, Los Angeles and friends here today in Washington, DC. And one of the things like the FBI and Federal law enforcement agencies, there is a very strong lure. I mean, you get to go in and defend America, you get to put bad folks in jail, and that is a strong lure for recruiting.

When you are going after the best and the brightest, that is what they sell. They tell you are going to be a special breed of a Federal law enforcement officer, to do great things for your country. Pretty powerful stuff.

Well, that strong lure is often hit with a brick wall when you get that first assignment. By the way, before you get in, you think you'll get through anything. You can get through the training school and you can finally get those credentials, you will get through anything. But what these agents soon find is that the financial realities of this are pretty stark.

What I wanted to do is talk just a minute and actually read some actual comments from agents all around the country and the things that they are suffering; and these are dedicated people who want to continue in the FBI, Customs and other agencies. They are just hit with the very harsh reality of the pay disparity that they are facing in many of these areas.

One is a GS–10, step 2. He is assigned to the San Francisco division: "I am seriously leaving the Bureau, but I am waiting until I go off probation. I will try to get out of this division any way I can—a specialty, a hardship, headquarters—any way that I possibly can. My decision is strongly reflected by my inability to purchase or invest in property or my future savings in retirement. I pack my lunch every day. Eating in a restaurant is absolutely nonexistent."

Unfortunately, that is the case for many of those agents who are just scraping by, want to do what they are doing, they love the work, they're very patriotic, but it's a bit embarrassing to go home and find no extra cash.

"I am a GS–13, step 10, assigned to the San Francisco division. Speaking from experience, it does not matter how important or what the quality of work you are doing is if you are worried about how you are going to pay your bills."

GS–14, assigned to Newark, "happy with the job, but really tired of the long days and the long commutes to the office. Most embarrassing, after 16 years in the Bureau, having to borrow $20,000 from close relatives just to be able to purchase a house in commuting distance within the Newark office division."

"I am a GS–14 assigned to Quantico. I joined the Bureau for the challenge and because it was the best law enforcement agency in the world. My morale is not good because of the cost of college that I have to try to save for. I am barely able to afford a new refrigerator. Mine is 20 years old. Low pay is a high reflection of my low morale. I have not been able to contribute to my savings account since I have been in the Washington, DC, area. I am certainly not desperate, but I certainly am not in the upper class when it comes to income, as statistics show."

"I am a GS–10 assigned to the Boston division. As it is, we absolutely have no money left at the end of each 2-week period and have had to ask our mortgage company to put our payments on hold until we can sell our house from the city I processed out of. Our family, including our children, are now living with my in-laws. It is mortifying to have to sponge off our relatives when you are our age."

Many of these agencies are attempting to recruit older agents with experience and a certain level of skill set, and we are putting a lot of pressure on these folks to come into the Bureau and other Federal law enforcement agencies because we need their talent. The country needs them at this hour.

When that agent, who is asking the mortgage company to hold off on his payments, is working long hours, his wife is at home trying to get the house in order and he is not coming home, I guarantee it, he is working weekends trying to defend America, it is only right we step up to the plate and say we understand that you will not be wealthy but we have the obligation to make sure that they do not run into these life problems as defenders of the United States of America.

I appreciate your leadership and hope we can have some quick action on this matter.

Thank you, Madam Chairwoman.

Mrs. DAVIS OF VIRGINIA. Thank you, Representative Rogers.

[The prepared statement of Hon. Michael Rogers follows:]

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Testimony of the Honorable Mike Rogers

"Ending the Federal Law Enforcement Vow of Poverty"

House Government Reform Committee

Subcommittee on Civil Service and Agency Organization

and

Subcommittee on Criminal Justice, Drug Policy, and Human Resources

Madame Chairwoman, Mr. Chairman, thank you for holding today's hearing. Addressing the evolving needs of federal law enforcement officers and agencies will most certainly require your continued attention and effort.

As you know, we are facing an ongoing crisis within our federal law enforcement agencies. It is not the typical, generalized federal personnel problem we are facing in a number of other government agencies. It is a readiness crisis caused by a pay and personnel system which does not meet the unique needs of law enforcement.

FBI agents and other federal law enforcement officers combat terrorists, child kidnappers, drug traffickers, corporate swindlers, computer criminals, gangs, organized crime, and hate crimes groups. Yet, our pay system does not reflect the particular needs of federal law enforcement agencies.

For example, under the current pay system, the FBI cannot offer special pay to agents with critical skills,

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such as language, computer, and forensics expertise. Given private sector demand for such expertise, the Bureau is finding it difficult to recruit and retain agents with the types of skills needed to defeat 21st century threats.

Instead of a modern, flexible pay system we continue to apply the General Schedule (GS) career development system, which was designed for white-collar workers, to law enforcement officers. This decision to continue to make due with an inappropriate system has had the consequnce of requiring agencies to evaluate and promote according to a rigid GS step and grade system, without taking into account law enforcement markers of performance, such as cases solved or law enforcement specific skills acquired.

The inadequacies of the GS pay scale are most obvious in the case of Special Agents assigned to high cost of living cities. For example, the current salary for a newly hired FBI Special Agent in San Francisco is $56,453, including all overtime payments. A search for a "low income" home within a 60 to 90 minute commute of San Francisco placed the house in the $300,000 range with a mandatory income of $86,000.

The current pay system also hampers agency efficiencies and effectiveness through pay compression. Pay compression squeezes our law enforcement agencies as well as our agents. It not only discourages our best and brightest from moving into the management ranks, it also discourages agents from remaining past basic retirement eligibility at a time when this country needs experienced, steady heads in charge.

These two facts are particularly exasperating when one considers that, as this committee knows, the Government Accounting Agency has found that between now and 2006, the retirement rate among federal law enforcement is expected to exceed 20 percent. Stemming this tidal-wave of retirements will require

that federal law-enforcement improve both their recruitment and retention rates.

While Congress has long been cognizant of the problem of different expenses in different regions of the country, and have tried to remedy the problem through pay locality increases, the inadequacies of the pay system continue to impact not only agencies, but everyday law enforcement office. Our antiquated system does not adequately adjust for the realities of life in some of America's high-cost metropolitan areas.

For example, today the salary of a starting Agent in San Francisco does not qualify him for even half the median cost of a home. As a result, Agents commonly face 4 hour daily commutes on top of their regular ten-hour-plus workday. This problem is not limited to the Bay area, but reaches Agents nationwide. And since assignments are based on the needs of the nation, not the finances of an Agent, many senior Agents are forced to leave the bureau when they are reassigned to one of these financial hardship cities.

Junior agents also face tough choices. One recent, true example illustrates just how outrageous our system has become. A GS 14 Supervisory Special Agent assigned to Houston transferred to DC about 18 months ago. She was making approximately $114,000. When she moved to FBIHQ, in a GS 14 position, her pay dropped to $107,000. Her experience with a shrinking paycheck continued as she lost another 5% through the imposition of a state income tax. She also saw her house payment increased $1700 per month. I'm certain that if you reflect upon your first days as a Member of Congress this committee can relate to her shock.

As a single woman with no dependents she is able to afford this sudden reduction in salary, but many with a family could not, and would be forced to choose between a diminished quality of life for their family, or

a departure from public service. But more importantly, it is contrary to the interests of the agency and the government to attach a $14,000 surcharge to a lateral move to Headquarters. Keep in mind that even with a promotion to GS 15, the shift from a state with no income tax to a region with one results in dramatically less take home pay. I encourage you to seriously consider this point because the GS system does not

Three separate administrations have also indicated there is need for a separate pay and personnel system. In the early 1990s, Congress mandated an enhancement of the federal law enforcement payment system. The Federal Employees pay Compatibility Act of 1990 directed OPM to develop a plan to establish a separate federal law enforcement personnel system.

OPM and the statutorily chartered National Advisory Commission on Law Enforcement (NACLE) studied the issue of a law enforcement specific pay system. Both OPM and NACLE concluded that a separate system should be created. However, circumstances and administrations changed and this suggestion never became law.

Office of Personal and Management Director Kay Coles James publicly invited national discourse on addressing the flaws of the federal pay system. Paving the way for reform, OPM reported that the antiquated General Schedule system does not reflect market pay levels; address new and unprecedented management challenges; encourage achievement and results; or tailor pay programs to agency specific missions and labor markets. A law enforcement pay system would address the concerns raised by the report.

It is because of my increasing concern with the nation's federal law enforcement pay system that I have

introduced H.R. 1676, the Comprehensive Federal Law Enforcement Pay Equity and Reform Act. My legislation seeks to reform federal law in three areas.

First my bill provides immediate relief for those law enforcement officers who need it most. Specifically H.R. 1676 provides a locality pay adjustment for federal law enforcement officers located in thirteen metropolitian areas. Those thirteen areas are: Boston-Lawrence-Salem, 24.4%, Chicago-Gary Lake County, 24.5%, Detroit-Ann Arbor- Flint MI, 18.5%, Hartford, CT, 20.3%, Los Angeles-Anaheim-Riverside, 27.1%, New York-New Jersey-Long Island, 26.1%, Philadelphia-Wilmington-Trenton, 20.3% Portland-Salem, 20.3%, Sacramento-Yolo, CA, 21.0 %, San Diego, 27.1%, San Francisco-Oakland-San Jose, 32.03%, Seattle-Tacoma-Bremerton, WA, 27.5%, Washington-Baltimore, 24.3%.

Second, it lifts the cap on overtime pay for federal law enforcement officers, thereby eliminating a serious disincentive to seeking promotion.

Third, and most importantly, my bill sets Congress and the administration on the path toward a new pay system. H.R. 1676 directs the OPM to study and submit to Congress, not later than 6 months after the date of enactment, a report containing its findings and recommendations regarding the need for and potential benefits of a separate pay, evaluation and promotion system for Federal law enforcement officers. In carrying out this study, the OPM is directed to take into account the valuable work and recommendations done by OPM in their 1993 report titled "A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers."

Mr. Chairman, Madame Chairwoman, today's realities underline the need for more law enforcement

personnel, as well as the need for highly skilled, and specially trained agents. Yet despite the signals of support from three consecutive administrations we still do not adequately pay for people with special skills, nor do we adjust pay to reflect the high cost of living in the metropolitan areas most in need of federal law enforcement.

I think that every federal law enforcement officer deserves a raise, but with the understanding that the government has limited means. My legislation allows us to live within our means, while paying law enforcement agents a respectable wage they deserve, and law enforcement agencies the relief they need.

Again, thank you for the opportunity to testify before you today, and for your interest in this issue.

HR 1676 IH

108th CONGRESS

1st Session

H. R. 1676

To amend chapter 55 of title 5, United States Code, to exclude availability pay for Federal criminal investigators from the limitation on premium pay; to modify levels of special pay adjustments for Federal law enforcement officers in certain areas, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

April 8, 2003

Mr. ROGERS of Michigan (for himself, Mrs. JO ANN DAVIS of Virginia, and Mrs. EMERSON) introduced the following bill; which was referred to the Committee on Government Reform

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A BILL

To amend chapter 55 of title 5, United States Code, to exclude availability pay for Federal criminal investigators from the limitation on premium pay; to modify levels of special pay adjustments for Federal law enforcement officers in certain areas, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Federal Law Enforcement Officers Pay Equity and Reform Act'.

SEC. 2. LIMITATION ON PREMIUM PAY.

(a) IN GENERAL- Section 5547 of title 5, United States Code, is amended--

(1) in subsection (a), by striking `5545a,';

(2) in subsection (c), by striking `or 5545a'; and

(3) in subsection (d), by striking the period and inserting `or a criminal investigator who is paid availability pay under section 5545a.'.

(b) EFFECTIVE DATE- The amendments made by this section shall take effect as if included in the enactment of section 1114 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107-107; 115 Stat. 1239).

SEC. 3. SPECIAL PAY ADJUSTMENTS FOR FEDERAL LAW ENFORCEMENT

OFFICERS IN CERTAIN AREAS.

(a) IN GENERAL- Section 404(b)(1) of the Federal Law Enforcement Pay Reform Act of 1990 (5 U.S.C. 5305 note) is amended by striking the matter after the semicolon and inserting the following:

`Area

Differential

Boston-Lawrence-Salem, MA-NH Consolidated Metropolitan Statistical Area

--24.4%

Chicago-Gary-Lake County, IL-IN-WI Consolidated Metropolitan Statistical Area

--24.5%

Detroit-Ann Arbor-Flint, MI

--18.5%

Hartford, CT

--20.3%

Los Angeles-Anaheim-Riverside, CA Consolidated Metropolitan Statistical Area

--27.1%

New York-Northern New Jersey-Long Island, NY-NJ-CT Consolidated Metropolitan Statistical Area

--26.1%

Philadelphia-Wilmington-Trenton PA-NJ-DE-MD Consolidated Metropolitan Statistical Area

--20.3%

Portland-Salem, OR-WA

--18.5%

Sacramento-Yolo, CA

--21%

San Diego, CA Metropolitan Statistical Area

--27.1%

San Francisco-Oakland-San Jose, CA Consolidated Metropolitan Statistical Area

--32.03%

Seattle-Tacoma-Bremerton, WA

--27.5%

Washington-Baltimore, DC-MD-VA-WV Consolidated Metropolitan Statistical Area

--24.3%'.

(b) EFFECTIVE DATE- The amendment made by this section shall apply with respect to pay for service performed in pay periods beginning on or after the date of the enactment of this Act.

SEC. 4. SEPARATE PAY, EVALUATION, AND PROMOTION SYSTEM FOR FEDERAL LAW ENFORCEMENT OFFICERS.

(a) STUDY- Not later than 6 months after the date of the enactment of this Act, the Office of Personnel Management shall study and submit to Congress a report which shall contain its findings and recommendations regarding the need for, and the potential benefits to be derived from, the establishment of a separate pay, evaluation, and promotion system for Federal law enforcement officers. In carrying out this subsection, the Office of Personnel Management shall take into account the findings and recommendations contained in the September 1993 report of the Office entitled `A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers'.

(b) DEMONSTRATION PROJECT-

(1) IN GENERAL- If, after completing its report under subsection (a), the Office of Personnel Management considers it to be appropriate, the Office shall implement, within 12 months after the date of the enactment of this Act, a demonstration project to determine whether a separate system for Federal law enforcement officers (as described in subsection (a)) would result in improved Federal personnel management.

(2) APPLICABLE PROVISIONS- Any demonstration project under this subsection shall be conducted in accordance with the provisions of chapter 47 of title 5, United States Code, except that a project under this subsection shall not be taken into account for purposes of the numerical limitation under section 4703(d)(2) of such title.

(3) PERMANENT CHANGES- Not later than 6 months before the demonstration project's scheduled termination date, the Office of Personnel Management shall submit to Congress--

(A) its evaluation of the system tested under the demonstration project; and

(B) recommendations as to whether or not that system (or any aspects of that system) should be continued or extended to other Federal law enforcement officers.

(c) FEDERAL LAW ENFORCEMENT OFFICER DEFINED- For purposes of this section, the term `Federal law enforcement officer' means a law enforcement officer as defined by section

8331 or 8401 of title 5, United States Code, and, subsection (b)(2) notwithstanding, includes any such officer serving in or under the Federal Bureau of Investigation.

END

Mrs. DAVIS OF VIRGINIA. And I want to thank you, Representative Filner, for your work on this issue.

We have a series of three votes, so we will recess—we generally don't ask questions of the Members, but if a Member wouldn't mind, the chairman has a question.

Mr. SOUDER. Mr. Rogers, I wonder if you have additional letters and things that would be helpful for the record. I would appreciate if you could insert them. I think it helps build a case. Also, anything that would relate to instances—I know in your written testimony and you referred in the past to this overtime pay question, anything that might be directly related to that, of what, at the practical level, to an agent. As somebody who has done this yourself you may be less constrained in the ability to say, oh, well, we had to back off of this, or I had turn this case over, or I have heard this. So if we could have that for the record on the overtime pay, because it is very difficult. Nobody wants to acknowledge that this may actually affect cases, but I am interested as to how does it cutoff.

Mr. ROGERS. I'll be happy to do that.

You have to remember the pressure. The agent comes home at the end of the day, and his wife is not all that amused or visa versa and puts a lot of pressure on these folks who we are asking a lot of, and that is just not a fair situation they find themselves in.

Mr. SOUDER. One of the things I would like to know, in your opinion are people actually, if the overtime pay runs out and they are not paid, are they actually working, which they are not supposed to do, but are they doing it because they don't want to lose their cases?

Mr. ROGERS. I can tell you that those agents are working. These are very dedicated individuals. We did it in our office. I see an agent over here I worked with in Chicago. I saw him do it. We did it. Most agents, 99 percent of them will continue working. Again, they are dedicated to their purpose. We just need to step up and give them a little relief, I think.

Mrs. DAVIS OF VIRGINIA. We actually only have one vote, and we are going to go ahead and continue with the hearing.

Thank you, Representative Rogers.

I now would like to invite the second panel of witnesses to please come forward on this panel.

We have Joanne Simms from the Department of Justice, Norman Rabkin from the General Accounting Office, Donald Winstead from the Office of Personnel Management, and Kay Frances Dolan from the Department of Homeland Security.

I'd also like to ask Chris Mihm, Director of Strategic Issues at the General Accounting Office, if he would stand and also be sworn in, in case there are questions for you.

If the panel would remain standing, I will administer the oath. It is the subcommittee's standard practice to ask witnesses to testify under oath. So if you would please raise your right hands.

[Witnesses sworn.]

Mrs. DAVIS OF VIRGINIA. Let the record reflect that the witnesses have answered in the affirmative, and you may be seated.

The panel will now be recognized for an opening statement, and we will ask you to summarize your testimony in 5 minutes. Any

more complete statement you may wish to make will be included in the record.

I would like to welcome Joanne Simms, Deputy Assistant Attorney General for Human Resources and Administration at the Department of Justice. Thank you for being with us today, Ms. Simms; and you are recognized first for the first 5 minutes.

STATEMENTS OF JOANNE SIMMS, DEPUTY ASSISTANT ATTORNEY GENERAL FOR HUMAN RESOURCES AND ADMINISTRATION, DEPARTMENT OF JUSTICE; NORMAN J. RABKIN, MANAGING DIRECTOR, HOMELAND SECURITY AND JUSTICE, U.S. GENERAL ACCOUNTING OFFICE; DONALD J. WINSTEAD, DEPUTY ASSOCIATE DIRECTOR, CENTER FOR PAY AND PERFORMANCE POLICY, OFFICE OF PERSONNEL MANAGEMENT; AND KAY FRANCES DOLAN, DIRECTOR OF HUMAN RELATIONS POLICY, DEPARTMENT OF HOMELAND SECURITY

Ms. SIMMS. Good morning, Madam Chairwoman and Chairman Souder. Thank you for this opportunity to testify before your subcommittee as you examine issues affecting the law enforcement community. We appreciate your interest in these critical issues. I look forward to working with you and our fellow law enforcement agencies as we go forward.

The Department of Justice employs close to 50,000 law enforcement employees, of which the primary occupational groups include criminal investigators and correctional officers. Our core enforcement components include the Federal Bureau of Investigation; the Drug Enforcement Administration; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the U.S. Marshals Service and the Bureau of Prisons.

The average age of our law enforcement employee is close to 39 years; and, on average, the majority are college educated. Many of our employees have families, and most will generally experience several moves during the course of their careers. Our law enforcement work force is assigned to offices in all 50 States, territories and all over the world. Their working conditions run from the typical white collar office environment to a makeshift desk or laptop in the middle of a jungle in South America, to prisons and correctional facilities, courthouses, airplanes and everything in between.

As a general rule, I think we can all agree that a consistent policy approach should be taken to managing law enforcement pay and benefits, as well as other work-related aspects across the Federal Government. Comparable pay for comparable work should be one of our guiding principles. Cross-cutting missions and activities, particularly in the post-September 11 environment, increase the opportunities for law enforcement agencies and personnel to become aware of disparities in pay and benefits between segments of the law enforcement community. As an example, one need only look at the well-publicized startup operation at the Transportation Security Administration that we have already talked about this morning which resulted in considerable attrition within several law enforcement agencies. It appears the situation is righting itself, as TSA is now an operating entity and no longer needs to draw its work force from other trained Federal law enforcement organizations.

This experience has been instructive, however, and has reinforced our view, as well as others, that fair and consistent treatment of Federal law enforcement officers is essential in maintaining a stable and satisfied work force. There are a few areas related to law enforcement compensation that merit attention.

Pay, of course. Law enforcement work is, by necessity, difficult and dangerous. The specific aspects of mission vary among agencies. Some may focus on investigating terrorism, tracking dangerous fugitives or enforcing the drug laws. Other enforce laws pertaining to alcohol, tobacco, firearms and explosives; and still others manage prisoners in a variety of correctional settings. All of our law enforcement personnel, however, may find themselves in situations where their personal safety and security is put at risk. A fair compensation approach using equal pay for the same type of law enforcement work as one of the guiding principles is essential. We must have the ability to tie pay more closely to performance.

Mobility. Law enforcement officers are generally required to be mobile in the performance of their work, including facing repeated relocations throughout the course of their career. For example, one component of the Department has a policy to relocate its new agents after training so each can begin his or her career with a fresh start in a locale that is not the one in which they grew up. In other cases, mobility is needed to respond to critical crime situations such as the sniper attacks last fall when 125 ATF agents and numerous FBI agents were brought to the metropolitan D.C. community to deal with this difficult and terrifying situation.

Also, the career development process for managers and supervisors in law enforcement agencies requires them to have a wide variety of enforcement experiences at the front line as well as in headquarters and necessitates a number of moves to achieve this level of experience. The amount of required mobility becomes a particular concern for law enforcement officers who may have to uproot their families to go from low-cost to high-cost areas or must move from locales which provide a wide range of services for families to locations where public services may be very limited or less desirable. School system differences, services for special needs children, elder care, by example.

Additionally, addressing affordable housing in high-cost areas and addressing reassignments to undesirable overseas locations are some of the issues that challenge our law enforcement officers.

We have addressed some of these compensation issues through Public Law 107–273, which was enacted in November 2002, which allows for the offer of an extended assignment bonus to law enforcement officers who remain beyond their original tour of duty in U.S. territories or possessions.

The Department has had longstanding quality-of-life issues for law enforcement personnel assigned to U.S. territories, particularly where English is not the first language; and Congress has assisted in addressing this need by authorizing house hunting trips for agents and their spouses.

We are aware of, and in some instances provided information for, several studies that are collecting data and reviewing these issues. The recent report of the Office of Personnel Management in this area is a comprehensive survey that includes data on all of the

principal law enforcement agencies. We will continue to review and provide information as requested for all these studies and reports.

Finally, as you know, our law enforcement employees do a superb job maintaining the security of our citizens and enforcing the rule of law. We are confident that you agree that they deserve the best support we can give them as they perform their jobs on our behalf. Ensuring fair and equitable treatment in pay and benefits for all Federal law enforcement professionals is one essential component in maintaining a stable and satisfied and high-performing work force.

Thank you.

Mrs. DAVIS OF VIRGINIA. Thank you, Ms. Simms.

[The prepared statement of Ms. Simms follows:]

Department of Justice

STATEMENT

OF

JOANNE W. SIMMS
DEPUTY ASSISTANT ATTORNEY GENERAL
FOR HUMAN RESOURCES AND ADMINISTRATION
JUSTICE MANAGEMENT DIVISION

BEFORE THE

SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION
AND
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

FEDERAL LAW ENFORCEMENT PERSONNEL IN THE POST 9/11 ERA

PRESENTED ON

JULY 23, 2003

STATEMENT OF
JOANNE W. SIMMS
DEPUTY ASSISTANT ATTORNEY GENERAL
JUSTICE MANAGEMENT DIVISION

BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION
AND THE
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
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Thank you for the opportunity to testify before your subcommittees as you examine issues affecting the law enforcement community. We appreciate your interest in these critical issues and look forward to working with you and our fellow law enforcement agencies going forward.

The Department of Justice

The Department of Justice employs close to 50,000 law enforcement employees, of which the primary occupational groups include criminal investigators and correctional

officers. Our core law enforcement components include:

- The Federal Bureau of Investigation (FBI);
- The Drug Enforcement Administration (DEA);
- The Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF);
- The U.S. Marshals Service (USMS); and
- The Bureau of Prisons (BOP).

The average age of our law enforcement employees is close to 39 years and, on average, the majority are college educated. Many of our employees have families, and most will generally experience several moves during the course of their careers. Our law enforcement workforce is assigned to offices in all 50 States, territories, and all over the world. Their working conditions run from the typical white collar office environment to a makeshift desk or lap top computer in the middle of the jungle in South America, to prisons and correctional facilities, courthouses and airplanes, and everything in between.

Compensation Issues

As a general rule, I think we can all agree that a consistent policy approach should be taken to managing law enforcement pay and benefits, as well as other work-related aspects, across the Federal government. Comparable pay for comparable work

should be one of our guiding principles. Cross-cutting missions and activities, particularly in the post 9/11 environment, increase the opportunities for law enforcement agencies and personnel to become aware of disparities in pay and benefits between segments of the Federal law enforcement community. As an example, one need only look at the well publicized start-up operation at the Transportation Security Administration (TSA), which resulted in considerable attrition within several law enforcement agencies. It appears this situation is righting itself, as TSA is now an operating entity and no longer needs to draw its workforce from other trained Federal law enforcement organizations.

This experience has been instructive and has reinforced our view, as well as others, that fair and consistent treatment of Federal law enforcement officers is essential in maintaining a stable and satisfied workforce. There are a few areas related to law enforcement compensation that merit attention.

- Pay: Law enforcement work is, by necessity, difficult and dangerous. The specific aspects of mission may vary among agencies. Some may focus on investigating terrorism, tracking dangerous fugitives, or enforcing the drug laws. Others enforce laws pertaining to alcohol, tobacco, firearms, and explosives, and still others manage prisoners in a variety of correctional settings. All of our law

enforcement personnel, however, may find themselves in situations where their personal safety and security is put at risk. A fair compensation approach using equal pay for the same types of law enforcement work as one of the guiding principles is essential. We must also have the ability to tie pay more closely to performance.

- Mobility: Law enforcement officers are generally required to be mobile in the performance of their work, including facing repeated relocations throughout the course of their careers. For example, one component of the Justice Department has a policy to relocate its new agents after training, so each can begin his/her career with a fresh start in a locale that is not the one in which the agent grew up. In other cases, mobility is needed to respond to critical crime situations, such as the sniper attacks last fall, when 125 ATF agents and numerous FBI agents were brought to the metropolitan DC community to deal with this difficult and terrifying situation. Also, the career development process for managers and supervisors in law enforcement agencies requires them to have a wide variety of enforcement experiences, at the front-line as well as in headquarters, and necessitates a number of moves to achieve this level of experience. The amount of required mobility becomes a particular concern for law enforcement officers, who may have to uproot their families to go from low cost to high cost areas or

must move from locales which provide a wide range of services for families to locations where public services may be very limited or less desirable (e.g., school system differences, services for special needs children, or elder care).

Additionally, addressing affordable housing in high cost areas, and addressing reassignments to undesirable overseas locations are some of the issues that challenge our law enforcement human resource offices.

We have had some success in addressing some of our compensation issues:

- Public Law 107-273 (21st Century Department of Justice Appropriations Authorization Act), Section 207, enacted on 11/2/02, allows for the offer of an extended assignment bonus to law enforcement officers who remain beyond their original tour of duty in a U.S. territory or possession, Puerto Rico and the Northern Mariana Islands.

- The Department has had long standing quality of life issues for law enforcement personnel assigned to U.S. territories, particularly where English is not the first language. Congress has assisted the Department in addressing these needs by authorizing house hunting trips for agents and their spouses, authorizing the use

of an extended assignment bonus, and providing funding for a Community Liaison Office (CLO) in Puerto Rico which helps integrate agents and their families into the local culture and gain the necessary services which will encourage a willingness to stay beyond their initial appointment to the island. To date, the CLO has been very successful in helping agent families.

Reports

We are aware of, and in some instances provided information for, several studies that are collecting data and reviewing these issues. The recent report of the Office of Personnel Management (OPM) in this area is a comprehensive survey that includes data on all the principle law enforcement agencies. In our view, the OPM report will provide an excellent point of reference and basis for discussion as we continue to look at these issues and make recommendations for the future. We will continue to review these studies and anticipate participating in the discussion as we move forward.

Conclusion

As you know, our law enforcement employees do a superb job maintaining the security of our citizens and enforcing the rule of law. We are confident that you agree

that they deserve the best support we can give them, as they perform their jobs on our behalf. Ensuring fair and equitable treatment in pay and benefits for all Federal law enforcement professionals is one essential component in maintaining a stable, satisfied and high performing workforce. Thank you again for the opportunity to appear before you. We look forward to working with you and our sister Departments and agencies on these important issues.

Mrs. DAVIS OF VIRGINIA. I now would like to recognize Norman Rabkin, Managing Director of Homeland Security and Justice issues at the General Accounting Office.

Thank you, Mr. Rabkin, for being with us today.

Mr. RABKIN. Chairwoman Davis, Chairman Souder, members of the subcommittee, I am pleased to be here today to discuss two recent GAO reports of interest to your subcommittees.

The first report discusses experiences encountered by the Federal police forces in the Washington, DC, area last year as they tried to hire officers to replace those who left to become Federal Air Marshals and for other reasons.

The second report discusses key practices found at the center of successful merges and transformations and is applicable to the recent creation of the Department of Homeland Security that combined 22 agencies with an estimated work force of 160,000 employees.

With me to discuss this report is Chris Mihm, who's a Director of Strategic Issues in GAO.

First, Federal police forces. Many Federal agencies in the Washington, DC, metropolitan area have their own police forces to ensure the security and safety of the persons and property within and surrounding Federal buildings. For example, the Secret Service has over 1,00 uniform officers protecting the White House, the Treasury building and other facilities used by the people it protects. The Pentagon now has a police force of about 400 officers. NIH has a force of just over 50 officers.

After the terrorist attacks of September 11 and the government's subsequent efforts to increase airline security, many of these local police forces began experiencing difficulties in recruiting and retaining officers. Police force officials raised concerns that the Federal Air Marshall Program was hiring many prospective and experienced officers by offering better starting pay and law enforcement retirement benefits.

Our review of 13 Federal police forces in the Washington area show that, in fiscal year 2002, total turnover nearly doubled from the previous year. Of the officers who voluntarily separated in fiscal year 2002, about half left to become Federal Air Marshals. Some of the forces tried to prevent this turnover by providing retention allowances and using other human capital flexibilities such as cash awards for performance.

Officials at 8 of the 13 forces told us they experience moderate to very great recruiting difficulties trying to replace these officers. Among the reasons the officials gave for difficulties were low pay, the high cost-of-living in the area, difficulty completing the application process and better retirement benefits at other law enforcement agencies. However, none of the 13 forces used recruitment bonuses or student loan repayments to try to improve their recruiting efforts, mainly because they didn't have enough funding or authority to do so.

Entry level pay at the 13 agencies last year ranged from $28,800 to $39,400. Twelve of the 13 agencies have since increased entry level pay this year, and the range is currently from about $33,000 to $43,000.

Since we issued our report, information we have received from the 13 police forces indicates that in this fiscal year turnover rates have dropped significantly for 12 of the 13 forces. For example, turnover here at the Capitol Police is about 4 percent. Last year, it was about 13 percent. At NIH, where last year 58 percent of the force turned over, the current turnover is 17 percent.

Next, our report on mergers and transformations. I would like to highlight four of the many key practices and implementation steps that agencies such as the Department of Homeland Security can take if they transform their cultures to be more results-oriented, customer-focused and collaborative in nature.

First, agency leadership needs to drive the transformation by defining and articulating a succinct and compelling reason for the change. The more the employees, customers and stakeholders understand the expected outcomes of the transformation, the more cooperation they will give and ownership they will assume.

Second, in setting implementation goals, the agency should try to understand the cultures of the merging organizations. This will help leadership gain a better understanding of the employees' values and beliefs.

Third, the agency should implement performance management systems with adequate safeguards. Leading organizations have modern, effective, credible systems with reasonable transparency and appropriate accountability mechanisms to support performance-based pay and related personnel decisions.

Fourth, agencies should try to involve employees in planning the transformation and sharing information on how the transformation is progressing. This should increase insights about operations from a front-line perspective.

Madam Chairwoman, Mr. Chairman, this completes my oral statement; and I will be glad to answer your questions.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Rabkin.

[The prepared statement of Mr. Rabkin follows:]

United States General Accounting Office

GAO

Testimony Before the Committee on Government Reform, Subcommittees on Civil Service and Agency Organization and Criminal Justice, Drug Policy and Human Resources, House of Representatives

For Release on Delivery
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FEDERAL LAW ENFORCEMENT

Selected Issues in Human Capital Management

Statement of Norman J. Rabkin, Managing Director, Homeland Security and Justice Issues

GAO-03-1034T

Chairwoman Jo Ann Davis, Chairman Mark Souder, and Members of the Subcommittees:

Many federal agencies in the Washington, D.C., metropolitan area have their own police forces to ensure the security and safety of the persons and property within and surrounding federal buildings. In the executive branch, for example, the Secret Service has over 1,000 uniformed officers protecting the White House, the Treasury Building, and other facilities used by the Executive Office of the President. The Interior Department's Park Police consists of more than 400 officers protecting parks and monuments in the area. The Pentagon Force Protection Agency has recently increased its force to over 400 officers. Even the Health and Human Services Department maintains a small police force on the campus of the National Institutes of Health (NIH) in Bethesda, Maryland. In addition, there are federal uniformed police forces in both the Legislative and Judicial Branches of the federal government.

After the terrorist attacks of September 11, 2001, and the government's subsequent efforts to increase airline security, many of these local police forces began experiencing difficulties in recruiting and retaining officers. Police force officials raised concerns that the newly created Transportation Security Administration (TSA) and its Federal Air Marshal Program were luring many prospective and experienced officers by offering better starting pay and law enforcement retirement benefits. Former Congresswoman Morella asked us to look into these concerns. I would like to summarize the results of that review, which was published last month.[1]

- Most forces reported experiencing recruitment difficulties. Officials at 8 of the 13 forces told us they experienced moderate to very great recruiting difficulties. Despite this, none of the 13 forces used available human capital flexibilities, such as recruitment bonuses or student loan repayments in fiscal year 2002, to try to improve their recruiting efforts.

[1]U.S. General Accounting Office, *Federal Uniformed Police: Selected Data on Pay, Recruitment, and Retention at 13 Police Forces in the Washington, D.C., Metropolitan Area*, GAO-03-658 (Washington, D.C.: June 13, 2003).

- In fiscal year 2002, many of the local forces experienced sizable increases in turnover, mostly due to voluntary separations. About half of the officers who left voluntarily went to the TSA. Some of the forces provided retention allowances and incentive awards to try to retain more of their officers.

- Entry-level pay at the 13 agencies during fiscal year 2002 ranged from $28,801 to $39,427, a gap that narrowed for some of the forces in fiscal year 2003 because officers at 12 of the 13 agencies received increased entry-level pay.

However, information we have gathered since we issued our report indicates that turnover in most of the police forces has dropped significantly during fiscal year 2003. The increase in turnover that occurred at 12 of the 13 police forces during fiscal year 2002 appears to be associated with the concurrent staffing of the TSA Federal Air Marshal Program. TSA's hiring of air marshals during fiscal year 2003 has been pared back.

To perform our work, we identified federal uniformed police forces with 50 or more officers in the Washington Metropolitan Statistical Area (MSA)—13 in all. We interviewed officials responsible for human capital issues and obtained documents on recruitment and retention issues. Using this information, we created a survey and distributed it to the 13 police forces to obtain information on entry-level pay and benefits, officer duties, turnover rates,[2] recruiting difficulties, and the availability and use of human capital flexibilities to recruit and retain officers. We reviewed and analyzed the police forces' responses for completeness and accuracy and followed-up on any missing or unclear responses with appropriate officials.

Chairwoman Davis, at your request and the request of Senator Voinovich, we have continued to examine the transformation of 22 agencies with an estimated 160,000 civilian employees into the Department of Homeland Security (DHS). To learn from private sector mergers and acquisitions, we

[2]To calculate the turnover rates, we divided the total number of police officers who separated from the police forces by the average number of officers on-board at the beginning of the fiscal year and the number of officers on-board at the end of the fiscal year. For each police force, we included as separations both those who left the police force, as well as those who transferred from the police officer series (GS-0083) to other job series within the force.

identified key practices and their implementation steps that can serve as a basis for federal agencies, including DHS, seeking to transform their cultures to be more results-oriented, customer-focused, and collaborative in nature. Our report on these implementation steps is being released today.[3]

Some of these steps are to

- define and articulate a succinct and compelling reason for change;
- identify cultural features of merging organizations to increase understanding of former work environments;
- adopt leading practices to implement effective performance management systems with adequate safeguards; and
- involve employees in planning and sharing performance information.

Federal Police Forces in Washington, D.C.

Although the specific duties police officers perform may vary among police forces, federal uniformed police officers are generally responsible for providing security and safety to people and property within and sometimes surrounding federal buildings. There are a number of federal uniformed police forces operating in the Washington MSA, of which 13 had 50 or more officers as of September 30, 2001. Table 1 shows the 13 federal uniformed police forces included in our review and the number of officers in each of the police forces as of September 30, 2002.

[3]U.S. General Accounting Office, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003).

Table 1: Federal Uniformed Police Forces with 50 or More Officers Stationed in the Washington MSA

Department	Uniformed police force	Number of officers on-board as of September 30, 2002
Executive branch		
Department of Defense	Pentagon Force Protection Agency	259
Department of the Interior	U.S. Park Police	439
Department of Justice	Federal Bureau of Investigation Police	173
Department of the Treasury	Bureau of Engraving and Printing Police	120
	U.S. Mint Police	52
	U.S. Secret Service Uniformed Division	1,072
General Services Administration	Federal Protective Service	140
Department of Health and Human Services	National Institutes of Health Police	53
U.S. Postal Service	U.S. Postal Service Police	109
Legislative branch		
Government Printing Office	Government Printing Office Police	52
Library of Congress	Library of Congress Police	129
U.S. Capitol Police	U.S. Capitol Police	1,278
Judicial branch		
Supreme Court	Supreme Court Police	122
Total		**3,998**

Source: GAO analysis of data provided by the 13 police forces.

The enactment of the Homeland Security Act[4] on November 25, 2002, had consequences for federal uniformed police forces. The act, among other things, established a new DHS, which includes 2 uniformed police forces within the scope of our review—the Federal Protective Service and the Secret Service Uniformed Division. Another component of DHS is TSA, a former component of the Department of Transportation. TSA includes the Federal Air Marshal Service, designed to protect domestic and international airline flights against hijacking and terrorist attacks. During fiscal year 2002, the Federal Air Marshal Program increased its recruiting significantly in response to the terrorist attacks of September 11, 2001. However, by fiscal year 2003, the buildup had been substantially completed. Because Federal Air Marshals are not limited to the grade and pay step structure of the federal government's General Schedule, TSA has

[4]P.L. 107-296, 116 Stat. 2135 (2002).

been able to offer recruits higher compensation and more flexible benefit packages than many other federal police forces.

Federal uniformed police forces operate under various compensation systems. Some federal police forces are covered by the General Schedule pay system and others are covered by different pay systems authorized by various laws.[5] Since 1984, all new federal employees have been covered by the Federal Employees Retirement System (FERS).[6] Federal police forces provide either standard federal retirement benefits or federal law enforcement retirement benefits.[7]

Studies of employee retention indicate that turnover is a complex and multifaceted problem. People leave their jobs for a variety of reasons. Compensation is often cited as a primary reason for employee turnover. However, nonpay factors, such as age, job tenure, job satisfaction, and job location, may also affect individuals' decisions to leave their jobs.

During recent years, the federal government has implemented many human capital flexibilities to help agencies attract and retain sufficient numbers of high-quality employees to complete their missions. Human

[5]The General Schedule system consists of 22 broad occupational groups. Each group includes separate series that represent occupations in that group. The police series (GS-0083) is within the Miscellaneous Occupations group. The Office of Personnel Management (OPM) defines the police series as positions in which the primary duties are the performance or supervision of law enforcement work in the preservation of the peace; the prevention, detection, and investigation of crimes; the arrest or apprehension of violators; and the provision of assistance to citizens in emergency situations, including the protection of civil rights.

[6]FERS benefits are derived from three components: an annuity, a thrift savings plan, and Social Security. The basic annuity provided under FERS is computed on the basis of (1) years of service and (2) the 3 years of service with the highest annual salaries (high 3). Congress intended that the second component of FERS—the Thrift Savings Plan—be a key element of FERS. The Thrift Savings Plan provides for an employer contribution, including an automatic contribution of 1 percent of salary, along with a matching contribution of up to 5 percent. Social Security benefits make up the third component of the retirement package. The Civil Service Retirement System annuity, which applies to individuals hired prior to January 1, 1984, is a stand-alone annuity based on age and years of service.

[7]Under FERS, officers receiving federal law enforcement retirement benefits receive 1.7 percent of their high 3 multiplied by the first 20 years of service and 1 percent multiplied by each year of service greater than 20 years. Thus, a police officer who retires at age 50 with 20 years of service would receive 34 percent of the officer's high 3. After 30 years of service, the benefit would be 44 percent of the officer's high 3. Officers retiring under FERS would also receive benefits from their Thrift Savings Plan accounts and Social Security.

capital flexibilities can include actions related to such areas as recruitment, retention, competition, position classification, incentive awards and recognition, training and development, and work-life policies. We have stated in recent reports that the effective, efficient, and transparent use of human capital flexibilities must be a key component of agency efforts to address human capital challenges.[8] The tailored use of such flexibilities for recruiting and retaining high-quality employees is an important cornerstone of our model of strategic human capital management.[9]

Most Forces Experienced Recruitment Difficulties

Eight of the 13 police forces reported difficulties recruiting officers from a moderate to a very great extent. Despite recruitment difficulties faced by many of the police forces, none of the police forces used important human capital recruitment flexibilities, such as recruitment bonuses and student loan repayments, in fiscal year 2002. Some police force officials reported that the human capital recruitment flexibilities were not used for various reasons, such as limited funding or that the flexibilities themselves were not available to the forces during the fiscal year 2002 recruiting cycle.[10]

Officials at 4 of the 13 police forces (Bureau of Engraving and Printing Police, the Federal Bureau of Investigation (FBI) Police, Federal Protective Service, and NIH Police) reported that they were having a great or very great deal of difficulty recruiting officers. In addition, officials at 5 police forces reported that they were having difficulty recruiting officers to a little or some extent or to a moderate extent. Among the reasons given for recruitment difficulties were:

- low pay;
- the high cost of living in the Washington, D.C., metropolitan area;
- difficulty completing the application/background investigation process; and
- better retirement benefits at other law enforcement agencies.

[8]U.S. General Accounting Office, *High Risk Series: Strategic Human Capital Management*, GAO-03-120 (Washington, D.C.: Jan. 2003).

[9]U.S. General Accounting Office, *A Model of Strategic Human Capital Management, Exposure Draft*, GAO-02-373SP (Washington, D.C.: Mar. 15, 2002).

[10]All executive branch agencies have the authority to use human capital flexibilities, such as recruitment bonuses and student loan repayments. However, agencies may choose not to offer them.

Conversely, officials at 4 of the 13 police forces (Library of Congress Police, the Supreme Court Police, U.S. Mint Police, and U.S. Postal Service Police) reported that they were not having difficulty recruiting officers. Library of Congress officials attributed their police force's lack of difficulty recruiting officers to attractive pay and working conditions and the ability to hire officers at any age above 20 and who also will not be subject to a mandatory retirement age.[11] Supreme Court officials told us that their police force had solved a recent recruitment problem by focusing additional resources on recruiting and emphasizing the force's attractive work environment to potential recruits. U.S. Postal Service officials reported that their police force was not experiencing a recruitment problem because it hired its police officers from within the agency. Table 2 provides a summary of the level of recruitment difficulties reported by the 13 police forces.

Table 2: Extent to Which Police Forces Reported Experiencing Recruitment Difficulties in the Washington MSA

Uniformed police force	Very great extent	Great extent	Moderate extent	Little or some extent	No extent
Library of Congress					•
Supreme Court					•
U.S. Capitol				•	
Pentagon Force Protection Agency			•		
Secret Service			•		
Park Police			•		
Bureau of Engraving and Printing	•				
U.S. Mint Police					•
Government Printing Office			•		
Federal Bureau of Investigation		•			
U.S. Postal Service					•
Federal Protective Service		•			
National Institutes of Health		•			
Total	1	3	4	1	4

Source: GAO analysis of data provided by the 13 police forces.

Although many of the police forces reported facing recruitment difficulties, none of the police forces used human capital recruitment

[11]Police forces that are not covered by federal law enforcement retirement benefits do not have a mandatory retirement age.

tools, such as recruitment bonuses and student loan repayments, in fiscal year 2002.

Sizable Differences in Turnover Rates among the 13 Police Forces

Total turnover at the 13 police forces nearly doubled from fiscal years 2001 to 2002. Additionally, during fiscal year 2002, 8 of the 13 police forces experienced their highest annual turnover rates over the 6-year period, from fiscal years 1997 through 2002. There were sizable differences in turnover rates among the 13 police forces during fiscal year 2002. NIH Police reported the highest turnover rate at 58 percent. The turnover rates for the remaining 12 police forces ranged from 11 percent to 41 percent. Of the 729 officers who separated from the 13 police forces in fiscal year 2002, about 82 percent (599), excluding retirements, voluntarily separated. About 53 percent (316) of the 599 officers who voluntarily separated from the police forces in fiscal year 2002 went to TSA.[12] Additionally, about 65 percent of the officers who voluntarily separated from the 13 police forces during fiscal year 2002 had fewer than 5 years of service on their police forces.

The total number of separations at all 13 police forces nearly doubled (from 375 to 729) between fiscal year 2001 and 2002. Turnover increased at all but 1 of the police forces (Library of Congress Police) over this period. The most significant increases in turnover occurred at the Bureau of Engraving and Printing Police (200 percent) and the Secret Service Uniformed Division (about 152 percent). In addition, during fiscal year 2002, 8 of the 13 police forces experienced their highest annual turnover rates over the 6-year period, from fiscal year 1997 through 2002.

The turnover rates at the 13 police forces ranged from 11 percent at the Library of Congress Police to 58 percent at the NIH Police in fiscal year 2002. In addition to the NIH Police, 3 other police forces had turnover rates of 25 percent or greater during fiscal year 2002. The U.S. Mint Police reported the second highest turnover rate at 41 percent, followed by the Bureau of Engraving and Printing Police at 27 percent and the Secret Service Uniformed Division at 25 percent.

There was no clear pattern evident between employee pay and turnover rates during fiscal year 2002. For example, while some police forces with

[12]Of the 316 officers who went to TSA, 313 accepted law enforcement positions and 3 accepted nonlaw enforcement positions.

relatively highly paid entry-level officers such as the Library of Congress Police (11 percent) and the Supreme Court Police (13 percent) had relatively low turnover rates, other police forces with relatively highly paid entry-level officers such as the U.S. Mint Police (41 percent), Bureau of Engraving and Printing Police (27 percent), and Secret Service Uniformed Division (25 percent) experienced significantly higher turnover rates. Additionally, turnover varied significantly among the 5 police forces with relatively lower paid entry-level officers. For example, while the Federal Protective Service (19 percent) and NIH Police (58 percent) entry-level officers both received the lowest starting pay, turnover differed dramatically.

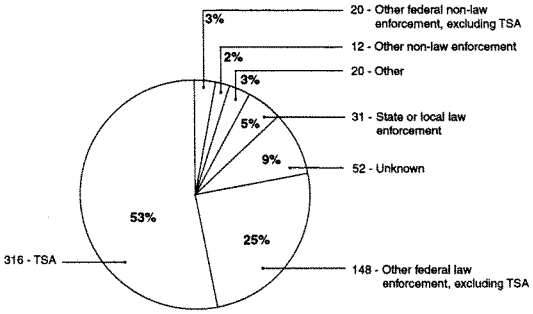
Likewise, no clear pattern existed regarding turnover among police forces receiving federal law enforcement retirement benefits and those receiving traditional federal retirement benefits. For example, entry-level officers at the Library of Congress Police, U.S. Capitol Police, and Supreme Court Police all received equivalent pay in fiscal year 2002. However, the Library of Congress (11 percent) had a lower turnover rate than the Capitol Police (13 percent) and Supreme Court Police (16 percent), despite the fact that officers at the latter 2 police forces received federal law enforcement retirement benefits. In addition, while officers at both the Park Police (19 percent) and Secret Service Uniformed Division (25 percent) received law enforcement retirement benefits, these forces experienced higher turnover rates than some forces such as U.S. Postal Service Police (14 percent) and FBI Police (17 percent), whose officers did not receive law enforcement retirement benefits and whose entry-level officers received lower starting salaries.

More than half (316) of the 599 officers who voluntarily separated from the police forces in fiscal year 2002 went to TSA—nearly all (313 of 316) to become Federal Air Marshals where they were able to earn higher salaries, federal law enforcement retirement benefits, and a type of pay premium for unscheduled duty equaling 25 percent of their base salary. The number (316) of police officers who voluntarily separated from the 13 police forces to take positions at TSA nearly equaled the increase in the total number of separations (354) that occurred between fiscal year 2001 and 2002.

About 25 percent (148) of the voluntarily separated officers accepted other federal law enforcement positions, excluding positions at TSA, and about 5 percent (32 officers) took nonlaw enforcement positions, excluding positions at TSA. Furthermore, about 9 percent (51) of the voluntarily separated officers took positions in state or local law enforcement or separated to, among other things, continue their education. Officials were

unable to determine where the remaining 9 percent (52) of the voluntarily separated officers went. Figure 1 shows a percentage breakdown of where the 599 officers who voluntarily separated from the 13 police forces during fiscal year 2002 went.

Figure 1: Percentage Breakdown of Where 599 Officers Who Voluntarily Separated during Fiscal Year 2002 Went



Source: GAO analysis of turnover data provided by the 13 police forces.

Although we did not survey individual officers to determine why they separated from these police forces, officials from the 13 forces reported a number of reasons that officers had separated, including to obtain better pay and/or benefits at other police forces, less overtime, and greater responsibility. Without surveying each of the 599 officers who voluntarily separated from their police forces in fiscal year 2002, we could not draw any definitive conclusions about the reasons they left.

Data we gathered from the 13 police forces since we issued our report indicate that fiscal year 2003 turnover rates will drop significantly at 12 of 13 forces–even below historical levels at most of the forces—if patterns for the first 9 months of fiscal year 2003 continue for the remaining

months.[13] Prospective turnover rates at these 12 forces in fiscal year 2003 range from being 21 to 83 percent lower than fiscal year 2002 levels. In addition, prospective fiscal year 2003 turnover rates at 8 of the 13 forces are below historical levels.

The use of human capital flexibilities to address turnover varied among the 13 police forces. For example, officials at 4 of the 13 police forces reported that they were able to offer retention allowances, which may assist the forces in retaining experienced officers, and 3 of these police forces used this tool to retain officers in fiscal year 2002. The average retention allowances paid to officers in fiscal year 2002 were about $1,000 at the Pentagon Force Protection Agency, $3,500 at the Federal Protective Service, and more than $4,200 at the NIH Police. The police forces reported various reasons for not making greater use of available human capital flexibilities in fiscal year 2002, including

- lack of funding for human capital flexibilities,
- lack of awareness among police force officials that the human capital flexibilities were available, and
- lack of specific requests for certain flexibilities such as time-off awards or tuition reimbursement.

The limited use of human capital flexibilities by many of the 13 police forces and the reasons provided for the limited use are consistent with our governmentwide study of the use of such authorities. In December 2002, we reported that federal agencies have not made greater use of such flexibilities for reasons such as agencies' weak strategic human capital planning, inadequate funding for using these flexibilities given competing priorities, and managers' and supervisors' lack of awareness and knowledge of the flexibilities.[14] We further stated that the insufficient or ineffective use of flexibilities can significantly hinder the ability of agencies to recruit, hire, retain, and manage their human capital. Additionally, in May 2003, we reported that OPM can better assist agencies in using human capital flexibilities by, among other things, maximizing its efforts to make the flexibilities more widely known to agencies through

[13]Historical levels were calculated by averaging turnover rates, when available, for fiscal years 1997-2001. The turnover rate from fiscal year 2002 was excluded from the average due to the special circumstances of the startup of TSA.

[14]U.S. General Accounting Office, *Human Capital: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces*, GAO-03-2 (Washington, D.C.: Dec. 6, 2002).

compiling, analyzing, and sharing information about when, where, and how the broad range of flexibilities are being used, and should be used, to help agencies meet their human capital management needs.[15]

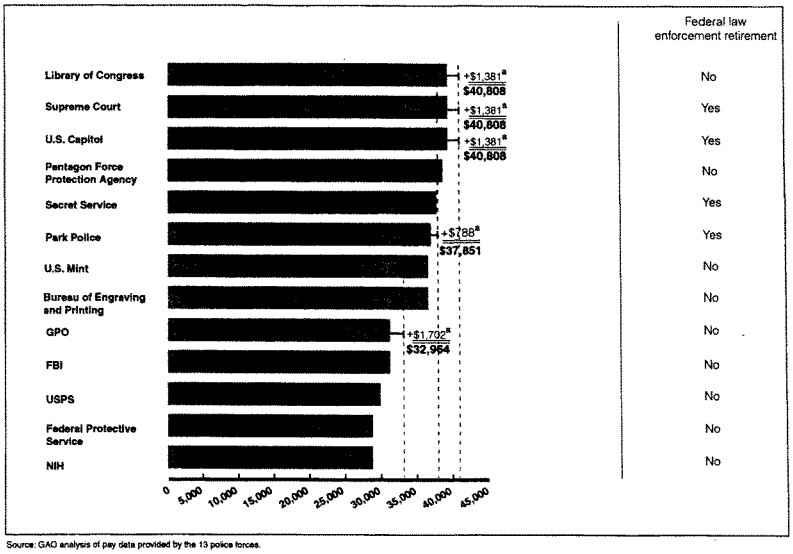
Entry-Level Pay and Benefits Varied among the Police Forces

Entry-level pay and retirement benefits varied widely across the 13 police forces. Annual pay for entry-level police officers ranged from $28,801 to $39,427, as of September 30, 2002. Officers at 4 of the 13 police forces received federal law enforcement retirement benefits, while officers at the remaining 9 police forces received standard federal employee retirement benefits. According to officials, all 13 police forces performed many of the same types of general duties, such as protecting people and property and screening people and materials entering and/or exiting buildings under their jurisdictions. The minimum qualification requirements and the selection processes were generally similar among most of the 13 police forces.

At $39,427 per year, the U.S. Capitol Police, Library of Congress Police, and Supreme Court Police forces had the highest starting salaries for entry-level officers, while entry-level officers at the NIH Police and Federal Protective Service received the lowest starting salaries at $28,801 per year. The salaries for officers at the remaining 8 police forces ranged from $29,917 to $38,695. Entry-level officers at 5 of the 13 police forces received an increase in pay, ranging from $788 to $1,702, upon successful completion of basic training. Four of the 13 police forces received federal law enforcement retirement benefits and received among the highest starting salaries, ranging from $37,063 to $39,427. Figure 2 provides a comparison of entry-level officer pay and retirement benefits at the 13 police forces.

[15]U.S. General Accounting Office, *Human Capital: OPM Can Better Assist Agencies in Using Personnel Flexibilities*, GAO-03-428 (Washington, D.C.: May 9, 2003).

Figure 2: Pay for Entry-level Officers and Retirement Benefits for Each of the 13 Police Forces with 50 or More Officers Stationed in the Washington MSA as of September 30, 2002



Source: GAO analysis of pay data provided by the 13 police forces.

[a]Pay increase after successful completion of basic training.

Entry-level officers at 12 of the 13 police forces (all but the U.S. Postal Service Police) received increases in their starting salaries between October 1, 2002, and April 1, 2003. Entry-level officers at three of the four police forces (FBI Police, Federal Protective Service, and NIH Police) with the lowest entry-level salaries as of September 30, 2002, received raises of $5,584, $4,583, and $4,252, respectively, during the period ranging from October 1, 2002, through April 1, 2003. In addition, entry-level officers at

both the U.S. Capitol Police and Library of Congress Police—two of the highest paid forces—also received salary increases of $3,739 during the same time period.[16] These pay raises received by entry-level officers from October 1, 2002, through April 1, 2003, narrowed the entry-level pay gap for some of the 13 forces. For example, as of September 30, 2002, entry-level officers at the FBI Police received a salary $8,168 less than an entry-level officer at the U.S. Capitol Police. However, as of April 1, 2003, the pay gap between entry-level officers at the two forces had narrowed to $6,323.

Officers at the 13 police forces reportedly performed many of the same types of duties, such as protecting people and property, patrolling the grounds on foot, and conducting entrance and exit screenings. Police force officials also reported that officers at all of the police forces had the authority to make arrests. Although there are similarities in the general duties, there were differences among the police forces with respect to the extent to which they performed specialized functions.

[16]In late April 2003, Supreme Court Police officers were granted a pay increase retroactive to October 1, 2002. This pay increase brought the entry-level pay of Supreme Court officers to the same levels as those of the Capitol Police and Library of Congress Police.

DHS Organizational Transformation

We have observed in our recent Performance and Accountability Series that there is no more important management reform than for agencies to transform their cultures to respond to the transition that is taking place in the role of government in the 21st century.[17] Establishing the new DHS is an enormous undertaking that will take time to achieve in an effective and efficient manner. DHS must effectively combine 22 agencies with an estimated 160,000 civilian employees specializing in various disciplines, including law enforcement, border security, biological research, computer security, and disaster mitigation, and also oversee a number of non-homeland security activities. To achieve success, the end result should not simply be a collection of components in a new department, but the transformation of the various programs and missions into a high performing, focused organization.

Implementing large-scale change management initiatives, such as establishing a DHS, is not a simple endeavor and will require the concentrated efforts of both leadership and employees to accomplish new organizational goals. We have testified previously that at the center of any serious change management initiative are the people—people define the organization's culture, drive its performance, and embody its knowledge base.[18] Experience shows that failure to adequately address—and often even consider—a wide variety of people and cultural issues is at the heart of unsuccessful mergers and transformations. Recognizing the "people" element in these initiatives and implementing strategies to help individuals maximize their full potential in the new organization, while simultaneously managing the risk of reduced productivity and effectiveness that often occurs as a result of the changes, is the key to a successful merger and transformation.

Chairwoman Davis, today you are releasing a report that we prepared at your and Senator Voinovich's request that identifies the key practices and specific implementation steps with illustrative private and public sector examples that agencies can take as they transform their cultures to be more results-oriented, customer-focused, and collaborative in nature.[19]

[17]U.S. General Accounting Office, *Major Management Challenges and Program Risks: A Governmentwide Perspective*, GAO-03-95 (Washington, D.C.: January 2003).

[18]U.S. General Accounting Office, *Human Capital: Building on the Current Momentum to Address High-Risk Issues*, GAO-03-637T (Washington, D.C.: Apr. 8, 2003).

[19]GAO-03-669.

DHS could use these practices and steps to successfully transform its culture and merge its various originating components into a unified department. (See table 3.)

Table 3: Key Practices and Implementation Steps for Mergers and Organizational Transformations

Practice	Implementation steps
Ensure top leadership drives the transformation.	Define and articulate a succinct and compelling reason for change. Balance continued delivery of services with merger and transformation activities.
Establish a coherent mission and integrated strategic goals to guide the transformation.	Adopt leading practices for results-oriented strategic planning and reporting.
Focus on a key set of principles and priorities at the outset of the transformation.	Embed core values in every aspect of the organization to reinforce the new culture.
Set implementation goals and a timeline to build momentum and show progress from day one.	Make public implementation goals and timeline. Seek and monitor employee attitudes and take appropriate follow-up actions. Identify cultural features of merging organizations to increase understanding of former work environments. Attract and retain key talent. Establish an organizationwide knowledge and skills inventory to allow knowledge exchange among merging organizations.
Dedicate an implementation team to manage the transformation process.	Establish networks to support implementation team. Select high-performing team members.
Use the performance management system to define the responsibility and assure accountability for change.	Adopt leading practices to implement effective performance management systems with adequate safeguards.
Establish a communication strategy to create shared expectations and report related progress.	Communicate early and often to build trust. Ensure consistency of message. Encourage two-way communication. Provide information to meet specific needs of employees.
Involve employees to obtain their ideas and gain their ownership for the transformation.	Use employee teams. Involve employees in planning and sharing performance information. Incorporate employee feedback into new policies and procedures. Delegate authority to appropriate organizational levels.
Build a world-class organization.	Adopt leading practices to build a world-class organization.

Source: GAO.

DHS Strategic Human Capital Management

As Secretary Ridge and his leadership team will recognize, strategic human capital management is a critical management challenge for DHS. In our report on homeland security issued last December, we recommended that OPM, in conjunction with the Office of Management and Budget and

the agencies, should develop and oversee the implementation of a long-term human capital strategy that can support the capacity building across government required to meet the objectives of the nation's efforts to strengthen homeland security.[29] With respect to DHS, in particular, this strategy should

- establish an effective performance management system, which incorporates the practices that reinforce a "line of sight" that shows how unit and individual performance can contribute to overall organization goals;
- provide for the appropriate use of the human capital flexibilities granted to DHS to effectively manage its workforce; and
- foster an environment that promotes employee involvement and empowerment, as well as constructive and cooperative labor management employee relations.

In response to these recommendations, the Director of OPM stated that OPM has created a design process that is specifically intended to make maximum use of the flexibilities that Congress has granted to DHS, including the development of a performance management system linking individual and organizational performance. Chairwoman Davis, at your and Senator Voinovich's request, we are reviewing the design process DHS and OPM have put in place and we expect to issue our first report this September.

DHS must also consider differences in pay, benefits, and performance management systems of the employee groups that were brought into DHS. Last March, the Secretary of Homeland Security highlighted examples of such differences. For example, basic pay is higher for Secret Service Uniformed Division officers than for General Schedule police officers. TSA uses a pay banding system with higher pay ranges than the General Schedule system. The Secretary also cited differences in benefits. The Secret Service Uniformed Division officers and TSA Air Marshals are covered under the law enforcement officer retirement benefit provisions, while the Federal Protective Service police and law enforcement security officers and various Customs Service employees, among others, are not. Further, the Secretary stated that DHS and OPM employees will determine

[29]U.S. General Accounting Office, *Homeland Security: Management Challenges Facing Federal Leadership*, GAO-03-260 (Washington, D.C.: Dec. 20, 2002).

if the differences in pay and benefits constitute unwarranted disparities and if so, they will make specific recommendations on how these differences might be eliminated in DHS's human resources management system proposal, which will be submitted later this year.

The performance management systems among DHS components also have significant differences that need to be considered. The performance management systems vary in fundamental ways. Of the 4 largest agencies joining DHS, the Customs Service's and TSA's performance management systems have 2-level performance rating systems.[21] We have raised concerns that such approaches may not provide enough meaningful information and dispersion in ratings to recognize and reward top performers, help everyone attain their maximum potential, and deal with poor performers. The Coast Guard has a 3-level system and Immigration and Naturalization Service has a 5-level system.[22]

One of the key practices mentioned above to a successful merger and transformation is to use the performance management system to define the responsibility and assure accountability for change. An effective performance management system can be a strategic tool to drive internal change and achieve desired results. Effective performance management systems are not merely used for once- or twice-yearly individual expectation setting and rating processes, but are tools to help the organization manage on a day-to-day basis. These systems are used to achieve results, accelerate change, and facilitate two-way communication throughout the year so that discussions about individual and organizational performance are integrated and ongoing. The performance management system must link organizational goals to individual performance and create a line of sight between an individual's activities and organizational results.

Chairwoman Davis, at your and Senator Voinovich's request, we identified a set of key practices that federal agencies could use to create this line of

[21]The Customs Service's performance management system applies to all Customs Service employees except the Senior Executive Service. The TSA performance management system applies to all TSA employees.

[22]The Coast Guard's performance management system applies to civilian employees. The Immigration and Naturalization Service's performance management system applies to all of its employees except attorneys and the Senior Executive Service.

sight and develop effective performance management systems.[23] These practices helped public sector organizations both in the United States and abroad create a line of sight between individual performance and organizational success and, thus, transform their cultures to be more results-oriented, customer-focused, and collaborative in nature. DHS has the opportunity to develop a modern, effective, and credible performance management system to manage and direct its transformation. DHS should consider these key practices as it develops a performance management system with the adequate safeguards, including reasonable transparency and appropriate accountability mechanisms in place, to help create a clear linkage between individual performance and organizational success.[24]

We recently reported that TSA, one of the components that joined DHS, has taken the first steps in creating such a linkage and establishing a performance management system that aligns individual performance expectations with organizational goals.[25] TSA has implemented standardized performance agreements for groups of employees, including transportation security screeners, supervisory transportation security screeners, supervisors, and executives. These performance agreements include both organizational and individual goals and standards for satisfactory performance that can help TSA show how individual performance contributes to organizational goals. For example, each executive performance agreement includes organizational goals, such as to maintain the nation's air security and ensure an emphasis on customer satisfaction, as well as individual goals, such as to demonstrate through actions, words, and leadership, a commitment to civil rights. To strengthen its current executive performance agreement and foster the culture of a high-performing organization, we recommended that TSA add performance expectations that establish explicit targets directly linked to organizational goals, foster the necessary collaboration within and across organizational boundaries to achieve results, and demonstrate

[23]U.S. General Accounting Office, *Results-Oriented Cultures: Creating a Clear Linkage between Individual Performance and Organizational Success*, GAO-03-488 (Washington, D.C.: Mar. 14, 2003).

[24]For more information on adequate safeguards, see U.S. General Accounting Office, *Defense Transformation: Preliminary Observations on DOD's Proposed Civilian Personnel Reforms*, GAO-03-717T (Washington, D.C.: Apr. 29, 2003).

[25]U.S. General Accounting Office, *Transportation Security Administration: Actions and Plans to Build a Results-Oriented Culture*, GAO-03-190 (Washington, D.C.: Jan. 17, 2003).

commitment to lead and facilitate change. TSA agreed with this recommendation.

Madam Chairwoman and Mr. Chairman, this completes my prepared statement. I would be happy to respond to any questions you or other members of the Subcommittee may have at this time.

For further information, please call me or Weldon McPhail at (202) 512-8777. Other key contributors to this testimony were Carole Cimitile, Katherine Davis, Geoffrey Hamilton, Janice Lichty, Michael O'Donnell, Lisa Shames, Lou Smith, Maria Strudwick, Mark Tremba, and Gregory H. Wilmoth.

Related GAO Products

Law Enforcement Personnel

Federcl Uniformed Police: Selected Data on Pay, Recruitment, and Retention at 13 Police Forces in the Washington, D.C., Metropolitan Area (GAO-03-658, June 13, 2003).

Review of Potential Merger of the Library of Congress Police and/or the Government Printing Office Police with the U.S. Capitol Police (GAO-02-792R, July 5, 2002).

Federal Retirement: Benefits for Members of Congress, Congressional Staff, and Other Employees (GAO/GGD-95-78, May 15, 1995).

Capitol Police: Administrative Improvements and Possible Merger With the Library of Congress Police (GAO/AFMD-91-28, Feb. 28, 1991).

Recruitment and Retention: Inadequate Federal Pay Cited as Primary Problem by Agency Officials (GAO/GGD-90-117, Sept. 11, 1990).

Report of National Advisory Commission on Law Enforcement (OCG-90-2, Apr. 25, 1990).

Federal Pay: U.S. Park Police Compensation Compared With That of Other Police Units (GAO/GGD-89-92, Sept. 25, 1989).

Compensation And Staffing Levels Of the FAA Police At Washington National And Washington Dulles International Airports (GAO/GGD-85-24, May 17, 1985).

Human Capital and Organizational Transformation

Results-Cultures: Implementation Steps to Assist Mergers and Organizational Transformations (GAO-03-669, July 2, 2003).

*Human Capital: Opportunities to Improve Executive Agencies' Hiring Processes (*GAO-03-450, *May 30, 2003).*

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Human Capital: Selected Agency Actions to Integrate Human Capital Approaches to Attain Mission Results (GAO-03-446, Apr. 11, 2003).

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Highlights of a GAO Forum: Mergers and Transformation: Lessons Learned for a Department of Homeland security and Other Federal Agencies (GAO-03-293SP, Nov. 14, 2002).

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Results-Oriented Cultures: Insights for U.S. Agencies from Other Countries' Performance Management Initiatives (GAO-02-862, Aug. 2, 2002).

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Human Capital: Practices That Empowered and Involved Employees (GAO-01-1070, Sept. 14, 2001).

Major Management Challenges

FBI Reorganization: Progress Made in Efforts to Transform, but Major Challenges Continue (GAO-03-759T, June 18, 2003).

Homeland Security: Information Sharing Responsibilities, Challenges, and Key Management Issues (GAO-03-715T, May 8, 2003).

High-Risk Series: Strategic Human Capital Management (GAO-03-120, Jan. 1, 2003).

Major Management Challenges and Program Risks: Department of Justice (GAO-03-105, Jan. 2003).

Homeland Security: Management Challenges Facing Federal Leadership (GAO-03-260, Dec. 20, 2002).

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Mrs. DAVIS OF VIRGINIA. Next, we have Donald Winstead, Deputy Associate Director for the Center for Pay and Performance Policy at OPM.

Thank you, Mr. Winstead; and you may begin your statement.

Mr. WINSTEAD. Madam Chairwoman, Mr. Chairman and members of the subcommittee, on behalf of Office of Personnel Management Director Kay Coles James, I am pleased to be with you today to discuss personnel issues affecting law enforcement employees in the Federal Government. Let me assure you at the outset that we greatly appreciate the many significant contributions to the Nation's security made by the dedicated members of the Federal law enforcement community.

The provisions governing pay and benefits for employees in that community and those in related occupations have evolved over many years. The stated purpose of the special law enforcement retirement provisions has been to make it possible for the government to maintain a young and vigorous work force in certain occupations requiring such employees. These provisions have never been intended as a reward for employees who perform certain types of work. The evolution of these provisions through legislation and judicial interpretation, however, has led to coverage decisions that are not always consistent and which are regarded in some cases as inequitable.

OPM recently completed a report on Federal employees with law enforcement duties. Our report, which was transmitted to Congress on June 30, covers employees who meet the definitions of law enforcement officer and the laws governing the Civil Service Retirement Service [CSRS], and the Federal Employees Retirement System [FERS], as well as other employees who have arrest authority; and here are some of the key findings of our report.

The government employs a total of about 99,000 employees who are covered by the special law enforcement retirement provisions of CSRS or FERS. More than 80 percent of these employees work in the Department of Justice or the new Department of Homeland Security.

The government employs another 30,000 employees who have authority to make arrests under Federal law but who are not covered by the definition of law enforcement officer and CSRS or FERS. Of these, 56 percent work for the Department of Homeland Security.

Most law enforcement officers [LEOs], and other employees with arrest authority, which we will call non-LEOs, are covered by standard basic pay and benefit systems. Within these systems, LEOs have special governmentwide pay and retirement benefits. Some LEOs and non-LEOs are covered by non-standard basic pay, premium pay and retirement provisions established under independent legislative authority or the Title 5 demonstration project authority.

Some of the non-standard basic-pay systems covering LEOs have a structure that is similar to, or linked to, the general schedule. However, some basic pay systems provide higher pay ranges than the general schedule. The Department of Homeland Security has a number of non-standard premium pay provisions. Customs inspectors and Immigration inspectors in particular receive significantly

higher payments for overtime and other special work than other Federal employees.

We believe the information in OPM's June 30 report provides the foundation for a greater understanding and appreciation of the complexity of the pay and benefits provisions currently applicable to Federal law enforcement personnel.

Under the terms of the Homeland Security Act, OPM is working with the Department of Homeland Security to develop a new pay system that will cover many law enforcement officers. DHS and OPM have established a DHS human resources system design team that has been charged with developing a range of options for human resource systems in areas of basic pay, classification, performance management, disciplinary action and appeals and labor-management relations. Any changes in premium pay or retirement benefits, however, would require additional legislation.

OPM and DHS will work with the Office of Management and Budget to help formulate the administration's position on any possible legislative proposals involving law enforcement personnel. We will be especially interested in evaluating the impact of any such proposal on options for modifying the basic pay of DHS employees under the new authority provided by the Homeland Security Act. In general, we are weary of any proposal that would have the effect of creating new pay or benefits disparities without a clearly articulated rationale for differences in treatment.

Finally, we believe any changes in law affecting law enforcement personnel should be driven by an assessment of the impact of those changes on the ability of Federal agencies to meet their strategic goals and objectives. For that reason, we believe major changes in the current pay and benefit structure for employees in law enforcement and related occupations should not be made without considering such factors as the recruitment and retention situation, the physical and mental demands of law enforcement employment, the treatment of other types of employees in similar circumstances, what human resources management problems, if any, exist under current provisions and how any proposed change would affect overall Federal expenditures. In addition, the application of any such provisions should be clear-cut, objective and consistent.

I will be pleased to answer any questions that any members of the subcommittee may have.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Winstead.

[The prepared statement of Mr. Winstead follows:]

STATEMENT OF
DONALD J. WINSTEAD
DEPUTY ASSOCIATE DIRECTOR
CENTER FOR PAY AND PERFORMANCE POLICY
OFFICE OF PERSONNEL MANAGEMENT

at a joint hearing of the

SUBCOMMITTEE ON CIVIL SERVICE AND
AGENCY REORGANIZATION
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

and the

SUBCOMMITTEE ON CRIMINAL JUSTICE,
DRUG POLICY AND HUMAN RESOURCES
COMMITTEE ON GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

on

PERSONNEL ISSUES AFFECTING
LAW ENFORCEMENT EMPLOYEES
OF THE FEDERAL GOVERNMENT

JULY 23, 2003

MADAM CHAIRWOMAN, MR. CHAIRMAN, AND MEMBERS OF THE SUBCOMMITTEES:

ON BEHALF OF OFFICE OF PERSONNEL MANAGEMENT (OPM) DIRECTOR KAY COLES JAMES, I AM PLEASED TO BE WITH YOU TODAY TO DISCUSS PERSONNEL ISSUES AFFECTING LAW ENFORCEMENT EMPLOYEES IN THE FEDERAL GOVERNMENT. LET ME ASSURE YOU AT THE OUTSET THAT WE DEEPLY APPRECIATE THE MANY SIGNIFICANT CONTRIBUTIONS TO THE NATION'S SECURITY MADE BY THE DEDICATED MEMBERS OF THE FEDERAL LAW ENFORCEMENT COMMUNITY.

THE PROVISIONS GOVERNING PAY AND BENEFITS FOR EMPLOYEES IN THAT COMMUNITY AND THOSE IN RELATED OCCUPATIONS HAVE EVOLVED OVER MANY YEARS. SINCE MUCH OF THAT DEVELOPMENT IS ATTRIBUTABLE TO THE SPECIAL RETIREMENT PROVISIONS GOVERNING LAW ENFORCEMENT OFFICERS, AND BECAUSE MANY CURRENT PAY ENTITLEMENTS ARE LINKED TO THOSE PROVISIONS, PLEASE PERMIT ME TO BEGIN WITH A REVIEW OF THEIR HISTORY AND SIGNIFICANCE.

WHILE I AM SURE YOU WILL NOT OBJECT IF I OMIT READING IT TODAY, I AM INCLUDING AS AN APPENDIX TO MY FORMAL STATEMENT A BRIEF CHRONOLOGY OF SIGNIFICANT EVENTS IN THE HISTORY OF THOSE SPECIAL RETIREMENT PROVISIONS.

SPECIAL RETIREMENT ELIGIBILITY AND COMPUTATIONAL PROVISIONS WERE FIRST ENACTED IN 1947 FOR FBI SPECIAL AGENTS. OVER THE YEARS, THESE PROVISIONS HAVE BEEN MODIFIED ON A NUMBER OF OCCASIONS.

GROUPS ADDED INCLUDE CRIMINAL INVESTIGATORS, PRISON GUARDS, NON-GUARD PRISON EMPLOYEES, FIREFIGHTERS, CAPITOL POLICE, NUCLEAR MATERIALS COURIERS, AND SUPREME COURT POLICE.

THE STATED PURPOSE OF THE SPECIAL PROVISIONS HAS BEEN TO MAKE IT POSSIBLE FOR THE GOVERNMENT TO MAINTAIN A YOUNG AND VIGOROUS WORKFORCE IN CERTAIN OCCUPATIONS REQUIRING SUCH EMPLOYEES. THE SPECIAL PROVISIONS HAVE NEVER BEEN INTENDED AS A REWARD OR AS ADDITIONAL COMPENSATION FOR EMPLOYEES WHO PERFORM CERTAIN TYPES OF WORK.

NOW, AS YOU KNOW, IN RESPONSE TO A JOINT REQUEST FROM YOUR COMMITTEE, THE COMMITTEE ON THE JUDICIARY, AND ONE OF ITS SUBCOMMITTEES, WE RECENTLY COMPLETED A REPORT ON FEDERAL EMPLOYEES WITH LAW ENFORCEMENT DUTIES.

OPM'S REPORT TO CONGRESS

PRINCIPALLY, THE REPORT WAS DESIGNED TO COVER EMPLOYEES WITH LAW ENFORCEMENT DUTIES WHO HAVE ARREST AUTHORITY. SOME OF THE EMPLOYEES IN THE GROUP STUDIED MEET THE DEFINITIONS OF "LAW ENFORCEMENT OFFICER" (LEO) IN THE LAWS GOVERNING THE CIVIL SERVICE RETIREMENT SYSTEM (CSRS) AND THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM (FERS), WHILE OTHERS DO NOT. AS YOU WILL NOTE FROM THE HISTORICAL DISCUSSION IN THE APPENDIX, THOSE DEFINITIONS RELY ON EMPLOYEES HAVING CERTAIN PRIMARY DUTIES RELATED TO CRIMINAL LAW ENFORCEMENT, BUT ALSO COVER EMPLOYEES IN A VARIETY OF OCCUPATIONS WHO HAVE FREQUENT AND DIRECT CONTACT WITH SUSPECTED OR CONVICTED CRIMINALS IN A DETENTION SETTING, SUCH AS SUPPORT STAFF WORKING AT FEDERAL PRISONS.

IN RESPONSE TO OUR REQUEST FOR INFORMATION, ALL FIFTEEN DEPARTMENTS AND TWENTY-NINE OTHER AGENCIES, INCLUDING SOME IN THE LEGISLATIVE AND JUDICIAL BRANCHES, PROVIDED DATA. OPM CONSOLIDATED THAT INFORMATION AND PRESENTED OUR FINDINGS ON JUNE 30, 2003.

TO SUPPLEMENT THE AGENCY SUBMISSIONS, OPM ALSO PREPARED VARIOUS COMPUTER RUNS FROM OUR CENTRAL PERSONNEL DATA FILE (CPDF).

MOST LEO'S ARE COVERED BY THE STANDARD GOVERNMENTWIDE PAY AND BENEFITS SYSTEMS ESTABLISHED UNDER TITLE 5, UNITED STATES CODE. THE STANDARD BASIC PAY SYSTEMS INCLUDE THE GENERAL SCHEDULE, THE PAY SCHEDULES ESTABLISHED FOR SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS AND MEMBERS OF THE SENIOR EXECUTIVE SERVICE, THE FEDERAL WAGE SYSTEM, AND OTHER STATUTORY PAY SYSTEMS. CERTAIN SPECIAL PAY PROVISIONS APPLY TO LEO'S UNDER THOSE STANDARD SYSTEMS. LEO'S HAVE SPECIAL RETIREMENT BENEFITS WITHIN THE STANDARD RETIREMENT SYSTEM.

OPM ALSO REQUESTED THAT AGENCIES PROVIDE INFORMATION ON NONSTANDARD BASIC PAY, PREMIUM PAY, AND RETIREMENT BENEFITS.

KEY FINDINGS OF OPM'S REPORT

QUANTITATIVE DATA PROVIDED BY AGENCIES

LEO'S

- THE AGENCIES IDENTIFIED A TOTAL OF 99,249 EMPLOYEES AS "LAW ENFORCEMENT OFFICERS" UNDER THE DEFINITIONS IN THE LAWS GOVERNING CSRS AND FERS. (THIS INCLUDES CERTAIN SECRET SERVICE UNIFORMED DIVISION AND PARK POLICE OFFICERS WHO ARE COVERED BY THE D.C. POLICE RETIREMENT PLAN.)

- OF THESE LEO'S, THE AGENCIES REPORTED THAT 17,466 EMPLOYEES (17.6 PERCENT) OBTAINED LEO RETIREMENT COVERAGE AS A RESULT OF HAVING FREQUENT DIRECT CONTACT WITH SUSPECTED OR CONVICTED CRIMINALS, AS OPPOSED TO HAVING THE PRIMARY DUTIES OF INVESTIGATION, APPREHENSION, AND DETENTION. THE AGENCIES REPORTED THAT THESE EMPLOYEES WORK IN 205 DIFFERENT OCCUPATIONAL SERIES. THE LEO'S WHOSE STATUS IS BASED ON PRIMARY DUTIES WORK IN 37 DIFFERENT OCCUPATIONAL SERIES.

- THE MAJORITY OF LEO'S WORK IN THE DEPARTMENT OF JUSTICE (54,891) AND THE DEPARTMENT OF HOMELAND SECURITY (24,724). THESE TWO DEPARTMENTS EMPLOY 80 PERCENT OF THE LEO'S REPORTED BY THE AGENCIES.

- THE AGENCIES REPORTED 7,719 EMPLOYEES IN SECONDARY (I.E., SUPERVISORY OR ADMINISTRATIVE) LEO POSITIONS. WE NOTE, HOWEVER, THAT THIS NUMBER REPRESENTS A MINIMUM TOTAL BECAUSE NOT ALL AGENCIES PROVIDED SECONDARY EMPLOYEE SUBCOUNTS.

NON-LEO'S WITH ARREST AUTHORITY

- THE AGENCIES IDENTIFIED 30,595 EMPLOYEES WHO HAVE AUTHORITY TO MAKE ARRESTS UNDER FEDERAL LAW (OR AN EQUIVALENT AUTHORITY TO DETAIN PERSONS UNDER MILITARY LAW), BUT WHO ARE NOT COVERED BY THE SPECIAL RETIREMENT PROVISIONS FOR LEO'S UNDER CSRS OR FERS.

- THE MAJORITY OF NON-LEO'S WITH ARREST AUTHORITY ARE EMPLOYED BY THE DEPARTMENT OF HOMELAND SECURITY (17,199). THESE EMPLOYEES CONSTITUTE 56 PERCENT OF THE GOVERNMENTWIDE TOTAL REPORTED BY THE AGENCIES.

DATA FROM THE CENTRAL PERSONNEL DATA FILE (CPDF)

TURNOVER DATA FOR SELECTED LEO AND NON-LEO OCCUPATIONS FOR FY 2001-2002

- CPDF DATA FOR FY 2001 AND FY 2002 SHOW THAT THE TWO LARGEST LEO OCCUPATIONS—GS-1811 CRIMINAL INVESTIGATOR AND GS-0006 CORRECTIONAL OFFICER—HAVE AVERAGE ANNUAL QUIT RATES OF LESS THAN 1 PERCENT. THE NEXT LARGEST LEO OCCUPATION, GS-1896 BORDER PATROL AGENT, HAS AVERAGE ANNUAL QUIT RATES OF LESS THAN 2 PERCENT AT THE JOURNEY LEVEL. THIS COMPARES TO AN OVERALL AVERAGE ANNUAL QUIT RATE OF ABOUT 1.7 PERCENT FOR ALL FEDERAL EMPLOYEES IN FY 2002.

- WITH RESPECT TO THE MAJOR GROUPS OF NON-LEO'S WITH ARREST AUTHORITY, CPDF DATA SHOW THAT THE AVERAGE ANNUAL QUIT RATES FOR IMMIGRATION AND CUSTOMS INSPECTORS ARE LESS THAN 2 PERCENT, WHILE THE RATES FOR POLICE OFFICERS ARE 5-6 PERCENT. (OPM ANTICIPATES THAT THE QUIT RATES FOR POLICE OFFICERS WILL DECLINE IN RESPONSE TO THE HIGHER SPECIAL RATE SCHEDULES ESTABLISHED FOR MANY OF THESE EMPLOYEES EARLIER THIS YEAR.)

MARCH 2003 DATA

- THE MARCH 2003 CPDF DATABASE IDENTIFIED 96,137 EMPLOYEES WHO ARE COVERED BY THE SPECIAL RETIREMENT PROVISIONS FOR LEO'S UNDER CSRS OR FERS. THE DIFFERENCE BETWEEN THIS COUNT AND THE 99,249 COUNT PROVIDED BY AGENCIES IS, IN PART, ATTRIBUTABLE TO THE FACT THAT CERTAIN AGENCIES DO NOT REPORT TO THE CPDF (IN PARTICULAR, JUDICIAL BRANCH COURT UNITS AND THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, THE U.S. POSTAL INSPECTION SERVICE, AND THE U.S. POSTAL SERVICE).

- OF THE 96,137 LEO'S IDENTIFIED BY THE CPDF, 84,924 OF THEM (88 PERCENT) ARE PAID UNDER THE GENERAL SCHEDULE.

- THE MAJOR OCCUPATIONAL SERIES FOR LEO'S IDENTIFIED BY THE CPDF INCLUDE CRIMINAL INVESTIGATORS (38,109 LEO'S, WHICH ACCOUNTS FOR NEARLY 40 PERCENT OF THE GOVERNMENTWIDE TOTAL), CORRECTIONAL OFFICERS (14,951, 15.5 PERCENT OF THE GOVERNMENTWIDE TOTAL), AND BORDER PATROL AGENTS (10,112 LEO'S, 10.5 PERCENT OF THE GOVERNMENTWIDE TOTAL.)

- THE CPDF IDENTIFIED 8,400 NON-LEO POLICE OFFICERS IN THE GS-0083 OCCUPATIONAL SERIES. THIS COUNT WAS LESS THAN THE TOTAL REPORTED BY THE AGENCIES (10,191) PRIMARILY BECAUSE CERTAIN AGENCIES INCLUDED IN OUR COUNTS DO NOT REPORT TO THE CPDF (THE CAPITOL POLICE, THE LIBRARY OF CONGRESS, THE NATIONAL SECURITY AGENCY, AND THE SUPREME COURT.)

STANDARD PAY AND BENEFITS SYSTEMS

- MOST LAW ENFORCEMENT OFFICERS (LEO'S) AND OTHER EMPLOYEES (NON-LEO'S) WITH ARREST AUTHORITY ARE COVERED BY STANDARD BASIC PAY AND BENEFITS SYSTEMS.

- WITHIN THE STANDARD PAY SYSTEMS, LEO'S HAVE SPECIAL GOVERNMENTWIDE PAY ENTITLEMENTS, SUCH AS HIGHER SPECIAL SALARY RATES AT GRADES GS-3 THROUGH 10, SPECIAL GEOGRAPHIC ADJUSTMENTS, A HIGHER OVERTIME HOURLY RATE CAP, A HIGHER RELOCATION BONUS CAP, FOREIGN LANGUAGE BONUS AUTHORITY, AND LAW ENFORCEMENT AVAILABILITY PAY. ALSO, ADMINISTRATIVELY UNCONTROLLABLE OVERTIME PAY FOR LEO'S IS CREDITABLE AS BASIC PAY FOR RETIREMENT AND LIFE INSURANCE PURPOSES.

- LEO'S ALSO HAVE SPECIAL RETIREMENT BENEFITS WITHIN THE STANDARD RETIREMENT SYSTEMS, AS DESCRIBED EARLIER.

NON-STANDARD PAY AND BENEFITS SYSTEMS

- OTHER LEO'S AND NON-LEO'S ARE COVERED BY NON-STANDARD PAY SYSTEMS, PREMIUM PAY PROVISIONS, AND RETIREMENT PROVISIONS ESTABLISHED UNDER INDEPENDENT LEGISLATIVE AUTHORITY OR THE DEMONSTRATION PROJECT AUTHORITY UNDER CHAPTER 47 OF TITLE 5, UNITED STATES CODE.

- THE AGENCIES IDENTIFIED 9,407 LEO'S (9.5 PERCENT) WHO ARE COVERED BY NONSTANDARD BASIC PAY SYSTEMS.

- THE JUDICIAL BRANCH (CONSISTING OF COURT UNITS AND THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS) HAS THE LARGEST NUMBER OF LEO'S (5,432) COVERED BY A NON-STANDARD BASIC PAY SYSTEM. THE CAPITOL POLICE HAVE THE LARGEST NUMBER OF NON-LEO'S (1,490) COVERED BY A NON-STANDARD BASIC PAY SYSTEM.

- SOME OF THE NON-STANDARD BASIC PAY SYSTEMS COVERING LEO'S HAVE A STRUCTURE THAT IS SIMILAR TO THE GENERAL SCHEDULE'S GRADES AND STEPS. HOWEVER, SOME BASIC PAY SYSTEMS PROVIDE HIGHER PAY RANGES THAN THE GENERAL SCHEDULE—IN PARTICULAR, THE SYSTEMS IN THE FINANCIAL REGULATORY AGENCIES, THE SECRET SERVICE UNIFORMED DIVISION, THE PARK POLICE, AND THE TRANSPORTATION SECURITY ADMINISTRATION.

- THE DEPARTMENT OF HOMELAND SECURITY HAS THE MOST NON-STANDARD PREMIUM PAY PROVISIONS. THE SPECIAL RULES FOR CUSTOMS INSPECTORS AND IMMIGRATION INSPECTORS STAND OUT. THESE INSPECTORS RECEIVE SIGNIFICANTLY HIGHER PAYMENTS FOR OVERTIME AND OTHER SPECIAL WORK THAN OTHER FEDERAL EMPLOYEES.

- THE LARGEST GROUPS COVERED BY NON-STANDARD RETIREMENT PROVISIONS ARE SUPREME COURT POLICE OFFICERS, CAPITOL POLICE OFFICERS, AND DIPLOMATIC SECURITY SERVICE AGENTS (IN THE DEPARTMENT OF STATE). WHILE NOT UNDER THE CSRS OR FERS DEFINITION OF "LAW ENFORCEMENT OFFICER," SUPREME COURT POLICE OFFICERS AND CAPITOL POLICE OFFICERS ARE ENTITLED TO CSRS/FERS RETIREMENT BENEFITS THAT ARE EQUIVALENT TO THOSE FOR LEO'S. DIPLOMATIC SECURITY SERVICE AGENTS ARE COVERED BY ONE OF THE FOREIGN SERVICE RETIREMENT PLANS.

WE BELIEVE THE INFORMATION IN OPM'S JUNE 30TH REPORT PROVIDES THE FOUNDATION FOR A GREATER UNDERSTANDING AND APPRECIATION OF THE COMPLEXITY OF THE PAY AND BENEFITS PROVISIONS CURRENTLY APPLICABLE TO FEDERAL LAW ENFORCEMENT PERSONNEL.

DEPARTMENT OF HOMELAND SECURITY

YOUR INTEREST IN THE DIFFERENCES IN PAY AND BENEFITS SYSTEMS APPLICABLE TO FEDERAL LAW ENFORCEMENT PERSONNEL COINCIDES WITH OPM'S CURRENT JOINT RESPONSIBILITY WITH THE DEPARTMENT OF HOMELAND SECURITY (DHS) TO DEVELOP A NEW PAY SYSTEM THAT

WILL COVER MANY LAW ENFORCEMENT OFFICERS. SECTION 881 OF THE HOMELAND SECURITY ACT OF 2002 (PUBLIC LAW 107-296, NOVEMBER 25, 2002) REQUIRED THAT THE SECRETARY OF HOMELAND SECURITY, IN CONSULTATION WITH THE DIRECTOR OF OPM, SUBMIT A PLAN TO CONGRESS FOR ENSURING THE ELIMINATION, TO THE MAXIMUM EXTENT PRACTICABLE, OF UNWARRANTED DISPARITIES IN THE PAY AND BENEFITS OF EMPLOYEES BEING TRANSFERRED TO DHS. IN RESPONSE TO THIS REQUIREMENT, DHS SUBMITTED A REPORT TO CONGRESS ON MARCH 5, 2003, PROVIDING INFORMATION ON POSSIBLE DISPARITIES WARRANTING FURTHER REVIEW.

THAT REPORT POINTED OUT THAT THE ISSUE OF PAY AND BENEFITS DISPARITIES IS INTEGRAL TO THE DESIGN AND ESTABLISHMENT OF A NEW HUMAN RESOURCES MANAGEMENT (HRM) SYSTEM FOR DHS EMPLOYEES, AS AUTHORIZED UNDER 5 U.S.C. 9701. (THAT SECTION WAS ENACTED BY SECTION 841(A)(2) OF THE HOMELAND SECURITY ACT.) THE REPORT FURTHER STATED THAT IT WOULD BE PREMATURE TO MAKE RECOMMENDATIONS REGARDING THE RESOLUTION OF POSSIBLE DISPARITIES, SINCE DHS AND OPM INTEND TO PROPOSE NEW HRM SYSTEMS FOR DHS LATER THIS YEAR, AFTER COLLABORATION WITH KEY STAKEHOLDERS, INCLUDING EMPLOYEE REPRESENTATIVES. THE DHS/OPM PROPOSAL WILL BE PUBLISHED IN THE *FEDERAL REGISTER* FOR PUBLIC COMMENT.

TO CARRY OUT SECTION 9701, DHS AND OPM HAVE ESTABLISHED A DHS HUMAN RESOURCES SYSTEMS DESIGN TEAM, WHICH IS COMPOSED OF DHS MANAGERS AND EMPLOYEES, HUMAN CAPITAL EXPERTS FROM DHS AND OPM, AND FEDERAL EMPLOYEE UNION REPRESENTATIVES. THIS DESIGN TEAM HAS BEEN CHARGED WITH DEVELOPING A RANGE OF OPTIONS FOR NEW HUMAN RESOURCES SYSTEMS IN THE AREAS OF BASIC PAY, CLASSIFICATION, PERFORMANCE MANAGEMENT, DISCIPLINARY ACTIONS AND APPEALS, AND LABOR-MANAGEMENT RELATIONS. SINCE PREMIUM PAY AND RETIREMENT BENEFITS CANNOT BE MODIFIED UNDER THE SECTION 9701 AUTHORITY, ANY CHANGES IN THESE PROVISIONS WOULD REQUIRE ADDITIONAL LEGISLATION.

DHS AND OPM WILL WORK WITH THE OFFICE OF MANAGEMENT AND BUDGET TO HELP FORMULATE THE ADMINISTRATION'S POSITION ON ANY POSSIBLE LEGISLATIVE PROPOSAL(S) INVOLVING LAW ENFORCEMENT PERSONNEL. WE WILL BE ESPECIALLY INTERESTED IN EVALUATING THE IMPACT OF ANY SUCH PROPOSAL ON OPTIONS FOR MODIFYING THE BASIC PAY OF DHS EMPLOYEES UNDER THE SECTION 9701 AUTHORITY. IN GENERAL, WE ARE WARY OF ANY PROPOSAL THAT WOULD HAVE THE EFFECT OF CREATING NEW PAY OR BENEFITS DISPARITIES WITHOUT A CLEARLY ARTICULATED RATIONALE FOR DIFFERENCES IN TREATMENT.

OUR HUMAN CAPITAL PHILOSOPHY IS PREDICATED ON THE BASIC PREMISE THAT ANY CONSIDERATION OF CHANGES IN LAWS AFFECTING EMPLOYEES, PARTICULARLY THEIR PAY AND BENEFITS AND WORKING CONDITIONS, SHOULD BE DRIVEN BY AN ASSESSMENT OF THE IMPACT OF THOSE CHANGES ON THE ABILITY OF AGENCIES TO MEET THEIR STRATEGIC GOALS AND OBJECTIVES.

ONCE AGAIN, THE HISTORY OF THE LAW ENFORCEMENT RETIREMENT PROVISIONS IS PARTICULARLY INSTRUCTIVE IN TERMS OF THE EBB AND

FLOW OF ATTENTIVENESS TO STRATEGIC HUMAN CAPITAL CONSIDERATIONS.

FROM THE INCEPTION OF THOSE PROVISIONS UNTIL 1974, EACH EMPLOYEE'S RETIREMENT REQUIRED THE RECOMMENDATION OF THE AGENCY HEAD AND THE APPROVAL OF OPM'S PREDECESSOR, THE CIVIL SERVICE COMMISSION. RETIREMENTS WERE APPROVED ONLY WHEN THEY SERVED THE HUMAN RESOURCES MANAGEMENT PURPOSES OF THE LAW.

THE APPELLATE AND JUDICIAL AUTHORITIES REVIEWING COVERAGE ISSUES FORMERLY GAVE DEFERENCE TO THE INTERPRETATION OF THE LEGISLATION BY THE EXECUTIVE BRANCH, WHICH USED THE PURPOSE OF THE LEGISLATION AS A PRINCIPAL TOOL OF INTERPRETATION. HOWEVER, IN RECENT YEARS, THE APPELLATE AND JUDICIAL AUTHORITIES HAVE TENDED TOWARDS ANALYZING ELIGIBILITY MORE AS AN ENTITLEMENT ISSUE. ALTHOUGH THE "POSITION ORIENTED" APPROACH ADOPTED BY THE MERIT SYSTEMS PROTECTION BOARD AND THE COURT OF APPEALS IN RECENT YEARS HAS RESTORED A MEASURE OF CONSISTENCY TO THE LAW ENFORCEMENT COVERAGE AREA, OTHER PRECEDENTS HAVE MUDDIED THE WATERS RATHER THAN CLARIFYING THE SITUATION.

THE EVOLUTION OF SPECIAL RETIREMENT COVERAGE HAS CREATED A SITUATION THAT APPEARS TO HAVE DEPARTED FROM FUNDAMENTAL HUMAN RESOURCES MANAGEMENT CONSIDERATIONS. COVERAGE DECISIONS ARE NOT ALWAYS CONSISTENT AND ARE REGARDED IN SOME CASES AS INEQUITABLE. WHILE THE CURRENT CRITERIA FOR DETERMINING COVERAGE ARE INTENDED TO CREATE CONSISTENCY, IN PRACTICE THEY SOMETIMES YIELD ANOMALOUS RESULTS. A FURTHER RESULT IS CONFUSION AS TO ELIGIBILITY AMONG AGENCIES AND EMPLOYEES.

PREFERRED APPROACH IN CONTEMPLATING CHANGE

WE BELIEVE THE APPROPRIATE MEANS OF IMPROVING PAY AND BENEFITS PROVISIONS IS A RETURN TO AN EMPHASIS ON THE CONTEXT OF HUMAN CAPITAL MANAGEMENT. OTHERWISE, EXPENDITURES FROM THE AGENCIES' BUDGETS AND THE RETIREMENT FUND MAY NOT SERVE TO ADVANCE THE INTERESTS FOR WHICH THEY ARE INTENDED.

THE DETERMINATION AS TO WHAT TYPES OF POSITIONS ARE TO BE COVERED BY WHICH PROVISIONS MUST BE BASED UPON OBJECTIVELY DEMONSTRATED NECESSITY AND EFFICACY. THERE SHOULD NOT BE A MAJOR CHANGE IN THE COMPOSITION OF THE COVERED CLASSES WITHOUT A COMPREHENSIVE ANALYSIS OF EACH AFFECTED PROGRAM AS A WHOLE. MOREOVER, IT IS IMPORTANT THAT WE BE CIRCUMSPECT IN THE PROCESS OF MAKING COVERAGE DECISIONS. ALL MATTERS THAT MIGHT AFFECT OR BE AFFECTED BY A CHANGE IN THE PAY OR RETIREMENT BENEFITS STRUCTURE SHOULD BE TAKEN INTO ACCOUNT. MATTERS TO BE CONSIDERED SHOULD INCLUDE RECRUITMENT, RETENTION, PHYSICAL AND MENTAL DEMANDS OF EMPLOYMENT, EFFECTS OF THE AGING PROCESS, TREATMENT OF OTHER TYPES OF EMPLOYEES IN SIMILAR CIRCUMSTANCES, WHAT HUMAN RESOURCES MANAGEMENT PROBLEMS (IF ANY) EXIST UNDER CURRENT PROVISIONS, AND HOW ANY PROPOSED MODIFICATION OF PAY OR RETIREMENT PROVISIONS WOULD AFFECT OVERALL FEDERAL EXPENDITURES. ONCE THE POLICIES HAVE BEEN DECIDED, ANY LEGISLATION SHOULD BE DRAFTED IN SUCH A MANNER

THAT APPLICATION OF THOSE POLICIES IS CLEAR-CUT, OBJECTIVE, AND CONSISTENT.

REGARDLESS OF THE COVERAGE DECISIONS THAT RESULT, IT IS ESSENTIAL THAT FUNDING OF THE COSTS, PARTICULARLY IN THE CASE OF RETIREMENT, BE PROVIDED FOR IN A RESPONSIBLE MANNER. IT IS IMPORTANT THAT THE PROSPECTIVE COSTS OF BENEFITS BE RECOGNIZED AT THE TIME THEY ARE INCURRED AS AN EXPENSE OF THE PROGRAM THAT BENEFITS FROM THEM. FURTHER, PROVISION MUST BE MADE FOR THE ADDITIONAL COST OF BENEFITS RESULTING FROM A CHANGE IN THE TREATMENT OF PRIOR SERVICE. TO CREATE AN EXPENSE WITHOUT A FUNDING MECHANISM FAILS TO PLACE RESPONSIBILITY FOR THOSE COSTS WHERE THEY BELONG AND REQUIRES THOSE COSTS TO BE ADDRESSED IN THE FUTURE.

THE CURRENT FERS DYNAMIC NORMAL COST (THE PERCENTAGE OF SALARY NECESSARY TO FUND RETIREMENT BENEFITS) IS 11.5 PERCENT FOR REGULAR EMPLOYEES. THE CURRENT FERS DYNAMIC NORMAL COST IS 24.0 PERCENT FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHER SPECIAL RETIREMENT EMPLOYEES. UNDER CSRS, THE DYNAMIC NORMAL COST IS 24.4 PERCENT FOR REGULAR EMPLOYEES AND 39.0 PERCENT FOR LAW ENFORCEMENT OFFICERS, FIREFIGHTERS, AND OTHER SPECIAL RETIREMENT EMPLOYEES. THESE RATES ARE HIGHER BECAUSE OF THE ENHANCED BENEFIT STRUCTURE AND EARLIER RETIREMENT ELIGIBILITY. MOREOVER, IT IS IMPORTANT TO UNDERSTAND THAT THOSE RATES FUND ONLY THE COSTS OF THE SERVICE TO WHICH THEY APPLY, AND DO NOT FUND CREDIT FOR PRIOR SERVICE.

A FEW YEARS AGO, OUR ACTUARY'S OFFICE PREPARED AN ESTIMATE OF WHAT IT WOULD COST TO COVER ALL OF THE GROUPS SEEKING INCLUSION UNDER THE SPECIAL LAW ENFORCEMENT PROVISIONS OF CSRS OR FERS. ALTHOUGH IT IS BASED IN LARGE PART UPON 1999 DATA THAT HAVE NOT BEEN UPDATED AND SHOULD NOT BE CONSIDERED AS PRECISELY ACCURATE, IT IS STILL ILLUSTRATIVE OF THE SCALE OF THE COSTS INVOLVED.

THE GROUPS INCLUDED DEPARTMENT OF DEFENSE POLICE, BUREAU OF ENGRAVING AND PRINTING POLICE, SECRET SERVICE SPECIAL OFFICERS, REVENUE OFFICERS, INS INSPECTORS, CUSTOMS INSPECTORS, AND A FEW OTHER SMALL GROUPS. THE ESTIMATE IS THAT TO INCLUDE SUCH GROUPS WITH CREDIT FOR PAST SERVICE WOULD RESULT IN AN INCREASE IN THE RETIREMENT FUND UNFUNDED LIABILITY OF $1.335 BILLION. THAT ESTIMATE PRESUMES FULL RETROACTIVE COVERAGE FOR PAST SERVICE, BUT DOES NOT INCLUDE THE ADDITIONAL COSTS TO EMPLOYING AGENCIES OF RETIREMENT DEDUCTIONS AT THE HIGHER LAW ENFORCEMENT CONTRIBUTION RATES OF $778 MILLION. THE ADDITIONAL COSTS ATTRIBUTABLE TO HIGHER LAW ENFORCEMENT SALARY RATES WOULD INCREASE THE ANNUAL PAYROLL COSTS OF AGENCIES BY ABOUT $57.6 MILLION IN THE FIRST YEAR ALONE, AND WOULD REQUIRE ADDITIONAL FUTURE AGENCY CONTRIBUTIONS OF $1.205 BILLION. IN OTHER WORDS, TO INCLUDE ALL THESE GROUPS WOULD COST ABOUT $3.3 BILLION IN RETIREMENT COSTS PLUS THE FUTURE ADDITIONAL PAYROLL COSTS REQUIRED UNDER CURRENT LAW ENFORCEMENT PAY ENTITLEMENTS. WHILE THERE WOULD NOT BE ADDITIONAL PAYROLL COSTS TO INCLUDE ASSISTANT U.S. ATTORNEYS, ANOTHER FREQUENTLY

MENTIONED GROUP, THEY WOULD ADD AN ADDITIONAL $1.2 BILLION IN ADDITIONAL RETIREMENT COSTS. TO FURTHER EXTEND COVERAGE TO OTHER EMPLOYEES (SUCH AS THOSE WHO HAVE ARREST AUTHORITY AND CARRY GUNS, AS HAS BEEN SUGGESTED) WOULD INCREASE COSTS EVEN MORE.

TO SUMMARIZE, WE CANNOT OVEREMPHASIZE THE NEED TO ASSESS THE IMPACT OF ANY CHANGES IN LAW ON THE ABILITY OF AGENCIES TO ACCOMPLISH THEIR MISSION-CRITICAL GOALS AND OBJECTIVES THROUGH THE STRATEGIC MANAGEMENT OF HUMAN CAPITAL. THE FAILURE TO DO SO WILL INEVITABLY GENERATE IMMENSE COSTS WITHOUT PRODUCING THE RESULTS THE AMERICAN TAXPAYER WANTS AND DESERVES.

I WOULD BE PLEASED TO ANSWER ANY QUESTIONS THE MEMBERS OF THE SUBCOMMITTEES MAY HAVE.

APPENDIX

1947 PUBLIC LAW 80-168 EXTENDED SPECIAL RETIREMENT BENEFITS UNDER THE CIVIL SERVICE RETIREMENT SYSTEM (CSRS) TO SPECIAL AGENTS AND CERTAIN OTHER EMPLOYEES OF THE FBI. COVERED INDIVIDUALS COULD RETIRE WITH THE APPROVAL OF THE ATTORNEY GENERAL AT AGE 50 AFTER 20 YEARS OF SERVICE WITH AN ANNUITY OF 2 PERCENT FOR EACH YEAR OF SERVICE AND A MAXIMUM BENEFIT OF 60 PERCENT OF AVERAGE SALARY.

1948 PUBLIC LAW 80-879 EXTENDED THE PROVISION TO OTHER EMPLOYEES, THE DUTIES OF WHOSE POSITIONS "ARE PRIMARILY THE INVESTIGATION, APPREHENSION, OR DETENTION OF PERSONS SUSPECTED OR CONVICTED OF OFFENSES AGAINST THE CRIMINAL LAWS OF THE UNITED STATES . . . ." EACH RETIREMENT REQUIRED THE RECOMMENDATION OF THE AGENCY HEAD AND THE APPROVAL OF THE CIVIL SERVICE COMMISSION (CSC).

1956 PUBLIC LAW 84-854 EXTENDED THE PROVISION TO OTHER NON-CUSTODIAL CORRECTIONAL EMPLOYEES WITH FREQUENT AND DIRECT PRISONER CONTACT. IT ALSO INCREASED THE MAXIMUM ANNUITY BENEFIT TO 80 PERCENT OF AVERAGE SALARY FOR ALL RETIREES.

1972 PUBLIC LAW 92-382 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO FIREFIGHTERS.

1974 PUBLIC LAW 93-350 MADE MAJOR CHANGES IN THE SPECIAL RETIREMENT PROVISIONS.

1. MANDATORY RETIREMENT AT AGE 55 WAS REQUIRED.

2. THE COMPUTATION WAS INCREASED TO 2 ½ PERCENT FOR EACH OF THE FIRST 20 YEARS OF SERVICE AND 2 PERCENT FOR EACH YEAR OF ADDITIONAL SERVICE.

3. FOR THE FIRST TIME, THE TERM "LAW ENFORCEMENT OFFICER" WAS APPLIED TO EMPLOYEES COVERED BY THIS BENEFIT.

4. THE REQUIREMENT THAT THE AGENCY HEAD RECOMMEND AND THE CSC APPROVE EACH RETIREMENT WAS ELIMINATED.

5. PROVISION WAS MADE FOR MAXIMUM ENTRY AGE SO THAT INDIVIDUALS WOULD COMPLETE THE REQUIREMENTS FOR RETIREMENT BY THE TIME THEY REACH MANDATORY RETIREMENT AGE.

6. THE EMPLOYEE DEDUCTION AND AGENCY CONTRIBUTION RATES WERE EACH INCREASED BY ½ PERCENT, TO 7 ½ PERCENT. PREVIOUSLY, BOTH WERE AT THE REGULAR EMPLOYEE'S RATES.

1979 THE COURT OF CLAIMS OVERTURNED THE LONG-STANDING POLICY THAT SPECIAL RETIREMENT ELIGIBILITY COULD BE BASED ONLY ON THE OFFICIAL DUTIES OF AN EMPLOYEE'S POSITION OF RECORD *(ELLIS V. U.S.,* 610 F.2D 760 (CT.CL.1979)).

1986 PUBLIC LAW 99-335 ESTABLISHED THE FEDERAL EMPLOYEES' RETIREMENT SYSTEM (FERS), UNDER WHICH THE SPECIAL RETIREMENT BENEFITS WERE MODIFIED WITHOUT CHANGING THE CSRS RULES. UNDER FERS--

1. RETIREMENT ELIGIBILITY BEGINS AT AGE 50 WITH 20 YEARS OF SERVICE, OR AT ANY AGE WITH 25 YEARS OF SERVICE.

2. THE BENEFIT IS 1.7 PERCENT FOR EACH OF THE FIRST 20 YEARS OF SERVICE AND 1 PERCENT FOR EACH YEAR OF ADDITIONAL SERVICE.

3. EMPLOYEES WHO PROTECT FEDERAL OFFICIALS AGAINST THREATS TO PERSONAL SAFETY WERE ADDED TO THE CLASS.

4. CERTAIN FEDERAL EMPLOYEES WERE ADDED TO THE CLASS WHO (PRIOR TO FERS) WOULD HAVE BEEN COVERED BY THE DISTRICT OF COLUMBIA POLICE AND FIREFIGHTERS' RETIREMENT SYSTEM.

1990 PUBLIC LAW 101-428 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO CAPITOL POLICE AS A SEPARATE GROUP NOT WITHIN THE DEFINITION OF LAW ENFORCEMENT OFFICER.

PUBLIC LAW 101-509 RAISED THE MANDATORY RETIREMENT AGE FROM 55 TO 57 FOR LAW ENFORCEMENT OFFICERS, BUT LEFT IT AT 55 FOR FIREFIGHTERS AND CAPITOL POLICE.

1994 PUBLIC LAW 103-283 RAISED THE MANDATORY RETIREMENT AGE FROM 55 TO 57 FOR CAPITOL POLICE.

1993-95 IN A SERIES OF CASES, THE MERIT SYSTEMS PROTECTION BOARD (MSPB) ESTABLISHED A NUMBER OF "INDICIA" OF LAW ENFORCEMENT EMPLOYMENT. APPELLATE REVIEW SHIFTED FROM EXAMINATION OF DUTIES TO REVIEW OF INDICIA.

1997 THE COURT OF APPEALS DENIED AN APPEAL FROM A DISALLOWANCE OF LAW ENFORCEMENT RETIREMENT, RELYING UPON THE MSPB INDICIA. AS A RESULT OF THIS DECISION, MSPB MAY NOW USE THE INDICIA AS A BASIS TO ALLOW LAW ENFORCEMENT CREDIT WITHOUT REGARD TO THE OVERALL DUTIES OF THE INDIVIDUAL *(BINGAMAN, V. TREASURY*, 127 F.3D 1431 (FED. CIR.1997)).

1998 PUBLIC LAW 105-261 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO NUCLEAR MATERIALS COURIERS AS A SEPARATE GROUP NOT WITHIN THE DEFINITION OF "LAW ENFORCEMENT OFFICER."

2000 MSPB ANNOUNCED THAT IT WAS ADOPTING A "POSITION-ORIENTED" APPROACH TO LAW ENFORCEMENT COVERAGE DECISIONS (*WATSON V. DEPT. OF THE NAVY*, 86 M.S.P.R. 318 (2000)).

2001 PUBLIC LAW 106-553 EXTENDED THE SPECIAL RETIREMENT PROVISIONS TO SUPREME COURT POLICE AS A SEPARATE GROUP NOT WITHIN THE DEFINITION OF "LAW ENFORCEMENT OFFICER."

THE COURT OF APPEALS FOUND THAT MSPB'S "POSITION-ORIENTED" APPROACH WAS CONSISTENT WITH APPLICABLE STATUTORY PROVISIONS. THE COURT ALSO NOTED THAT OPM'S REGULATORY DEFINITION OF "PRIMARY DUTIES" (5 CFR §§ 831.902 AND 842.802) ESTABLISHES A "THREE-PRONGED" TEST FOR LAW ENFORCEMENT OFFICER COVERAGE (*WATSON V. DEP'T OF THE NAVY*, 262 F.3D 1296 (FED. CIR. 2001).

2002 MSPB STATED THAT IT MAY STILL CONSIDER THE *BINGAMAN* INDICIA UNDER THE SECOND AND THIRD PRONGS OF THE THREE-PRONGED TEST (*STREET V. DEPT. OF THE NAVY*, 90 M.S.P.R. 652 (2002)).

Mrs. DAVIS OF VIRGINIA. Finally, we have Kay Francis Dolan, Director of Human Relations Policy at the Homeland Security Department.

Ms. Dolan, you are recognized for 5 minutes.

Ms. DOLAN. Good morning, Chairwoman Davis and Chairman Souder. I am Kay Frances Dolan, Director of Departmental Human Resource Policy at the Department of Homeland Security. Prior to joining the Department in March, I was the Deputy Assistant Secretary for Human Resources at the Department of the Treasury. I am very pleased to be here today, and the Department of Homeland Security appreciates very much the support we have received from the committee as we move to create a new human resource system.

The Homeland Security Act of 2002 provided the Department with a historic opportunity to design a 21st century human resource management system that is fair, performance-based, flexible and supports the goals of the Department as well as the people of the Department of Homeland Security. We have a responsibility to create a system that is flexible and contemporary, while preserving basic Civil Service principles. This is one of the most exciting challenges facing any government agency. It's not a simple task, and it is not a task to be taken lightly. The Secretary and the Director of the Office of Personnel Management have asked us to take the time to do it right.

Working with OPM, including my colleague here, Don Winstead, we are following a process that ensures maximum collaboration with our employees and their representatives, stakeholders and subject matter experts.

I am pleased to note that the next panel includes several union leaders who have joined with us in the design process. Their commitment and their contributions to the process have been invaluable.

We have established a design team that includes human resource professionals both from the Department and from OPM, DHS front-line employees and managers and union representatives. The design team has been conducting research and outreach since April 1st. We recently completed town hall and focus group meetings in nine cities across the country, meeting with over 2,000 front-line employees and managers to elicit their input to the design of the new system. While the results of these sessions are still being compiled, we can say that participants are extremely proud of the work they do on behalf of this country and they also believe very strongly that they be treated fairly.

The design team has conducted research in the public and private sectors and met with close to 100 individuals and organizations to discuss practices and lessons learned. The team has now begun to develop a range of options in each of the six areas of flexibility granted to the Department: pay, classification, performance management, adverse actions, appeals and labor relations.

Secretary Ridge charged the design team with developing options that support both the mission of the Department and the people who implement that mission. He insisted that the team develop options where all employees can be confident that they will be hired based on merit, will receive fair treatment without regard to politi-

cal affiliation, will receive equal pay for the same type of law enforcement work and will not be retaliated against for whistle-blowing. Finally, he asked the design team to develop options which hold people accountable for their performance, and that's at every level.

A Senior Review Committee [SRC], has been established to determine which action should be presented to the Secretary and the Director for their consideration. The SRC will hold its first meeting later this week on Friday, and that meeting is open to the public. Around the beginning of October, the SRC will meet again to review and narrow the range of options for presentation to the Secretary and the Director. Finally, the Director and the Secretary plan to issue proposed regulations for a new system later this calendar year.

One of the most significant challenges is the issue of pay and benefits disparities for the over 50,000 employees who are either covered by law enforcement retirement benefits or who are in positions with some kind of law enforcement work. As members and the panelists know, the differences can be very significant and include differences in base pay, overtime and other premium pay, retirement and special pay supplements.

The Section 881 report required by the Homeland Security Act provides many examples of differences we inherited when the Department was created. Not all of the differences constitute unwarranted disparities.

The design team will help identify those instances where changes are needed, and both subcommittees have generously invited the Department to make proposals where legislation may be necessary.

Thank you for the opportunity to appear before you today, and I would be happy to answer any questions.

[The prepared statement of Ms. Dolan follows:]

Department of Homeland Security

Statement of Kay Frances Dolan
on
Federal Law Enforcement Personnel In the Post 9/11 Era
before the
Subcommittee on Civil Service & Agency Organization
and the
Subcommittee on Criminal Justice, Drug Policy, & Human Resources
Committee on Government Reform
July 23, 2003

Good morning Chairman Davis, Chairman Souder, and distinguished members of the Subcommittees. I am pleased to appear today at this joint hearing of the Subcommittee on Civil Service and Agency Organization and the Subcommittee on Criminal Justice, Drug Policy, and Human Resources on Federal law enforcement personnel in the Post 9/11 era. The Department of Homeland Security appreciates the support we have received from both Committees as we move to create a human resource system.

The Department has been provided an historic opportunity to design a 21st century human resource management system that is fair, performance-based, and flexible. We have a responsibility to create a system that is flexible and contemporary while preserving basic civil service principles. The Homeland Security Act of 2002 provided DHS the opportunity to improve and streamline the Federal personnel system in the following key areas:

- Hiring: bringing in the best and the brightest to work for DHS
- Pay: providing for pay determined by individual merit and value to the organization
- Classification: creating a system that is fair and distinguishes the value of work to DHS
- Bargaining: creating a cooperative, positive work environment
- Accountability: linking individual performance to organizational goals and balancing recognition and rewards with ability to identify and remove repeat poor performers

This is one of the most exciting challenges facing any government agency – to design a human resource management system which supports the goal of Homeland Security. The Secretary and the Director of the Office of Personnel Management are committed to creating a model system in that is responsive to DHS employees and the mission of the Department, and accountable to the American people. This is not a simple task, nor is it one to be taken lightly, and the Secretary and the Director have asked us to take the time to do it right.

Working with OPM, we are following a process that ensures maximum collaboration with our employees and their representatives, stakeholders, and subject matter experts. I am pleased to note that the next panel includes several union leaders who have joined with us in the design process. Their commitment and their contributions to the process have been invaluable.

We have established a Design Team that includes human resource professionals both from the Department and OPM, DHS front line managers and employees, and union representatives. The Design Team has been conducting research and outreach since the first of April. The Design Team has recently completed town hall and focus group meetings in nine cities across the county – meeting with over 2,000 front line employees and managers to elicit their input to the design of the new system. The results of those sessions are still being compiled – we can say, however, that participants are proud of the work they do on behalf of our country and they believe very strongly that they be treated fairly. We are committed to that concept.

The Design Team has researched human resources practices in the public and private sectors. Design Team members have met with close to one hundred individuals and organizations to discuss promising and successful practices and lessons learned.

The Design Team is now beginning to develop a range of options in each of the six areas of flexibility granted to the Department: pay, classification, performance management, adverse actions, appeals and labor relations.

Secretary Ridge charged the Design Team with developing options that first, support both the mission of the Department and the people charged with implementing it. He asked that the Design Team make sure the system is truly national -- meeting the needs of inspectors and analysts, law enforcement officers, intelligence specialists, scientists, and medical experts. Second, he directed the Design Team to leave any preconceived notions at the door. He insisted that the Design Team develop options where all employees can be confident they will be hired based on merit, will receive fair treatment without regard to political affiliation and equal pay for the same type of law enforcement work, and will not be retaliated against for whistleblowing. Finally, he asked the Design Team to develop options which hold people accountable for their performance – at <u>every</u> level – linking individual performance to organizational goals, with the ability to identify and reward exceptional service and discipline chronic poor performances.

A Senior Review Committee (SRC) has been established to determine which options should be presented to the Secretary and the Director of OPM for their consideration. The SRC will hold its first meeting later this week – Friday, July 25th – the meeting is open to the public. This meeting is intended to outline the

research strategy, present guiding principles for the design, and provide guidance to the Design Team.

Around the beginning of October, the SRC will meet again to review and narrow the range of options for presentation to the Secretary and the Director. The Director and the Secretary plan to issue proposed regulations for the new system later this calendar year.

The Design Team has begun to develop options. One of the most significant challenges is the issue of pay (and benefits) disparities for the over 50,000 employees who are covered by law enforcement retirement benefits or who are in positions with some law enforcement type duties. Section 881 of the Homeland Security Act required the Department to address this issue. Because it is so integral to the larger design process, we intend to address these pay and benefit issues during the development of the new human resource management system.

As Members and the panelists today know, the differences can be very significant and include differences in base pay, overtime and other premium pay, retirement, and special pay supplements. I would like to provide you with just one example of the extent and complexity of the problem.

Full implementation will eventually eliminate the need for travelers to undergo three separate inspections for immigration, customs, and agriculture. Significant cross training is being provided, as is counterterrorism training to create a better understanding of terrorist issues. However, the three legacy organizations are governed by different rules for setting overtime pay, commuting time pay, Sunday pay, night pay, and holiday premium pay. They are also subject to different premium pay caps and creditable pay for retirement purposes. These differences complicate ability of local managers to make assignments. And while these differences have long been troubling, they now are exacerbated by our move to integrate operations. These differences need to be resolved. The Homeland Security Act envisioned "one face at the border".

The Section 881 Report, which was submitted in March, provides many more examples of differences which we inherited when the Department was created. Not all differences constitute unwarranted disparities. The Design Team will help identify those instances where changes need to be proposed. Both Committees have generously invited the Department to make proposals where legislation may be necessary. We envision any such proposals to emerge from the design process late this year or early next year.

Thank you for the opportunity to appear before you today. I look forward to any questions or observations you may have.

Enclosure1

Employees Transferring to the Department of Homeland Security Who Have Law Enforcement Duties

Table A – Employees Who Are Serving in Positions That Qualify for Law Enforcement Officer Retirement Benefits*	
Approximate Number	**Description of Category of Law Enforcement Officers (LEOs)**
Coast Guard	
<50	GS-1811- Criminal Investigator
Customs Service	
<50	GS-1801- Aviation Enforcement Officer
<100	GS-1801- Marine Enforcement Officer
<20	GS-1801- Technical Enforcement Officer
<3,500	GS-1811- Criminal Investigator
<30	GS-1884- Customs Patrol Officer
<500	GS-2181- Aircraft Pilot
<100	Other misc. positions (primarily managerial)
Federal Emergency Management Agency	
<50	GS-1811- Criminal Investigator (Office of Inspector General)
Federal Law Enforcement Training Center (all secondary LEO positions) (Note: Counts exclude instructors serving on details from other agencies.)	
<50	GS-1801- Miscellaneous positions (45 instructors and two program specialists)
<10	GS-1811- Criminal Investigator
<10	GS-1811- Law Enforcement Specialist
Federal Protective Service (formerly part of the General Services Administration)	
<10	GS-0083- Police Officer (covered as LEO through MSPB appeal)
<80	GS-1811- Criminal Investigator
Immigration and Naturalization Service	
<650	GS-1801- Deportation Officer
<250	GS-1801- Detention & Deportation Officer
<150	GS-1801- Immigration Enforcement Officers
<50	GS-1801- Immigration Officers
<100	GS-1801- Misc. managerial officials
<2,000	GS-1802- Detention Enforcement Officer
<50	GS-1802- Detention Facility Supervisors and Assistants
<2,050	GS-1811- Criminal Investigator
<250	GS-1816- Immigration Inspector (only those whose primary duties include interrogation/ investigation of persons suspected of alien smuggling, terrorism, drug and other contraband smuggling, document fraud; arrest and detention of suspects; and development of the case against the detainee in conjunction with the U.S. Attorney)
<9,950	GS-1896- Border Patrol Agent
<100	GS-2181- Aircraft Pilots
<70	Other misc. positions at detention facilities
National Infrastructure Protection Center (formerly part of FBI)	
<20	GS-1811- Criminal Investigator
Secret Service	
<1,100	LE-0083- Uniformed Division Officer (includes closed subgroup covered under DC police retirement system. LEO under FERS, but not under CSRS)
<150	GS-0800- Physical Security Specialist (LEO under FERS only)
<10	GS-1801- Protective Support Manager (LEO under FERS only)
<50	GS-1802- Protective Support Technician (LEO under FERS only)
<50	GS-1802- Special Officer, assigned to protective detail (LEO under FERS only)
<3,100	GS-1811- Criminal Investigator
Transportation Security Administration	
N/A	GS-1801- Federal Air Marshal
<100	GS-1811- Criminal Investigator

Table B – Employees With Law Enforcement Duties Who Serve in Positions That Do Not Qualify for Law Enforcement Officer Retirement Benefits*	
Approximate Number	**Description of Category of Law Enforcement Officers**
Customs Service	
<700	GS-1801- Canine Enforcement Officer
<150	GS-1801- Seized Property Specialist**
<8,850	GS-1890- Customs Inspector
<100	GS-2101- Detection Systems Specialist (Airborne)**
<50	GS-2185- Flight Engineer**
Immigration and Naturalization Service	
<5,250	GS-1816- Immigration Inspector (excluding those covered in Table A)
Federal Protective Service (formerly part of the General Services Administration)	
<200	GS-0080- Law Enforcement Security Officer (LESO)
<400	GS-0083- Police Officer
Federal Emergency Management Agency (FEMA)	
<20	GS-0083- Police Officer
Secret Service	
<70	GS-1802- Special Officer, assigned to Special Services Division
<50	GS-1802- Operations Support Technician**

Notes:

* See definitions of "law enforcement officer" in 5 U.S.C. 8331(20) and 8401(17) for purposes of the Civil Service Retirement System and the Federal Employees Retirement System, respectively.

** Employees in the asterisked positions have no arrest authority.

Source: Agency data available as of January 2003.

Enclosure 2

Summary of Differences By Type of Pay or Benefit (See Note 1.)		
Type of Pay or Benefit	**Description of Difference**	**Source of Difference**
Basic Pay		
Basic pay system (See Note 2.)	TSA has a pay banding system with higher pay ranges than GS system. Cap on locality-adjusted rates is EX-III for most employees and EX-II for TSA senior executives.	TSA law & administrative action under that law.
	The pay system for Secret Service Uniformed Division (SSUD) officers provides higher pay than is available for GS police officers. (Same system applies to Park Police officers.) The freeze on locality pay for SSUD officers will be lifted by the FY2003 Omnibus Appropriation Act.	DC Code
	One transferring employee is under a Department of Energy excepted pay system. Pay is capped at EX-IV.	Sec. 621(d) of the DOE Organization Act
GS grade level	Normal journey level is GS-9 for APHIS inspectors but is GS-11 for Customs and Immigration inspectors.	GS classification law and standards
	Normal journey level for Customs pilots is GS-13 or 14 but is GS-12 for INS pilots.	
	Normal journey level for criminal investigators is GS-13 in Customs Service but is GS-12 in INS. In Secret Service the normal journey level is GS-13.	
	GSA cited low grades for FPS police; single-interval series in contrast to 2-grade interval series for INS Border Patrol Agents. (However, GSA notes that recently approved OPM special rates have made basic pay rates equitable.)	
Locality pay	Customs Service cited lack of sufficient locality pay differentials in certain areas such as New York City and San Francisco.	Title 5 and implementation of locality pay law
Special Pay Supplements		
Recruitment bonuses	Plum Island Disease Center employees are covered by permanent demonstration project authority that imposes no limit on the amount of recruitment bonuses.	Public Law 105-277
Relocation travel and transportation expenses	Plum Island Disease Center employees are covered by permanent demonstration project authority that allows the Center to reimburse new appointees for all relocation travel and transportation expenses authorized under title 5 for transferred employees.	Public Law 105-277
Foreign language bonus	Law enforcement officers and Customs officers (i.e., inspectors and canine enforcement officers) may receive up to 5% of basic pay to compensate for use of foreign language as part of job.	Title 5 (5 U.S.C. 4523) and COPRA
Overtime and Other Premium Pay		
Overtime pay (See Note 3.)	Law enforcement officers have a higher overtime hourly rate cap than other employees covered by Title 5. For LEO's, the overtime rate may not fall below the regular rate of basic pay.	Title 5 (5 U.S.C. 5542)
	Customs officers (i.e., inspectors and canine enforcement officers): OT rate = 2 x basic rate.	COPRA
	Immigration inspectors (for certain inspection work): OT rate = 4 hours at basic rate for each 2 OT hours or fraction thereof, if at least 1 hour is worked between 5:00 pm and 8:00 am (double time plus possible credit for time not worked).	1931 Act (covers immigration inspection work only)

	APHIS inspectors (for certain inspection work): OT rate is same as under title 5, but overtime pay is not subject to any biweekly/annual premium pay cap; no compensatory time off.	Administrative action under Sec. 10412(c)(1) of Public Law 107-171
	SSUD officers: OT rate = 1.5 x basic rate at lower ranks; straight rate at higher ranks	DC Code
Commuting time pay	Customs officers – credited with 3 hours at basic rate when called back within 16 hours of last regular shift, as long as OT does not start within 2 hours of next regular shift.	COPRA
	APHIS inspectors (for certain inspection work) – credited with commuting time (1 to 3 hours if within metropolitan area; up to 6 hours if outside); paid at overtime rate.	Administrative action under Sec. 10412(c)(1) of Public Law 107-171
Sunday pay	Customs officers – 50% premium for Sunday work, which is defined as non-overtime hours in any daily tour that overlaps Sunday.	COPRA
	Immigration inspectors (for certain inspection work) – 2 days' pay at basic rate for any amount of time less than 9 hours worked on a Sunday (roughly 100% premium plus possible credit for hours not worked).	1931 Act
	APHIS inspectors (for certain inspection work) – all Sunday work paid at 2 x basic rate (100% premium) even if part of basic workweek; no cap.	Administrative action under Sec. 10412(c)(1) of Public Law 107-171
	TSA employees – receive Sunday premium pay (25%) only for hours that actually fall on Sunday. (Less generous than title 5.)	TSA law and requirement to follow FAA rules unless TSA modifies.
Night pay	Customs officers – 15% or 20% premium, depending on hours/shifts.	COPRA
	Immigration inspectors (for certain inspection work) – 10% premium (under title 5).	Title 5
	APHIS inspectors (for certain inspection work) – 10% premium (same as title 5), but not subject to premium pay cap.	Administrative action under Sec. 10412(c)(1) of Public Law 107-171
Holiday premium pay	Customs officers – 100% premium (same as title 5).	COPRA
	Immigration inspectors (for certain inspection work) – Two days' pay at basic rate for any amount of time less than 9 hours worked on holidays (roughly 100% premium plus possible credit for hours not worked).	1931 Act
	APHIS inspectors (for certain inspection work) – 100% premium (same as title 5), but not subject to premium pay cap.	Administrative action under Sec. 10412(c)(1) of Public Law 107-171
	SSUD officers – 100% premium; same as title 5 except that 30 minutes or more is rounded to full hour.	DC Code
Premium pay caps	Customs officers – $30,000 annual cap on COPRA overtime and premium pay; COPRA overtime and premium pay not subject to title 5 cap.	COPRA & appropriations law
	Immigration inspectors - $30,000 annual cap on all forms of overtime pay and 1931 Act premium pay; cap covers all INS employees, not just inspectors.	1931 Act & appropriations law
	APHIS inspectors (for certain inspection work) – no cap on premium pay under Sec. 10412(c)(1) of Public Law 107-171.	Administrative action under Sec. 10412(c)(1) of Public Law 107-171
	TSA generally follows title 5 premium pay caps, but has grandfathered some employees who were hired before it decided to apply those caps. (Note: FAA does not have premium pay caps. TSA initially followed that FAA policy, but then modified it.)	TSA law and administrative application.

	SSUD officers – subject to premium cap in DC Code, which followed old rules in 5 U.S.C. 5547 before that section was amended; lower of EX-V or 150% of GS-15, step 1, rate.	DC Code

Availability pay	Availability pay applies to criminal investigators, but AUO pay may apply to other law enforcement officers, such as Border Patrol Agents; disparity in payment of FLSA overtime pay in addition to AUO pay.	Title 5 (5 U.S.C. 5545(c)(2) and 5545a)
	TSA air marshals are entitled to retirement-creditable availability pay on the same basis as criminal investigators under the regular title 5 rules. Thus, title 5 caps should apply, but TSA is paying above those caps for a grandfathered group.	TSA law and administrative application.
	FLETC instructors do not receive availability pay. (Criminal investigators who are temporarily detailed to FLETC continue to receive availability pay. Details last 3-5 years.)	Title 5
FLSA overtime	Employees may lose FLSA overtime pay when promoted to an FLSA-exempt position.	FLSA and Title 5
Compensatory time off	There are differences in agency policies on the use of compensatory time off and payment for unused compensatory time off.	Administrative application.
	SSUD officers – similar to title 5 except that fractional hours are rounded to the nearest hour.	DC Code
Leave		
	TSA senior executives may be placed in the 8-hour leave accrual category and given a starting leave balance of 40 hours, regardless of the amount of Federal service.	TSA law and requirement to follow FAA rules unless TSA modifies.
Retirement		
Law enforcement officer (LEO) retirement benefit	SSUD officers and TSA Air Marshals are covered under LEO retirement benefit provisions, but following employees are not covered: GSA/FPS police, GSA/FPS law enforcement security officers, certain Secret Service special officers, most immigration inspectors, and various Customs Service employees (i.e., customs inspectors, canine enforcement officers, airborne detection systems specialists, flight engineers, and seized property specialists).	Title 5 retirement law & OPM regulations.
Retirement-creditable basic pay	For customs inspectors only, first $15,000 of **variable** overtime pay in a year is treated as retirement-creditable. (Note: Certain law enforcement officers receive **regular** overtime supplements as retirement-creditable basic pay—AUO pay and availability pay.)	COPRA
Waiver of reemployed annuitant offset	FLETC is authorized by law to hire up to 250 Federal retirees who will not be subject to any reemployed annuitant offset. So far FLETC has hired 30 retirees as instructors under this provision.	Public Law 107-206 (August 2, 2002)
	OPM has authorized TSA to make extensive use of the authority to waive the reemployed annuitant offset.	Title 5 law and administrative application.
DC police retirement system	A closed group of SSUD officers (and some agents and other Secret Service employees) are covered by or eligible to transfer to the DC police retirement system. Annuitants under the DC system are not subject to the reemployed annuitant offset that applies to CSRS/FERS retirees (absent a waiver). Secret Service retirees in the DC system are entitled to annuity adjustments based on changes in salary for active employees (equalization provision), while CSRS/FERS retirees receive cost-of-living adjustments.	DC Code

NOTES:

1. We are focusing on differences in pay and benefits among civil service employees. We are not attempting to identify differences as they relate to DHS transferees who are in the uniformed services—namely, Coast Guard military personnel and employees in the commissioned corps at the National Oceanic and Atmospheric Administration (Commerce) or the U.S. Public Health Service (HHS). Also, we do not plan to analyze the pay and benefits of employees in non-appropriated fund instrumentalities in the Coast Guard, since they are not considered to be Federal employees for most purposes.

2. Coast Guard has special pay authorities that apply to the U.S. Coast Guard Academy faculty and to a small number of lamplighters and to one lighthouse keeper. Since the faculty plan is similar to the Naval Academy faculty plan and since the lamplighter and lighthouse keeper are being phased out, we do not view these authorities for unique occupations as raising significant disparity concerns.

3. Customs inspectors, immigration inspectors, and APHIS inspectors frequently work side-by-side at border locations.

Glossary:

1931 Act – Act of March 2, 1931, dealing with premium pay of immigration inspectional duties (46 Stat. 1467), which is codified at 8 U.S.C. 1353a and 1353b; applies to all INS employees who perform covered immigration inspection duties.
APHIS – Animal and Plant Health Inspection Service
AUO – Administratively Uncontrollable Overtime under 5 U.S.C. 5545(c)(2)
COPRA – Customs Officer Pay Reform Amendments, part II of subchapter D of title XIII of Public Law 103-66 (August 10, 1993), which amended section 5 of the 1911 Act (19 U.S.C. 261 and 267) and 5 U.S.C. 8331(3); applies to "Customs officers" who are defined as Customs inspectors and canine enforcement officers.
DC Code – Statutory code for the District of Columbia Government
DHS – Department of Homeland Security
EX – Executive Schedule
FLETC – Federal Law Enforcement Training Center
FLSA – Fair Labor Standards Act
FPS – Federal Protective Service (in GSA)
GS – General Schedule
GSA – General Services Administration
INS – Immigration and Naturalization Service
LEO – law enforcement officer
OPM – Office of Personnel Management
OT – Overtime
SSUD – Secret Service Uniformed Division
TSA – Transportation Security Administration

April-September timeframe is focused on HRMS options developm
s/regulations will be drafted this fall

DHS/OPM HRMS High Level Work Plan

ril | May | June | July | August | September | October | November | Decer

Today

nization

ucate (Background Briefs, IC, etc.)
ntify Design Principles
termine Option Framework/Format

Collection & Synthesis

- Define Systems Elements
- Baseline/Document Current DHS Systems
- Document Current Practices Research
- Conduct Focus Groups

Option Development & Analysis

- Draft Options
- Evaluate & Identify Issues
- Quantitative Analysis, as needed

Report

- Draft
- Final

Communications

- Develop Strategy (who, what, when)
- Develop Pr ucts/Tools Aligned to Strategy
- Conduct T Hall Meetings

Develop Rules/Regulatory Framework

Mrs. DAVIS OF VIRGINIA. Thank you, Ms. Dolan. And thank you to all of our panelists for being willing to be here today. And I am going to yield to my chairman, Mr. Souder, to begin the questioning.

Mr. SOUDER. Let me ask a—you gave us so much information. We have been out in the grassroots, and I am trying to process kind of where—which one of you and where to start. So let me start first with the GAO study.

You referred to the turnover rates dropping, you use—is the only place you studied D.C. in that?

Mr. RABKIN. That's correct.

Mr. SOUDER. And that the rates dropped dramatically after TSA basically had finished their hiring, and there seems to be some stability. In your opinion, were there—there is a couple of different things I wanted to sort through, because that suggests—and do you agree—that the problem was short-term. If it was short term, were there gaps that were significant in lack of protection during the period that we were trying to catch up? Have we seen a decline in the quality of work force because of the turnover and the rapid change? In other words, what's the practical implication, at least from Washington, DC, that you saw when there was a high turnover rate and now where we have a little bit more stability?

Mr. RABKIN. That's an excellent question. We didn't look specifically at that. We did followup with the agencies to get their perceptions on recruiting problems. And many of these police forces had significant or substantial problems trying to recruit new officers to replace those that were leaving, many of whom ended up going to the Federal Air Marshal program. But I think it would take a different kind of an evaluation to examine the impact that situation, short lived as it might have been, had on the quality of the work or their ability to meet their mission during that period of time.

Mr. SOUDER. I can't remember whether it was in your testimony or Mr. Winstead's from OPM, that one of you had a piece of data in there that suggested that the turnover rate among police officers was higher than that among the Border Patrol and Customs?

Mr. WINSTEAD. Yes. I believe that was our testimony. We used the term "quit rate." And by that, we mean voluntary separations from a position with the Federal Government, excluding retirements. And I believe the testimony that we provided indicated that for police officers, the quit rate in fiscal year 2001, 2002, was in the 5 to 6 percent range, which is higher than the overall average quit rates for Federal employees as a whole.

The other thing I think we pointed out, however, is that OPM approved higher special pay rates for police officers throughout the country in early 2003 after the close of last fiscal year. Those increases ranged up to 20 to 25 percent depending on grade level and location. And our expectation would be that those quit rates that we saw in the last couple of years will begin to decline this year as a result of the higher pay.

Mr. SOUDER. Did you separate—at that time Customs and Border Patrol were two separate when you did the study? Or was this after the Department of Homeland Security? Did you see much differences between them?

Mr. WINSTEAD. In terms of?

Mr. SOUDER. This is non-retirement reasons for quitting.

Mr. WINSTEAD. Right.

Mr. SOUDER. Not retirement.

Mr. WINSTEAD. That's correct.

Mr. SOUDER. OK.

Mr. WINSTEAD. And separations from the Federal Government as a whole. That's what we mean by the term quit rate. We looked at criminal investigators and correctional officers. Those are the two largest law enforcement officer occupations. And the quit rates for those groups are actually less than 1 percent. And the next largest law enforcement occupation is Border Patrol agents. And there, the quit rate was about 2 percent or less than 2 percent at the junior level. It is higher at the entry level. And the——

Mr. SOUDER. Higher by what factor?

Mr. WINSTEAD. Well, at the lowest grades, the entry grades, the quit rate tends to be fairly high. And that's true, I think, largely because of the stringent training requirements and the fact that some of the individuals who are initially recruited for those jobs simply fail to complete the training. I can get those percentages for you.

Mr. SOUDER. One last question with that is, is that in the Border Patrol, did you see any differences in those quit rates in the south border from the north border? Because certainly from our experience from going out there is, is that there is almost no turnover at the north border. And at the south border, that those who aren't trying to get out are out. And that, in other words, at one point, in one zone 40 percent had applied for either transfer or leaving the Border Patrol. I believe that was in the Arizona sector when the Homeland Security came up. It's partly challenge of jobs, it's partly challenge of the pay questions. And we are trying to sort out which things they are in retention and how much of this is pay and how much of it is other substances.

Mr. WINSTEAD. I don't have readily at hand the information about the quit rates for the southern border as compared to the northern border or other locations, but we can get that information for you.

Mr. SOUDER. Thank you.

Ms. Dolan, do you have any comments?

Ms. DOLAN. No, I don't. Nothing to add.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Chairman.

I am not sure who this question is for. How do you respond to—you all heard Representative Filner's comment. And that's what actually tweaked my interest when he first came to me about his bill, was men and women who do their job every day and are not classified as law enforcement officers, yet when they die they are classified as law enforcement officers. How do you respond to that?

Mr. WINSTEAD. Madam Chairwoman, I think what I would say is the law certainly does not reflect the dictionary definition of law enforcement officer. We are charged with administering the law as it currently exists, and that law defines the term "law enforcement officer" in a very precise and very particular way that happens to exclude individuals, many individuals who would probably meet the dictionary definition of that term, law enforcement officer. The term itself I think has been problematic from the inception.

Mrs. DAVIS OF VIRGINIA. What changes from life to death to make them meet the requirements of the law to be considered a law enforcement officer?

Mr. WINSTEAD. Well, I'm not privy to the rules governing the circumstances under which the names are added to the wall at the memorial. So I don't know exactly what criteria are used for that purpose.

Mrs. DAVIS OF VIRGINIA. Have you all had a chance to look at these three pieces of legislation from the three gentlemen that are here? And, if so, any comments on the legislation?

Mr. WINSTEAD. We have looked at the legislation. I think the administration, however, is not in a position to express that, a position on any of that legislation at this point in time.

Mrs. DAVIS OF VIRGINIA. Anybody else?

Ms. SIMMS. I would have to ditto that, and only add that we haven't had sufficient time at this point to thoroughly analyze what it means. I think we are generally supportive, but we'd have to look at the specifics of it.

Mrs. DAVIS OF VIRGINIA. Let me ask you, Ms. Simms, do you think that law enforcement officer retirement benefits should be given to all employees who do law enforcement activities? Or should they be used strictly as a personnel management tool for recruitment and retention?

Ms. SIMMS. We are a strong proponent of consistency across the board. Within the Department of Justice we've taken looks at several junctures; we've formed various committees to take a look at the inequities across—within the—internal to the Department. We have had representatives from each one of the bureaus talk about the pay and benefit disparities. We have actually done an onsite study in Puerto Rico where we have housing and language and education issues. We are a strong proponent of consistency across the board.

Mrs. DAVIS OF VIRGINIA. Do you think there are inconsistencies right now?

Ms. SIMMS. Yes, I do.

Mrs. DAVIS OF VIRGINIA. Just within the Department of Homeland Security, or throughout?

Ms. SIMMS. When I say across the board, I mean internal to the Department of Justice as well as externally when we are looking at our sister agencies.

Mrs. DAVIS OF VIRGINIA. What can we in Congress do to help you alleviate or remove those inconsistencies?

Ms. SIMMS. I think, certainly, endorsing the legislation that is coming forward after all have had an opportunity to weigh in on that and address it as it pertains to our own particular organizations. The fact that we are here today I think is a huge step in that direction. I don't know that it has been addressed in this type of forum before, and we certainly appreciate that.

Mrs. DAVIS OF VIRGINIA. Anybody else have any comments on those questions?

Unfortunately, we have been called for another vote now.

Mr. WINSTEAD. Madam Chairwoman, I think we said in our statement that one of the things that we will be careful to look at in reviewing any proposed legislation is the extent to which it may

have an impact on the options that we are developing jointly with the Department of Homeland Security. And, in addition, we are very concerned about the potential for creating new pay and benefits disparities. Part of the problem that we have right now is that legislation has been enacted over the years, which of course was well intentioned and addressed a problem, a serious problem that existed at the time. But in the aggregate, what we end up with is a situation with a number of perceived inequities. And we simply would want to avoid replicating that situation by seeing legislation enacted that creates new pay and benefits disparities.

Mrs. DAVIS OF VIRGINIA. I think that's been a concern of this committee as well, Mr. Winstead. We had all of these—in fact, my staff didn't want me to co-sponsor so many of those pieces of legislation because it was piece-mealed. But I wanted to, to send the message that we need to do something to correct the inconsistencies and inadequacies that are out there for our folks that are on the front line, if you will.

We, unfortunately, have a series of 6 votes, which means we are going to have to adjourn probably for about 45 minutes or so. I don't want to keep this panel. I have a lot more questions. If I can submit them to you in writing and get you to respond to me in writing, that way I can let you go.

And, unfortunately, I am going to have to ask Ms. Kelly, bless your heart, you always have to wait for votes. I am going to have to ask the third panel if you would excuse us while we recess for 45 minutes roughly, until we finish the 6 votes.

I want to thank all four of you, and hope that you will be available to our staff if we have questions, if you will review the legislation. And when are you supposed to get back to us, Ms. Dolan?

Ms. DOLAN. The Secretary and the Director of OPM will be issuing proposed regulations in the fall. And meanwhile, we will be happy to keep you apprised of our progress.

Mrs. DAVIS OF VIRGINIA. I would appreciate that. We have a lot of good men and women out there doing the job, and we don't want to lose them and we want to make sure that they are treated fairly. Thank you all so much.

We are going to recess until about 11:50, and hope we will be back by then. Thank you.

[Recess.]

Mrs. DAVIS OF VIRGINIA. We recessed for the votes we were going to have, and they have recessed basically for an hour, which means that about the time we get started again they are going to call us for the votes again. And we have a problem of having to be out of this room by 1:30. That's the way things are in Congress, though. And we have to be flexible.

We are going to go ahead and start. And we will swear the other witness in when he gets in. So if the panel would rise.

We have on this panel Colleen Kelley, president of the National Treasury Employees Union; Ignatius Gentile, president of the DHS Council 117 as part of the American Federation of Government Employees; Nancy Savage, president of the FBI's Agents Association; Richard Gallo, former president of the Federal Law Enforcement Officers Association; T.J. Bonner, president of the National

Border Patrol Council; And, finally, Louis Cannon, president of the D.C. State Lodge for the Fraternal Order of the Police.

If you will raise your right hands, I will administer the oath.

[Witnesses sworn.]

Mrs. DAVIS OF VIRGINIA. Let the record reflect that the witnesses have answered in the affirmative. And you may be seated.

The panel will now be recognized for an opening statement. We will ask you to summarize your testimony in 5 minutes; and any more complete statement you may wish to make will be included in the record.

I would first like to welcome Colleen Kelley, who is no stranger to this committee. Colleen, you have been here several times to testify this year. I would like to thank you for being with us today. And you are recognized for 5 minutes.

STATEMENTS OF COLLEEN M. KELLEY, PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION; IGNATIUS GENTILE, PRESIDENT, DEPARTMENT OF HOMELAND SECURITY COUNCIL 117, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES; NANCY SAVAGE, PRESIDENT, FEDERAL BUREAU OF INVESTIGATION AGENTS ASSOCIATION; RICHARD GALLO, FORMER PRESIDENT, FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION; AND LOUIS P. CANNON, PRESIDENT, DISTRICT OF COLUMBIA STATE LODGE CHAIRMAN, FEDERAL OFFICER'S COMMITTEE, FRATERNAL ORDER OF POLICE

Ms. KELLEY. Thank you very much, Chairwoman Davis, Chairman Souder. It is a pleasure to be here on behalf of the 150,000 Federal employees represented by NTEU. That number includes over 7,500 Customs inspectors, 6,000 IRS Revenue officers, and over 900 Customs K–9 enforcement officers who do perform law enforcement functions every day.

The creation of the Department of Homeland Security has moved the issue of Federal law enforcement officer status to the forefront of Federal employee pay and benefit issues. On March 1, 2003, the Bureau of Customs and Border Protection was established within DHS. The CBP combines over 42,000 Federal employees from the Customs Service, the INS, the Border Patrol, and the Agriculture Department.

In addition to provisions in the legislation that created the DHS, a number of other pieces of legislation have been introduced during the 108th Congress that would alter the definition and the benefits of Federal law enforcement officers. One of the most important pieces of legislation involving the definition of law enforcement officer is H.R. 2442, the Law Enforcement Officers Equity Act of 2003. This bipartisan legislation would include Customs inspectors, CEOs, and IRS revenue officers as law enforcement officers for the purpose of 20-year retirement.

NTEU believes that Customs inspectors, IRSROs, and Customs CEOs should receive the same 20-year retirement option as other law enforcement officers. Their job duties regularly expose them to real threat and injury, and even to death. This is dangerous work with real and unrelenting hazards.

The Customs inspectors and CEOs in the CBP have as their primary mission stopping terrorism and the flow of illegal drugs into

the United States. Inspectors and CEOs enforce Federal criminal laws and stop fugitives who are subject to State and Federal warrants and are responsible for stopping sophisticated and dangerous narcotics smugglers, international money launderers, armed smugglers, and terrorists. They search aircraft, vessels, automobiles, rail cars, travelers, and baggage for violations of civil and criminal laws at 307 ports of entry.

The work of the Customs inspectors and the CEOs involves a substantial physical risk and personal danger. According to the FBI's 2001 Uniform Crime Report, Customs officers accounted for 62 percent of the officers who were injured in the line of duty in the Treasury Department in 2001. Inspectors and CEOs are currently required to undergo 9 weeks of basic training at the Federal Law Enforcement Officer Training Center in Glencoe, GA. Their current training includes criminal law, arrest authority, arrest procedures, search and seizure authority, and techniques including self-defense tactics, frisk and patdown procedures, handcuffing and takedown techniques, antiterrorism, and firearms use. And all inspectors and CEOs are required to qualify on a firing range at least 3 times a year.

According to the agency, inspectors and CEOs have been stabbed, run over, dragged by automobiles, assaulted with blunt objects, and threatened. Inspectors at every port face these hazards as they try to detect and detain drug traffickers, terrorists, and other felons. One only has to ask Customs inspector Diana Dean who stopped terrorist Ahmed Ressam, known as the Millennium Bomber, from entering the United States with a truckload of explosives in Port Angeles, WA on December 14, 1999. It was later determined that Ressam has intended to use those explosives to destroy the Los Angeles International Airport.

In addition to legislation providing 20-year retirement, other legislation such as H.R. 466 and 1676 would help Federal law enforcement officers to obtain the adjusted percentage differentials or locality pay under the Federal Law Enforcement Pay Reform Act of 1990.

While NTEU agrees with the intent of these bills, we would prefer that Congress first eliminate the disparity between Federal employees such as those in Customs and IRS who for statistical purposes are considered law enforcement officers but by statutory definition are not.

There is no doubt that extending law enforcement officer status to additional Federal employees will involve substantial costs. However, NTEU strongly believes that the costs are easily outweighed by the benefits to the officers, to the agencies, and to the American public. No one could reasonably dispute the importance of the work done by these law officers. Whether stopping illegal drugs or enforcing our Nation's tax laws, these hardworking men and women provide a critical public service. Given the significance of these jobs, it is vitally important for Customs and the IRS to be competitive with other State and local law enforcement agencies in granting these men and women 20-year retirement, and law enforcement officer status would be a very positive step in that direction.

On behalf of the 150,000 members represented by NTEU, I thank this committee for taking such a serious look at this issue, and ask for your help in moving this issue forward to make it a reality. Thank you.

Mrs. DAVIS OF VIRGINIA. Thank you, Ms. Kelley. We appreciate you being with us today.

[The prepared statement of Ms. Kelley follows:]

National Treasury Employees Union

TESTIMONY OF
NATIONAL TREASURY EMPLOYEES UNION
NATIONAL PRESIDENT
COLLEEN M. KELLEY

ON

PERSONNEL ISSUES AFFECTING LAW ENFORCEMENT EMPLOYEES OF THE FEDERAL GOVERNMENT

BEFORE

HOUSE GOVERNMENT REFORM SUBCOMMITTEES ON CIVIL SERVICE AND AGENCY ORGANIZATION AND CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

WEDNESDAY JULY 23, 2003 10 A.M.
2154 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, D.C.

Chairwoman Davis, Chairman Souder, Ranking Members Davis and Cummings, distinguished members of the Committee, I would like to thank the Subcommittees for the opportunity to comment on personnel issues affecting law enforcement employees of the federal government.

As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 155,000 federal employees, including over 7,500 Customs Inspectors, 6,000 IRS Revenue Officers (RO's); and over 900 Customs Canine Enforcement Officers (CEO's) who perform law enforcement functions. The creation of the Department of Homeland Security (DHS) has moved the issue of federal law enforcement officer status to the forefront of federal employee pay and benefit issues. In addition, a number of bills have been introduced this Congress that would alter the definition and benefits of federal law enforcement officers.

As members of this committee are aware, on March 1, 2003, the Bureau of Customs and Border Protection (CBP) became an official agency of the DHS. The CBP combines over 42,000 federal employees from the Customs Service, the INS, Border Patrol and Agriculture Department. The focus of this front-line law enforcement bureau is the movement of goods and people across our borders and to prevent illegal entry into the U.S. of people or goods at or between ports-of-entry while facilitating the movement of legitimate trade and international travel. The legislation that created the DHS also required that the Secretary of Homeland Security, in consultation with the Director of the Office of Personnel Management, submit a plan to Congress for ensuring the elimination of unwarranted disparities in the pay and benefits of

federal employees being transferred to DHS. In addition to these provisions in the legislation that created the DHS, a number of other pieces of legislation have been introduced during the 108th Congress that would alter the definition and benefits of federal law enforcement officers.

Secretary Ridge provided a report to Congress on March 9, 2003 that focused on identifying differences in pay and benefits among employees transferring to DHS, but did not make specific recommendations regarding how those differences might be eliminated. The report clearly shows that within the CBP there are two classes of federal employees, those with law enforcement officer status and its benefits and those without (report attached). Unfortunately, Customs Inspectors and CEO's fall into the latter class and are therefore being denied the benefits given to other federal employees in the CBP who they work with at 307 ports-of-entry across the country. In addition to the federal employee personnel flexibilities provided in the legislation that created the DHS, a number of other pieces of legislation have been introduced during the 108th Congress that would alter the definition and benefits of federal law enforcement officers.

One of the most important pieces of legislation involving the definition of law enforcement officer is HR 2442-The Law Enforcement Officers Equity Act of 2003. NTEU strongly supports this bipartisan legislation introduced by Representatives Bob Filner and John McHugh. This legislation would include Customs Inspectors, CEO's and IRS Revenue Officers as law enforcement officers for the purpose of 20-year retirement. As I will describe in greater detail in the remaining portions of my testimony, the record will clearly support the inclusion of all these employees under the early retirement provisions for federal law enforcement officers.

Other pieces of legislation such as HR 466 and HR 1676 would help federal law enforcement officers, who live in certain high-cost areas, to obtain adjusted percentage differentials under the Federal Law Enforcement Pay Reform Act of 1990. However, since Customs Inspectors, Canine Enforcement Officers and IRS Revenue Officers do not have law enforcement officer status, they are not eligible for the adjusted percentage differentials proposed in Representatives King and Rogers bills. NTEU agrees with the intent of these bills but would prefer that Congress eliminate the disparity between federal employees, such as those in Customs and the IRS, who for statistical purposes are considered law enforcement officers but by statutory definition are not.

HISTORY OF FEDERAL LAW ENFORCEMENT OFFICER STATUS

To better understand why it is so important to include Customs Inspectors, CEO's and Revenue Officers as law enforcement officers you need to look at the history of providing special retirement provisions for federal law enforcement officers which dates back to 1947, when such benefits were given to agents at the Federal Bureau of Investigation. These retirement provisions were expanded in 1948 to cover any officer or employee whose duties are primarily the investigation, apprehension, or detention of persons suspected or convicted of offenses against the criminal laws of the United States. Title 5 U.S.C. section 8336 (c)(1) allows law enforcement officers who fall under this definition to retire from the federal government at age 50 after 20 years of service. The law was amended in 1972 to include firefighters. Congress has found that the work of federal law enforcement officers and firefighters is extremely physically demanding -- far more taxing and dangerous than most jobs in the federal government. Further, Congress believed that the public interest is served when these jobs are

held by younger men and women capable of meeting the intense physical demands of such difficult work.

In light of the special nature and intense stresses associated with their positions, Congress continued to expand twenty-year retirement eligibility to include air-traffic controllers and nuclear materials handlers. Presently, Members of Congress and the Capitol Police are also eligible to retire with twenty years of service. NTEU believes that all of these employees are deserving of this benefit, however, it is time to recognize the neglected positions within Customs and the IRS.

NTEU believes that Customs Inspectors, IRS Revenue Officers, and Customs Canine Enforcement Officers should receive the same twenty-year retirement option as other law enforcement officers. Every day, the men and women who hold these jobs face enormous physical challenges and constant stress. Their job duties regularly expose them to the threat of injury or even death. This is dangerous work with real and unrelenting hazards. For the safety of these officers and for the sake of the public they serve, NTEU believes that a twenty-year retirement option as included in HR 2442 is wise public policy.

MISSIONS OF CUSTOMS AND IRS

The Customs Inspectors and CEO's in the CBP remain a front line law enforcement agency, with the primary missions of stopping terrorism and the flow of illegal drugs into the United States. Inspectors and CEOs enforce federal criminal laws and seize fugitives who are subject to state and federal warrants and are responsible for stopping sophisticated and dangerous

-- narcotics smugglers, international money-launderers, arms smugglers, terrorists, and fugitives from justice who pose serious threats to the United States. Customs inspectors use a variety of investigative tools to perform their duties, including vehicle and personal searches and direct interrogation. They search aircraft, vessels, automobiles, railcars, travelers and baggage for violations of civil and criminal laws at 307 ports of entry. The inspectional ranks of Customs continue to seize more illegal narcotics than all other federal agencies combined year after year.

The mission of the IRS is to enforce the federal tax laws, and IRS Revenue Officers are responsible for collecting delinquent taxes. They are assigned a case only after the IRS has performed extensive background work and afforded a taxpayer numerous opportunities to pay his or her taxes or file a delinquent return. If a case is still not closed after an exhaustive campaign of letter-writing, telephone calls, and record-searches, it is forwarded to a Revenue Officer for a thorough, professional field investigation and appropriate action.

LAW ENFORCMENT DUTIES OF CUSTOMS AND IRS EMPLOYEES

Customs Inspectors and Canine Enforcement Officers

The work of Customs Inspectors and CEO's involves substantial physical risks and personal danger. According to the FBI's 2001 Uniform Crime Report, 52 Customs officers were assaulted in 2001, 18 of which were assaulted with weapons such as vehicles, firearms, blunt objects or personal weapons. Customs officers also accounted for 52 out of 84 Treasury Department officers injured in the line of duty in 2001, nearly 62 percent. In recognition of the kind of work they were asked to perform, both the Department of Treasury and the Customs

Service included Customs Inspectors and Canine Enforcement Officers as law enforcement officers when these statistics were compiled for the 2001 FBI Uniform Crime Report.

Inspectors and CEOs are currently required to undergo nine weeks of basic training at the Federal Law Enforcement Training Center in Glynco, Georgia. In the near future, basic training for DHS inspectional personnel is anticipated to increase to 15-20 weeks when all DHS inspectional training is integrated into one border inspector curriculum. The current training includes criminal law, arrest authority and arrest procedures, search and seizure authority and techniques, self-defense tactics, frisk and pat-down procedures, handcuffing and take-down techniques, anti-terrorism, and firearms use. In addition, all Customs Inspectors and CEOs are issued firearms to protect themselves, their fellow Inspectors, and the public. The decision to require firearms was the agency's necessary response to the constant threat of violence faced by Inspectors in the performance of their duties at all ports. Currently, all Customs Inspectors and CEOs are required to qualify on a firing range at least three times a year.

Training is a matter of life or death for Customs officers, all of whom must be ready to confront armed and hostile travelers and desperate felons and fugitives. Twenty-four Customs Inspectors have been killed in the line of duty. According to the agency, Inspectors and CEOs have been shot, stabbed, run over, dragged by automobiles, assaulted with blunt objects and threatened. Terrorists, drug smugglers and fugitives do not hesitate to use violence to avoid being caught and arrested.

Threats and attacks against Customs Inspectors are not limited to any one border. Inspectors at every port face the hazards that come with trying to detect and detain drug traffickers and other felons. For example, the Canadian border is increasingly susceptible to terrorist and drug trafficking as Customs Inspectors working on the Northern border work regularly with local police to curb the flow of drugs and detain fugitives. One only has to ask Customs Inspector Diana Dean who stopped terrorist Ahmed Ressam, known as the Millennium Bomber, from entering the United States with a truckload of explosives in Port Angeles, Washington on December 14, 1999. It was later determined that Ressam had intended to use the explosives to destroy Los Angeles International Airport (LAX).

The threats and attacks are not diminished for inspectors at Customs seaports. Routine ship searches can often turn into dangerous confrontations with armed stowaways trying to smuggle drugs into the United States. Inspectors at seaports are required to board vessels at sea if the vessel is too large to come into the port. After reaching the ship out in the harbor, often they board it by descending a long rope ladder and timing the wave swells with the ladder's movement against the vessel. Once aboard, Inspectors are exposed to all kinds of hazards. They must endure the intense heat and noise of the engine rooms, and must safely navigate high-pressure lines, large machinery, cranes and fork lifts during routine searches.

Inspectors must also search all manner of cargo coming into the United States. This includes chemicals and other hazardous materials. In some areas, Inspectors and CEOs are exposed to insect swarms and disease, and in some situations, they have undergone mandatory testing for hazardous exposure to asbestos and lead. They must stand for hours in awkward

positions at border crossings where they breathe exhaust fumes and withstand driving rains, snow, ice and high winds, and the scorching heat of summer. The dangerous nature of ship inspection came to the forefront when Senior Customs Inspector Thomas Murray from Gramercy, Louisiana lost his life when he suffocated in the cargo hold of a ship loaded with scrap metal on October 30, 2001.

Customs Inspectors are also responsible for working with the Treasury Enforcement Communications System (TECS), which is connected to the National Crime Index Center computer. TECS lists warrants for people who are wanted by federal, state and local law enforcement agencies as well all terrorist watch lists. Inspectors are required to seize these fugitives, who are wanted for such crimes as murder, robbery or rape, in addition to drug smuggling. Inspectors must detain these fugitives until they are transported to jail.

In most areas of the country, Customs Inspectors and CEOs work on task forces with state and local police departments to conduct special operations designed to detect illegal drugs, stolen vehicles and money laundering. They try to stop illegal merchandise from coming into the country, and high tech equipment, illegal currency and weapons from going out.

Not many people recognize the sacrifices that Inspectors and Canine Enforcement Officers make for the Customs Service. Their lives are controlled by their jobs. They rarely work regular 9-5 schedules and they have little control over the schedules they do work in any given two-week period. Staffing levels are not adequate to meet the needs of most ports, so Inspectors are frequently asked to work on their days off or to work beyond their regular shifts.

The constant strain of performing dangerous, life-threatening work on an irregular and unpredictable schedule has a profound impact on the health and personal lives of many Inspectors and CEOs. They must maintain control and authority, sometimes for 16 hours a day, knowing that a dangerous situation could arise at any moment.

Finally, and most importantly, Customs Inspectors and Canine Enforcement Officers are also the first line of defense against terrorism. Many ports of entry have elaborate anti-terrorist plans in place, and Inspectors work side-by-side with Customs Agents, FBI Agents and local police to carry out contingency plans. Inspectors take the lead in boarding suspicious flights, searching the plane, and looking for stowaways. In these tense situations, fraught with danger, Customs Inspectors are the only enforcement personnel who are not covered by the twenty-year retirement provisions of section 8336(c)(1) of Title 5.

IRS Revenue Officers

Study after study performed by the IRS shows that the job of Revenue Officer (RO) is the most hazardous in the Department of Treasury, and that includes the Secret Service. Revenue Officers are required to call on delinquent taxpayers from crime-ridden city neighborhoods to remote and isolated rural areas. Revenue Officers have been held hostage, attacked by dogs, hit by cars, threatened with shotguns, handguns, hunting rifles, knives, hammers, tire irons, and bombs. Delinquent taxpayers are sometimes in desperate financial or legal trouble. And it is no longer surprising when Revenue Officers find themselves confronting delinquent taxpayers that belong to tax protest groups or a local militia.

It is not always the taxpayer who poses the greatest danger. The neighbors and families of delinquent taxpayers have threatened to shoot Revenue Officers if they don't leave the premises. Revenue Officers must collect from drug dealers, organized crime figures, and tax protesters. Indeed, the growing number of illegal tax protest groups poses a significant threat to IRS Revenue Officers. These groups collect names and addresses of Revenue Officers and release information to fellow protesters. Many of these groups advocate violence against the IRS.

Revenue Officers must conduct seizures of taxpayer assets, including homes and cars. Many ROs wear bulletproof vests and are accompanied by armed police officers to safely perform this aspect of their jobs. Public sales of seized property can be dangerous as well. ROs sometimes need to move a sale location because they receive threats from tax protesters. Every Revenue Officer could tell you about the times when they feared for their lives while working a case. These brushes with violent, threatening delinquent taxpayers are etched in their minds and easily recalled.

The adversarial nature of the Revenue Officer/delinquent taxpayer relationship places significant strain on the typical IRS Revenue Officer, for whom danger and confrontation are part of the daily routine. Revenue Officers face crushing workloads, a hostile work environment, and the ever-present threat of physical attack, a danger that, sadly, extends to their families and loved ones. The stress associated with these conditions can exact a severe toll. According to one study, relied on by the IRS in 1985, these stresses are exacerbated with age and can lead to

physical problems, including high blood pressure, stomach problems, insomnia, suicide and depression.

COST ANALYSIS

One of the arguments that has been used in the past to deny granting early retirement to these officers is the cost. There is no doubt that extending law enforcement officer status to additional federal employees will involve substantial costs. NTEU strongly believes that the costs are easily outweighed by the benefits to the officers, their families, and the American public. No one could reasonably dispute the importance of the work done by these law officers. Whether stopping the flow of illegal drugs or enforcing our nation's tax laws, these hard-working men and women provide a critical public service.

Given the significance of these jobs, it is vitally important for Customs and the IRS to be competitive with other state and local law enforcement agencies in the recruitment and retention of first-rate personnel. Yet we know that the combination of low starting salaries and second-rate retirement benefits does not always attract the best candidates for these difficult, dangerous and essential jobs. Recruitment and retention of capable personnel was a preeminent consideration behind Congress' establishment of the twenty-year retirement option for other law enforcement officers and firefighters. NTEU believes the same compelling reason exists here.

The IRS performed an extensive cost-benefit analysis in 1993, looking at such factors as the loss or quit rates of highly experienced employees, reduced training costs, and increased revenue collection. According to the IRS, a direct relationship exists between retirement benefits

and personnel loss rates. As retirement benefits increase, loss rates decrease. More to the point, incumbents entitled to twenty-year retirement have a lower attrition rate than incumbents in the same series that do not. According to this study, loss rates for incumbents with twenty-year retirement entitlement were more stable over time, and little change occurred from one fiscal year to another.

The high cost associated with turnover and training new employees must also be considered when weighing the costs and benefits of a twenty-year retirement. When Revenue Officers quit or leave the agency, their inexperienced replacements need extensive and costly training. It takes an inexperienced new RO some two years to learn the job and become as productive as the experienced RO that he or she has replaced. The existence of the twenty-year retirement option will not only help the IRS retain experienced personnel, but it will help the agency compete against other law enforcement agencies to recruit experienced and capable officers.

The situation within Customs is no different. Currently, newer hires to Customs are highly susceptible to the pull of twenty-year retirement benefits and higher salaries offered by state and local law enforcement agencies. They have received costly training and on-the-job experience within Customs, but they know they deserve to be rewarded for the dangers and risks they are exposed to every day. All too often, talented young officers treat Customs as a stepping-stone to other law enforcement agencies with more generous retirement benefits. One only has to look at the number of Customs personnel lost to the Air Marshal program during the

last few years because of the benefit of twenty-year retirement. When this occurs, both Customs and the wars on terrorism and drugs suffer as a result.

While NTEU believes that the benefits of a twenty-year retirement clearly outweigh the costs, there are certainly ways to ease the financial burden to these agencies and the taxpayers. These options include a phase-in period for the retirement eligibility, or the mandatory retirement age. The Subcommittees could devise a twenty-year retirement package for IRS and Customs much like that received by Members of Congress and air traffic controllers, who also benefit from a twenty-year retirement.

CONCLUSION

NTEU is convinced that Inspectors and Canine Enforcement Officers of Customs and Revenue Officers of the IRS should receive the same early retirement benefits as those enjoyed by other federal law enforcement personnel. When law enforcement officers from different agencies join forces on a drug raid or to search a boat for armed smugglers, Customs officers are often the only law officers on the scene who are not eligible for early retirement. They all face the same dangers and the risk of death or injury, but they don't all have the same rights and benefits.

Revenue Officers are subjected to the same gross inequities when they join with law officers from other federal agencies and their state and local counterparts on dangerous and risky operations. These dedicated men and women are united by the violence and threats they must endure, but when it comes to retirement benefits, the Revenue Officer is not covered.

Customs and IRS law officers put their lives on the line every day to serve the American people. The work they do is as dangerous as it is important. In the course of fighting the wars on terrorism and drugs as well as upholding our tax laws, these men and women have been beaten, kicked, stabbed, and dragged behind cars; some have been killed. They are part of the family of law enforcement officers across this nation who put themselves in harms way to uphold the laws passed by this Congress. They are subject to the same dangers, meet the same rigorous job standards, and rely on the same investigative skills and techniques as other law enforcement officers who enjoy the benefits of twenty-year retirement. Common sense demands an end to this inequity.

Thank you for the opportunity to be here today on behalf of NTEU and its 155,000 members to discuss these extremely important federal employee issues.

Mrs. DAVIS OF VIRGINIA. Next, we have Nancy Savage of the FBI Agents Association. And we thank you for being with us, and you are recognized for 5 minutes.

Ms. SAVAGE. Thank you for this opportunity to appear before you today to testify about personnel issues that affect the effectiveness of Federal law enforcement; in particular, the Federal Bureau of Investigation. Also, I want to thank you for your bipartisan leadership and that of the other members of the committees, Representatives Mica, Sanchez, Van Hollen, who have joined you on H.R. 1676, which is critical to this effort. Allow me also to recognize and thank Congressman Mike Rogers, who had to leave here, for his critical effort in this regard.

I am a special agent of the FBI, assigned to the Portland, OREgon division. I have worked for the FBI for 26 years, 6 as a personnel specialist, and 20 as a special agent. My early career in the FBI and also in the Department of the Army as a personnel specialist has helped me to try to frame this issue in my own mind, because I want to work for an effective personnel solution to what affects all my colleagues in Federal law enforcement.

First, let me stress that FBI agents are patriots by nature. We don't take this job for wealth or fame. All FBI agents want to make a difference, but they also want to make a living.

Since the terrorist attacks of September 11th, our agents have been on a constant state of alert. They typically work 10-plus-hour days and face a 1 to 4-hour commute in a constant effort to prevent future attacks and bring terrorists to justice. They are also working their other traditional law enforcement responsibilities: the crackdown on organized crime, drug cartels, civil rights, violent gangs and hate groups, as well as guard against cyber crimes and identity theft. The list grows longer every day.

To combat 21st century crimes, the FBI and other Federal law enforcement require highly trained individuals with special skills, advanced degrees, and, above all else, experience. We face an immediate crisis in high-cost-of-living areas. For example, the total salary, including overtime, a starting FBI agent in San Francisco can make is $45,000, which with overtime can reach a maximum of about $56,000. In May 2002, the median cost of a single family home in this area set a record of $439,000. The maximum a family with an income of $56,000 can afford to spend on a house is $203,000, half the going rate for a normal small house.

In response to a recent Agents Association survey, one New York agent who has a law degree and speaks Spanish responded: "I have had to sell off most of my belongings and borrow from my family. The bottom line is that presently I am forced to move from room to room, often being homeless for days or weeks at a time."

The other financial issues that strikingly face us in California and New York are Joint Terrorism Task Force agents who work on our task forces in New York City and also in California. They work jointly with other Federal, State, and local law enforcement officers, are generally the lowest paid employees on those task forces.

The personnel and effectiveness issues now confronting the FBI are a combination of short-term crisis in high-cost cities and broader systemic national problems. To this end, H.R. 1676 offers both a short-term fix and a long-term solution. It eliminates the pay cap

for agents, provides a geographic pay adjustment for the 13th highest cost-of-living in the United States, and directs OPM to study the effectiveness of a separate pay system for Federal law enforcement officers. This combination is critical if we are to succeed in addressing the issues Federal law enforcement faces here. A short-term fix alone in the form of a locality pay raise would soon erode, and representatives of Federal law enforcement will be back again asking Congress for help on this issue. Moreover, while a locality pay raise would be of great importance in those areas hardest hit right now, it will not fix the wider issues.

To address the near-term pay problems in high-cost cities, it would adjust locality pay rates to make them more accurately reflect the real cost of living. It would be based on Chamber of Commerce cost-of-living statistics. And this would make a huge difference, because if we can pay those individuals who live in San Francisco, who live in New York, who live in L.A., what a true cost of living is, it will stop the exodus of our employees who are trying to get to Houston or other cities that are paid relatively large salaries based on a wage-base configuration currently in place.

It would also provide an incentive for our employees to move to Washington, DC, which is an increasing cost-of-living geographic metropolitan area, and which is required of most of our management moves. And this is a critical issue. We need the best managers as well as the best agents. Without this incentive, we are facing a true crisis that grows worse year by year. And this is an important dynamic.

To sum up this issue, I would have to also speak back to one of the earlier speakers, Donald Winstead from OPM. We need an effective solution that will take in and consider a personnel management system change that actually encourages our senior agents and even our junior agents to stay and work in high-cost-of-living areas where some of our more critical investigative functions are, and also encourage people to take that turn to come to Washington, DC, and fight some of these Beltway battles and become better prepared to go back out into the street and lead street agents.

As a conclusion, I would like to say that we just thank you very much. We owe the people who protect our national security far better than we are currently able to give them under our current Federal law enforcement personnel system. And we owe the American public the confidence that H.R. 1676 would provide.

Over the long term, our Federal law enforcement remains capable and effective in defending the American people from terrorists and protecting all of you from criminals. Thank you for the opportunity.

Mrs. DAVIS OF VIRGINIA. Thank you, Ms. Savage.

[The prepared statement of Ms. Savage follows:]

Testimony of Nancy Savage
On Behalf of the Federal Bureau of Investigation Agents Association
Before the Subcommittees on Civil Service and Agency Organization and
Criminal Justice, Drug Policy and Human Resources,
Committee on Government Reform
United States House of Representatives
Personnel Issues Impairing the Effectiveness of Federal Law Enforcement
July 23, 2003

Chairwoman Davis, Chairman Souder, Ranking Members Davis and Cummings, members of the Subcommittees, thank you for this opportunity to appear before you today to testify about personnel issues that affect the readiness of federal law enforcement, in particular the Federal Bureau of Investigation (FBI).

Let me begin by offering special thanks to both Chairwoman Davis and Ranking Member Davis for your hard work and leadership in support of H.R. 1676, the Federal Law Enforcement Officers Pay Equity and Reform Act. Your bipartisan leadership, and that of other members of your committees, such as Representatives Mica, Sanchez and Van Hollen, who have joined you on this important bill, is critical to this effort. We truly appreciate all that you have done and are doing for the men and women who safeguard our homes, streets, communities and country.

Allow me to also recognize and thank Congressman Mike Rogers who has led this effort to ensure the continued excellence and effectiveness of the FBI and other federal law enforcement agencies. Congressman Rogers is himself a former FBI Agent and served in a high cost of living area. He understands first hand the challenges law enforcement faces as it confronts modern-day threats ranging from terrorism to kidnappings to corporate fraud. Congressman Rogers, the FBI Agents Association (FBIAA) greatly appreciates not only your service but also your longstanding leadership and efforts on behalf of federal law enforcement.

My name is Nancy Savage. I am a Special Agent in the FBI assigned to the Portland, Oregon Division. I have worked for the FBI for twenty-six years, six as a Personnel Specialist and twenty as a Special Agent. My assignments have included five years as a drug squad supervisor and two years as an FBI Headquarters Unit Chief in the Criminal Intelligence Program. I am the president of the FBI Agents Association, a non-governmental, professional association with a membership of nearly 9,000 current and more than 2,000 retired agents nationwide. I want to make it clear that I am testifying today on behalf of the FBI Agents Association, not as an official representative of the FBI.

Before discussing the personnel challenges the FBI and other federal law enforcement face, it is important to underscore the strength and dedication of our agents. FBI agents are patriots by nature. They don't take the job for wealth or fame. They join the Bureau to make a difference, to protect this nation and its people, and to defend our Constitution.

Let me also stress that the personnel challenges discussed in this testimony are the product of longstanding, systemic flaws that are, pursuant to existing laws and rules, largely beyond the

province of the current FBI Director and his predecessors. Fixing these very serious problems will require an act of Congress.

I. THE NATION NEEDS A STRONG AND CAPABLE FBI

Since the terrorist attacks of September 11, 2001, our agents have been on a constant state of alert. As President Bush has repeatedly said, we are at war against terrorism. The men and women of the federal law enforcement are deployed day-in and day-out on the frontlines of this struggle. Our agents typically work ten-plus hour days in a constant effort to prevent future attacks and bring terrorists to justice.

At the same time, the FBI continues to carry out its other mandated law enforcement responsibilities. The men and women of the FBI continue to investigate white-collar criminals who have swindled hardworking people of their life-savings, retirements, and American dreams. FBI agents across the nation are searching for abducted children. Other agents are cracking down on organized crime, fighting drug cartels, safeguarding civil rights, clamping down on violent gangs and hate groups, and guarding against cyber crimes and identity theft—the list is longer.

And, as a matter of pride and professionalism, despite the challenges we face, these agents will continue to rise to the occasion because they truly believe in what they do.

Having said that, we face dramatically escalating threats and increasingly dangerous criminals. Today's criminals are increasingly sophisticated. White-collar criminals now use multiple layers of foreign and domestic corporate structures to illegally avoid taxes. Corporate criminals use intricate, inter-locking partnership schemes to defraud shareholders. Similarly, modern terrorist organizations deploy advanced skills and complex structures to thwart us. They work across borders with other terrorist and criminal organizations through various forms of alliances to broaden their reach, train their ranks, obtain weapons and raise money, such as through drug trafficking.

Defeating these 21st Century threats requires more than just stalwart dedication and unabashed patriotism. To combat threats like these, the FBI and other federal law enforcement require highly trained individuals with special skills, advanced degrees and, above all else, experience. To foil terrorist plots we need agents fluent in languages and dialects. To unravel complex corporate crimes we require people with advanced forensic accounting skills. To combat cyber-crime we have to deploy highly skilled information technology experts. In today's world, these skills are in high demand from both the public and private sectors.

In addition to having the right specialized skills, d ating these threats requires the FBI and other federal law enforcement to remain in a cons t state of alert and at peak performance. We simply cannot let our guard down.

II. Pay and Personnel System Problems Threaten FBI Effectiveness

At the same time we are asking ever more of the FBI, our agents and the Bureau as a whole face increasing personnel system problems. If these problems are left unaddressed they will very likely threaten the ability of the Bureau to perform its mission. We know also that our colleagues in other federal law enforcement agencies are concerned about the same challenges.

A. We Face an Immediate Crisis in High-Cost-of-Living Areas

In cities, such as the metropolitan areas of Los Angeles, New York, San Francisco, Boston, Chicago, Detroit and the District of Columbia, agents' compensation simply has not kept up with the cost of living. As a result, our agents are increasingly forced to choose between providing for their families and protecting the nation. While this may seem unfathomable, in certain areas, we actually have FBI agents who are forced to use housing assistance programs due to financial constraints.

Take, for example, the situation in San Francisco. The starting base salary for an FBI agent in San Francisco is $45,163, which with overtime can reach a maximum of about $56,000. Supporting a family on a salary of $56,000 is extremely difficult in the Bay area. In May 2002, the median cost of a single-family home in this area set a record at $439,000. According to the San Francisco Mayor's Office of Housing, the maximum a family with an annual income of $56,000 can afford to spend on a house is $203,000. In other words, an FBI agent assigned to the Bay area can afford less than half of what the median house costs in this region. Not only is home ownership out of reach for many FBI families, but agents also report that their low incomes can make it difficult to merely qualify for rental apartments. Making ends meet becomes a constant struggle. Many newly hired Agents are incurring large credit card debt with no hope of changing this pattern.

Unable to afford housing, confronted by growing debts and faced with the demands of safeguarding our homeland, FBI agents are working over ten-hour days only to face commutes that often exceed two hours or more each way. The strain on families is incredible.

While the problems in San Francisco are particularly pronounced, they are far from unique. In response to a recent FBIAA survey about cost of living one agent assigned to New York said "I have taken out several loans in the form of re-financing my [car], credit card debt, moved into the ghetto and in spite of this, I still spend more than I make." Another New York agent, who has a law degree and speaks Spanish, responded, "I have had to sell off most of my belongings and borrow from my family. The bottom line is that presently I am forced to move from room to room often being homeless for days or weeks at a time." Still other agents in the New York area tell of selling cars, borrowing money on home equity loans, cashing in life insurance policies, moving in with family, and withdrawing money saved in a spouse's retirement account just to limit their debts, as opposed to making ends meet.

One Washington, D.C. agent responded that simply buying a new refrigerator was a stretch. A new agent with a law degree who was assigned to Los Angeles, uprooting his family and causing his wife to have to leave a stock analyst job, said:

> [F]inancial issues are putting stress on my marriage and my wife and I are struggling. . . . We have had to sell one of our cars. The money was meant for a down payment on a house but instead it has gone to pay bills. We buy multiple newspapers in order to clip coupons to save on groceries and most expenses from our wedding are still on our credit cards being charged outrageous interest rates. All the money given to us as wedding gifts is being used to pay bills. Since joining the Bureau our income has been cut in half, our housing costs have almost doubled ($750 a month to $1,300 a month) with less space and our grocery bills have increased $30 plus coupons a week. I finally achieved a goal of mine by becoming a Special Agent but the financial cost and stress being placed on a new marriage is beginning to be overwhelming.

For all but the most dedicated, these burdens would have long ago been well beyond overwhelming.

These financial strains also make it increasingly difficult to find experienced agents to fill critical slots in these metropolitan areas. Only a handful of veteran agents volunteer to work in these metropolitan areas because they know of the fiscal hardships such an assignment will entail. The end result is we have a hard time getting our best agents to stay in assignments in high threat areas like Washington, D.C., New York, Chicago, Seattle, Los Angeles and San Francisco. And, when we try to make people take these posts, we lose many of our more experienced hands to early retirement.

As the dysfunction of the current locality pay configuration increases, federal law enforcement leadership will move into a crisis state with agents increasingly seeking assignment to low cost/high locality pay areas—avoiding critical large cities and headquarters assignment where they are urgently needed.

All this takes a toll not only on agents and their families, but also on our national security. This isn't just about equitable pay—it is about a high quality law enforcement work force. As dedicated as FBI agents are, this nation simply cannot expect individuals who are working ten-plus hour days, with two-plus hour commutes at both ends of the work day, over long periods of time, with no real end in sight, to be at peak readiness. We don't expect that from even a combat-deployed military unit; we shouldn't expect it here.

B. <u>High-Paying Private Sector Jobs are Eroding the FBI's Human Capital</u>

Growing private sector demand for the skills and experience of FBI agents also exacerbates the FBI's human capital erosion. In the wake of the 9-11 attacks, companies have hired FBI agents away from the Bureau to beef up their corporate security. According to a recent survey by GIGA

Information Group, financial services industry chief security officers reporting to a company's chief information officer can expect to make upwards of $270,000 per year plus a 15 to 25 percent bonus. This same firm reported that financial services industry chief security officers reporting to chief financial officers or chief operating officers can earn up to $400,000 per year. FBI wages pale in comparison to what the private sector is offering. With families facing economic hardships, it is not surprising that many of our agents are finding it impossible not to jump at more lucrative opportunities. As one agent said during our recent survey, "I have a specialized skill that is highly sought after both in the private industry and the Bureau: computer network investigations/forensics and security. I have received offers of more than twice my salary to leave for the private sector. Many of my colleagues with commensurate skills and experience have taken those offers." He stays because he wants to serve his country, but for how long? If we don't act soon, we risk losing him and many others like him. Our agents don't require $400,000 salaries, but they do need a salary that reflects their skills, market value, and the value our citizens place on their services.

C. Current Locality Pay Configuration and Pay Caps Deter Many Well-Qualified Agents From Entering the Management Ranks

Another major issue we face is the management disincentive created by the poorly configured locality pay combined with the pay cap. Most agents join the Bureau to work cases, bust criminals, fight terrorists and protect the nation. This, in and of itself, creates a natural disinclination toward management. This problem is only compounded by the current pay cap, which limits the availability pay that senior personnel can earn. Because of the pay cap, senior agents that move into management often find that their pay is capped, making nothing more with increased responsibilities.

Locality pay configurations also discourage management moves, which require one or more tours of duty in the Washington, D.C. area. For example, in 1995, I was posted to a management position at FBI headquarters. Despite the fact that this post came with a promotion, I moved from a lower cost area to a higher cost area and my pay fell by approximately$100 per paycheck. My housing costs tripled. The effect of this is to greatly diminish the pool of candidates that are willing to move into management posts. We have many exceptional leaders who continue as a sense of civic duty and caring for this great nation. However, for the long-term, this country cannot afford a personnel system that has such overwhelming disincentives to the effective staffing of FBI leadership posts.

D. Broader Systemic Issues Undercut Long-Term Effectiveness of Federal Law Enforcement

In 1993, the Office of Personnel Management issued its *Report to Congress: A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers* (The OPM Report). This report was prepared by OPM at the direction of Congress, which had charged OPM with analyzing the impact of compensation and personnel issues on federal law enforcement. The OPM Report built upon the earlier work of the National Advisory Commission on Law Enforcement (NACLE). The OPM and NACLE efforts began under the first Bush administration and completed and released by the Clinton administration; the process

was bipartisan. Together the OPM and NACLE processes were broad-based and comprehensive and reflected the views of the federal law enforcement community, outside experts, the experts at OPM and two administrations spanning party lines.

In its report OPM recommended to the Congress that the Congress should establish a federal law enforcement specific pay system. OPM's recommendation was based on the following findings:

- "[T]he current GS classification system lacks credibility in the law enforcement community."
- The GS system's evaluation criteria did not "reflect the unique requirements of law enforcement work . . . ."
- "The physical requirements and hazards of [law enforcement] jobs and the requirements for instantaneous, life-and-death decision-making and the use of deadly force are not adequately recognized under a system designed primarily for office work."
- The GS system doesn't properly take into account the special skills, certifications and advanced training required of law enforcement.
- Retention problems exist with respect to certain federal law enforcement occupations and in certain regions of the nation.

These conclusions are more on target now than they were even when the OPM Report was issued. The problems caused by trying to fit law enforcement into a personnel system designed for office workers remain unaddressed. Since the OPM Report, the locality pay increases that the Congress provided to federal law enforcement have been steadily eroded by inflation. Adjusted for inflation, many of today's federal law enforcement officers and agents make less now than their similarly situated counterparts did at the time of the OPM Report.

More specific to the FBI, the manner in which locality rates are calculated for agents is wildly out of step with reality. OPM calculates these rates on the basis of the labor market for comparable nonfederal and private sector jobs. In determining wage rates for FBI agents, OPM uses deputy sheriffs as the comparable nonfederal job category. However, FBI agents as a rule require four-year college degrees, often posses more advanced degrees, and enter the Bureau at older ages, typically after a prior career with significant professional experience. In other words, the OPM's wage comparison greatly undervalues our agents.

Moreover, at the time of the OPM report, OPM found that federal law enforcement wages were on par with or better than the typical state and local law enforcement wage rate. Even assuming the validity of the comparison—comparing an FBI agent to a local police officer is to a great extent comparing apples to oranges—salaries in the state and local law enforcement ranks increasingly eclipse the compensation paid to FBI agents. In virtually all of the FBI led joint task forces on terrorism, fugitives, violent crime, where FBI agents work side by side with their state and local law enforcement officers in California and New York, the FBI agents are the lowest paid law enforcement officers assigned. Not only is their overall salary the lowest, FBI agents

pay their own benefits, which are generally provided to state and local law enforcement officers. The FBI has overall responsibility for the investigations and the results of the task forces, yet our employees are the lowest paid employees assigned them. To compound this, unlike our counterparts, we do not earn real overtime pay, are precluded from holding any additional employment to supplement our income, and cannot serve in the military reserves.

These systemic flaws create real world problems. For example, because the GS system doesn't adequately take into account the special skills and certifications required by law enforcement, federal law enforcement offers its officers and agents inadequate incentives to obtain 21st Century crime and terror fighting skills. Moreover, for those officers and agents who have these skills, the system does not offer them the recognition and compensation required to ensure they will stay in federal law enforcement. Almost all newly hired FBI agents take a significant pay cut when they come to work for the FBI, based on the high level of education and skills that they must have to be competitive for the position. To put it bluntly, the system makes it needlessly hard for us to recruit and retain the highly skilled individuals we need for today's missions.

In short, as OPM, the NACLE, and two administrations recognized, the current GS system is ill suited to federal law enforcement; in essence, the GS system now forces the badge-shaped peg of law enforcement into a square hole.

E. Unless Carefully Executed, the Creation of a New Homeland Security Law Enforcement Personnel System Could Cause an Exodus From the FBI's Ranks

When Congress created the Department of Homeland Security (DHS), it directed and authorized the agency to develop its own homeland security personnel system. In essence, the members of Congress recognized the need for H.R. 1676; the Congress created a separate pay system for DHS because you recognized that the GS system does not work for the Department's missions and functions, which are similar to those of the FBI and other federal law enforcement. We concur with the goals of this initiative.

Unless great care is taken, there is the potential that the development of a new, effectively preferential system covering other law enforcement jobs will cause an exodus of FBI agents to these other agencies. We have already seen a similar dynamic with the creation of the Transportation Security Agency (TSA). Because TSA was provided additional latitude and flexibility in its hiring and personnel matters, that agency was able to offer compensation and other benefits well beyond that which the FBI can under the GS system. Because of this, some agents have already left to go over to TSA. If this occurs on a broader scale from the DHS process, the result will be a net loss for the nation.

To prevent this from occurring we believe that three steps are necessary: first, the Congress, as you are doing today, must keep close watch over this process; second, those individuals developing the DHS system must be directed by the administration to prevent such an event; and, third, the Congress should pass H.R. 1676 to ensure parity in recruitment and retention across federal law enforcement.

To this end, we have reached out to the OPM and DHS team that is working on the new system. They have told us they are aware of this risk, which is an important first step. We have offered our assistance as they move ahead. However, we have not yet moved beyond our early consultation. We look forward to working with them in their important effort.

III. H.R. 1676 IS CRITICAL TO MAINTAINING THE EFFECTIVENESS OF THE FBI AND OTHER FEDERAL LAW ENFORCMENT

Because these Subcommittees are aware of the workings of this bill—it is a product of your leadership—I will not go into the details of the proposed legislation, but instead will focus on a few critical points.

A. Combining a Short-Term Fix with a Long-Term Systemic Solution

As discussed above, the personnel and readiness issues now confronting the FBI are a combination of a short-term crisis in high-cost cities and broader, systemic national problems. To this end, H.R. 1676 offers both a short-term fix and a long-term solution. This combination is critical if we are to succeed in addressing the issues federal law enforcement faces here. A short-term fix alone, for example, in the form of a locality pay raise, would soon erode. In just a few years time, the representatives of federal law enforcement would be back before you asking for your help again. Moreover, while a locality pay raise will be of great importance in those areas hardest hit right now, it will not fix the wider issues that undermine the ability of federal law enforcement to recruit, retain, promote and nurture the best and brightest.

At the same time, the need for Congressional action is urgent. As the responses of our agents to the FBIAA's recent survey reflect, in the high-cost cities we face a real and substantial crisis. We recognize that crafting a law enforcement specific pay system will not happen over night; we are prepared to work toward that end. However, the current pay crisis in areas like Washington, D.C., San Francisco, New York, Chicago, Los Angeles, Detroit, San Diego and Seattle, needs to be addressed now before it is allowed to compromise the effectiveness of our homeland defense frontline units: federal law enforcement. Addressing the pay crisis in these important metropolitan areas buys us the time to work for a long-term systemic solution.

H.R. 1676 offers both the short-term fix and the long-term solution. To address the near-term pay problems in high cost cities, the bill would adjust locality pay rates in these areas to make them more accurately reflect the real cost of living. For the long-term, the bill would direct OPM to revisit its 1993 study and determine if those findings remain valid—we know from experience they are. Once OPM has made this finding, H.R. 1676 would direct the administration to begin developing a law enforcement specific pay system through a pilot project in one of the covered agencies. In other words, this time, the in tion of Congress to fix these problems would be acted upon, not just studied.

The federal government must recognize that federal law enforcement is a national work force and set salaries that are equitable from locality to locality. We must stem the exodus of experienced agents from large high cost of living areas and maintain their expertise and

experience in these areas, while paying them a competitive salary to do so. And, at the same time, we need to address for the long-term the larger personnel and readiness challenges we face. H.R. 1676 will immeasurably help federal law enforcement achieve both these goals.

B. Acting with Fiscal Responsibility and Personnel Management Effectiveness

The FBIAA is fully aware of the budgetary concerns of the members of this Congress. When we worked with your staff members to craft H.R. 1676, we were careful to ensure that the bill reflected those concerns. This bill isn't a wholesale pay raise hidden in the form of a locality pay adjustment for every locality nationwide. Certainly, the FBIAA would welcome a raise for federal law enforcement as a whole—our members would welcome better pay for their hard work as much as anyone else. However, we recognize that current fiscal concerns may make such an approach untenable. We also recognize that if every locality were given a pay raise without consideration of true cost of living, this move would further compound the personnel management problems. Unless something is done to repair the flawed wage comparison system, agents will continue to attempt to move to localities that offer on relative terms better pay.

Rather, we feel that it is so vital to address the current crisis and solve the systemic personnel issues federal law enforcement faces that we wanted to be sure that such solutions did not get caught up in budgetary wrangling. To this end, we targeted with laser focus locality pay increases only to those areas where we actually face a real crisis. H.R. 1676 is a budget conscious answer to the readiness concerns of federal law enforcement.

C. Taking a New Approach to Calculating Locality Pay

Simply put, the present method of calculating locality pay for FBI agents is not working. As described above, the labor market comparison using deputy sheriffs as the benchmark fails to recognize that these two job categories totally differ except that they share the honor of both being from the law enforcement community. The comparison doesn't consider that, as a whole, FBI agents have more education, work different types of more complex cases, and enter their careers with more experience and age under their belts. Moreover, because it simplistically views FBI agents as just gumshoes who carry guns, this methodology fails to take into account special skills. For example, the wages of an FBI agent with an advanced computer degree, who works computer forensics cases for the FBI, is seen as just another cop; his or her pay is weighed against a deputy sheriff, not an IT professional. In effect, any special skills are erased in this process.

Additionally, given the manner in which agents are hired and assigned the current wage-based-locality pay system is ill suited to the FBI. Unlike even other aspects of the federal government, federal law enforcement, especially the FBI, does not hire on a local basis. We hire on a national basis and only during the end of a sixteen-week training program, do agents learn where they are to be assigned. We hire agents in Omaha and then assign them to San Francisco. Since we do not hire within a geographic area, wage-based-locality pay is absolutely meaningless for special agents. Agents are reassigned nationally based on the current crime-fighting needs of the nation. We simply cannot continue this local-wage-based system for federal law enforcement, but must pay wages that are comparable based on a true cost of living.

The constant theme of the FBIAA survey for agents assigned to high cost of living areas is that Agents are merely maintaining their employment despite tremendous financial hardship with the plan to leave their assigned field office as soon as possible in an effort to move to a lower cost of living area with a greater percentage of wage based locality pay. This nation cannot afford for an already inexperienced FBI work force to seek to migrate continually to smaller, lower cost of living areas simply to avoid financial ruination. The competition for key management jobs in these high cost areas is significantly diminished with important positions left vacant for extended periods of time. Again, a generalized locality increase based on local wage rates only exacerbates current staffing problems and does nothing to reform a personnel system that does not meet the specialized requirements of sworn law enforcement officers.

H.R. 1676 takes an innovative locality pay approach: it actually looks at the real cost of living to determine what the cost of living, or locality, adjustment should be in each metropolitan area. H.R. 1676 relies upon the cost of living analysis of the U.S. Chamber of Commerce's research arm to determine what cities require adjustments and to set the level of each adjustment. The U.S. Chamber of Commerce cost of living index is highly regarded and widely used by the private sector, the President's Council of Economic Advisors and the United States Census Bureau. This index captures and analyzes the cost of living across the nation based on real costs for consumer goods and services ranging from health care to groceries to housing. If this formula were to be put into place, it would go a long way towards establishing pay equity across the country and encouraging sound personnel management practices.

D. Offering the Opportunity to Make a Real Difference

The broader reform element of H.R. 1676 offers the Congress, the administration and the federal law enforcement community the opportunity to craft a personnel system for federal law enforcement that will ensure that these crime and terror fighting agencies have the human capital necessary to most effectively discharge their important missions. Such a system promises the ability to:

- Factor tangible success and performance into advancement;
- Provide incentives to help us recruit and retain the special skills (such as, computer forensics, cyber-security, linguistics, and bioterrorism) needed to counter 21st Century threats.
- Encourage the most qualified people to enter into management and provide leadership to our law enforcement agencies.
- Staff all of our offices effectively with seasoned Special Agents.

These are more than laudable goals; if federal law enforcement is to remain capable of defeating terrorists, bringing child kidnappers to justice, unraveling corporate crimes, dismantling drug cartels and defending civil rights, they are necessities.

* * * *

Our nation is at war. In this war, unlike other wars, our actual nation, its cities infrastructure, and heartland, are the frontlines. The men and women who man these lines are, for the most part, the officers and agents of federal law enforcement. At the same time, we are asking these same men and women to protect against cyber crime, break drug cartels, guard our civil rights, bring corporate criminals to justice, return child kidnap victims to their families, guard our borders—the responsibilities are many and all are vital to our national security and domestic tranquility.

In this threat environment, we need the agents who safeguard us to be at the top of their game—a tough assignment for an agent whose typical day runs over 14 hours and who is worried that his or her family faces financial hardship. We have agents running up debts, selling their belongings, mortgaging their homes and dipping into their retirement accounts. As you all know well, there is great honor in public service. It is simply wrong to force the men and women who defend us to choose between their sense of duty and patriotism and their obligation to their families.

We owe the people who protect our national security far better. And, we owe the American public the confidence that H.R. 1676 would provide: over the long-term our federal law enforcement remains capable and effective in defending the American people from terrorists and protecting them from criminals.

Thank you for the opportunity to appear before you today.

Mrs. DAVIS OF VIRGINIA. Next we will hear from Richard Gallo from the Federal Law Enforcement Officers Association. And, Mr. Gallo, I believe first that Mrs. Maloney from New York would like to welcome you.

Mrs. MALONEY. Thank you so much, Madam Chairwoman, and Madam Chairwoman and Chairwoman for calling this, and I thank all of you for service and for what you have done for us. And I particularly want to welcome Richard Gallo, who is a constituent and past president of the Federal Law Enforcement Officers Association. And I join with all of my constituents in thanking you and all of Federal law, and, I would add, city and State law, for the heroic work that you do every day and the heroic work that you did particularly after September 11. I certainly support any initiative that advances pay, uniformed pay, and works to help our law enforcement officials.

And I am here to welcome you and introduce you. I look forward to your testimony. Thank you for being here. Thank you for your service.

Mrs. DAVIS OF VIRGINIA. Thank you, Mrs. Maloney.

Mr. Gallo, you are recognized for 5 minutes.

Mr. GALLO. Thank you, Chairwoman Davis. And I would like to thank you for your leadership on this issue as well and for giving us the opportunity to discuss H.R. 2442. And I hope I get your attention when I say H.R. 2442, not H.R. 466 or 1676, because H.R. 2442 was the last of several bills introduced in the 101st Congress back in 1990. H.R. 2442 was the result of hearings held by the National Advisory Commission on Law Enforcement created by the 100th Congress.

The National Advisory Commission on Law Enforcement was staffed by three U.S. Senators, five Members of the House of Representatives, the U.S. Attorney General, the Treasury Secretary, the Director of OPM, the Director of FBI, the Administrator of DEA, two Inspector Generals, and FLEOA. H.R. 2442 was debated in front of this committee. In fact, on March 28, 1990, FLEOA testified in front of the House of Representatives Committee on Post Office and Civil Service, Subcommittee on Compensation and Employees Benefits, in favor and support of H.R. 2442, which was signed into law by the President on November 5, 1990.

That law called for a separate pay and classification system to be set up by OPM. In fact, the wording was, "OPM shall create a separate pay and classification system." And when you all use that term "shall create," it doesn't mean that you are giving them wiggle room. "OPM shall create a separate pay and classification system for Federal law enforcement officers." That was the law that you all passed, that the President signed, that OPM has ignored. Here we are 13 years later, after having to watch the work of that good Congress erode away, the work of that Commission erode away, and we are discussing the same issue.

Our written testimony covers in greater detail the points that we believe are important, points too numerous to cover within a 5-minute presentation. But we should not be able to tell you that there are first-year Federal law enforcement officers who qualify for public assistance, or that there are Federal law enforcement officers who commute before dawn to the city in which they work in

and then sleep in their cars to catch up on their sleep before reporting to work, because they live so far away to afford a house for their family and their children they have no other alternative; or that we hire and train people for the Federal law enforcement occupation but then they resign in order to go to work for a State or local law enforcement agency so they can make a better salary and have better benefits. These things are happening.

We should not be able to tell you that law enforcement officers have been moved by their headquarters from one city to the other, the entire office has been moved from one city to another in order to place that entire office within a higher locality pay area. This was done when the FBI moved their office in Concord, NH to Manchester, NH. The FBI moved their offices to Concord, NH because that was in the RUS pay district. They moved them to Manchester, NH because that qualified for the Boston pay district.

But all these things have happened. If you look at the USA Jobs Web site, there is an announcement requesting applicants for positions as a special agent with the Secret Service, and the closing date on this announcement is in December in the year 2099. They can't get enough applicants for the job because of the starting pay.

In the 107th Congress, H.R. 466 was known as H.R. 3794, with a companion bill in the other Chamber offering partial pay increases and the locality pay adjustments paid to the group of Federal law enforcement officers that Congress singled out in H.R. 2442 back in 1990, that law that was passed. In the closing days of the 107th Congress, there were attempts to attach it to the legislation that created Homeland Security. The obstacle that emerged in the other Chamber centered around the fact that H.R. 3794 only covered 18 pay districts, leaving some Senators feeling that Federal law enforcement officers in their States which were not among the 18 pay districts may be compromised by a mass exodus of senior agents to other pay districts. And remember, this does happen. FBI moved their offices from Concord to New Hampshire. So even headquarters does this, much less the agents themselves who are looking for their best high three.

Some Senators from both sides of the aisle informed us that they were hesitant to support the bill. Other Senators, and again from both sides of the aisle, informed us that they would make sure that the bill would be tabled unless it included their States, because they felt that the bill as written, only covering several pay districts not including their own States, would impact the effect of law enforcement, the ability of law enforcement in their State.

This year's answers to last year's concerns, bipartisan concerns, was to increase the adjustment for some districts and to cut the adjustment for some districts in order to include the remaining districts without blowing the budget, and the result was H.R. 466.

And we truly appreciate Representative Peter King's—a Notre Dame graduate, I might add—leadership on this issue. H.R. 466 offers partial pay adjustments for all 32 districts and a section originally written by Senator Joseph Biden's staff for FLEOA to fence off LEAP pay from counting toward the pay cap.

We are pleased that both Chairs, Vice Chairs, ranking members, and actually majority of both subcommittees are cosponsors of H.R. 466, and also pleased to see that majorities of Republicans and

Democrats of the full committee are cosponsoring H.R. 466. And, last, we are pleased to note the majority of Representatives in Congress have already cosponsored H.R. 466 with over 225 cosponsors now.

In closing, FLEOA strongly supports H.R. 466; however, if the committee during markup attaches the provision calling for the 1993 OPM study to be revisited, we would not object in the least, since in the other Chamber, the bill that mirrors H.R. 466 includes that section, and that already has 37 co-sponsors.

Let us go to markup. Let us get the—let us hammer out the differences in markup, and let us get a bill that can pass not only this Chamber but the other Chamber and get to the President's desk this year.

I will answer any questions, of course, that this subcommittee may have. Thank you very much.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Gallo.

[The prepared statement of Mr. Gallo follows:]

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RICHARD J. GALLO
IMMEDIATE PAST PRESIDENT

WITH

TIMOTHY DANAHEY
NATIONAL PRESIDENT

OF THE
FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEES ON

CIVIL SERVICE AND AGENCY REORGANIZATION
&
CRIMINAL JUSTICE, DRUG POLICY and
HUMAN RESOURCES

CONCERNING

PERSONNEL ISSUES AFFECTING FEDERAL LAW ENFORCEMENT
& PAY REFORM

ON
JULY 23, 2003

Chairwoman Davis, Chairman Souder, Ranking Members Davis and Cummings, Members of the Subcommittees, Ladies and Gentlemen:

My name is Richard J. Gallo and I am with the Federal Law Enforcement Officers Association (otherwise known as FLEOA). I currently serve as the Immediate Past President, having served as President from September 1996 until I completed my second term in March 2003. I am here with Timothy Danahey, the current President of FLEOA to discuss the issues of pay disparity and the need for pay reform for federal law enforcement agents.

We are here representing over 20,000 federal agents from over 50 different agencies, including the following: Drug Enforcement Administration, US Marshals Service, US Customs Service (now part of BICE – the Bureau of Customs and Immigration Enforcement), the IRS's Criminal Investigations Division, Postal Inspectors from the US Postal Inspection Service, agents from the Bureau of Alcohol Tobacco, Firearms and Explosives, the Federal Bureau of Investigation, the Secret Service, the Immigration and Naturalization Services and Border Patrol (both now part of BICE), from the Department of State's Bureau of Diplomatic Security, from the Department of Defense's Naval Criminal Investigative Service, the Defense Criminal Investigative Service, the Army's Criminal Investigative Division, the Air Force's Office of Special Investigation, from the Bureau of Land Management, Forest Service, Bureau of Indian Affairs, Fish and Wildlife Service, US Park Police and National Park Service, the Food and Drug Administration, the US Attorney's offices, FINCEN, Labor's Office of Labor Racketeering, US Probation Officers, and the criminal investigators employed by over 30 different Inspector General offices, including the Departments of Agriculture, Commence, Education, Energy, Interior, Justice, Labor, Treasury, Postal Service, SEC, Library of Congress, Housing and Urban Development, Health and Human Services, FDIC, AID, EPA, TSA, FEMA, GAO, SSA, Transportation, SBA, NASA, GSA, RRB, VA, NRC, – all Federal law enforcement officers who are working under what is commonly referred to as "6c" covered positions (i.e., eligible to retire if you have over 20 years of service and the age of 50).

FLEOA's President Danahey is an agent with the Naval Criminal Investigative Service, while I am a Senior Special Agent with the USDA Office of Inspector General. Other National Officers here today are Executive Vice President Art Gordon with the Bureau of Alcohol, Tobacco, Firearms and Explosives and Legislative Vice President Matt Issman, with BICE (formerly the US Customs Service).

FLEOA is a non-partisan, professional association, representing exclusively federal law enforcement officers. On behalf of our members we wish to thank you for your leadership on holding these hearings on this important topic.

We have been actively involved in the issue of Pay Reform for Federal Agents for over sixteen years. During the 1980's, FLEOA worked closely with Senator Denis DeConcini, who earned the nickname "Guardian Angel of the Treasury Agents". In 1987, a bill, introduced by Senator DeConcini, was passed that established the National Advisory Commission on Law Enforcement, commonly referred to as the NACLE Commission. This Commission was tasked to study (what was common knowledge to members of FLEOA and a few elected officials) the huge recruitment and retention problem in federal law enforcement ranks.

The NACLE Commission was created in 1988, and FLEOA was a commissioner along with three US Senators, five Members of the House of Representatives, the US Attorney General, the Treasury Secretary, the Directors of OPM and FBI, the Administrator of DEA, two Inspectors Generals and several others.

NACLE held hearings documenting the horror stories about the recruitment and retention problems in federal law enforcement. They heard how, even through federal agents needed a college degree and several years of investigative experience to apply for their jobs, state and local law enforcement paid more and gave greater benefits. They read presented stories showing how criminals were looking for the agents teetering on the edge of bankruptcy in order to offer bribes, and, they also read the stories of the federal agents, from agencies including the FBI, DEA Customs, and the Border Patrol, who succumbed to those temptations as a result. They read about the pay of federal law enforcement officers in California being ranked 25th lowest overall They read about the senior agents in federal law enforcement who had plans to leave federal law enforcement as early as possible, because in the exact words of Herb Hawkins, Special Agent in Charge of the FBI's Phoenix office in the late 1980's: "I am not paid what I am worth, and I need to retire to make some money."

The NACLE staff made its draft recommendations on October 4, 1989. On January 30, 1990, the Commissioners approved the final findings and recommendations, two of which were:

Federal Pay was too low for the law enforcement occupations and needed to be increased at all levels.

The only long term solution to Federal Law Enforcement's pay and benefit malaise lay in a separate Federal Law Enforcement Pay System.

The NACLE Commission made a number of significant recommendations addressing longstanding pay and benefits issues for the government's law enforcement workforce, which were turned into legislative proposals, and introduced as companion bills introduced in both chambers in March 1990. In the House of Representatives, HR 4224 was introduced by Representative Don Edwards, along with Representatives George Gekas, William Hughes and Michael Oxley. Senator DeConcini introduced S.2250 in the Senate.

On March 28, 1990, FLEOA, along with many of the same representative people here today, testified in front of the House of Representative's Committee on Post Office and Civil Service, Subcommittee on Compensation and Employee Benefits explaining the immediate need for sweeping adjustments of the pay scale for Federal law enforcement officers.

In October 1990, as a result of those hearings, and subsequent work by the Representatives, Senators and their staffs, the recommendations of the NACLE Commission passed into law. President George H. Bush signed Public Law 101-509 on November 5, 1990, the first major government-wide pay reform in almost 30 years.

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In summary and in part, this law did the following:

- Granted special emergency pay adjustments to certain pay districts (only 8, instead of the 23 originally recommended by NACLE);

- Called for a nine-year phase-in of locality pay adjustments starting in 1994 (to bring federal employees within 5% of the pay disparity gap, set by the President's Pay Council in each individual pay district).

- Required OPM to provide to Congress, no later then January 1, 1993, a plan to establish a separate pay and classification system for federal law enforcement officers.

So why, with such a rich history in how Congress, back in 1987 to 1990, reviewed, studied, debated, and eventually solved the problems, are we here today?

It would appear that something has gone dreadfully wrong for Federal law enforcement and federal law enforcement officers to be in the same predicament as they were in the 1980's.

- We should not be able to tell you that there are first year federal law enforcement officers who qualify for public assistance.

- We should not be able to tell you that there are federal law enforcement officers who commute before dawn to the city in which they work in, then sleep in their cars (to catch up on their sleep) before reporting to work (they live so far away – to afford a house for their family– they have no other alternative).

- We should not be able to tell you that after we hire and train people for the federal law enforcement occupation, that there are federal agents who leave in order to work for a state or local law enforcement agency – so they can make a better salary and get better benefits.

We should not be able to tell you these things but we must – they are happening every day in the real world. The only question left to ask is: **WHY?**

The answer is because the law passed by Congress and signed by President George H. Bush in 1990 has been ignored! For more than thirteen years!

It is incomprehensible, however, we the enforcers of the laws of the United States, are not receiving the benefits of the law. But yet if a criminal is arrested for breaking the law and does not receive due process, the case is dismissed. A classic case of: "Do as I say, not as I do!"

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A point-in-fact:

P.L 101-509 has been the law for over thirteen years, yet there is still no separate pay and classification system set up for federal law enforcement officers.

The special emergency pay adjustments granted in P.L. 101-509 [based on 1990 dollar values] have eroded away, and are in dire need of readjustment.

The original special emergency pay adjustments, written during the September/October 1990 timeframe, while part of a viable solution then, are at the least, comical now. The following examples show why:

The Boston area was granted a 16% pay adjustment. The pay adjustment is still the same after 13 years! (NOTE: The FBI moved their offices from Concord, NH to Manchester, NH in order to transfer their agents from the RUS Pay District to the higher Boston Pay District – but what about the law enforcement response time for upstate New Hampshire?). (Note: RUS stands for "Rest of the United States").

In NYC, the original pay adjustment was 16%. Now it is 16.83%. This only occurred in January 2003! Thirteen years and the area only got a whooping 0.83% increase!

In San Francisco, the original 1990 pay adjustment was also set at 16%. By 2002, the pay adjustment had only risen 3.4% to 19.04% even though the OPM set pay disparity gap was listed at 52.08%!

In Los Angeles, the original 1990 pay adjustment was 16%. This was because pay disparity gap for LA at the time was approximately 22%. Today, the LA pay district receives a pay adjustment of 17.71%; a whole 1.71% increase in 13 years, while the area pay disparity gap has more than doubled. The gap is currently set at 45.06%.

But, big cities are not the only place were federal law enforcement is suffering. The Southwest border, from McAllen, Texas to San Diego, California has seen its share of recruitment and retention problems over the years as well, as has the Northern Border. Cities like Seattle, Sacramento, Denver, Miami and dozens of other areas have also seen problems in the recruitment and retention of federal law enforcement officers.

Other districts that the NACLE Commission recommended to receive special emergency pay adjustments, such as Atlanta, Miami and Sacramento, were not on the final list within P.L. 101-509 – however these areas (along with others) were to participate in the nine-year phase-in of pay adjustments starting in 1994.

Here's the kicker: The "phase-in" never was accomplished, due to some valid concerns over the formulas used to calculate the pay disparity gap in each area (NOTE: pay disparity gap is separate and distinct from cost of living gaps. A pay disparity gap can be more "employer friendly" while a cost of living gap can be more "employee friendly"). However, FLEOA believes that whatever the concerns were about the formula computations, it should never have gotten to the point where the law was completely ignored.

Starting in 1998, FLEOA began working on trying to get the attention of anyone who would listen regarding what we saw as a potential problem. Our efforts included participating in a meeting on January 25, 1999, at the offices of the General Counsel of the Senior Executives Association (Shaw, Bransford, Veilleux and Roth, located here in Washington, DC, (also present was the then National President and Executive Director of the FBI Agents Association). At this meeting there was expressed unanimity about this problem and it was resolved that something must be done.

A paper was put together by FLEOA members in ATF in the San Francisco and delivered to the ATF Director – asking for some type of relief because the quality of life in the Bay Area was such that agents were fleeing the office as soon as they could transfer out. In fact there was testimony in front of Congress which stated that approximately 65% of the FBI agents in San Francisco, Los Angeles and New York had less then five years on the job – because the senior agents were transferring out of these cities as soon as they got enough seniority.

Two years later, in February 2001, FLEOA presented to the Congressional Law Enforcement Caucus, co-chaired by two true friends of law enforcement, Representatives Jim Ramstad and Bart Stupak, a paper entitled: "FLEOA Calls For Changes In Locality Pay - Crisis Coming In Recruitment and Retention". We orally presented our paper before this Caucus, and FLEOA's first words were:

"WAKE UP – DOES ANYONE SEE THE CRISIS THAT IS COMING?"

At this meeting of the Congressional Law Enforcement Caucus, FLEOA detailed the problem and reviewed the potential disaster we saw coming. What was amazing to us was that it seemed no one else appeared to understand or realize that federal law enforcement was entering into a gunfight without any bullets.

At the February 2001 meeting of the Congressional Law Enforcement Caucus, a staffer of Representative Peter King approached FLEOA and told us how their office was receiving calls about this very same issue, and wanted us to meet with his boss to discuss whatever our draft proposals were addressing these problems.

Over the next months, work on this issue was conducted between FLEOA and Representative King – work that straddled the disaster of September 11, 2001 – and as a New Yorker who lost family and friends on 9-11, I can tell you without apology that completing work on this issue did take a backseat during those trying times. We also worked with the Senate during this time – particularly Senator Joseph Biden and his staff.

The result of this collaborative work effort was HR 3794, introduced into the House of Representatives during the 107th Congress in 2002, which called for **partial** increases in the locality pay adjustment paid to federal agents. The bill, HR 3794, covered 18 pay districts (note: there are a total of 32 pay districts).

Of the 18 pay districts covered by HR 3794, they included the eight pay districts originally covered by the special emergency pay adjustments granted in P.L. 101-509, plus any other pay district that had a higher pay disparity gap (as determined by the Bureau of Labor Statistics and published by OPM's Presidents Pay Agent) than the lowest pay gap within the original eight districts (ten districts had such – therefore the total pay districts on HR 3794 was 18).

Originally, we did not include a section written up by Senator Biden's staff for FLEOA – a section that addressed fencing off LEAP (Law Enforcement Availability Pay) from the pay cap. However this section surfaced in a bill introduced later by Representative Michael Rogers, as well as in the bill introduced this year by Representative King.

By the end of the 107th Congress, HR 3794 had 162 co-sponsors. A companion bill in the Senate (S.2770) was also introduced, and almost made it as an amendment to the legislation creating the Department of Homeland Security – however a huge obstacle emerged in the Senate.

The obstacle that emerged in the Senate centered around the fact that HR 3794 covered 18 metropolitan pay districts – leaving certain Senators feeling that federal law enforcement in the districts in their state (not among the 18) may be compromised by an exodus of agents to pay districts with a high locality pay adjustment (remember the FBI leaving Concord, NH for "greener" pastures in Manchester, NH?).

Certain Senators (from both sides of the aisle) informed us they were hesitant to support, other Senators (again, from both sides of the aisle) said flat out that they would make sure the bill would be tabled – because they did not want to see senior federal law enforcement officers transfer from their state to another state in order to receive a higher pay adjustment (note: a federal law enforcement officer's retirement annuity is based on an employees "high three" – which is usually the last three years of a person's career).

Thus the choice was either to: 1) add the remaining pay districts to a bill, or: 2) call their bluff (about making sure they would table the bill).

The lame duck session of the 107th Congress ended with HR 3794 and S. 2770 (also SA 4839) pending in their respective committees.

This year, we met with the staffs of Representatives King and Rogers to discuss the particulars of this issue, armed with the knowledge that certain members of the other chamber wanted a bill that would not trigger a mass exodus from their areas by agents in search of a higher pay adjustment. Mindful of the fact that this has an impact (however slight) on the budget, we discussed refining the proposal; by decreasing the partial pay adjustments in some areas in order to enable inclusion of a partial pay adjustment for all pay districts. FLEOA thinks it is rather sophomoric to ignore concerns of either chamber – especially when both sides of the aisle expressed those concerns.

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We also agreed that the section calling for a revisit of the study completed in 1993 by OPM relative to creating a separate pay and classification system for federal agents should be included.

However, due to differences regarding how many pay districts should be included, a single bill was not introduced. In January of this year, the work completed was introduced by Representative Peter King as HR 466. We truly appreciate Representative King's leadership and support on this issue.

HR 466 includes **partial** pay adjustments in the locality pay adjustments for all 32 pay districts and a section (originally written by Senator Biden's staff for FLEOA) to fence off LEAP pay from counting towards the pay cap, thereby enabling supervisors to earn overtime pay – overtime which they currently work, but do not get paid for.

We are pleased to see that both Chairs, both Vice Chairs, and both Ranking Members of the Subcommittee on Civil Service and Agency Reorganization and the Subcommittee on Criminal Justice, Drug Policy, and Human Resources are co-sponsoring HR 466. We are please to note that a majority of Members on both of these Subcommittees are co-sponsoring HR 466. We are pleased to note that majorities of Republicans and of Democrats on the full Committee are co-sponsoring HR 466. And, lastly, we are please to note that a majority of Representatives in Congress have already co-sponsored HR 466.

In the Senate, a bill (S.985) has been introduced that is a companion to HR 466 in its entirety, however also contains the provision calling for a revisit of the 1993 study by OPM relative to creating a separate pay and classification system for federal agents.

FLEOA strongly supports HR 466 – however if the committee, during markup attaches the provision calling for the 1993 OPM study to be revisited, we would not object in the least. In addition, if the Committee would want to address problems that have arisen in the States of Alaska and Hawaii - the pay adjustment in these two states are in the form of a "COLA" (Cost of Living Allowance) and thus unlike a locality pay adjustment, they do not count towards a retirement annuity – by converting the COLA into a straight (dollar for dollar) locality pay adjustment for purposes of calculating a retirement annuity, FLEOA would support such a change. This change was proposed to us by FLEOA's Hawaii and Alaska Chapter President (Hawaii Chapter President: Roger Grinley, an agent with the FBI; and, Alaska Chapter President: Marvin Goffena, a Deputy with the US Marshals Service).

FLEOA wishes to sound the clarion here in this Congress - as we did in our meeting with the Congressional Law Enforcement Caucus in February 2001. This issue is adversely affecting federal law enforcement – the recruitment and retention of the individuals tasked with investigating many of the federal crimes that this body passes. Federal agents only make up about 5% of this nation's law enforcement – hence the saying:

"You can't make a federal case out of everything".

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The requirements to become a Federal agent are generally tougher then any other law enforcement agency -- state, local or municipal. The usual requirements include a four-year degree plus investigative experience in a state or local police or investigative agency. Federal agents are usually recruited and selected from many of the other law enforcement agency – state, local and municipal.

Many who jump to the federal law enforcement ranks [because federal law enforcement is considered the epitome of law enforcement] lost time in grade [seniority] they had in their previous state or local agency. This time is usually measured in years, some transferees lose more than ten years. The job of federal law enforcement officer is not for the faint hearted. The job comes with last minute travel, long hours, training, and extended surveillances, just to name a few things. It can be very frustrating. Many strive and yearn to be federal law enforcement officers; but only the best are selected. Many highly qualified people don't act on their desire to be one of the best because, **they can't afford it!**

Yet, many state and local police departments pay more and have better benefits, for instance, compare the pay for some local Police Detectives versus an agent starting with the DEA or Secret Service, in the following cities:

Chicago:	$ 37,700	Starting salary for a Chicago Detective:	**$ 64,000**
Cincinnati:	$ 36,888	Starting salary for a Cincinnati Detective:	**$ 54,000**
Denver:	$ 37,291	Starting salary for a Denver Detective:	**$ 62,000**
Las Vegas:	$ 36,075	Starting salary for a Henderson Detective:	**$ 56,140**
Los Angeles:	$ 38,191	Starting salary for a LAPD Detective:	**$ 68,000**
Minneapolis:	$ 36,713	Starting salary for Minneapolis Detective:	**$ 58,000**
New York:	$ 38,174	Starting salary for a NYPD Detective:	**$ 68,000**
Portland, OR:	$ 36,739	Starting salary for a Portland Detective:	**$ 59,000**
Seattle:	$ 36,782	Starting salary for a Seattle/Tacoma Detective:	**$ 57,000**
San Francisco:	$ 39,175	Starting salary for a SFPD Detective:	**$ 76,000**
Santa Clara:	$ 39,175	Starting salary for a Santa Clara Detective:	**$ 65,000**
Tampa:	$ 36,075	Starting salary for a Tampa PD Detective:	**$ 54,000**

The salaries listed above are without overtime – both on the federal salaries as well as the local PD salaries. It has to be noted that federal agents receive overtime in the form of "LEAP" (stands for: Law Enforcement Availability Pay) Pay, which is restricted to 25% of their base salary. In addition, anyone earning over the pay cap automatically has his or her salary reduced to the pay cap (note: this occurs frequently at the GS-15 level and infrequently at the GS-14 level). The overtime pay of local Police Department Detectives are not automatically restricted – and the media continually issues reports regarding the huge amounts of overtime worked by local Police Department detectives, especially needed in these days of Orange Alerts being issued by the US Department of Homeland Security.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

As a result of this pay disparity what potential applicants find on our job vacancy web sites is: "Applicants are solicited numerous job vacancies in various cities". And, instead of closing dates on our job announcements, you see:

"OPEN CONTINUOUSLY" -or- **"OPEN UNTIL FILLED"**

Another federal agency, instead of using the two above captions, used the following:

"December 31, 2999"

What does this mean? Why do we have to continuously solicit applicants? Why do we have job announcements with a closing date of 97 years into the future?

The answer is:

> We are not able to recruit the best and brightest from the detective ranks of Police Departments, because they pay substantially more then federal law enforcement.

As the premiere law enforcement agencies, this situation begs the following important questions:

> Who are we getting as applicants? Those who are unable to get their detective badges in their local PD? If the applicants can't get their detective badges in their local PD, do we really want them as Federal law enforcement officers? Why should Federal law enforcement be forced to do with second best? If Federal law enforcement is the premiere law enforcement, why should we lose our best and brightest because they can't afford to take care of their families?

It should be noted that some state and local Police Departments are now recruiting from the ranks of federal law enforcement. So in effect what is happening is: **we pay to train qualified candidates only to see these individuals leave federal service to go to a better paying law enforcement job at the local level** (where, besides the pay, the health and retirement benefits are better). **We are bleeding this hidden cost through our training budgets.**

Recently there have been published reports indicating that, since 9-11-01, the FBI has hired 900 agents and among these new hires, over 100 have left the agency (note: the FBI hires at a GS-10 level, not the GS-7 level other agencies pay new hires – this is an approximate $5,000 increase in pay). This is without precedent. If the Human Resources Division of IBM was hiring engineers, and over time many of them left to go to other companies, the people staffing the Human Resources of IBM would be fired for being incompetent. The taxpayer monies used to train these law enforcement officers is slipping through **"below the radar"** while we debate spending some of what is already wasted to recruit and retain.

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Just this past month, IRS Criminal Investigations office in New York City has transferred 11 agents out of their New York City office, in respond to hardship requests from all 11. Again, this triggers "below the radar" spending, since those 11 positions have to be filled – and will be filled with new agents straight out of the academy. The alternative to allowing these agents' hardship transfers was to watch some of them resign from service. Thus not only would their positions have to be filled, but also the positions they transferred into. The bottom line is that are agencies are already utilizing funding to deal with the locality pay crisis in which we find ourselves. FLEOA believes that HR 466, granting **partial** locality pay adjustments will help with recruitment and retention, and thus assist in stemming some of this "below the radar" bleeding

How would this help management retention? HR 466 would allow mid and high level supervisors to earn 25% of their salaries in overtime. This will resolve the problem of pay compression in our ranks. Currently some mid and high-level supervisors do not earn more then their subordinates. A street level agent with 20 years on the job may be the top candidate for a managerial position but why take on added responsibilities for no additional pay?

A top-level street agent with over 20 years on the job closely earns not only what his/her direct supervisor earns, but also what his/her second level supervisor earns! This is why Federal law enforcement agencies have not been able to attract candidates for managerial positions in high cost of living areas. This disincentive has resulted in Federal law enforcement agencies getting **ZERO** applicants for supervisory positions in high cost of living cities – but since there are street level agents working in these areas, you do need supervisors, so what is the agencies answer?

MORE CURRENT HIDDEN COSTS: With a squad of criminal investigators in the field working, and with zero applicants for supervisor positions, the agencies have to TDY (Temporary Duty Assignment) someone from another area. This person is detailed to the city in question for anywhere from a 30 to 90 day assignment. Agencies put these TDY supervisors in a hotel near the office (usually in the downtown area) pay for their meals and provide expense monies. Agencies rotate supervisors from several cities to make sure that there is supervision of the criminal investigators working in the field.

This problem in retaining managers who are at the pay cap is compounded by virtue of our retirement system (federal criminal investigators can retire at the age of 50 if they have 20 years of service). Since most agents with over 20 years on the job find themselves at, or near this pay cap, and are working hours in which they are not getting paid for, most have no incentive to remain -- but huge incentives to retire and seek employment in the private sector. Since 9/11 many companies have a newfound respect for their security personnel – which has translated into better pay and benefits. **We hemorrhage our best and brightest into the private sector while we are unable to complete for the best and brightest among the youngest.** Section Two of H.R. 466 will abate this bleeding.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

In 1990, Congress saw fit to surgically address the problems in federal law enforcement and, this proposal updates the solution chosen by Congress at that time. The proposal adjusts the 13 year-old special emergency pay adjustments percentages paid to federal agents (and this time includes the US Capitol Police) easing the pay disparities by **partially increasing** the locality pay adjustments paid to them. Since 1990, the current pay adjustments have either NOT been increased at all, or, have had negligible increases. **The cost of the adjustments in HR 466 will ZERO OUT**, since these adjustments remain stagnant in the coming years.

We must be able to draw dedicated, focused and talented professionals to perform the difficult work that America wants its federal agents to perform - to keep America safe and secure.

Seeing federal law enforcement agencies get zero applicants for supervisory positions in high cost of living cities should give us pause. Seeing job announcements with no closing date, just the caption "Open Until Filled" should give us pause. Seeing over ½ of major metropolitan areas staffed with federal criminal investigators with less then five years on the job, should give us pause.

Today we briefly covered two very serious issues affecting the recruitment and retention of federal law enforcement officers -- pay disparity and pay reform. As we in FLEOA discussed these issues we sincerely believe they must be addressed immediately to stem the debilitating outflow of highly qualified federal law enforcement officers as well as our inability to recruit. The solution to this problem is H.R. 466.

The answer:

America's Federal Agents Need H.R. 466 –
Pay Reform For Federal Agents -

* * * * *

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

Mrs. DAVIS OF VIRGINIA. I would now like to recognize Ignatius Gentile, representing Immigration and Naturalization Service Employees. Thank you for being with us today. And you are recognized for 5 minutes.

Mr. GENTILE. Thank you, Madam Chairperson, and members of the subcommittee. My name, as you know, is Ignatius Gentile. I am the president of Council 117 within the Department of Homeland Security. And we are with the American Federation of Government Employees.

I have also been employed by the U.S. Immigration Service in New York City for over 32 years, serving most of my tenure as a deportation officer in New York. Our union represents over 16,000 inspectors, deportation officers, detention officers, special agents, adjudication officers, asylum officers, and other support staff.

Contrary to the myth created during last year's battle over work rules at the Department of Homeland Security, our union has never been an obstructionist or has ever constrained our agency or our new Department in carrying out its critical mission. In fact, we play an essential role in examining proposals affecting pay benefits, personnel rules, and making sure our employees' views are clearly understood. After all, it is our employees of this newly formed Department that ultimately will determine its success or failure.

In fiscal year 2002, we inspected almost 70 million air travelers at more than 220 airports designated as ports of entry [POE], and this was around the United States and abroad. Those inspections resulted in the interception of approximately 6,900 criminal aliens, 2,700 persons being smuggled into the United States, and more than 18,000 fraudulent travel documents and identification cards. In total, our staff of inspectors denied admission to over 208,000 travelers during the air inspections at the port of entry in just fiscal year 2002.

We are here today to talk about the critically important pay and benefits issues affecting thousands of our employees with the new Department of Homeland Security. These issues are important not only because they are the bread-and-butter concern to our workers and their families, but also because they have a tremendous effect on our employees' morale. One of our best measures of measuring our employees' morale is the rate of attrition. We commend Representative Filner for his longstanding support on this issue, and thank both he and Representative McHugh for their efforts.

Under the current law, the immigrations inspectors are treated inequitably. Not only is their pay scale lower than any other Federal, State, and local law enforcement agency, but they also do not receive, as you are aware of, any law enforcement retirement benefits. H.R. 2442 seeks to rectify this injustice by granting these officers the same retirement benefits received by other Federal law enforcement officers. We can see no justification for treating our inspectors as anything less than full law enforcement officers.

Immigration inspectors are regularly put in harm's way, which is the reason why they are required to carry a firearm and qualify in the usage of that firearm. They have search authorities to undertake searches, make arrests, deport aliens. Our immigration inspectors also prepare cases for criminal prosecution by the U.S. Attorney's Office, including cases involving alien smuggling, docu-

ment fraud, and attempted illegal entry. In fact, our inspectors have general arrest authority for any offense committed against the United States.

It has been suggested by some that this legislation is too expensive and therefore should not be adopted. Of course, we strongly disagree. To date, no study undertaken on H.R. 2442 has considered the potential saving resulting from a reduced training cost. According to an OIG Department of Justice report issued in fiscal year 2002, the INS invested over $19 million to train approximately 1,000 new inspectors out of its academy. We believe that much of that money could have been saved had H.R. 2442 been in effect, and therefore should be accounted as an offset savings in any future cost studies on the actual bill.

Finally, it bears to note that the Bush administration's first appointee as the INS Commissioner, Mr. James Ziglar, actively supported law enforcement retirement coverage for our immigration inspectors because he felt so strongly that it should indeed be provided.

We as a Nation simply cannot afford to lose our most experienced personnel at this time. We need the inspectors' instincts, their experience, their eyes trained on thousands of people they inspect daily. We need their dedication, commitment, and knowledge. We need to treat these dedicated employees as they actually are: law enforcement officers.

The enactment of the Law Enforcement Officers Equity Act would be a very important step in that direction.

In closing, I would like to thank this committee for inviting me here today to share my thoughts and my values on this vital matter. At this point, I would be happy to respond to any of your various inquiries. Thank you.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Gentile.

[The prepared statement of Mr. Gentile follows:]

Statement of Mr. Ignatius Gentile
President, Department of Homeland Security Council 117
American Federation of Government Employees

before a joint hearing of the

U.S. Committee on Government Reform
Subcommittee on Civil Service and Agency Organization and,
Subcommittee on Criminal Justice, Drug Policy, and Human Resources

U.S. House of Representatives

July 23, 2003

Madam Chairperson and Members of the Subcommittees:

My name is Ignatius Gentile and I am President of Department of Homeland Security Council 117 (AFGE). Our union represents over 16,000 legacy Immigration and Naturalization Service Inspectors, Deportation Officers, Special Agents, Adjudications Officers and other former INS employees. Contrary to the myth created during last year's battle over work rules at the Dept. of Homeland Security, our union has never been obstructionist, nor is our contract constraining on the Agency in carrying out its critical mission. In fact, we play an essential role in examining proposals affecting pay, benefits and personnel rules and making sure employee views are clearly understood. After all, it is the employees of this agency that ultimately determine its success or failure.

In FY 2002, the INS inspected almost 70 million air travelers at more than 220 airports designated as Points Of Entry (POE) around the United States and in foreign countries where travelers are inspected prior to arrival in the United States. Those inspections resulted in intercepting approximately 6,900 criminal aliens, 2,700 persons being smuggled into the United States, and more than 18,000 fraudulent travel and identification documents. In total, INS inspectors denied admission to over 208,000 travelers during inspections at air POEs in FY 2002.

We are here today to talk about critically important pay and benefit issues affecting thousands of employees within the Department of Homeland Security (DHS). These issues are important not only because they are "bread and butter" concerns to workers and their families, but also because they have a tremendous affect on employee morale. And one of the best measures of employee morale is the rate of attrition.

The Attrition Crisis at DHS

At DHS, the attrition rate for inspectors has reached double digit levels. It is even worse among Border Patrol Agents. The fact is the employees America relies upon as the front-line in the battle against terrorism are leaving the agency in droves. According to data released by the Immigration and Naturalization Service in 2002, the attrition rate for Immigration Inspectors was 10 percent and expected to rise to 15 percent by the end of the year.

In February of this year, the Office of Inspector General at the Dept. of Justice released a report (03-15) which stated that "in FY 2002 approximately 26 percent of all inspectors at air, land, and sea POEs were newly hired. While the report did not break down how many of these new hires replaced lost personnel, there is no doubt the number is substantial.

Our nation is losing some of its most highly trained and experienced front line inspectors and it forces us to ask the question: what impact is this attrition crisis having on our ability to prevent terrorists from crossing our borders?

The second question that must be asked is: what can we do to stem the job loss among DHS law enforcement personnel. I have some ideas.

Federal Law Enforcement Equity Act (H.R. 2442)

First and foremost, we urge you to take up H.R. 2442, the Federal Law Enforcement Officers Equity Act and bring it to the House Floor for consideration. The enactment of this legislation, which has been introduced with the bipartisan support of Rep. Bob Filner and Rep. John McHugh, will do much to reduce the attrition rate among Immigration Inspectors. Under current law, Immigration Inspectors are treated as second-class citizens. Not only is their pay scale lower than many other federal state and local law enforcement agencies, but they also do not receive federal law enforcement retirement benefits. H.R. 2442 seeks to rectify this injustice by granting these officers the same retirement benefits received by most other federal law enforcement officers.

We commend Rep. Filner for his long-standing support on this issue and thank both he and Rep. McHugh for their recognition that the time for talk on this issue has ended and the time for action has come. We can see no justification for viewing Immigration Inspectors as anything less than law enforcement officers.

Immigration Inspectors are regularly put in harms way which is why they are generally required to carry firearms and must qualify on their usage four times a year. They have the authority to undertake warrantless searches deport illegal aliens. Immigration Inspectors patrol, respond to incidents, arrest and process suspects, administer oaths and take sworn statements. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) included expedited removal provisions which gives Immigration Inspectors the authority to order certain aliens removed under expedited removal proceedings without further hearings or review by an immigration judge. The expedited removal order carries the same penalties as a removal

order issued by an immigration judge. Immigration Inspectors also prepare cases for criminal prosecution by United States Attorneys, including cases involving alien smuggling, document fraud, and attempted illegal entry.

An Inspector can arrest criminal or previously deported aliens. In fact, Inspectors must do so in order that they remain in custody. As mandated by Congress and included in the credentials, Inspectors are authorized to act upon the witnessing of felonious acts by anyone. There is an entire class at the IOBTC regarding possible penalties for an officer failing to act in certain areas.

It has been suggested by some that this legislation is too expensive and therefore should not be adopted. We could not disagree more strongly. To date, no study undertaken on H.R. 2442 has considered the potential savings resulting from reduced training costs. According to the OIG/DOJ report mentioned earlier, the INS invested over $19 million to train approximately 1,000 new Immigration Inspectors at its Academy in FY 2002. We believe that much of that money could have been saved had H.R. 2442 been in effect, and therefore, should be counted as offsetting savings in any future cost studies of the bill.

Finally, it bears noting that the Bush Administration's first appointee as INS Commissioner, James Ziglar, actively supported law enforcement retirement coverage for Immigration Inspectors – despite internal opposition – because he felt so strongly that it should be provided.

We as a nation, simply cannot afford to lose our most experienced personnel at this time. We need their instincts, their experience, their eyes trained on the thousands of people they inspect every day. We need their dedication, commitment and knowledge. We need to treat these people as the law enforcement officers they are. The enactment of the Law Enforcement Officers Equity Act would be a very important step in that direction.

Pay Equity

Neither pay nor retirement benefits for Immigration Inspectors are not competitive with state and local law enforcement jobs. State and local Police Departments offer a higher starting pay, often in excess of ten thousand dollars a year. State and Local police departments also offer a twenty year retirement program, better health benefits, union recognition, and a collective bargaining agreement. Is it any wonder so many federal law enforcement officers are seeking positions in state and local law enforcement.

New DHS Personnel Rules

Beyond the enactment of H.R. 2242, we believe that most DHS employees are anxiously awaiting the new personnel plan for the Agency.. Uncertainty over collective bargainning,

appeals rights and pay reform is having the expected affect on the work force. People are looking around, talking to each other, considering their options Uncertainty is a breeding ground for attrition. And there is an active, if informal network, among all law enforcement officers at all levels on job vacancies and other opportunities.

It is vital that the new DHS work rules be fair to both agency managers and employees. As a union, we understand that our first priority is to perform effectively and efficiently in our jobs. But in our view, part and parcel of that process is fair treatment by our supervisors. Work rules that provide unchecked power to supervisors and managers is a recipe for disaster. Attrition will skyrocket, morale and enthusiasm for the job will disappear and Americans will be left less safe.

Let us hope the members of the DHS Design Team understand the importance of balance in shaping a new system. If the rules are fair, the Agency wins by maintaining a motivated, committed work force; the employees win by having their basic rights protected and, of course, the American people win by having the most effective front line troops in the battle against terrorism.

Adequate Resources for DHS

Despite significant increases in funding for agencies and programs operated under the Department of Homeland Security, there are activities which apparently are not receiving adequate financial support. According to reports from the field, Immigration Inspectors are being replaced by U.S. Customs Inspectors on the port of entry primary inspection line across the country due to funding constraints. U.S. Customs Inspectors are only permitted to conduct primary immigration inspections on U.S. Citizens Permanent Residents and Canadian citizens. U.S. Customs officers then sit idle while lines of arriving non U.S. citizens swell to the point of overload. This creates additional waiting times for non U.S. citizens

Historically, a mixture of Immigration and Customs Inspectors have staffed the primary inspection lanes. These Officers rely on each other while conducting primary inspections because the rules, regulations and policies surrounding the Immigration and Nationality Act are so complex. Because of this, it is not uncommon to see a Customs Inspector exit the inspections booth and ask an Immigration Inspector for guidance on routine to complex matters of Immigration Law. However the opposite is not generally the case. Staffing primary inspection solely with officers of the Customs Service would greatly reduce the efficiency of the process of primary inspection. Eliminating the Immigration Inspectors would mean that those questions that were answered or dealt with by Immigration Inspectors, would either go unanswered or be sent inside the building for secondary inspection.

The result will be major travel delays, a backlog in secondary inspections and a potential security threat. If Inspectors are under increased pressure to move the lines faster, they could be missing small but important signs of potential terrorists attempting to gain entry into the U.S.

We have heard the intent here is to limit the work of Immigration Inspectors at Ports-of-Entry to secondary inspections, with Customs Inspectors staffing the primary Inspection lanes. This is a bad plan aimed solely at saving money on the Immigration Inspections budget and shifting the costs over to Customs.

A primary inspection program is a well-balanced equation. To have a well-balanced primary inspection you must have the knowledge and skills of both legacy agencies represented. Removing one element of the equation and stating it would have no effect on the overall effectiveness is absurd. By removing the Immigration Inspector, you remove years of developed skills, knowledge and experience. Thank you.

Mrs. DAVIS OF VIRGINIA. We would like to now recognize Louis Cannon of the Fraternal Order of Police. Thank you, Mr. Cannon, for being here today. And you are recognized for 5 minutes.

Mr. CANNON. Good afternoon, Chairwoman Davis, Chairman Souder, and other members present of the two subcommittees. My name is Louis Cannon. I am the president of the Fraternal Order of Police District of Columbia State Lodge and chairman of the National FOP's Federal Officers Committee. On behalf of National President Chuck Canterbury, we appreciate this opportunity to appear before you here today to discuss our views on compensation issues affecting Federal law enforcement officers. On a side note, we would also like to thank Chairman Souder for his efforts on the House floor yesterday on the CJS appropriations bill.

The Fraternal Order of Police is the Nation's largest law enforcement labor organization, with over 306,000 members in 43 State lodges. Included in that total are more than 25,000 Federal law enforcement officers, representing agencies from each of the three branches of the Federal Government. For our organization, the most pressing concern is the continuing inequality in retirement benefits afforded to Federal officers under the law enforcement officer or 6(c) retirement system. And it is on this issue that I will primarily focus my remarks.

Each and every day, tens of thousands of Federal police officers and other law enforcement employees place their lives on the line in the defense of Federal employees, the general public, and the institutions that are the foundations of our democracy. They serve as our Federal Government's first responders, and are asked to face the same hazards as their State and local counterparts. And when one of them falls in the line of duty, their names are added to the National Law Enforcement Officers Memorial here in Washington.

They are also the brave men and women who were among the first to respond to the devastating terrorist attacks in New York City and the Pentagon. Yet these same individuals, despite carrying out their sworn duty to protect and serve with honor and dedication, are consistently denied equal status with their Federal law enforcement colleagues under the law enforcement officer retirement provisions of Chapters 83 and 84 of Title 5 U.S. Code. Their exclusion under current law and the regulations of OPM is not based on the duties that they are asked to perform, forcing the officers to constantly appeal to OPM or to bring a case before the Merit Systems Protection Board to fight for the status to which they are already entitled.

That is why the Fraternal Order of Police strongly supports amending current law to clarify the definition of law enforcement officer and ensure the inclusion of Federal police officers and others whose primary duties are law enforcement and who are currently denied LEO retirement coverage. And that is why we support H.R. 2442, the Law Enforcement Officers Equity Act introduced by Representatives Filner and McHugh last month.

The FOP believes that there are three primary reasons to enact H.R. 2442, and to reform the current definition of who is and is not classified as law enforcement officer for retirement purposes.

First, the extension of LEO status will improve the recruitment and retention efforts of law enforcement agencies throughout the

Federal Government. Perhaps the most pressing problem facing Federal law enforcement agencies today is the ability to recruit qualified applicants for the police and investigative positions, and the challenge of retaining fully trained and qualified personnel in the face of a competitive market for the services they perform.

However, the lack of law enforcement retirement coverage is one of the primary incentives for police officers and others to seek employment with other agencies. In the Washington, DC, area alone, there are scores of Federal, State, and local agencies for which an individual seeking a career in law enforcement can choose from without the inconvenience of having to relocate his or her family.

Next, H.R. 2442 will bring equity to the various law enforcement and police occupations. The major duties of the 083 Federal police position, whether or not they are currently covered by law enforcement retirement, are indistinguishable from those of State and local law enforcement. However, there are not enough to distinguish many Federal law enforcement officers from other government employees and other retirement laws.

The Office of Personnel Management reached a similar conclusion in a 1993 report to Congress, stating that it is undeniable that uniformed police work is considered a core law enforcement function outside of the Federal Government. And the Federal Government has also recognized it is law enforcement by putting some Federal police positions in the definition of law enforcement officer for pay purposes under current law.

While not explicitly recommending the extension of LEO retirement coverage, OPM did note that as they studied law enforcement in protective occupations and worked on the design of a separate job evaluation pay system, it became clear that a different definition of law enforcement officer would be needed for system coverage purposes.

Finally, passage of this legislation will permanently end the confusion regarding which requirements qualify law enforcement employees for law enforcement status. This issue of who is and who is not a law enforcement officer for retirement purposes is a source of great confusion for the thousands of police officers employed by the Federal Government. For them, achieving law enforcement status is not about bigger paychecks or enhanced benefits, but about achieving parity with their fellow officers. They have trouble comprehending how they can perform the same functions as their LEO-covered Federal counterparts, yet receive unequal benefits.

When a Federal law enforcement officer falls in the line of duty, the government does not look at whether or not they were considered LEO or non-LEO for the purposes of providing public safety officer benefits to their family. It is only within the Federal Government that an employee who performs basic law enforcement functions will be considered something other than a law enforcement officer.

Today, all Federal law enforcement officers, regardless of their classification and grade, must shoulder greater burdens in the post-September 11th world. These brave men and women are now asked to serve as first responders, to be prepared and capable of responding to incidents and situations which threaten our Nation, and to be on the front line in the fight to improve Homeland Security.

Amending current law to clarify the definition of law enforcement officer and ensuring the inclusion of Federal police officers and others who are denied coverage will improve the recruitment and retention of qualified officers, ensure equity among law enforcement employees, and eliminate the confusion surrounding the current definition. But more importantly, the passage of the Law Enforcement Officers Equity Act would afford Congress the opportunity to do what is right and what is needed to ensure that the Federal Government is protected by the most highly trained, qualified, and professional corps of law enforcement officers available.

In conclusion, the FOP does not believe that now is the time for enacting measures which have the effect of continuing disparities which exist between and among Federal law enforcement employees or which allow one agency to recruit officers at the expense of another. Rather, it is time for those which recognize the important work performed by these brave men and women throughout the Federal Government and which will attract the best and brightest to Federal law enforcement work.

Thank you very much, Chairwoman Davis and Chairman Souder, for the opportunity to appear before you today. We very much appreciate the support of yourself, Madam Chairwoman Davis, and numerous members of both subcommittees who were cosponsors of the Law Enforcement Officers Equity Act in the 107th Congress.

I look forward to working with the subcommittees to advance legislation, and I would be pleased to answer any questions.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Cannon.

[The prepared statement of Mr. Cannon follows:]

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JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

TESTIMONY

Of

Inspector Louis P. Cannon
President, District of Columbia State Lodge
Chairman, Federal Officer's Committee
Fraternal Order of Police

On

Personnel Issues Affecting Law Enforcement Employees of the Federal Government

Before the

Subcommittee on Civil Service and Agency Organization
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
United States House of Representatives

23 July 2003

Good morning Chairwoman Davis, Chairman Souder, Ranking Members Davis and Cummings and members of the two Subcommittees. My name is Louis Cannon, and I am the President of the Fraternal Order of Police – District of Columbia State Lodge, and Chairman of the National F.O.P.'s Federal Officers' Committee. I am also an Inspector with the United States Mint Police, and have previously served with the Library of Congress Police and the Metropolitan Police Department here in Washington. I am here today on behalf of National President Chuck Canterbury to discuss our views on several important personnel issues affecting Federal law enforcement officers, and the various legislative proposals which have been put forward to address them.

The Fraternal Order of Police is the nation's largest law enforcement labor organization, with over 306,000 members in 43 State Lodges. Included in that total are more than 25,000 Federal law enforcement officers, representing agencies from each of the three branches of the Federal government. For our organization, the most pressing concern is the continuing inequality in the retirement benefits afforded to Federal officers under the "law enforcement officer" (LEO) or "6(c)" retirement system. In particular, the definition of what constitutes a law enforcement officer under current law is outdated, and does not reflect the increased hazards faced by today's Federal law enforcement personnel.

Each and every day, tens of thousands of Federal police officers and other law enforcement employees place their lives on the line in defense of the citizens and institutions that are the foundation of our democracy. They serve as our Federal government's first responders and are asked to face the same hazards as their State and local counterparts; and when one of them falls in the line of duty, their names are added to the National Law Enforcement Officers Memorial here in Washington. They are also the brave men and women who were among the first to respond to the devastating terrorist attacks in New York City and at the Pentagon.

Yet these same individuals, despite carrying out their sworn duty to protect and serve with honor and dedication, are consistently denied equal status with their Federal law enforcement colleagues under the "law enforcement officer" retirement provisions of Chapters 83 and 84 of Title 5, U.S. Code. Their exclusion under current law and the regulations of the Office of Personnel Management is not based on the duties they are asked to perform, forcing these officers to constantly appeal to OPM or bring a case before the Merit Systems Protection Board to fight for the status to which they are already entitled.

That is why the Fraternal Order of Police strongly supports amending current law to clarify the definition of "law enforcement officer" and ensuring the inclusion of Federal police officers and others whose primary duties are law enforcement and who are currently denied LEO retirement coverage. And that is also why we support H.R. 2442,

the "Law Enforcement Officers Equity Act," introduced by Representatives Filner and McHugh last month. I think it is important to note at this point, that this issue has been designated as the top legislative priority for the F.O.P.'s Federal Coalition, which is comprised of both law enforcement employees who are included in, and excluded from, the LEO retirement system.

Current Law

As mentioned above, the laws governing the LEO provisions of the Federal Employees Retirement System (FERS) and Civil Service Retirement System (CSRS) are contained in Chapters 83 and 84 of Title 5, U.S. Code.[1] Under current law, Federal law enforcement officers, firefighters, and air traffic controllers are provided enhanced retirement coverage which allows them to retire after 20 years of service at age 50, or at any age after 25 years of service. These employees must contribute a slightly larger percentage of pay (.5%) to the Federal government's retirement fund, and the positions may be subject to a maximum hiring age of 37, and are subject to a mandatory separation age of 57.

Under Section 8401 (17), a law enforcement officer is defined as an employee, the duties of whose position are primarily the "investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, or... the protection of officials of the United States against threats to personal safety." In addition, the duties performed by a "law enforcement officer" are "sufficiently rigorous that employment opportunities should be limited to young and physically vigorous individuals." Those who are not deemed eligible for LEO coverage under this definition are those employees whose primary duties "involve maintaining order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than those who are suspected or convicted of offenses against the criminal laws of the United States."[2]

The regulations governing law enforcement officer retirement further expand upon the definition of key terms contained in Section 8401.[3] "Primary duties" is defined as those that constitute the basic reason for the existence of the position, occupy a substantial portion of the individual's working time, and are assigned on a regular and recurring basis.[4] A "rigorous position" is one in which the duties are so rigorous that they should be limited to young and physically vigorous individuals. U.S. Park Police and Secret Service Uniformed Division law enforcement officer positions are also deemed to be rigorous positions under current law and regulations.

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[1] Since most Federal employees are now covered by the FERS retirement system, this paper will rely primarily on references from Chapter 84 as well as the regulations contained in 5 CFR 842.
[2] 5 CFR 842.802
[3] 5 CFR Ch. I, Subpart H
[4] *Id.*

In addition to the officers of the Park Police and Secret Service-Uniformed Division, those who are considered to meet the definition or who now receive LEO retirement include most criminal investigators (GS-1811 series), Metropolitan Washington Airport Authority police, and employees of the Bureau of Prisons or Federal Prison Industries, Inc.[5]

The Need for Reform

According to OPM, in 1997 there were over 22,000 employees throughout the Federal government with law enforcement duties who were not deemed to meet the requirements of the "law enforcement officer" definition—including over 6,000 Federal police officers (GS-083 series). The F.O.P. believes that there are three primary reasons for enactment of H.R. 2442 and to reform the current definition of who is and is not classified as a law enforcement officer for retirement purposes: that the extension of LEO status will improve the recruitment and retention efforts of law enforcement agencies throughout the Federal government, that it will bring equity among the various law enforcement and police occupations, and that it will permanently end the confusion regarding which requirements qualify law enforcement employees for law enforcement status.

Expanded LEO Coverage Means Enhanced Recruitment and Retention of Qualified Law Enforcement Employees

Perhaps the most pressing problem facing Federal law enforcement agencies today is the ability to recruit qualified applicants for their police and investigative positions, and the challenge of retaining fully trained and qualified personnel in the face of a competitive market for the services they perform. This has become increasingly evident in the aftermath of September 11, as agencies work to enhance their security and assist in the fight to improve homeland security. In August 2002, for example, *Government Executive* magazine reported on the efforts of Federal law enforcement agencies to recruit experienced officers, stating that "[t]he Transportation Security Administration is hiring thousands of air marshals, uniformed officers and criminal investigators...[t]he Immigration and Naturalization Service is hiring 20,000 Border Patrol agents, immigration inspectors and other law enforcement personnel over the next two years...[and] the FBI is looking for 900 special agents...this year."[6] Thus far, perhaps the most successful in their efforts has been the Transportation Security Administration. According to the magazine's tally, "federal agencies lost more than 1,400 law enforcement officers and support personnel to the Transportation Security Administration between September [2001] and June [2002]."[7] The reason is simple: TSA positions, specifically Federal Air Marshals, typically receive better pay and benefits than most other Federal law enforcement employees.

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[5] While not specifically included in 5 USC 8401(17), the officers of the U.S. Capitol Police also qualify for LEO retirement.
[6] "Law enforcement officers benefit from hiring bonanza," Brian Friel, GovExec.com, 13 August 2002.
[7] "Marshal Draw," Brian Friel, GovExec.com, 1 August 2002.

In particular, the lack of law enforcement retirement coverage is one of the primary incentives for police officers and others to seek employment with other agencies. In the Washington, D.C. area alone there are scores of Federal, State and local agencies from which an individual seeking a career in law enforcement can choose from, without the inconvenience of having to relocate himself and his family. The movement of Federal law enforcement employees from one agency to another in search of better pay and benefits is not a new phenomenon. In 1999, the Fraternal Order of Police-Bureau of Engraving and Printing Police Labor Committee reported that in the preceding year, of sixteen officers who left the BEP force, twelve left to pursue careers with other law enforcement agencies, and eight were hired by agencies that provide LEO retirement. Moreover, the average length of service with BEP police for these officers was less than 14 months, meaning that the Bureau expended funds to train, compensate and equip these officers for their short terms of service, and the agencies to which they transferred received a crop of fully trained and qualified law enforcement officers without spending an equal amount for new officer recruits.

Ensuring Equity Among Federal Law Enforcement Employees

Another positive situation which would result from the passage of H.R. 2442 would be the elimination of inequitable situations between and among law enforcement employees. The major duties of the GS-083 Federal police position—whether or not they are currently covered by law enforcement retirement—are "the performance or supervision of law enforcement work in the preservation of the peace; the prevention, detection, and investigation of crimes; the arrest or apprehension of violators; and the provision of assistance to citizens in emergency situations, including the protection of civil rights."[8] These responsibilities are indistinguishable from those of State and local law enforcement, however, they are not enough to distinguish many Federal law enforcement officers from other government employees under the retirement laws.

The Office of Personnel Management reached a similar conclusion in a 1993 report to Congress entitled *A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers*.[9] In their report, OPM noted that "[i]t is undeniable that uniformed police work is considered a core law enforcement function outside of the Federal Government...[and] the Federal Government has also recognized it as law enforcement by including some Federal police positions in the definition of law enforcement officer for pay purposes under current law."[10] While not specifically recommending the extension of LEO retirement coverage, OPM did note that as they "studied the law enforcement and protective occupations and worked on the design of a separate job evaluation and pay system, it became clear that a different definition of 'law

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[8] See Section Four, "Handbook of Occupational Groups and Families," Office of Personnel Management, August 2001.
[9] Authorized by Section 412 of Title IV of the Federal Employees Pay Comparability Act of 1990 (FEPCA), P.L. 101 – 509.
[10] Page 18, "Report to Congress: A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers," U.S. Office of Personnel Management, September 1993.

enforcement officer' would be needed for system coverage purposes."[11] Accordingly, OPM concluded that:

> "'law enforcement officer' should be defined for job evaluation and pay system coverage purposes to include all executive branch employees who meet the retirement definitions,...plus all positions properly classified as police officers that are not now covered...
>
> "This definition would provide greater consistency to the definition of 'law enforcement officer' since it would encompass only those positions in which the primary knowledge, skills, abilities and duties are law enforcement...The addition of police officer and law enforcement Park Ranger positions not now covered by the law enforcement pay entitlements would provide for equitable treatment of all executive branch police forces...Moreover, it is clear from OPM's research that staffing problems for this occupational group are significantly greater than for the General Schedule as a whole. The overall quit rate for police officers is twice that of the General Schedule as a whole."[12]

Unfortunately, OPM's recommendations were never fully explored, and any action which may have arisen because of the report were set aside in favor of implementing the proposals put forward by the National Performance Review.[13]

Eliminating confusion surrounding which requirements qualify Federal law enforcement employees for law enforcement status

The issue of who is and is not a law enforcement officer for retirement purposes is a source of great confusion for the thousands of police officers employed by the Federal government, and hinges primarily on judicial and administrative interpretations of the definition contained in current law. For them, achieving law enforcement status is not about bigger paychecks or enhanced benefits, but about achieving parity with their fellow officers. They have trouble comprehending how they can perform the same functions as their LEO-covered Federal counterparts yet receive unequal benefits. Over the years, the Merit Systems Protection Board (MSPB) has been extremely active in trying to determine, on a case-by-case basis, the answer to this question. Two MSPB decisions in particular— *Bremby v. Navy* and *Watson v. Navy*, both involving police officers at the Norfolk Navy Base in Norfolk, Virginia— illustrate the confusion surrounding the interpretation of the term "law enforcement officer" under Title 5, and highlight the constraints imposed by it.

In April 1999, the MSPB ruled in *Bremby v. Navy* that GS-083 police officers and supervisory police officers stationed at the Norfolk Navy Base were entitled to CSRS law

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[11] *Id.*, page 16
[12] *Id.*, page 18
[13] See Statement of Barbara L. Fiss, Assistant Director for Compensation Police, U.S. Office of Personnel Management, before the Subcommittee on Compensation and Employee Benefits, House Committee on Post Office and Civil Service, November 4, 1993.

enforcement retirement coverage based on the duties they perform and as described in their official Position Descriptions. Based on a decision in a 1997 case before the U.S. Court of Appeals for the Federal Circuit, the Board reiterated certain criteria which a law enforcement officer covered under CSRS must frequently meet.[14] In *Bremby*, the Board restated that "an LEO covered by CSRS commonly: (1) has frequent direct contact with criminal suspects; (2) is authorized to carry a firearm; (3) interrogates witnesses and suspects, giving Miranda warnings when appropriate; (4) works for long periods without a break; (5) is on call 24 hours a day; and (6) is required to maintain a level of physical fitness...no single factor, however, is essential or dispositive to the LEO retirement credit determination."[15] The Board further found, that the "existence or degree of physical hazard associated with a position is a factor in the determination of LEO status."[16] In this, and in several similar cases, the Board focused on a "fact-specific inquiry into the daily or frequent duties actually performed by the officer seeking LEO coverage, even if those duties were not listed in the Position Description as primary duties," also known as the "incumbent-oriented" approach.[17]

In *Watson*, the MSPB and the Court of Appeals for the Federal Circuit, denied LEO coverage to police officers at the same Naval base, and in the process, moved from an "incumbent-oriented" to a "position-oriented" approach for the purposes of determining entitlement to LEO retirement. In its decision, the Board ruled that the "approach set forth in *Bremby* for determining LEO entitlement placed too much emphasis on the day-to-day duties of a particular incumbent over a limited period of time."[18] In adopting this new standard for evaluating LEO cases, the Board determined that a position-oriented approach "more affirmatively takes into account the basic reasons for the existence of the position...[and] if the position was not *created* for the purpose of investigation, apprehension, or detention, then the incumbents of the position would not be entitled to LEO credit."[19] In determining these "basic reasons," the MSPB relied heavily on OPM's classification standards for the GS-083 position, and found that these materials substantiated the finding that the police officer position "does not meet either the statutory or regulatory definition of a 'law enforcement officer.'"[20]

The problem, however, is that these classification standards explain neither why the Navy decided to create a police force at Norfolk nor the actual duties of an individual officer's position. In addition, these standards do not reflect the current realities of Federal law enforcement work; particularly the increased responsibilities thrust upon these officers in the wake of events such as the September 11, 2001, terrorist attacks and the bombing of the Murrah Federal Building in Oklahoma City in 1995. Rather, the classification standards establish a government-wide pay system through grades of particular positions that are based on analysis of general statements of duties,

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[14] See *Bingaman v. Treasury* (127 F.3D 1431 (Fed. Cir. 1997)
[15] See *Bremby v. Navy* [81 M.S.P.R. 450 (1999)]
[16] *Id.*
[17] See *Watson v. Department of the Navy* (Fed. Cir. 2001)
[18] See. *Watson v. Department of the Navy, 86 M.S.P.R. 318 (2000)*
[19] *Id.*, emphasis added
[20] *Id.*

responsibilities, and qualification requirements.[21] The F.O.P., which filed an *amicus* brief in this case before the Court of Appeals, believes that the Board's decision in *Watson* abandoned a workable, objective, factually specific evaluation based on direct evidence of the performance of certain duties, for a subjective estimate based upon secondary evidence of the historical motivation underlying the creation of a specific position.

The Need for Enactment of H.R. 2442

When a Federal law enforcement officer falls in the line of duty, the government does not look at whether or not they were considered "LEO" or "Non-LEO" for the purposes of providing Public Safety Officer Benefits to their family. Likewise, State and local law enforcement agencies do not maintain two separate classes of police officers within their departments. It is only within the Federal government that an employee who performs basic law enforcement functions would be considered something other than a law enforcement officer. Today, all Federal law enforcement officers, regardless of their classification or grade, must shoulder greater burdens in the post-September 11 world. These brave men and women are now asked to serve as first responders, to be prepared and capable of responding to incidents and situations which threaten our nation, and to be on the front lines in the fight to improve homeland security.

In addition, the issue of law enforcement status and retirement is one that must be examined in terms of fairness and professionalism. Amending current law to clarify the definition of "law enforcement officer" and ensuring the inclusion of Federal police officers and others who are denied coverage will improve the recruitment and retention of qualified officers, ensure equity among law enforcement employees, and eliminate the confusion surrounding the current definition. But more importantly, the passage of the "Law Enforcement Officers Equity Act" would afford Congress the opportunity to do what is right, and what is needed, to ensure that the Federal government is protected by the most highly trained, qualified, and professional corps of law enforcement officers available.

Other Issues Affecting Federal Law Enforcement Officers

In addition to H.R. 2442, I would like to briefly discuss several other issues which affect Federal law enforcement officers, and the legislation which has been introduced to address them.

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[21] "Position classification standards are descriptive of work as it exists and is performed throughout the Federal service. While they indicate the proper series, titles, and grades of positions, they do not alter the authority of agency managers and supervisors to organize programs and work processes; to establish, modify, and abolish positions; to assign duties and responsibilities to employees; and to direct and supervise the accomplishment of their assigned missions. The classification systems should be a guide to judgment and supportive of each agency's efforts to manage its workforce," Pg. 7, *Introduction to the Position Classification Standards*, Office of Personnel Management, August 1991.

Inaction on Expanding LEO Retirement to FBI Police

Last Year, Congress extended "law enforcement officer" retirement to the police officers at the Federal Bureau of Investigation (FBI). Included in Public Law 107 – 273, Section 11024 of the 21st Century Department of Justice Appropriations Authorization Act authorized the FBI Police to receive pay and benefits similar to that provided to members of the US Secret Service Uniformed Division (USSS-UD), effective after 1 January 2003. However, because Congress did not specifically identify the Executive Branch agency which was to be responsible for crafting the regulations to implement this provision of the Act, no further action has occurred. In late April the Office of Personnel Management submitted a legislative proposal to Congress to repeal this section of the Act, denying the FBI the ability to effectively compete with other agencies for qualified police recruits. In their letter to the President of the Senate, OPM cited several reasons for submitting their proposal in addition to the lack of an identifiable agency to proffer regulations, including: that the "legislation is insufficient to authorize enhanced benefit payments from the Civil Service Retirement and Disability Fund," that "no appropriations have been provided for the additional costs of enhanced benefits," and that Section 11024 "is technically insufficient to accomplish its objective." The Fraternal Order of Police believes that rather than accept OPM's arguments on the need for repeal, Congress should instead work to make the necessary changes to Section 11024, so that the clear intent of Congress can be carried out.

Increased Locality Pay for FLEOs/Removal of Limitation on Premium Pay

Over the last two Congresses, several proposals have been put forward to increase the locality payments received by Federal law enforcement officers, and to remove the limitations on the amount of premium pay that can be received by these employees. While we have taken no position on any of these proposals, I would like to advise the Subcommittee of our general position on this issue.

First and foremost, the F.O.P. believes that if locality pay is increased for Federal LEOs, it must be a total, nationwide increase which would affect Federal employees in all thirty-two Metropolitan Statistical Areas (MSAs). Second, we believe that to improve recruitment and retention, the enhanced locality pay should be extended to all Federal law enforcement officers, regardless of whether or not they are currently deemed to meet the definitions of Sections 8331 or 8401 of Title 5, U.S. Code. Third, we agree that Congress should eliminate the limitation on the "premium pay" Federal law enforcement officers can receive, which at present keeps criminal investigators and others from receiving compensation in excess of certain caps.

We are concerned, however, with the provision in some of these bills which would require OPM to essentially redo their 1993 report on a separate pay, evaluation and promotion system for Federal law enforcement officers, authorizing them to establish demonstration programs to put such a system into effect on a trial basis. As currently written, the updated study and any demonstration project would be limited to only those

officers who meet the retirement definition, excluding many agencies whose officers could benefit from inclusion in this section. In a recent report, which the F.O.P. helped to facilitate, the General Accounting Office (GAO) studied pay, recruitment and retention at thirteen Federal police forces in the D.C. area. GAO noted that, among the agencies they reviewed, 1) the entry-level pay for police officers varied by more than $10,000 in FY 2002; 2) total turnover nearly doubled between 2001 and 2002; 3) in FY 2002 eight of the 13 agencies experienced their highest turnover rate in six years; 4) officials at nine of the 13 agencies reported some difficulty in recruiting officers; and 5) none of the police forces used "important human capital flexibilities, such as recruitment bonuses and student loan repayments, during fiscal year 2002." [22]

As the GAO report shows, the problems with the recruitment and retention of Federal law enforcement personnel is not limited to one particular GS classification or agency. Now is not the time for enacting measures which have the effect of continuing the disparities which exist between and among Federal law enforcement employees, or which allow one agency to recruit officers at the expense of another. Rather, it is time for those which recognize the important work performed by these brave men and women throughout the Federal government, and which will attract the best and brightest to Federal law enforcement work. Therefore the F.O.P. believes that any study or demonstration project which OPM is authorized to perform must also include all uniformed Federal law enforcement personnel, and those who are outside of the LEO retirement system.

Expansion of LEO Retirement to Assistant United States Attorneys & Federal Prosecutors

Several pieces of legislation have also been put forward in past Congresses to include Assistant United States Attorneys (AUSA) and other Federal prosecutors within the LEO retirement system. We realize that other groups and occupations often seek coverage under theses provisions of Chapters 83 and 84 of Title 5, US Code, because of the more generous retirement benefits they provide. In addition to doing nothing to rectify the disparity among law enforcement personnel, the legislation which has been introduced on this issue is problematic for several other reasons. They contain provisions which would exempt Federal prosecutors from the maximum hiring age and mandatory separation requirements applicable to Federal law enforcement officers, and which help agencies maintain young and vigorous workforces. They also contain provisions which would require the government to pay both the individual and the agency costs for employees who elect LEO coverage. Thus, what Federal prosecutors would gain by enactment of this legislation is above and beyond what is available even to current recipients of LEO retirement coverage.

But perhaps most importantly, these bills beg the question: Should Federal prosecutors qualify as law enforcement officers when not all Federal law enforcement officers qualify as law enforcement officers? The F.O.P. believes that the answer is

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[22] "Federal Uniformed Police: Selected Data on Pay, Recruitment, and Retention at 13 Police Forces in the Washington, D.C., Metropolitan Area (GAO-03-658)," U.S. General Accounting Office, June 2003, Pg. 23.

obvious, and that Congress should not expand the number and types of employees eligible for LEO coverage unless and until it first acts to remedy the existing disparity within the law enforcement and police occupations under current law.

Thank you very much, Chairmen Davis and Souder, for the opportunity to appear before you here today. We very much appreciate the support of yourself, Madam Chairman, Mr. Davis, and the numerous Members of both Subcommittees who were cosponsors of the "Law Enforcement Officers Equity Act" in the 107th Congress. We look forward to working with the Subcommittees to advance legislation important to Federal law enforcement officers, and I would be pleased to answer any questions you may have at this time.

Mrs. DAVIS OF VIRGINIA. Mr. Bonner, we haven't forgotten you, but I would need you to stand so I could swear you in.

[Witness sworn.]

Mrs. DAVIS OF VIRGINIA. Let the record reflect that the witness has answered in the affirmative. And, Mr. Bonner, Mr. T.J. Bonner from the National Border Patrol Council, we welcome you. And you are recognized for 5 minutes.

STATEMENT OF T.J. BONNER, PRESIDENT, NATIONAL BORDER PATROL COUNCIL

Mr. BONNER. Thank you, Madam Chairwoman, Mr. Chairman, other members of the subcommittees. On behalf of the 9,000 frontline law enforcement officers represented by the National Border Patrol Council, we welcome this opportunity to present our views concerning issues that affect every aspect of our working lives.

While there is a clear consensus that we need to attract and retain the best and the brightest employees in order to safeguard our Nation's liberty, there is a considerable amount of disagreement concerning how best to achieve this goal. In the brief time allotted, I would like to share the perspective of frontline employees.

We believe that any pay and personnel systems that are developed must follow three basic principles: First, employees must be treated fairly and equitably. Second, their wisdom and experience must be valued, solicited, and heeded. Finally, they must be adequately and equitably compensated for the essential services that they provide.

Deviating from these commonsense principles will make it difficult, if not impossible, to attract and retain the best and the brightest employees, and should be avoided at all costs.

For example, depriving employees of a meaningful voice and input into their conditions of employment by limiting or eliminating their collective bargaining rights ignores the wealth of knowledge and experience that they possess. Since Federal employees cannot strike or bargain over wages or benefits, the only topics left on the bargaining table are working conditions. Denying these employees a meaningful voice in these matters is foolish and counterproductive, and results in poor morale as well as ill-advised policies generated by managers far removed from the front lines.

Grievance and appeals processes that fail to provide for review of management decisions by independent neutrals only exacerbate inequities and demoralize the work force, chasing away good workers. Employees are not willing to serve their entire career under the threat of being fired without cause at the whim of a manager or political appointee, nor are they willing to work under a system that denies them the basic right to contest such actions in a fair forum. Pay banding systems that do not have fair and easily understood rules, incorporating the principle of equal pay for substantially equal work, create inequities that are extremely damaging to morale and the spirit of teamwork that is so essential in law enforcement.

So-called pay-for-performance, which is actually pay based upon favoritism in many cases, suffers from the same flaws and yields the same disastrous results. Pay systems that deny employees time-and-a-half compensation for their overtime work, such as the

Law Enforcement Officers Availability Pay Act of 1994, are a prime source of dissatisfaction and cause good employees to seek jobs with other agencies.

The relative ease of recruiting in an economic slump should not deceive anyone into believing that this meets our goal of attracting highly qualified law enforcement officers who will remain in the service of our Nation for 20 to 30 years. Hiring desperate people who are looking to make ends meet until they can find a career that genuinely interests them serves neither the employees nor the public well.

Federal law enforcement officers are in the midst of a human capital crisis. Employees are voting with their feet in record numbers, and there is great cause for alarm. Last fiscal year, for example, one out of every five Border Patrol agents left the agency for one reason or another.

There are four major reasons that employees are abandoning careers in Federal law enforcement: lack of job satisfaction; low pay compared to that of other law enforcement officers performing similar tasks; lack of upward and lateral mobility; and poor working conditions. Unless all of these issues are addressed simultaneously, attrition will remain unacceptably high.

Frontline employees recognize that the current system is far from perfect and is in need of reform. They are also wise enough to know that it could easily be made worse, and therefore do not embrace change for the sake of change. They understand that in order to effectuate positive change, reform needs to be accomplished in accordance with the principles outlined herein.

Salaries of employees in high-cost-of-living areas must be commensurate with those of other law enforcement officers in those areas if the Federal Government hopes to remain competitive. Law enforcement retirement coverage needs to be extended to all of those who enforce our Nation's laws, including legacy immigration and Customs inspectors, if we want to attract the best and the brightest to these important jobs.

In order to convince people to choose a career in Federal law enforcement, they need to be provided with challenging and financially rewarding career opportunities. Choice promotions need to be offered to existing employees before outside applicants are considered.

In sum, any changes to personnel laws, rules, and regulations must be viewed through the prism of the commonsense principles outlined herein, and must recognize that the goal of a first-class work force cannot be achieved if workers are treated in a second-class manner.

Thank you. And I would be happy to answer any questions you might have.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Bonner.

[The prepared statement of Mr. Bonner follows:]

STATEMENT OF THE

NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO

BEFORE THE

SUBCOMMITTEES ON CIVIL SERVICE AND AGENCY ORGANIZATION
AND CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

COMMITTEE ON GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

PERSONNEL ISSUES AFFECTING LAW ENFORCEMENT EMPLOYEES OF THE FEDERAL GOVERNMENT

PRESENTED BY

T.J. BONNER
NATIONAL PRESIDENT

JULY 23, 2003

On behalf of the 9,000 front-line law enforcement officers represented by the National Border Patrol Council, thank you for this opportunity to present our views concerning issues that affect every aspect of our working lives. I'm confident that the overwhelming majority of Americans share an interest in making these difficult and dangerous jobs as attractive as possible in order to recruit and retain the best and brightest to enforce our nation's laws, helping to ensure our continued liberty.

During the past several years, the discussion concerning the best ways to achieve this goal has intensified, and a number of ideas have been proposed. Some of them would be helpful, while others would not. I will attempt to briefly outline what front-line employees believe will and will not work.

In contemplating changes to the pay and personnel laws, rules and regulations that affect federal law enforcement employees, several principles must be strictly followed in order to attract and retain the best and the brightest: First, employees must be treated fairly and equitably. Second, their wisdom and experience must be valued, solicited, and heeded. Finally, they must be adequately and equitably compensated for the essential services that they provide.

Although it might seem that common-sense would dictate adherence to these principles, the fact that many of the more popular options currently under consideration fail to follow them demonstrates that this is not the case. In fact, most of the ideas being advanced under the rubric of "personnel flexibilities," supposedly designed to attract the best and the brightest, will in fact have the opposite result because they violate these fundamental principles.

The following examples of existing and proposed personnel policies and practices that stray from these principles serve as negative models. If we are truly interested in attracting and retaining high-quality employees, perpetuating or repeating these mistakes should be avoided at all costs.

Depriving employees of a meaningful voice and input into their conditions of employment by limiting or eliminating their collective bargaining rights ignores the wealth of knowledge and experience

that they possess, and conveys the clear message that no one is interested in their opinion about how to effectively accomplish the mission of the agency. Given the fact that these front-line employees are in the best position to know what is required to attain this goal, it is incredibly arrogant to ignore this invaluable resource. The current collective bargaining exclusions on national security grounds found in our federal labor relations laws are a vestige of the McCarthy era, and have no legitimate place in an enlightened society. Federal employees cannot strike, nor can they bargain over wages or benefits. Thus, the only topics left on the bargaining table are working conditions. Denying employees a meaningful voice in these matters is foolish and counter-productive, and results in poor morale, as well as ill-advised policies generated by managers far removed from the front lines.

Grievance and appeals processes that fail to provide for review of management decisions by independent neutrals only exacerbate inequities and demoralize the workforce, encouraging good workers to seek employment elsewhere. Employees are not willing to serve their entire career under the threat of being fired without cause at the whim of a manager or political appointee, nor are they willing to work under a system that denies them the basic right to contest such actions in a fair forum.

Pay banding systems that do not have fair and easily-understood rules incorporating the principle of equal pay for substantially equal work create inequities that are extremely damaging to morale and the spirit of teamwork that is essential in law enforcement.

So-called "pay for performance," which is actually pay based upon favoritism, suffers from the same flaws and yields the same disastrous results. Any legitimate performance management system must recognize that it is difficult, if not impossible, to accurately measure many aspects of the missions of law enforcement agencies, such as deterrence, and that performance in other aspects, such as apprehensions and seizures, is often more a function of being in the right place at the right time than of skill or effort.

Pay systems that deny employees time-and-a-half compensation for their overtime work, such

as the Law Enforcement Officers Availability Pay Act of 1994, are a prime source of dissatisfaction and cause good employees to seek jobs with other agencies.

To the extent that the foregoing common-sense principles are not followed, a steep price is paid. It becomes increasingly difficult to recruit and retain high-quality employees. The relative ease of recruiting in an economic slump should not deceive anyone into believing that this meets our goal of attracting highly-qualified law enforcement officers who will remain in the service of our nation for 20 to 30 years. Hiring desperate people who are looking to make ends meet until they can find a career that genuinely interests them serves neither the employees nor the public well.

Federal law enforcement agencies are in the midst of a human capital crisis. Employees are voting with their feet in record numbers, and there is great cause for alarm. Last fiscal year, one out of every five Border Patrol Agents left the agency for one reason or another. Although the number has decreased slightly this year, it is still unacceptably high, especially considering that the cost of recruiting and training a new employee exceeds $100,000.00.

There are four major reasons that employees are abandoning careers in federal law enforcement: lack of job satisfaction, low pay compared to that of other law enforcement officers performing similar tasks, lack of upward and lateral mobility, and poor working conditions. Unless all of these issues are addressed simultaneously, attrition will remain unacceptably high.

Front-line employees recognize that the current system is far from perfect, and is in need of reform. They are also wise enough to know that it could easily be made worse, and therefore do not embrace change for the sake of change. They understand that in order to effectuate positive change, reform needs to be accomplished in accordance with the principles outlined herein.

The current compensation system falsely assumes that a single rate of pay for the same occupation is equitable and will allow employees to maintain more or less the same standard of living regardless of where they work. Of course, this is simply not true. As we all know, the cost of living is substantially higher in certain parts of the country than in others. With State and local law enforcement agencies in these high cost-of-living areas offering much higher salaries, it is nearly impossible to compete with them to attract and retain talented law enforcement officers. The law enforcement grapevine is very sophisticated, and employees are very much aware of the earnings of officers in other agencies.

While it may save a few dollars in the short-term, creating artificial distinctions to deny law enforcement retirement coverage to certain classes of employees, such as legacy Immigration and Customs Inspectors, is a foolish strategy that actually costs taxpayers more in the long-term, and more importantly hampers our ability to attract the high-quality employees that are necessary to get the job done properly.

In order to convince people to choose a career in federal law enforcement, they need to be provided with challenging and financially rewarding career opportunities. The Immigration and Naturalization Service hired most of its criminal investigators straight out of college rather than offering those choice, higher-paying positions to their experienced Border Patrol Agents and Immigration Inspectors. Unfortunately, very little has changed for these employees now that they report to the new Department of Homeland Security.

In sum, any changes to personnel laws, rules and regulations must be viewed through the prism of the common-sense principles outlined herein, and must recognize that the goal of a first-class workforce cannot be achieved if workers are treated in a second-class manner.

Mrs. DAVIS OF VIRGINIA. And thank you to all of our guests today for being so patient with us. And they are telling us we may have a vote here in the next 15 minutes or so, so we will have to see what happens.

I would like to yield now to Mr. Souder.

Mr. SOUDER. Just a couple of brief things.

First, I want to thank, Mr. Cannon, the FOP, for your letter in our efforts on trying to stop this back-door legalization of marijuana. We have that; that will be one of not the immediate next series but the next series after that of votes, and hopefully we will prevail, thanks a lot to your help, the narcotics officers of the United States, and others who are standing firm as people try to weaken the laws and increase the terror in our streets.

And we want to thank all of your agencies, because you are front line in our defense. Diana Dean and the great Customs Inspectors; the people in the Border Patrol are out there, relatively boring job much of the time, watching for people coming across illegally and the drug runs that come sometimes. There was one done by cells with seven SUVs tearing in, planning to shoot their way through. To argue INS agents, who are immigration authorities, trying to check for the illegal people coming through, never knowing increasingly in this day and age if they are al Qaeda or just a random poor person trying to find a job, there is a big difference in that risk. Much like a police officer going to a domestic disturbance, when you go in there and then they are fleeing, you don't know whether they have a gun, a knife, or what exactly you are dealing with, whether they are on drugs or alcohol. And the risk that everybody takes is very much appreciated by all of us.

Mr. Gallo's testimony jogged me. First, I want to thank you for, in particular, acknowledging my colleague's graduation from the premier university of the United States, Notre Dame, that—there aren't too many of us Nomers here, but we are a stick-together type. But you triggered a question in my mind, and I thought it was a very interesting layout of the history as we have tried to work through this.

In locality pay, does locality pay, I presume, get counted into the retirement base?

Mr. GALLO. Yes, it does, sir.

Mr. SOUDER. Because one of the problems I potentially see in moving this, because I thought it was really good in reading through your full testimony about what we run into in trying to pass this, and whether people would move from other places—particularly to use the word "veteran," people in the agencies would move to places of high locality pay. Therefore, the 18 areas not covered were concerned about the locality pay and losing their senior people. And that is, is that locality is pay to really address what you are dealing with in trying to come up with housing and costs when you are moving into an area. But if it was really just locality pay, nobody would transfer over just to get the pay.

Mr. GALLO. That's correct.

Mr. SOUDER. So it's retirement, because it's based on the previous, if you're in the old system, what, top 3 years? That if even if the locality pay merely was to equalize, it really wouldn't be equal because your retirement would go up.

Mr. GALLO. That's correct.

Mr. SOUDER. So in trying to figure out how to work this, that may be—have you addressed that before? Should locality pay not count in the retirement and, rather, have a base that is based on your senior level of activity and locality pay is pulled out of that retirement system? Or would you not adjust the locality pay quite as much because it is going to help you in retirement? Because that is not a locality adjustment, then, if there is an incentive to move to another area.

Mr. GALLO. Sir, in order to get that locality pay or the little bit extra, right now the RUS pay district is at 9 percent.

Mr. SOUDER. Let me first acknowledge that it is way off now. That is not the current, currently. But if we try to adjust it, should that be calculated in the adjustment if we try to legitimately? Because you could see from the salary differences, I mean, some areas are 78,000 for local police officers and others were 40-something.

So, in the current system it is totally broken. But as we look to revise it and if we were actually looking to make the playing field level, how do we calculate that retirement?

Mr. GALLO. That is one of the reasons why all the districts were included, so it wouldn't be such a huge disparity between the RUS and the San Francisco and the New York. We cut down some of those areas and we raised the RUS a little bit so the disparity wouldn't be as pronounced.

But there is a big issue in reference to that, Congressman, in reference to Alaska and Hawaii, because they are going to get a 25 percent COLA. They don't get any locality pay; they get a 25 percent cost-of-living adjustment, and it doesn't count at all toward your retirement. And the Congressmen from Hawaii and the Senators from Hawaii have pointed out that a lot of their 48-year-of-age agents, because we get to retire at 50 years of age or 20 years in, are transferring to Los Angeles for their last 3 years, because the 17 percent locality pay in Los Angeles counts toward your retirement but your 25 percent COLA in Hawaii does not. And that's something that I guess we all have to look at in markup, to maybe make it a dollar-for-dollar conversion that the COLA would count. Because, again, if you raise Los Angeles up another—I think both bills have them going up more or less to 10 percent. Instead of being 17, it will be near 27 under Congressman Rogers' bill and Congressman King's bill. A 27 percent difference between Honolulu and L.A. may trigger a one-way ticket to the mainland for your last 3 years. And here you are with your 20 years of service or your 25 years of service, entering your last 3, and the citizens of Honolulu are deprived of your services, and in fact you are replaced with somebody else who is less senior, actually.

So that may be something for markup, sir, definitely.

Mr. SOUDER. Thank you.

Mrs. DAVIS OF VIRGINIA. Thank you, sir.

Representative Van Hollen was supposed to be one of our witnesses for our first panel and wasn't able to be here. So I am going to go to him now, and I am going to give you time to do your opening statement and then ask questions.

STATEMENT OF HON. CHRIS VAN HOLLEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. VAN HOLLEN. Thank you very much, Madam Chairwoman. And thank you, Chairman Souder, as well. And thank all the witnesses for your testimony.

And, Madam Chairwoman, I will be brief if I could just include my full statement in the record. And I appreciate the opportunity to testify on this legislation, H.R. 2276, the National Institutes of Health security bill. And I want to commend both Chairwoman Davis and Chairman Souder for taking the initiative on this whole set of Federal law enforcement legislation, and thank you for including this among them.

And I also want to thank the chairman and ranking member of the full committee for being cosponsors of this legislation and the chairman and ranking member of the Civil Service Subcommittee for their cosponsorship. I appreciate this being a bipartisan effort.

There is a heightened need to enact this bill dealing with NIH because of the nature of—the sensitive nature of the work done at NIH makes it a potential target for terrorist activities in this post-September 11 environment.

As the country's premier biomedical research facility, NIH is soon going to become the home, or is expected to be the home of the BioShield initiative. And this Congress just passed the BioShield legislation recently out of the House on a bipartisan basis.

In response to September 11, 2001, the Congress increased the authorized size of the NIH police force from 64 officers to 85 officers. Unfortunately, that force has never come close to reaching that level of manpower.

And it's due to the current pay system and the retirement system and this bill is designed to address those shortcomings. The NIH Police are one of the lowest paid in the Washington metropolitan area. Making matters worse, they are not classified as Federal law enforcement officers and thereby they are denied the retirement benefits and the distinction that affords to others. The result has been a very low retention rate for officers and difficulty with recruitment. Even if you exclude retirement, there's been a 77 percent annual attrition rate at NIH. And as a result of staffing shortages, valuable investments have been lost. For example, NIH was forced to spend almost $2 million in overtime costs in fiscal year 2002.

In addition, every time a police officer leaves NIH, we lose the investment that we have made in training that officer. Again, for example, NIH spent over $200,000 training the 20 officers that left in fiscal year 2002. Thirty-four officers have left since September 11, 2001 for better pay and benefits elsewhere.

Let me just give you very few examples of the other consequences of the understaffing. There has been an inability to fill the specialty units such as the HAZMAT response, which is critical for responding to possible biological chemical and radioactive terrorist attacks. There has been an inability to provide routine and specialty training, which includes learning to respond to terrorist attacks or threats. When under high alert levels, NIH officers—under the protocol, they are required to assume additional responsibilities which they are unable to meet. They have been unable to

patrol off-campus facilities even though that's required when you go to the higher levels. They have been forced to work 14-hour days, 6 to 7 days a week just to meet the minimal law enforcement and security responsibilities.

Those are some of the problems that have been associated with the current system. This legislation would change that by elevating their status, putting them on a status similar to other Federal law enforcement agents. It also provides some change in their jurisdiction. Right now, they're not allowed to go off NIH campus and do not have any kind of arrest authority even at their annexes or facilities that are off the main campus. In Bethesda, this legislation would expand that jurisdiction. So it tries to address a number of issues that I think are important. These are important issues for security before September 11. They become even more important since September 11, particularly given the sensitive nature of work that's going on at NIH in the proposed new location of the biomedical—excuse me, the biodefense lab at that particular site, which I have other concerns with, but certainly that is the expected home of that lab at this time.

So I thank you for the opportunity to testify, and I hope that we can include this in the final package that this committee reports. Thank you.

[The prepared statement of Hon. Chris Van Hollen follows:]

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EDUCATION AND THE WORKFORCE

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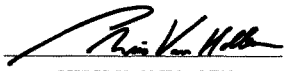

CHRIS VAN HOLLEN
MEMBER OF CONGRESS

TESTIMONY BEFORE THE CIVIL SERVICE SUBCOMMITTEE

STATEMENT SUBMITTED FOR THE RECORD

H.R. 2276, NIH SECURITY BILL

JULY 23, 2003

Madam Chairwoman, I appreciate having this opportunity to testify in behalf of H.R. 2276, The NIH Security Act, which I introduced on May 22, 2003. Passage of this bill is essential as we face the reality that we will live under a long-term heightened terrorist threat.

H.R. 2276 was introduced with 12 Original Cosponsors. I am honored that the Chairmen and Ranking Members of the Full Government Reform Committee and the Civil Service Subcommittee are among them. Thank you, Chairwoman Davis, for your support.

NIH, with its satellite facilities, consists of 27 Institutes and Centers, and more than 28,000 employees. There are approximately 3,000 research laboratories, a hospital/clinical center that will exceed 3 million square feet when completed, many animal research and holding facilities, a 300-acre main campus, a 500-acre animal research complex, a 500-acre environmental health research campus, a 70-acre cancer research campus, a 33-acre infectious disease research campus, radiation safety storage facilities, a computer support center (a critical infrastructure of the Federal Government), child care centers, a world-renowned national medical research library, banks, credit unions, pharmacies, a central warehouse and mail distribution center, power plant, motor-pool, cafeterias/snack bars, fitness centers, as well as a variety of other supporting commercial, industrial, and administrative operations encompassing both on and off main campus locations.

There is a heightened need to enact this bill because NIH, due to the sensitive nature of its work, could be a potential target for terrorists. As the country's premier biomedical research facility, NIH will soon be home to Project BioShield, a new Homeland Security initiative recently passed by the House to produce vaccines and treatments to protect Americans against biomedical and chemical weapons.

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In response to the attacks of September 11, Congress increased the authorized size of the NIH police force from 64 officers to 85. Unfortunately, the force has never come close to reaching those numbers due to the current pay and retirement system.

NIH police are one of the lowest paid in the Washington metropolitan area. Making matters worse, NIH police are not classified as Federal ``law enforcement officers," and are thereby denied the superior retirement benefits that distinction affords. The result is a very low retention rate for officers and difficulty with recruitment. Even excluding retirements, there exists a 77 percent annual attrition rate at NIH.

Severe staffing shortages cost NIH valuable dollars and human resources. For example, NIH was forced to spend $1.9 million in overtime costs in FY 2002. In addition, every time a police officer leaves the NIH, the agency loses thousands of dollars of investment in training. For example, NIH spent over $200,000 training the 20 officers that left in FY 2002 (34 officers have left since 9/11) for better pay and benefits. Therefore, NIH is not receiving the benefit of this investment.

Understaffing of officers -- sixty, as of last March -- has resulted in:

- delays in responding to routine calls such as traffic problems, suspicious persons;
- the inability to fill specialty units such as Hazmat Response, critical for responding to possible biological, chemical, and radioactive terrorist attacks;
- the inability to provide routine and specialty training, which includes learning to respond to terrorist threats/attacks, special weapons and tactics training, weapons of mass destruction training.

Under High Level Alerts, NIH Police Officers:

- are unable to patrol off-campus facilities, even though required under these levels;
- are forced to work 12-14 hours a day, six to seven days a week just to meet the minimal law enforcement and security responsibilities associated with the level of terrorist threat;
- experience sleep deprivation, increased illness and injuries, heightened stress, and family/personal problems which adversely effect morale, alertness, and response times;
- are unable to provide the necessary units to perform routine duties as patrolling the campus, enforcing traffic, and responding to standard calls; and
- are unable to staff special response units that would be necessary to deter and/or repel a terrorist attack on NIH facilities.

Jurisdictional restrictions placed on the NIH Police render the force unable to provide full law enforcement services to off-campus facilities, including the inability to fully investigate crimes or serve warrants. The current NIH Police jurisdiction stems from a delegation of authority from the General Services Administration, and is limited basically to the main campus in Bethesda. The only available coverage for the numerous NIH leased facilities in Montgomery County, MD, and the major NIH complexes in Hamilton, MT, New Iberia, LA, and Research Triangle Park, NC, is a

combination of armed and unarmed guards, and local law enforcement agencies. As with the main campus, these facilities have very specialized policing needs. The disparity of police service provided is severe, and as a result, thousands of NIH employees, numerous NIH Bio-safety Level (BSL) 3 labs containing select agents and radioactive material and equipment, and animal care facilities in the off-campus locations are placed at greater risk. Without the full jurisdiction as provided for in the legislative proposal, the NIH Police:

- are hindered when investigating crimes and threats against NIH personnel and facilities, causing local law enforcement (who have their own priorities) to attempt to handle NIH criminal matters;
- are unable to staff the Rocky Mountain laboratory facility in Montana and other off-campus facilities; and
- are unable to provide executive protection for the Director of NIH and other high-level officials during heightened terrorist alerts.

In closing, increasing security demands at NIH require upgrading the status of the NIH police force, to discourage attrition and encourage new hiring. I urge this Subcommittee and the full Government Reform Committee to give swift and complete consideration to H.R. 2276. In these times of heightened security concerns, we need to enact the NIH Security Act into law.

Thank you, Chairwoman Davis.

Mrs. DAVIS OF VIRGINIA. Thank you, Mr. Van Hollen, you are welcome to ask questions of the panelists.

Mr. VAN HOLLEN. I have no questions at this time.

Mrs. DAVIS OF VIRGINIA. Mr. Souder, do you have any others?

Mrs. DAVIS OF VIRGINIA. Then you get me. This is for the FBI Agents Association. My subcommittee staff, on their trip out West, heard some very compelling stories as we heard from Representative Mike Rogers earlier about the high cost of living areas, and their inability to buy homes, and as you heard him testify, you know having to put their house payments on hold and different things. What has been your experience in working with the FBI on issues involving employee pay?

Ms. SAVAGE. The most critical issue we're facing right now is the disparity in law enforcement pay and FBI agent pay around the country in high-cost living areas. Just overwhelmingly the agents that are assigned in some of these high cost of living areas, especially at the more inexperienced levels because their pay is lower, are scratching and clawing to get out of those areas by any way they can. They are trying to transfer through specialty transfers to hardship areas where they didn't have a chance to move to more desirable locations because they cannot meet their basic family needs. They are going into debt and unable to pay for retirement, unable to become property owners of any sort, unable to adequately pay for their families basic expenses. Like I said, when they have to go on—I worked with an agent who had to go on public assistance just to feed his family. They are having to go into military housing and happy to do so, but it's got to be a temporary-type move.

Mrs. DAVIS OF VIRGINIA. How often do you think this happens? Is it on a regular basis?

Ms. SAVAGE. Concentrated in a number of cities, New York, San Francisco is probably the most extreme right now because their cost of living is probably the highest in the Nation or one of the highest in the Nation. We have, you know, obviously significant criminal impact in New York, San Francisco, LA and those are probably the very worst, although there are others in significant need.

We face a huge anomaly because of the wage-base system that is currently in effect for general schedules. Basically, the Office of Personnel Management does studies periodically and probably not often enough, and they take a look at what wages are paid to an individual in a comparable occupation. Well, it's got a bifurcated problem, part of the problem they are comparing an FBI agent with advanced degrees and specialized skills with that of a deputy sheriff. And not that we don't appreciate and understand local law enforcement, but the type of skill level and education level, there is usually a tremendous disparity and that doesn't work. And also we hire as well as most Federal law enforcement, we hire on a national basis. We hire our agents. We send them to a training academy for 16 weeks, and then we may hire someone from Omaha, and we air drop them into San Francisco, where they have no real say in the matter.

So they're coming in from one area and then being transferred into another where they stay and be assigned for a significant

length of time until they can get their way out of there. Increasingly, even though they love the work, have high morale and love being an FBI agent, that's not the issue. They're going broke, and they're trying to find any way out of there. So those officers are increasingly inexperienced, even when we have an inexperienced work force in Federal law enforcement some of these critical offices have an even—they have an even less of an experienced work force than anywhere else. And they're trying to get into other areas that based on the wage-base system—you know, our highest-paid agents just about in the country are in Houston. And some of the other areas that they're trying to get to, their basic standard of living can be much much higher because dollars only mean what goods and services they can buy. And in San Francisco, increasingly, the other area I mentioned San Francisco, New York, LA and those other cities I have left off, but an increasing problem is Washington, DC. And it just exploding in costs and it's very, very important for us to be able to attract our more senior and experienced agents into the Washington, DC, headquarters arena.

Mrs. DAVIS OF VIRGINIA. When you say Washington, DC, are you meaning Washington, DC?

Ms. SAVAGE. The whole metropolitan—the commuting area where they can afford to buy is far out in Maryland, far out in Virginia.

Mrs. DAVIS OF VIRGINIA. Representative Rogers made a comment about someone from Quantico. Is Quantico based on D.C. cost of living?

Ms. SAVAGE. All included in the same metropolitan statistical area. Because they want to look at what is the commuting range, they just can't base it on what it may cost for someone to live at 10 and Pennsylvania Avenue because there's no housing there. They have to come and work there so they may have to live in Fredericksburg or far out in Maryland and they're having a longer and longer commute, maybe 1½ hours each way to get in here, but you still have to look at what their cost of living and even the OPM system how it works now based on wage rates, it's based on—that metropolitan statistical area is based on commuting rates because they recognize that. So that's why I say someone assigned to Washington and that's one of the major problems we have, because there's no incentive. They're going to put their family through tremendous financial hardship in order to raise their hand and be a law enforcement leader. And that we need not only good agents but we tremendously need the best and the brightest within our organizations to step up into leadership positions. And those leadership positions require that the individuals be well rounded and have experience not only in the field but they have to have experience at our headquarters and inside the Beltway to understand how government works and how they can more effectively go out and help their field office.

Mrs. DAVIS OF VIRGINIA. My time is up. Mark, do you have anything else?

I have one here that I am supposed to ask—never mind that was for the other panel.

Bear with me, I am going to recognize our ranking member on the Civil Service Subcommittee, Mr. Danny Davis, and see if he has an opening statement. Any comment?

Well, I would like to thank you all for being here. We may have questions as time goes along and thank you so much for your patience and we actually made it without having to make you wait again. But thank you again for coming and appreciate it and hope we can work with each and every one to try and get something passed in the near future to do something to correct the disparities and the inequities that we have with our law enforcement personnel. Thank you all for coming.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Danny K. Davis and additional information submitted for the hearing record follow:]

**STATEMENT OF THE HONORABLE DANNY K. DAVIS
AT THE SUBCOMMITTEE ON CIVIL SERVICE
AND AGENCY ORGANIZATION
HEARING ON**

**Federal Law Enforcement Personnel in the Post 9/11 Era:
How Can We Fix An Imbalanced Compensation System.**

Wednesday, July 23, 2003

Chairman Davis, federal officers, in varying degrees and capacities, uphold the Constitution and protect the public welfare. Over the years, however, there has been much debate and controversy, with no permanent resolution, on which types of federal employees should be classified as "law enforcement officers," and as such, should receive enhanced pay and retirement benefits.

In 1988, the Anti-Drug Abuse Act established the National Advisory Commission on Law Enforcement (the Commission) which studied the pay, benefits, and other issues related to the recruitment and retention of employees defined as "law enforcement" under federal retirement laws. The Commission's report, which was released in April 1990, made several recommendations for interim pay enhancements for law enforcement officers and suggested that the Office of Personnel Management (OPM) conduct a further study on the need for a new pay system for federal law enforcement.

The Commission's report did note, however, that the statue defining "federal law enforcement officer" was broad, encompassing both traditional positions within the field and less traditional positions not generally considered part of the law enforcement community.

As recommended by the Commission, Congress enacted the Federal Employees Pay and Comparability Act of 1990 (FEPCA), which enhanced law enforcement pay and

directed OPM to conduct a study of the pay and job evaluation for federal law enforcement officers. OPM, along with a 45-member advisory committee drawn from law enforcement agencies and employee groups, produced in September 1993 a report entitled, "A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers. Two months later, the Subcommittee on Post Office and Civil Service held a Subcommittee hearing on the report and its findings.

At that hearing, Ms. Barbara Fiss, who testified on behalf of OPM stated, "OPM determined at the outset that the definition of law enforcement officer used in the FEPCA provisions, based on retirement law, needed to be examined because it covers employees whose primary duties included such diverse jobs as health care, accounting, and cooking; but excluded employees whose primary duties include maintaining law and order and protecting, property and the civil rights of individuals. OPM's fact-finding visits confirmed OPM's belief that the coverage issue had to be reconciled."

In a hearing this Subcommittee held on this same subject in 1999, OPM said much the same thing. William Flynn, at that time Associate Director for Retirement and Insurance at OPM, testified at the hearing that, "We believe that to simply consider whether to add certain specified groups to coverage under the existing provisions is much too limited an inquiry. Instead, it is time to reexamine the program and its history. We must first determine what human resources management needs should be addressed. Then, we must analyze how those needs can best be addressed in a cost-effective manner that is fair to both employees and the taxpayers."

This subcommittee is again holding a hearing on the classification and pay of federal law enforcement officers with no comprehensive solution to the problem.

Determining the definition of a federal law enforcement officer is clearly a very complex and controversial issue. This hearing is an opportunity for us to revisit this issue and find permanent solutions to concerns that have been raised in the past and that are still lingering today.

"Federal Law Enforcement Personnel in the Post 9/11 Era: How Can We Fix an Imbalanced Compensation System?"

OPM's Responses to Follow-up Questions from the House Subcommittee on Civil Service and Agency Organization

Question: I understand that OPM has traditionally insisted that pay enhancements should be used to compensate for the hazards employees face and that special retirement benefits should not be used for that purpose, but rather to encourage earlier retirements, which in turn benefits the organization by ensuring a young and vigorous workforce. If this is still the case, please explain your thinking in this area.

Answer: There are various forms and degrees of hazard encountered by different employee groups. Because of these variations, OPM has consistently stated that the best way to compensate employees for hazards encountered in employment is through the pay-setting process. The legislative history on law enforcement retirement benefits clearly indicates that law enforcement retirement benefits were intended to be a workforce management tool to maintain a young and vigorous workforce through youthful career entry, continuous service, and early separation. Several provisions in the law work in combination to accomplish these goals. These provisions include the authority for agency heads to set a maximum entry age (typically 37) for law enforcement officers (LEOs), early retirement with an enhanced annuity computation, and a mandatory separation age (typically 57). The enhanced annuity formula, which consists of a higher per year accrual rate than applies to regular employees, was added to the law in 1974 to enable application of a mandatory retirement requirement without economic hardship to affected individuals.

If the statutory scheme (i.e., maximum entry age, early retirement with an enhanced annuity, and mandatory separation) is altered, this raises the issue of whether the LEO early/enhanced retirement program is serving as a workforce management tool or merely as a reward for certain types of work. If, for example, LEOs are expected to enter employment beyond 37, to work longer, or are not subject to early retirement or mandatory separation, it becomes increasingly difficult to explain an enhanced formula designed to compensate an employee for a shortened career. Rather, it becomes a reward for certain types of work. Therefore, if LEO retirement benefits are to be retained as a viable program, the goal of the program must remain the management of law enforcement workforces for the benefit of the Government.

Question: You have stated that the purpose of law enforcement retirement is the maintenance of a "young and vigorous" workforce. Does the statutory scheme of maximum entry age, mandatory retirement, and early retirement actually create a young and vigorous law enforcement workforce?

Answer: Yes. The retirement section of OPM's June 30 report to Congress (Appendix I) contains a statistical analysis of selected employee groups with and without LEO retirement coverage. The statistical analysis indicates that groups with LEO retirement coverage are, on average, younger than groups without LEO retirement coverage. OPM's analysis indicates that 75 percent of selected employee groups with LEO coverage are younger than 45, while only 57 percent of the selected employee groups without LEO coverage are under age 45.

Question: We have a continuing problem, as you know, with piecemeal solutions to Government-wide issues. If Congress were to require from OPM a report with options and recommendations for a comprehensive solution to the current pay and benefits disparities of law enforcement personnel across Government, could you do it and do you think that would be helpful?

Answer: Your interest in options for a comprehensive solution to the current pay and benefits disparities applicable to Federal law enforcement personnel coincides with OPM's current joint responsibility with the Department of Homeland Security (DHS) to develop a new pay system that will cover many LEOs. Section 881 of the Homeland Security Act of 2002 (Public Law 107-296, November 25, 2002) required that the Secretary of Homeland Security, in consultation with the Director of OPM, submit a plan to Congress for ensuring the elimination, to the maximum extent practicable, of unwarranted disparities in the pay and benefits of employees being transferred to DHS. In response to this requirement, DHS submitted a report to Congress on March 5, 2003, providing information on possible disparities warranting further review.

That report pointed out that the issue of pay and benefits disparities is integral to the design and establishment of a new Human Resources Management (HRM) system for DHS employees, as authorized under 5 U.S.C. 9701 (enacted by Section 841(a)(2) of the Homeland Security Act). The report further stated that it would be premature to make recommendations regarding the resolution of possible disparities, since DHS and OPM intend to propose new HRM systems for DHS later this year, after collaboration with key stakeholders, including employee representatives.

DHS and OPM have established a DHS Human Resources Systems Design Team, which is composed of DHS managers and employees, human resources experts from DHS and OPM, and Federal employee union representatives. The Design Team was charged with developing a wide range of options for new human resources systems in the areas of basic pay, classification, performance management, disciplinary actions and appeals, and labor relations. In October 2003, the design team presented 52 options for new human resources system to the DHS Human Resources Management Senior Review Committee in a meeting that was open to the public. The Secretary of Homeland Security and the Director of OPM will make a decision on the human resources systems that should be implemented within DHS. The DHS/OPM proposal for new human resources systems will be published in the *Federal Register* for public comment. We suggest permitting OPM time to analyze any new DHS basic pay system for its potential applicability to employees in law enforcement and related occupations outside DHS. Such a Governmentwide solution almost certainly would require legislation. OPM will work with the Office of Management and Budget to determine the Administration's position regarding any legislative proposals related to basic pay for Federal law enforcement personnel.

DHS and OPM also have charged the Design Team with developing a range of options related to premium pay and law enforcement officer retirement benefits. Since premium pay and retirement benefits cannot be modified under the administrative authority granted by the Homeland Security Act, these options may require additional legislation to be implemented. Some of these options could involve Governmentwide changes. Accordingly, DHS and OPM will work with the Office of Management and Budget to determine the Administration's position on any possible legislative proposal(s) involving premium pay and retirement benefits for Federal law enforcement personnel.

If Congress concludes that it would be useful for OPM to take a comprehensive Governmentwide look at this very complex set of issues, we believe it would be extremely important to allow sufficient time to carry out this task—at least 9 months following the issuance of final regulations to establish new HR systems for DHS. We note that OPM has already provided Congress with an extensive report on Federal law enforcement personnel, which provides information about these employees and reviews differences in their pay and benefits. This report may be helpful in analyzing proposals affecting the pay and benefits of employees in law enforcement and related occupations.

Question: Has Congressional action in this area worsened the current situation – I mean is there any valid HR reason why we should allow LEO retirement

benefits for Supreme Court police officers and Capitol Police, as we do, but not for police officers at the National Institutes of Health or for FBI police officers or for police officers who guard our military bases?

Answer: Legislation that has awarded LEO retirement benefits in a piecemeal fashion has created differences in the pay and benefits provided to various groups engaged in law enforcement. Precedential court decisions have also contributed to the differences within and among law enforcement groups. Whenever differences in pay and benefits exist within a specific group of employees, there are real and perceived inequities. If it is proposed that LEO retirement is to be extended to new groups, the proposal should take into account all groups across the Government with the goal of reducing or eliminating inequities in law enforcement retirement coverage.

LEO retirement is a Governmentwide program. Therefore, any proposed changes in the statutory LEO provisions would have to be examined for their Governmentwide effects, particularly with respect to the Federal Government's ability to compete with non-Federal employers. Attempting to address that issue by limiting a legislative proposal to a particular agency, or agencies, could establish and perpetuate disparities within the rest of the executive branch. Experience suggests that this would lead to an inevitable cycle in which agencies independently and continually seek enhanced benefits in order to compete with other Federal agencies, as opposed to non-Federal employers.

Question: If law enforcement officer benefits were to be extended to most groups in the broad law enforcement category, can OPM compute the cost? What would be the cost?

Answer: Yes, we estimate that the cost of extending law enforcement officer benefits to new groups would be at least $4.5 billion. This cost estimate is based on 1999 demographic data. If specific legislation were to be proposed in the future extending law enforcement officer benefits to new groups, OPM would, of course, provide the exact costs of that legislation to Congress, upon request.

The estimated $4.5 billion cost consists of several components. About $1.3 billion of the total cost is due to the increase in the Retirement Fund unfunded liability for past service credit, $1.2 billion for retroactive agency contributions associated with higher law enforcement contribution rates for past service credit, $57.6 million in increased annual payroll costs due to the higher special pay rates for LEOs, and $1.9 billion for future agency retirement contributions. The $57.6 million is the increased payroll cost for the first year. That amount would be adjusted in subsequent years to account for future pay adjustments. In addition, one

of the current proposals would extend LEO coverage to all employees with arrest authority who carry a gun. The Central Personnel Data File (CPDF) does not contain data based on the number of employees with arrest authority who carry a gun, so we cannot easily estimate the costs of such a proposal.

Question: What is the overall quit rate for law enforcement positions (LEO and Non-LEO with arrest authority)? How do these quit rates compare with the average Governmentwide quit rate for all occupations? Also, are exit interviews ever used as a management tool to help determine the reasons why employees are leaving their agencies?

Answer: CPDF data for FY 2001 and FY 2002 show that the two largest LEO occupations—GS-1811 criminal investigator and GS-0006 correctional officer—have average annual quit rates of less than 1 percent. The next largest LEO occupation, GS-1896 Border Patrol agent, has average annual quit rates of less then 2 percent at the journey level and above.

With respect to the major groups of non-LEOs with arrest authority, the average annual quit rates for immigration and customs inspectors are less than 2 percent, while the rates for police officers are 5-6 percent in FY 2001 and FY 2002. OPM anticipates that the quit rates for police will decline in response to the higher special rate schedules established for most police officers in early 2003. The higher special rates provided pay increases to police officers that ranged up to 20 to 25 percent, depending on grade level and location.

The quit rates for most LEOs and non-LEOs with arrest authority compare favorably to the Governmentwide average annual quit rate of about 1.7 percent in FY 2002.

An agency may use exit interviews to help determine why employees are leaving its workforce. OPM does not have information on agency exit interviews of law enforcement personnel.

Question: What is OPM doing to help recruit and retain police in the Federal Government?

Answer: In early 2003, Director Kay James approved higher special rates for General Schedule police officers throughout the country. The higher special salary rates provided pay increases that ranged up to 20 to 25 percent depending on grade level and location. In addition, the Federal Government has many other HR flexibilities available to help agencies recruit and retain police officers—e.g., recruitment, relocation, and retention bonuses; superior qualification appointments, and student loan

repayments. These HR flexibilities may be used alone or in conjunction with other HR flexibilities.

Question: Why are support staffs in prisons (i.e., cooks, plumbers, electricians, gardeners, etc.) law enforcement officers?

Answer: Prior to 1956, the Civil Service Commission interpreted the term "detention" in the enhanced benefit provisions to mean that prison guards were the only prison staff entitled to enhanced retirement benefits. In 1956, Congress expanded the enhanced benefit provisions to individuals, specifically prison support staff, who were subject to frequent and direct contact with prisoners (Public Law 84-854). A good explanation of the history and rationale for this change is contained in the July 19, 1956, report of the House Post Office and Civil Service Committee (Report No. 2796) on S. 65, which is included in OPM's June 30 report to Congress.

Question: Mr. Winstead, we've heard that buying a house in California is practically impossible for new FBI agents. Presumably, the same would be true of other new hires. Has OPM considered a way to address this problem and is there any flexibility in current law to help out new employees with the housing needs, or would we need to enact legislation for this purpose?

Answer: Legislation would be required to provide employer-assisted housing (EAH) benefits to Federal employees. However, EAH benefits are being offered by only a small number of public and private employers. The Society for Human Resource Management has reported that 6 percent of employers offer mortgage assistance to their employees, while 3 percent offer help with down payments.

The Federal Government currently offers many HR flexibilities that agencies may use to help new hires meet their financial obligations--e.g., recruitment, relocation, and retention bonuses; superior qualification appointments, and student loan repayments.

Question: The maximum entry age requirements prevent individuals over age 37 with military experience from becoming law enforcement officers. Why do the maximum entry age requirements limit the initial appointments of law enforcement officers to individuals under age 37?

Answer: Law enforcement officer retirement benefits were created as a workforce management tool for the creation of a "young and vigorous" law enforcement workforce. The age 37 maximum entry age requirement, mandatory retirement at age 57 with at least 20 years of LEO service, and the enhanced early retirement at age 50 with 20 years of law enforcement service work together to maintain a young and vigorous law enforcement workforce.

The enhanced retirement benefit was specifically established to permit an individual to retire voluntarily at an early age or at the mandatory age with a sufficient annuity to make retirement worthwhile. Increasing the maximum entry age would disrupt the effectiveness of the current statutory scheme and would make it more difficult, if not impossible, to maintain a young and vigorous law enforcement workforce because employees would have to work beyond age 57 to meet the 20-year service requirement. Further, if the mandatory retirement age of LEOs were to be increased, the enhanced retirement benefit would not be required because law enforcement personnel would be allowed to work until an age where a regular, financially viable retirement annuity would be payable.

House Civil Service and Agency Organization Subcommittee
Federal LE Personnel in the Post 9/11 Era
July 23, 2003

1) Do DHS's current flexibilities allow you to pay special allowances to new employees in areas where the cost of living is particularly high, or where housing costs have made it difficult to recruit new hires from outside the area?

Answer: We do have concerns about the negative impact on recruitment and retention caused by particularly high costs of living or housing. We believe our current flexibilities would allow us to address these issues through some form of pay or pay adjustment.

2) Instead of the current all-or-nothing LEO retirement coverage provisions, do you envision the possibility of having different levels of special benefits for law enforcement personnel, making distinctions in special retirement benefits between, say, customs inspectors and customs agents?

Answer: The Homeland Security Act did not authorize the Secretary and the Director to waive any of the statutory requirements governing law enforcement retirement coverage for DHS employees. Any significant changes involving these programs therefore would require legislation. However, we did ask the Design Team to consider the issues involving LEO retirement coverage. We anticipate that these matters will be considered by OPM, DHS, and other Administration officials to determine whether legislative proposals should be developed by this Administration in the future. I am not in a position at this time to say whether or when the Administration will submit a legislative proposal to Congress or what that proposal might consist of.

3) Customs inspectors have up to $12,500 of overtime counted included in their high-3 average salary for retirement. Do immigration inspectors receive a similar kind of retirement enhancement?

Answer: Immigration inspectors do not have any part of their overtime counted toward retirement. Customs inspectors were granted the retirement benefit as part of COPRA. This is one of the disparities in benefits we will address as part of One Face at the Border and the creation of the integrated position of CBP Officer. We did ask the Design Team to assess the retirement, benefits, and premium pay disparities. The Administration will be assessing the need for legislative proposals to address several issues, including having some amount of overtime included in pay for retirement purposes.

4) I know your design team brings together a diverse set of interests – labor union representatives, OPM HR experts and of course your DHS people. How is this process going and has the design team been able to work effectively together?

   Answer: We have been very pleased with the results of the Design Team—both the collaborative process they used and the work they produced. Their open-mindedness, wide-ranging perspectives, and dedication to a difficult task have been remarkable. We are extremely grateful for their work.

GAO Responses to Follow-up Questions from July 23, 2003, Testimony Presented at a Hearing on Federal Law Enforcement to the Committee on Government Reform, Subcommittees on Civil Service and Agency Organization and Criminal Justice, Drug Policy and Human Resources, House of Representatives

Question 1: Your recent report on federal police forces in the Washington, D.C. metro area concluded that "entry-level pay and retirement benefits varied significantly among the 13 police federal police forces as of September 30, 2002. Entry-level police officer salaries varied by more that $10,000 across the 13 police forces." Based on GAO's experience with this topic nationwide, would you say that the disparities found in the Washington area are representative of those found across the country?

GAO Response: Our review focused on selected data on pay, recruitment, and retention at 13 police forces in the Washington, D.C. metropolitan area and we did not obtain data for federal uniformed police located throughout the United States. Therefore, we cannot determine whether disparities found in the Washington, D.C. metropolitan area are representative of potential disparities throughout the country.

Question 2: The report states that "although many of the police forces reported facing recruitment difficulties, none of them used human capital recruitment flexibilities, such as recruitment bonuses and student loan repayments, in fiscal year 2002." Is it GAO's belief that there has been a failure on the part of federal agencies to effectively use existing tools to attract and retain quality public safety personnel?

GAO Response: Despite reporting recruitment difficulties, many of the forces did not make use of available human capital flexibilities such as recruitment bonuses and student loan repayments during fiscal year 2002. While we cannot determine how the use of these flexibilities would have impacted recruitment efforts during this time, many agencies may have missed opportunities to enhance recruitment efforts by making use of human capital flexibilities that were available. In our model of strategic human capital management, we have advocated the tailored use of human capital flexibilities for recruiting and retaining high-quality employees.

Question 3: The report also states that "while officials from the 13 forces reported a number of reasons that officers had separated, including to obtain better pay and/or benefits at other police forces, less overtime, and greater responsibility, we were unable to discern any clear patterns between employee turnover and pay. That is turnover varied significantly among police forces that had similar pay for entry-level officers." Can you elaborate on this conclusion?

GAO Response: As we reported, there was no clear pattern evident between employee turnover and entry-level pay and turnover rates during fiscal year 2002. For example, while some police forces with relatively highly paid entry-level officers such as the Library of Congress Police (11 percent) and the Supreme Court Police (13 percent) had relatively low turnover rates, other police forces with relatively highly paid entry-level

officers such as the U.S. Mint Police (41 percent), Bureau of Engraving and Printing Police (27 percent), and Secret Service Uniformed Division (25 percent) experienced significantly higher turnover rates. In addition, turnover varied widely among the 5 police forces with relatively lower paid entry-level officers. For example, while the Federal Protective Service (19 percent) and NIH Police (58 percent) entry-level officers both received the lowest starting pay, turnover rates differed dramatically.

Likewise, no clear pattern existed regarding turnover among police forces receiving federal law enforcement retirement benefits and those receiving traditional federal retirement benefits. For example, entry-level officers at the Library of Congress Police, U.S. Capitol Police, and Supreme Court Police all received equivalent pay in fiscal year 2002. However, the Library of Congress Police (11 percent) had a lower turnover rate than the Capitol Police (13 percent) and Supreme Court Police (16 percent), despite the fact that officers at the latter two police forces received federal law enforcement retirement benefits. Additionally, while officers at both the Park Police (19 percent) and Secret Service Uniformed Division (25 percent) received law enforcement retirement benefits, these forces experienced higher turnover rates than some forces such as the U.S. Postal Service Police (14 percent) and FBI Police (17 percent), whose officers did not receive law enforcement retirement benefits and whose entry-level officers received lower starting salaries.

U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

October 21, 2003

The Honorable Jo Ann S. Davis
Chairwoman
Subcommittee on Civil Service and
Agency Reorganization
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Madam Chair:

Enclosed please find responses to questions to posed to Deputy Assistant Attorney General Joanne W. Simms, following Ms. Simms' appearance before the Subcommittee on July 23, 2003. We hope this information is useful to you. If we may be of additional assistance in connection with this or any other matter, we trust that you will not hesitate to call upon us.

Sincerely,

William E. Moschella
Assistant Attorney General

Enclosure

cc: The Honorable Danny K. Davis
Ranking Minority Member

STATEMENT OF
JOANNE W. SIMMS
DEPUTY ASSISTANT ATTORNEY GENERAL
JUSTICE MANAGEMENT DIVISION

BEFORE THE
SUBCOMMITTEE ON CIVIL SERVICE AND AGENCY ORGANIZATION
AND THE
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES

COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

FEDERAL LAW ENFORCEMENT PERSONNEL IN THE POST 9/11 ERA

PRESENTED ON

JULY 23, 2003

QUESTIONS FOR THE RECORD

Are you aware that the sentiment exists among a significant percentage of FBI employees that salaries are too low in certain high-cost cities like L.A., San Francisco, and New York - making it very difficult for such agents to purchase a home?

Yes. This situation is particularly problematic for agents who are transferred from a low cost of living area into a major city where the cost of living is much higher. Unlike most employees who choose a geographic location and become established, adapting their lifestyles to the location, agents are periodically transferred based on the needs of law enforcement and may only have a limited choice in the transfer. Any transfer to a new location that results in less disposable income due to higher housing or other costs becomes a potential morale issue for employees.

Although since 9/11 the FBI may not have a recruiting problem, are you concerned that many agents may eventually leave the FBI since many of them are struggling to make a decent living?

Although we would be concerned if FBI agents were abandoning their jobs because they could not make a decent living, this is not the case, nor has it been the trend. FBI agents are retained in their jobs at a higher rate than nearly any other profession in the Department of Justice. Their

pay rates, supplemented by overtime, are higher than other Department administrative staff and professionals in the same location.

Are you concerned about a low morale problem in the FBI, especially in the major metropolitan areas?

We certainly would be concerned about a low morale problem; however, morale issues tend to be overcome by the challenges of an agent's job as evidenced by the great number of applicants to agent jobs, the high retention rates for these jobs, and the fact that most, when selected, spend their entire careers with the FBI. This is not to discount the aspects of the job that affect morale negatively (e.g., loss of disposable income associated with a transfer). However, these issues do not affect the high performance and dedication to duty that FBI agents demonstrate daily.

Do you think that there is a bigger morale problem amongst employees in cities with a higher cost-of-living than in cities with a low cost-of-living? If so, how can the problem be fixed?

There is anecdotal evidence that this may be true; however, as stated earlier, this is a natural reaction whenever one's disposable income is reduced due to a forced move. It can also happen, in reverse, to agents who work in a city with excellent support services for children with special needs who are then transferred to a rural location where the support services are absent. There are many factors that can affect the morale of an employee and what is a factor for one is not necessarily a factor for another. The FBI, to the best of its ability, tries to take into consideration the employee's expressed individual needs as it makes transfer decisions. There is no way to eliminate all morale concerns; however, by listening to concerns and giving employees as much say as possible in making geographic moves, negative impacts can be ameliorated.

Besides locality pay, I have heard that some local governments have considered using mortgage repayment benefits as a recruitment tool. What do you think about such a benefit, and would this be a useful recruitment tool in high-cost cities?

The FBI does not have agent recruitment issues. Morale issues are more likely to arise due to mandatory reassignments and the changes these moves can have on an agent and his/her family. Higher housing costs may be one issue, but longer commuting times, reduced access to social services, loss of an equivalent job for a transferring spouse, disruption in a child's academic life, separation from close family or friends, and the like, are all issues that might affect an agent's morale upon transfer. Mortgage repayment would not be of particular use, since every person's mortgage situation is different - some have high mortgages, others have none.

How is the LEO retirement benefit currently being used at the FBI? Is it helping the FBI to recruit and retain their employees?

The LEO retirement benefit at the FBI is the same as for most other Federal law enforcement officers. At the time of recruitment, most applicants do not ask about retirement benefits, but certainly the benefits contribute to the fact that most agents, once they get through initial training, will spend their entire career with the FBI. Therefore, it appears that LEO retirement benefits contribute toward retaining agents.

Do you think there is any inconsistencies with the current compensation system for law enforcement officers at the Department of Justice that need to be addressed? What can Congress do to assist you in removing these inconsistencies?

With the addition of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the Department, and the transfer of the Immigration and Naturalization Service to the new Department of Homeland Security, DOJ is experiencing considerably less concerns over inconsistency. Today, the law enforcement compensation system within the Department is much more uniform among our components and law enforcement workforce. However, we continue to be concerned about inconsistencies.

Answers to Submitted Questions for T.J. Bonner, National Border Patrol Council

Besides increasing locality payments, what other broad reforms would you support in order to make the border patrol a more efficient force and a more desirable place to work?

The Border Patrol, as well as the rest of the law enforcement agencies in the federal government, must recognize that if they truly want to attract and retain the best and brightest employees, they must offer them a total compensation and benefits package that exceeds those being provided by the other law enforcement agencies competing for their talents. In many geographic locations, the federal government is extremely non-competitive.

Employees must also feel valued and appreciated if the federal government expects them to serve in law enforcement occupations for an extended period of time. Meaningful employee input must be solicited and heeded in the development of policies and rules governing how the work is performed. This is not being done now, and must change.

Career paths that present employees with new challenges and reward them for their dedicated service must also be developed and implemented. The Bureau of Customs and Border Protection is one of the few law enforcement agencies in this country that does not promote its criminal investigators from within the ranks of its uniformed divisions. This not only ignores the wealth of experience and talent that these employees possess, but discourages them from remaining with the agency.

In your testimony you state that it would be Adifficult, if not impossible@ to implement a pay for performance plan for the border patrol. How would you propose to reward high-performing border patrolmen and women, and how would you promote excellence in general?

Current law provides managers with a great deal of flexibility to reward high-performing employees, including the ability to issue unlimited cash awards or time-off from duty in any amount without loss of pay or charge to leave.[1] They may also grant employees rating-based cash awards of up to 20% [2] and provide an additional, permanent salary step increase for top performers once a year.[3] Sadly, these authorities are exercised far too infrequently, primarily for budgetary reasons. This short-sighted mentality has to change if the federal government expects to attract and retain high-quality employees.

In order to promote excellence in general, it must be encouraged and rewarded at all levels of the organization. The mission of each agency must be clear and understood by all employees. Leadership must be taught to all employees from day one, and only those employees who demonstrate those

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[1] 5 U.S.C. ' 4502. (An agency may pay cash awards of up to $10,000 without approval, up to $25,000 with the approval of the Office of Personnel Management, and an unlimited amount with the approval of the President of the United States.)

[2] 5 U.S.C. ' ' 4302, 4503, 4505a; 5 C.F.R. 451.104.

[3] 5 U.S.C. ' 5336; 5 C.F.R. Part 531, Subpart E.

skills should be promoted. Everybody at all levels of the organization must be held accountable for their actions.

You mention poor working conditions as one of four reasons why employees are leaving careers in federal law enforcement. Could you describe exactly what you mean by Apoor working conditions@ and any possible remedies?

Poor working conditions in the Border Patrol take a variety of forms, including discouraging or prohibiting agents from apprehending illegal aliens (primarily by forcing them to maintain static positions and watch helplessly as illegal aliens stream by), perpetuating a culture where employee input regarding how best to accomplish the mission is not solicited or heeded, and rewarding and punishing employees based on favoritism rather than merit.

There are no simple remedies for any of these problems.

Elected officials are primarily responsible for the muddled mission of the Border Patrol, and it is unreasonable to expect bureaucrats to override these policies. Until legislators honestly confront the complex immigration issues facing our Nation and adopt laws that are fair and enforceable, it is unlikely that anything will change substantially in this regard. The frustration of dealing with this hypocritical approach will continue to drive conscientious employees away from the organization.

A major cultural upheaval will be required to transform the Border Patrol from a Agood >ol boy@ network into a high-performance organization. This will take time to fully accomplish, and must start at the highest levels and filter down in order to be effective. This new management culture would solve many of the morale problems that currently plague the organization.

In your testimony you suggest that the hiring practices at the Border Patrol lend towards the hiring of Adesperate people who are looking to make ends meet.@ Given the lucrative nature of the drug trade along the border with Mexico, do you think that the Border Patrol=s hiring practices increase the chances of hiring agents more susceptible to corruption?

The quoted statement applied to all federal law enforcement agencies, not just the Border Patrol, and was not intended to imply that corrupt individuals gravitate toward law enforcement agencies during economic slumps. Rather, it meant that a scarcity of employment opportunities in the private sector would force prospective employees into whatever job markets were hiring, and that when their preferred occupation later became available, they would abandon their stopgap employment.

In response to the stated concern, the two most important aspects of the hiring and employment processes that bear upon a candidate=s susceptibility to corruption are thorough background checks and comprehensive one-on-one field training programs. The high attrition rate of the Border Patrol, coupled with its lack of a budget for transfers, results in large numbers of new-hires being stationed together without a corresponding number of experienced agents to properly train and mentor them. This is a matter of concern, and needs to be addressed.

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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

2 October 2003

The Honorable Jo Ann Davis
Chair, Subcommittee on Civil Service &
Agency Organization
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Madam Chairwoman:

I am writing in response to your written questions submitted to the Fraternal Order of Police following the 23 July Subcommittee hearing on "Federal Law Enforcement Personnel in the Post 9/11 Era: How Can We Fix an Imbalanced Compensation System?" I would also like to thank you for the opportunity to testify at this important hearing, and to elaborate on our position with respect to Federal law enforcement pay and benefits.

Attached are our responses to the six questions you posed to our organization. I have also included two additional attachments in response to questions 2 and 4. Thank you again, and please do not hesitate to contact me, or Executive Director Jim Pasco, through our Washington office if we can be of any further assistance.

Sincerely,

Chuck Canterbury
National President

Enclosure

"FEDERAL LAW ENFORCEMENT PERSONNEL IN THE POST 9/11 ERA: HOW CAN WE FIX AN IMBALANCED COMPENSATION SYSTEM?"
Subcommittee on Civil Service and Agency Organization
July 23, 2003

Response of the National Fraternal Order of Police to Questions Submitted from Chairwoman Jo Ann Davis

Fraternal Order of Police:

1. I note that the annuity for an LEO is not only available after fewer years of service than a regular civil servant, but the monthly benefit is also larger. Does this make sense from a human resources perspective? I understand the need for an early retirement because of the physical demands of the job, but should we necessarily presume that these individuals will retire altogether? Isn't it likely that men and women retiring in their late forties to mid-fifties will assume a second career, and thus the larger LEO retire benefit is unnecessary? Wouldn't be easier to extend the LEO benefit to other officers if it were not so expensive in this respect?

As OPM testified before the Subcommittee in 1999, "the stated purpose for the special [retirement] provisions has been to make it possible for the government to maintain a young and vigorous workforce in certain occupations requiring such employees." Thus, LEO-covered positions are subject to maximum hiring ages and mandatory separation ages. These requirements help to ensure that those who wear the badge are physically capable of making an arrest or subduing a suspect.

A presumption that because law enforcement officers are eligible to retire in their forties or fifties, and are therefore likely to begin a second career while receiving their full pension benefit, is not necessarily valid. Within the Federal government, law enforcement officers who retire as such have spent twenty years or more keeping the peace and upholding the law. Their training has been geared towards acquiring and refining their knowledge of law enforcement policies and procedures. Given the maximum hiring age of 37 for Federal law enforcement officers, their opportunity to find new employment with a Federal agency would be non-existent. And with a State or local law enforcement agency, we believe the opportunities for law enforcement officers who retire at this age to find further employment in this field—and at the same pay level—would be extremely limited. For example, while the Virginia State Police does not maintain a maximum hiring age for its Troopers, it does start all new employees at the same pay rate—regardless of years of experience.

Public safety—whether on the Federal, State or local level—is a demanding and unique profession. As mentioned above, Federal law enforcement officer retirees have spent between twenty and twenty-five years keeping the peace and upholding the law; and their careers and training have been geared towards these efforts. The skills and training that a law enforcement officer receives over the course of his or her career are not easily transferable to the private sector. Similarly, the opportunities for a Federal employee

who has spent their career in a clerical, administrative or management position would be much greater because of the transferability of their skills. We believe that the different benefit computation formulas between Federal law enforcement officers and other employees reflect this fact, and therefore does make sense from a human resources perspective.

We would agree, however, that some law enforcement officers may have no alternative but to take on a second job after retirement in order to supplement their income and avoid financial hardship—particularly since they essentially cannot make withdrawals from the Thrift Savings Plan component of their retirement savings without penalty until age 59 ½. Congress recognized this fact when it enacted Public Law 99 – 350 in 1974, and increased the computation of the benefit formula to 2 ½ percent for each of the first twenty years of service, and 2 percent for each year of service thereafter. As OPM further testified in 1999, the current benefit formula was added to the law "to enable the affected individuals who were subject to mandatory retirement [at age 57] to retire without experiencing economic hardship."

Over the years, much of the discussion surrounding the extension of LEO retirement has focused on the costs of the various proposals. H.R. 2442 addresses this issue by including a provision which enables Federal agencies to spread out the cost of providing this benefit for their officers over a ten year period. The costs of the legislation would also be spread across no less than thirteen major Federal departments and agencies, and countless sub-agencies. Finally, it must also be kept in mind that any additional costs of this legislation should be compared with the amount an agency must spend to recruit, train and equip a newly hired officer. At the United States Mint, for example, the agency spends over $34,000 to recruit, equip and provide basic training to its 083 police officer candidates. Upon completion of basic training at the Federal Law Enforcement Training Center, that officer must undergo an additional five weeks of agency training under a Field Training Officer before he can be put out on the street. The estimated cost for that is an additional $7,000, for a minimum total cost of $41,000. This total does not include the additional man hours which must be spent by the individual's Field Training Officer and supervisory training officer while he or she is in a probationary status for their first 18-months of employment.

The F.O.P. believes that the focus of the discussion of LEO status should instead be shifted to the question of how, given today's need for enhanced security, can Federal agencies recruit the most qualified individuals for law enforcement work and retain their valuable services throughout their careers. Extension of LEO retirement is one such way.

2. In your testimony you cite law enforcement retirement coverage as one of the primary reasons why police officers seek employment with other agencies. Do you have any rough estimate how many officers have left because they desired law enforcement retirement benefits?

The F.O.P. does believe that the lack of law enforcement retirement coverage is one of the primary incentives for police officers and others to seek employment with other

agencies. However, it is not only the retirement benefit itself. The ability to retire after 20 years of service at 50 years of age, coupled with the pay enhancements that are available to those who meet the retirement definition, is a strong incentive for officers who wish to pursue a career in law enforcement to transfer to agencies which provide this benefit.

The F.O.P. does have a 1999 estimate for the Bureau of Engraving and Printing (BEP) Police, which is attached to the end of this document. As we noted in our testimony, in 1999, our BEP Police Labor Committee reported that in the preceding year, of sixteen officers who left the BEP force, twelve left to pursue careers with other law enforcement agencies, and eight were hired by agencies that provide LEO retirement. Moreover, the average length of service with BEP Police for these officers was less than 14 months, meaning that the Bureau expended funds to train, compensate and equip these officers for their short terms of service, and the agencies to which they transferred received a crop of fully trained and qualified law enforcement officers without spending an equal amount for new officer recruits.

As GAO concluded in its recent report on thirteen Federal police forces in the Washington, D.C. area "without surveying each of the 599 officers who voluntarily separated from their police forces in fiscal year 2002," no definitive conclusions could be drawn regarding the reasons why officers left their employing agencies. We would likewise be hesitant to provide a more comprehensive rough estimate at this time based on the numerous anecdotal accounts we have received over the years, however, we would be happy to work with the Subcommittee to compile such an estimate.

3. I appreciate your desire to see federal public safety employees treated equitably across the spectrum, and that the danger and responsibilities of their jobs be adequately compensated, both in active status and in retirement.

However, I understand concerns OPM might have about entry-level policemen, joining a force in their early twenties, being eligible for retirement in twenty years in their early forties. They probably still have many years of effective service, having gained a great deal of law enforcement experience through the years, yet still being relatively young. The LEO benefit would certainly be an incentive to retire early. Isn't there some very valid concerns, from a human resource management perspective, that we will be unnecessarily losing some important talent from our police forces if this is offered across the board?

These concerns, regarding the loss of experienced personnel if LEO retirement is offered across the board, are only valid if you discount the importance to the law enforcement mission for agencies to be able to maintain a young and vigorous workforce. An officer who joins a Federal police force at, for example, the age of 22 would not be eligible for regular retirement until age 47 at the earliest. As the officer ages into his fifties, the question becomes not whether he or she can still provide his agency with additional years of service, but what type of service will he be capable of performing.

Referring back to OPM's testimony before the Subcommittee in 1999 cited in response to Question 1, "the stated purpose for the special [retirement] provisions has been to make it possible for the government to maintain a young and vigorous workforce in certain occupations requiring such employees." At no time in our nation's history has this need been greater than it is today. Since the 9/11 terrorist attacks, the responsibilities of law enforcement at every level of government have changed dramatically. In addition to their role maintaining law and order, Federal law enforcement officers must now confront new challenges such as those posed by terrorists using chemical, biological or radiological weapons to attack our nation. These new and sometimes unforeseen hazards demand that the Federal government ensure their employees and others are protected by the most highly trained and qualified corps of law enforcement officers available. This also means that no Federal agency should be at a competitive disadvantage when it comes to the ability to recruit and retain these vital public servants.

The jobs performed by Federal public safety employees are unique compared to most occupations throughout the government. They are required to place their lives on the line each and every day to protect their fellow employees, and the visitors to their facilities. This uniqueness also means that, unlike most other positions within the Federal government, such factors as age and physical ability are extremely relevant to an employee's ability to perform his or her assigned duties. The Merit Systems Protection Board reached a similar conclusion in *Hobbs v. OPM* (1993). The Board ruled that "the legislative intent behind the preferential retirement provisions for Firefighters and Law Enforcement Officers was to provide for their early retirement based on a determination that these positions should be 'composed, insofar as possible, of young men and women physically capable of meeting the vigorous demands of the occupation which are far more taxing than most in the Federal Service.'"

The F.O.P. believes Congress recognized this concern when it included a mandatory separation age into the CSRS and FERS laws. Police and fire departments must always be prepared to meet the life and death challenges common to their work, and older officers gradually lose job essential skills, placing their lives, as well as those of their fellow employees and the general public, at risk. That is why having a young and vigorous workforce is essential to ensuring that when the need arises, every officer in a given department is ready and capable of subduing an individual resisting arrest or chasing a fleeing subject.

In 1996, Congress also addressed this issue when it enacted a permanent exemption for public safety employers from the *Age Discrimination in Employment Act* as part of the omnibus spending bill of 1996. This law allowed State and local governments to again set and enforce maximum hiring ages for new employees and a mandatory retirement age without facing individual lawsuits alleging age discrimination. The Fraternal Order of Police strongly supported the enactment of this law to ensure that public safety personnel are able to meet the physical demands of their profession. During floor consideration of a similar bill which passed the House of Representatives in 1995, then Subcommittee on Employer-Employee Relations Chairman Harris Fawell noted that "the public safety field

is one of the rare exceptions where one's age is relevant to one's ability to perform effectively as a firefighter or law enforcement officer." Rep. Major Owens also spoke on the need for mandatory hiring and maximum separation ages:

> "Age does indeed affect an individual's ability to perform the duties of a public safety officer. This is not a stereotype. This is not ageism. This is a medical fact. Physical ability declines with age. For example, aerobic capacity declines at a rate of 1 percent per year after age 30. Strength declines at a rate of 10-13 percent every decade. The risk of sudden incapacitation also clearly increases with age, increasing sixfold between the age of 40 and 60 years of age. These physical effects are not experienced by all people to the same degree or at the same precise time. But they pose a significant problem to public safety agencies in their efforts to maintain a fit and effective workforce."

Not only is an appreciation of the unique physical demands and abilities required in law enforcement work essential to understanding the need for an earlier retirement for public safety officers; but the health and physical risks associated with their particular occupation must also be taken into account. The names of over 800 Federal law enforcement officers killed in the line of duty adorn the wall at the National Law Enforcement Officers Memorial right here in our nation's capital; and it is a testament to the dangers faced by these officers on a daily basis. The unseen risks, such as the prevalence of on the job injury or disability, constant stress, and the increased risk of heart and hypertension disorders, are all factors that need to be considered when looking at the necessity for police officers and firefighters to retire earlier than other Federal employees.

One recent study, for example, found that "police officers are twice as likely as the rest of us to suffer heart attacks, strokes and other cardiovascular disease." The study, conducted by Iowa State University and published in 1998, looked at 232 retired male law enforcement officers and found that the rate of heart attacks and related conditions among these individuals was 31.5 percent, compared to 18.4 percent for the general population. When known risk factors were taken out of the equation, "working as a law enforcement officer meant a 2.34 times greater risk of disease." For the Subcommittee's information and review, we have attached an article regarding the results of this study from the *Boston Globe* and reprinted in *American Police Beat*.

4. How would you respond to the following statement from the GAO's June, 2003 report on Selected Data on Pay, recruitment, and Retention at 13 Police Forces in the Washington, D.C., Metropolitan Area for fiscal year 2002: "no clear pattern existed regarding turnover among police forces receiving federal law enforcement retirement benefits and those receiving traditional federal retirement benefits"? The GAO cites, for example, the fact the Library of Congress had a lower turnover rate than the Supreme Court Police and the Capital Police despite the fact that the latter had law enforcement retirement benefits.

The FOP has maintained that the inability of some Federal agencies to provide LEO retirement is a primary incentive for law enforcement employees to seek employment with other Federal, State or local agencies which do provide this or a similar benefit. The results of the GAO study do not undermine the validity of this conclusion. This is particularly true given the limited universe of law enforcement officers which the GAO studied, and the fact that, as GAO concluded, "without surveying each of the 599 officers who voluntarily separated from their police forces in fiscal year 2002," they could not draw any definitive conclusions about the reasons they left.

Instead, it is important to examine what the GAO did conclude. For example, GAO found that of the 729 officers who separated from the 13 Washington, D.C. area police forces, more than 300 went to TSA "where they were able to earn higher pay, federal law enforcement retirement benefits," and LEAP pay. GAO also found that "about 65 percent of the officers who voluntarily separated from the 13 police forces during Fiscal Year 2002 had fewer than 5 years of service with their respective agencies.

In addition, GAO noted that officials from four agencies which do not provide LEO retirement to their employees—BEP Police, FBI Police, FPS, and NIH Police—reported "having a great or very great deal of difficulty recruiting officers. Similarly, none of the four agencies which provide LEO retirement—Capitol Police, Supreme Court Police, Secret Service-Uniformed Division, and U.S. Park Police—reported experiencing recruitment difficulties to a very great or great extent. Of the nine agencies studied which lack LEO retirement, six reported some difficulty recruiting police officers.

We believe that the comments of the National Institutes of Health on the GAO report, provided in Appendix VI, are also very informative. NIH—which had the highest turnover rate in FY 2002 at 58 percent—reported that "this Congressional report highlights the severe difficulty that agencies, especially the NIH, are experiencing in recruiting and retaining officers due to disparities in pay and benefits, not only with outside entities but within the Federal sector itself." NIH further noted that it is not able to provide LEO retirement to their officers, despite the fact that their police spend 60 percent of their time carrying out as their primary duties the investigation, apprehension and detention of suspected or convicted criminals. In responding to the GAO claim that the FY2002 increase in turnover rates was a one time occurrence due to the staffing buildup at TSA, the agency commented that "NIH has had a long-standing problem of retaining officers because the agency does not have the statutory authority to provide competitive pay and benefits. Especially in a post September 11 world, security personnel are at a premium and competent officers will only build careers with agencies that can provide competitive pay and benefits."

5. As one of the primary reasons why you support H.R. 2442 you state that it will bring equity to the various law enforcement and police occupations. Do you feel that all of the numerous federal law enforcement jobs incur the same risks, require the same skills and training, and merit the same rewards?

Law Enforcement Officers at every rank and level of government have the same basic, core mission: to protect the public safety through enforcement of the laws, and to investigate, arrest and detain those who would violate them. This mission is not altered by geographic location, classification, or retirement status. The FOP believes that the distinctions used to separate those employees who do carry out this mission for the Federal government into categories of "LEO" or "Non-LEO" are unwarranted and outdated. Further, we believe that denying Federal law enforcement employees equal benefits based on these distinctions does not serve to advance the law enforcement mission or public safety. And, as mentioned above, we do not believe that any Federal agency should be at a competitive disadvantage with other agencies for the recruitment and retention of qualified employees because they lack the authority to provide this most basic benefit.

Therefore, we believe that the passage of H.R. 2442 will eliminate the inequitable situation created by the retirement laws between and among the law enforcement officers of the various Federal agencies. In asking Congress to pass this important legislation, we are not seeking equity in every aspect of the various law enforcement personnel systems. There are obvious differences in pay, for example, that reflect the different levels of skills and training required for an FBI Special Agent as opposed to an FBI Police Officer. Rather, what we and other supporters of this legislation are seeking is the recognition of the fact that if you wear a badge and carry a firearm, are sworn to uphold the law and arrest those who violate it, then you are a law enforcement officer regardless of whether you are a police officer, inspector or criminal investigator.

In addition, one of the most important lessons for law enforcement following the heinous terrorist attacks on our nation on 11 September 2001, was that they must be prepared—at all levels of government—to prevent, detect and respond to a wide array of threats to the public safety. No one can say with certainty how or when these individuals will strike next, nor can we divine what types of facilities or infrastructure they will target. It is this level of unpredictability that demands that all Federal law enforcement employees be prepared to meet these future threats to our safety and security.

A good example is the Pentagon Force Protection Agency (PFPA), formerly the Defense Protective Service, whose police officers do not receive LEO retirement. When American Airlines Flight 77 was flown into the Pentagon, it was the officers of the PFPA who were on the scene and were the first to respond. Prior to 9/11, however, upon completion of their basic training, these officers received only minimal in-service training—mainly in the areas of patrol and traffic control. Thus, although they may not have been trained to respond to terrorist attacks, they were expected to do so on 9/11. According to our Labor Committee Chairman at the Pentagon, since the attacks, the training of officers has been greatly improved. PFPA employees now receive daily briefings on terrorist activity, or the likelihood of terrorist activity as it relates to the Pentagon or the National Capitol Region. They have also received enhanced firearms, counterterrorism, and weapons of mass destruction training. In addition, the PFPA has teamed up with area State and local law enforcement agencies to protect the Pentagon and coordinate their response efforts.

We would also ask the Subcommittee to take into consideration the comments of a GS-083 Department of Defense Police Officer who is currently denied LEO retirement:

> "We feel we deserve the LEO pay and retirement simply because we perform the duties of a law enforcement officer. Regardless of where we work, our duties are no different then any other law enforcement/police officer in the country. We face the same dangers and challenges. OPM's definition and separation of a law enforcement officer and police officer does not make sense. They are one [and] the same, performing the same duties.
>
> "We carry a weapon, wear ballistic vests, and respond to all types of calls for service to include emergencies. We must train with and employ weapons, be prepared to respond to domestic situations, deal with dangerous personnel and be 'community oriented' social workers. Since the terrorist attacks of September 11, 2001, we are expected to know about and be prepared to respond to chemical and biological situations, deal with potential suicide terrorist and hate groups. We work 24 hours per day, 7 days per week in all types of conditions, under enormous stress and are called upon to react within seconds to potential life and death situations. Yet we are not recognized as a professional service. We are not compensated for the dangerous jobs that we do and we are told that we will have to do this job until we are in our late 50s and early 60s to collect our retirement."

6. Do you have any concerns that if H.R. 2442 is passed that it may put significant burdens on agencies' budgets and lead to RIFs?

No. As mentioned above, H.R. 2442 addresses this issue by including a provision which enables Federal agencies to spread out the cost of providing this benefit for their officers over a ten year period. The costs of the legislation would also be spread across no less than thirteen major Federal departments and agencies, and countless sub-agencies. Further, any additional costs of this legislation should be compared with the amount an agency must spend to recruit, train and equip a newly hired officer. In addition, we are unaware of any negative impact from the most recent extensions of LEO retirement to officers of the Metropolitan Washington Airport Authority (MWAA) and the United States Supreme Court Police. According to the Chairman of the F.O.P.'s Supreme Court Police Labor Committee, their agency has experienced no negative effect from the extension of LEO retirement in 2000 and, in fact, staffing has actually increased from approximately 80 to 133 officers in the past three years.

Another important point, one which is often overlooked in the debates on this issue, is the level of participation by those who would be extended LEO retirement coverage. It is our understanding that the cost estimates which have been developed on H.R. 2442 and similar legislation necessarily assume 100 percent participation by affected employees. The language of H.R. 2442 clearly states that an employee who elects to transfer to the LEO retirement system must essentially "buy back" their prior years of LEO service; that

is, for each year of creditable service, they must pay into the Civil Service Retirement and Disability Fund .5 percent of pay per year. Many officers with twenty or more years of service would face a heavy financial burden and would likely find it either impossible or otherwise unfeasible to move to the LEO system. Likewise, the cost to employees with ten or more years of service may dissuade many of them from electing coverage, and they would instead choose to stay with their current retirement system. Therefore, it is our belief that the group that would be helped the most by passage of H.R. 2442 would be those who have been employed as a law enforcement officer from one to ten years. It is this group of employees which GAO in its recent study showed as having the greatest number of separations to both TSA and to other non-TSA law enforcement positions, and that Federal agencies should already be working towards retaining their services.

BEP POLICE SERVICES DIVISION – WASHINGTON D.C. FACILITY

The following officers have left the Police Services Division from January 1, 1998 to January 1, 1999.

Officer	EOD	Separation Date	Reason for Separation	Length of Service	Ending BEP pay	Other Agency's - Starting Pay	- After 1 year
Duck, Walter	11/10/97	12/27/97	- U.S. Capitol Police	- 1 month	$29,750	$32,337*	$38,010
Richardson, Jimmy	01/29/69	01/03/98	- Retire	347 months			
Hernandez, Emilio	01/02/97	01/03/98	- FPS, Miami, FL	- 12 months	$32,603	----	
Breen, Joseph	01/02/97	04/10/98	- U.S. Capitol Police	- 15 months	$32,603	$32,337 *	$38,010
Shields, Christopher	05/12/97	04/08/98	- U.S. Capitol Police	- 11 months	$32,603	$32,337 *	$38,010
Smith, Carl	04/30/95	06/06/98	- Veterans Police	- 37 months	$35,541	-----	
Mazzella, Marc	05/05/97	06/07/98	- Arlington County Police	- 13 months	$32,603	$31,628	
Kirkpatrick, Shawn	11/03/97	07/10/98	- Delaware Deputy Sheriff	- 8 months	$29,750	-----	
Marsicano, Jon	05/05/97	08/21/98	- U.S. Capitol Police	- 15 months	$32,603	$32,337 *	$38,010
Mosley, Jon	05/06/85	08/28/98	- Resign	171 months			
Greene, Johnny	09/01/57	09/11/98	- Retire	492 months			
Roberts, Edward	01/06/97	10/24/98	- BEP Machinist	21 months	$35,541	-----	
Bachman, Jason	11/11/97	12/19/98	- U.S. Capitol Police	- 13 months	$32,603	$32,337 *	$38,010
Barnes, Brian	11/03/97	12/19/98	- U.S. Capitol Police	- 13 months	$32,603	$32,337 *	$38,010
Banks, Daryl	11/03/97	12/19/98	- U.S. Capitol Police	- 13 months	$32,603	$32,337 *	$38,010
Price, Scott	11/03/97	01/03/99	- Park Police	- 14 months	$32,603	$32,914	
					(BEP)	$29,750	$33,801

* The United States Capitol Police promotes its officers to the PFC rank after 1 year of service, which is currently $38,010, compared to the Bureau's Police one year of service pay of $33,801. The U.S. Capitol Police also gives their officers a promotion after training to a rate of $34,715.The U.S. Capitol Police journey-level tops off at $54,583, while the Bureau of Engraving and Printing Police's highest rate of pay for their journey-level is currently $41,417.

** The total cost to train a Bureau Police Officer for the 17 week training period is $14,812 ($2,147 FLETC costs plus $10,543 salary costs and $2,122 equipment costs).

Law officers face much higher risk of heart attacks, strokes

BY LARRY TYE
The Boston Globe

What a softy!!!

Police officers are twice as likely as the rest of us to suffer heart attacks, strokes and other cardiovascular disease, according to a study published today.

"Part of it is the stress of the profession," said Warren D. Franke, associate professor of health and human performance at Iowa State University and lead author of the study in a recent issue of the Journal of Occupational and Environmental Medicine.

The Iowa team zeroed in on 232 retired male highway patrol, narcotics, and other state police officers, all of whom were 55 or older. The rate of cardiovascular disease reported by those officers was compared with the rate among 817 male Iowans of the same age, few if any of whom were involved in police work.

The contrast was stark: the rate of heart attacks, strokes, and related conditions was 31.5 percent in the law enforcement group compared with 18.4 percent in the general population. It was even starker when researchers ruled out known risk factors like high cholesterol and smoking, looking solely at the effect of occupation: working as a law enforcement officer meant a 2.34 times greater risk of disease.

Regardless of who's right scientifically, politically the issue has been settled for years in Massachusetts and other states with so-called Heart Laws. Those statutes presume that when law enforcement officer suffer a heart attack, it is job-related and they qualify for job-related disability coverage.

The Iowa findings "legitimize what we've assumed for a very long time," said Sergeant Detective Margot Hill of the Boston Police Department. "You'll be riding around for four to five hours and patrolling and everything will be calm, then you'll get called for a shooting. Think of what that does to all your vital signs. It just can't get worse than that."

Chief Tom O'Loughlin of the MBTA police agreed, and said that actuarial charts show that police live about 10 years less, on average, than other public employees.

"People have this sense," he said "that police officers are supposed to have this hard outer shell, to wear superman or superwoman underalls".

"We don't. There is no hard shell, things don't bounce off from us." he said.

While most police believe they are at greater risk of heart disease, they also believe that risk can be lowered. That is why the department in Boston built an exercise center at its new headquarters and has set fitness standards for officers.

That is also why instructors like Jane Sheehan at the Boston Police Academy are incorporating stress management into their training.

"It's kind of an institutional shift in attitude" she said.

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HR 2276 IH

108th CONGRESS

1st Session

H. R. 2276

To provide for the establishment of the National Institutes of Health Police, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

May 22, 2003

Mr. VAN HOLLEN (for himself, Mr. TOM DAVIS of Virginia, Mr. WAXMAN, Mrs. JO ANN DAVIS of Virginia, Mr. DAVIS of Illinois, Ms. NORTON, Mr. WYNN, Mr. CARDIN, Ms. JACKSON-LEE of Texas, Mr. MCDERMOTT, Mr. FROST, Mr. KILDEE, and Mr. BISHOP of New York) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for the establishment of the National Institutes of Health Police, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `NIH Security Act'.

SEC. 2. NATIONAL INSTITUTES OF HEALTH POLICE.

(a) ESTABLISHMENT- The Director of the National Institutes of Health (in this section referred to as the `Director of NIH') shall establish a permanent police force, to be known as the National Institutes of Health Police (in this section referred to as the `NIH Police'), for the purpose of performing law enforcement, security, and investigative functions for property under the jurisdiction, custody, and control of or occupied by the National Institutes of Health.

(b) APPOINTMENT OF OFFICERS-

(1) IN GENERAL- The Director of NIH shall appoint a Chief, a Deputy Chief, and such other officers as may be necessary to carry out the purpose of the NIH Police.

(2) OFFICERS ABOVE MAXIMUM AGE- The Director of NIH may appoint officers of the NIH Police without regard to standard maximum limits of age prescribed under section 3307 of title 5, United States Code. Officers appointed under this paragraph--

(A) may include the Chief and Deputy Chief of the NIH Police, shall have the same authorities and powers as other officers of the NIH Police, and shall receive the same pay and benefits as other officers of the NIH Police; and

(B) shall not be treated as law enforcement officers for purposes of retirement benefits.

(c) POWERS- Each officer of the NIH Police may--

(1) carry firearms, serve warrants and subpoenas issued under the authority of the United States, and make arrests without warrant for any offense against the United States committed in the officer's presence, or for any felony cognizable under the laws of the United States, if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(2) conduct investigations within the United States and its territories for offenses that have been or may be committed on property described in paragraph (1) or (2) of subsection (d); and

(3) protect in any area of the United States or its territories the Director of NIH and other officials, as authorized by the Director of NIH.

(d) JURISDICTION- Officers of the NIH Police may exercise their powers--

(1) on all properties under the custody and control of the National Institutes of Health;

(2) on other properties occupied by the National Institutes of Health, as determined by the Director of NIH; and

(3) as authorized under paragraphs (2) and (3) of subsection (c).

(e) PAY, BENEFITS, RETIREMENT-

(1) IN GENERAL- Subject to subsection (b)(2)(B) and paragraph (2)(A) of this subsection, all officers of the NIH Police appointed under subsection (b) are law enforcement officers as that term is used in title 5, United States Code, without regard to any eligibility requirements prescribed by law, and are eligible for all pay and benefits prescribed by law for such law enforcement officers.

(2) PAY; RANKS-

(A) PAY- The officers of the NIH Police shall receive the same pay and benefits, as determined by the Director of NIH, as officers who hold comparable positions in the United States Park Police. For purposes of this subparagraph, the Chief of the NIH Police is deemed comparable to the Assistant Chief in the United States Park Police, and the Deputy Chief of the NIH Police is deemed comparable to the Deputy Chief in the United States Park Police.

(B) RANK- The Chief and Deputy Chief of the NIH Police shall have ranks not lower

than a colonel and a lieutenant colonel, respectively. Other ranks and equivalences shall be determined by the Director of NIH or the Director's designee.

END