

## **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 108<sup>th</sup> Congress for federal law enforcement personnel<sup>1</sup>, 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.

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<sup>1</sup> 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.<sup>2</sup> 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).<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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<sup>6</sup> (however, the larger salary deductions cover only a small fraction of the cost differential<sup>7</sup>). 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*.<sup>8</sup>

### **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.<sup>9</sup>

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<sup>2</sup> See Appendix A for data on compensation and retirement benefits as provided by OPM.

<sup>3</sup> The term “6(c) retirement” is a shorthand expression for 5 U.S.C. § 8336(c).

<sup>4</sup> 5 U.S.C. § 8336(c) (2001).

<sup>5</sup> 5 U.S.C. § 8412(d)(2) (2001).

<sup>6</sup> 5 U.S.C. § 8334(c); 5 U.S.C. § 8422(a)(3).

<sup>7</sup> See 5 C.F.R. § 841.413.

<sup>8</sup> 5 U.S.C. § 8331(20) (2000); *Bingaman v. Dept. of the Treasury*, 127 F. 3d 1431, 1436 (Fed. Cir. 1997).

<sup>9</sup> 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).”<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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.<sup>13</sup> 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.”<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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<sup>10</sup> Pub. L. No. 80-879, (Jul. 2, 1948).

<sup>11</sup> *Id.*

<sup>12</sup> 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.

<sup>13</sup> 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>>.

<sup>14</sup> Pub. L. No. 99-335, (Jun. 6, 1986).

<sup>15</sup> *Id.*

<sup>16</sup> *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.<sup>17</sup> A 1993 regulatory change authorized agency heads to determine position coverage, individual service credit appraisals, and individual position coverage requests for CSRS employees.<sup>18</sup>

### **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<sup>19</sup>

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[.]<sup>20</sup>

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.”<sup>21</sup>

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<sup>17</sup> Pub. L. No. 101-509, (Nov. 5, 1990).

<sup>18</sup> 5 C.F.R. § 831.903 (a), (b) (2002).

<sup>19</sup> 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).

<sup>20</sup> 5 U.S.C. § 8331(20) (2001).

<sup>21</sup> 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.”<sup>22</sup>

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.<sup>23</sup>

## **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.<sup>24</sup> 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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<sup>22</sup> 5 U.S.C. § 8401(17) (2001).

<sup>23</sup> 5 U.S.C. § 8412(d)(1) (2001).

<sup>24</sup> 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.<sup>25</sup>

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.”<sup>26</sup>

#### **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.”<sup>27</sup> 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.”<sup>28</sup>

#### **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

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<sup>25</sup> 5 C.F.R. § 1201.114(a)(1) (2002).

<sup>26</sup> 5 U.S.C. § 7703(c)(1)–(3) (2001).

<sup>27</sup> 127 F.3d 1431 (Fed.Cir.1997)

<sup>28</sup> *Id.*

had been done in the past.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

The U.S. Court of Appeals for the Federal Circuit affirmed the MSPB decision to use a “position-oriented approach” in *Watson*.<sup>32</sup> 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.<sup>33</sup>

The Court noted that the Board’s approach included consideration of both the position documentation and actual duties.<sup>34</sup> 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.<sup>35</sup>

#### **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.”<sup>36</sup>

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<sup>29</sup> 86 M.S.P.R. 318 (2000).

<sup>30</sup> *Id.* at 321.

<sup>31</sup> *Id.* at 324.

<sup>32</sup> *Watson v. Dept. of the Navy*, 262 F.3d 1292 (2001).

<sup>33</sup> *Id.* at 1300.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 1302.

<sup>36</sup> *Law Enforcement Retirement Coverage: Hearing before the Subcomm. on Civil Service of the House Comm. on Government Reform*, 106<sup>th</sup> 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.<sup>37</sup>

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.

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

**CSRS**

<i>Regular</i>	<i>LEO</i>
<b>Retirement at age:</b>	<b>Retirement at age:</b>
55 w/ 30 years	50 w/ 20 years LEO
60 w/ 20 years	
62 w/ 5 years	
<b>Annuity:</b>	<b>Annuity:</b>
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)
<b>Contribution:</b>	<b>Contribution:</b>
7% by the employee	7.5% by the employee
18% by the Government	31.5% by the Government

**FERS**

<i>Regular</i>	<i>LEO</i>
<b>Retirement at age:</b>	<b>Retirement at age:</b>
55 w/ 30 years	50 w/ 20 years LEO
60 w/ 20 years	Any age w/ 25 years LEO
62 w/ 5 years	
<b>Annuity:</b>	<b>Annuity:</b>
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)
<b>Contribution:</b>	<b>Contribution:</b>
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.<sup>38</sup>

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."<sup>39</sup> 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."<sup>40</sup> 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."<sup>41</sup>

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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<sup>38</sup> Memorandum from Sharon Gressle, Congressional Research Service (Jun. 3, 2002).

<sup>39</sup> *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).

<sup>40</sup> *Id.*

<sup>41</sup> *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.<sup>42</sup> 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)).<sup>43</sup> 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."<sup>44</sup>

### **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."<sup>45</sup>

### **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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<sup>42</sup> *Report of the National Advisory Commission on Law Enforcement*, OCG-90-2 (April 1990).

<sup>43</sup> *Id.* at 38.

<sup>44</sup> *Id.*

<sup>45</sup> *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.”<sup>46</sup>

With some changes, the immediate pay enhancements recommended by NACLE were enacted as part of the Federal Employees Pay Comparability Act of 1990 (FEPCA).<sup>47</sup> 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.”<sup>48</sup>

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<sup>49</sup>.

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<sup>46</sup> *Id.* at 18-19.

<sup>47</sup> *A Plan to Establish a New Pay and Job Evaluation System for Federal Law Enforcement Officers*, U.S. Office of Personnel Management (Sept. 1993).

<sup>48</sup> *Id.* at 1.

<sup>49</sup> *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.<sup>50</sup>

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

## 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

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<sup>50</sup> *Id.* at 6.

<sup>51</sup> *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.<sup>52</sup>

#### 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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<sup>52</sup> *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.”<sup>53</sup>

## 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.”<sup>54</sup>

## IV. Legislation Introduced in the House of Representatives During the 108<sup>th</sup> 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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<sup>53</sup> *Id.* at 14-16.

<sup>54</sup> *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.