

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
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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

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Appendix G1

STANDARD GOVERNMENTWIDE PAY AND BENEFITS PROVISIONS

Basic Pay Systems	Overtime Pay and Other Premium Pay Authorities	Other Pay Provisions	Retirement	Other Benefits
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Premium pay under 5 U.S.C. 5541-5550a • Fair Labor Standards Act as administered by OPM (5 CFR part 551) 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Civil Service Retirement System (5 U.S.C. chapter 83) • Federal Employees Retirement System (5 U.S.C. chapter 84) 	<ul style="list-style-type: none"> • 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 <i>Court Personnel System</i> – This system covers probation and pretrial services officers and assistants serving in Federal court units.	18 U.S.C. 3153 and 3672
	<i>Judiciary Salary Plan</i> – This system covers chief and deputy chief probation officers and pretrial services officers.	18 U.S.C. 3153 and 3672
	<i>Administrative Office Classification, Compensation and Recruitment Systems (AOCCRS)</i> – 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).	28 U.S.C. 602 note, Public Law 101-474
	Transportation Security Administration (TSA) Pay Plans <i>Core Compensation Plan</i> – 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). <i>TSA Senior Executive Service Plan (TSES)</i> – 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 <i>Inspection Service Law Enforcement (ISLE)</i> – 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. <i>Inspection Service Executive Schedule (ISES)</i> – 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: - <i>DOD Civilian Acquisition Workforce Demonstration Project:</i> 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.) - <i>DOD Scientific and Technical Laboratories:</i> - 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 USPS 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.

	<p>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.)</p>	28 U.S.C. 13f and 672(b)
	<p>Supreme Court Marshals* The Supreme Court Marshal, Chief Deputy Marshal, and Deputy Marshal for Security are covered under the Supreme Court Pay Schedule.</p>	28 U.S.C. 672(a) and (b)
	<p>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.</p>	44 U.S.C. 305
	<p>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.</p>	Public Law 99-574 Section 10 of Public Law 104-113, March 7, 1996
	<p>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.</p>	5 U.S.C. 5375
	<p>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.</p>	10 U.S.C. 1601-1614
	<p>DOD - Demonstration Projects DOD has several demonstration projects with broad-banding systems. The following projects are reported as covering some police officers:</p> <ul style="list-style-type: none"> - 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
	<p>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.)</p>	22 U.S.C. chapter 52
	<p>U.S. Agency for International Development - Foreign Service* AID employs special agents who are covered by the Foreign Service pay and retirement systems.</p>	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

	<p>hours-in-tour concept.</p> <p>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.</p>	
Holiday work pay	<p>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).</p>	COPRA
	<p>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).</p>	1931 Act
Premium pay caps	<p>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.</p>	COPRA & appropriations law
	<p>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.</p>	1931 Act & appropriations law
	<p>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.)</p>	40 U.S.C. 207b(a)
Premium pay (general)	<p>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.</p> <p>(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).)</p>	40 U.S.C. 207b(a)
	<p>Postal Security Force Officers These officers are not covered under the standard title 5 premium pay provisions. Information on overtime pay is provided above.</p>	
	<p>Supreme Court Police Officers* These officers are not covered under the standard title 5 premium pay provisions. No information on premium pay entitlements provided.</p>	
Retirement		
Retirement-creditable basic pay	<p>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.)</p>	COPRA
DC police retirement plan	<p>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.)</p>	DC Code § 7-703
Foreign Service Retirement System	<p>Diplomatic Security Service Agents Most (90%+) Diplomatic Security Service special agents are covered by</p>	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).)

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

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
REPORT TO CONGRESS**

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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 age¹ for law enforcement officers, early retirement² of law enforcement officers with an enhanced annuity computation,³ and a mandatory separation age.⁴ Furthermore, the FERS definition of

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 Transportation 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).

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“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 least 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.

EMPLOYEES WITH LAW ENFORCEMENT DUTIES REPORT TO CONGRESS

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.

EMPLOYEES WITH LAW ENFORCEMENT DUTIES REPORT TO CONGRESS

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 guards⁶ 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.

EMPLOYEES WITH LAW ENFORCEMENT DUTIES REPORT TO CONGRESS

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--

EMPLOYEES WITH LAW ENFORCEMENT DUTIES REPORT TO CONGRESS

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]

EMPLOYEES WITH LAW ENFORCEMENT DUTIES REPORT TO CONGRESS

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

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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

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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

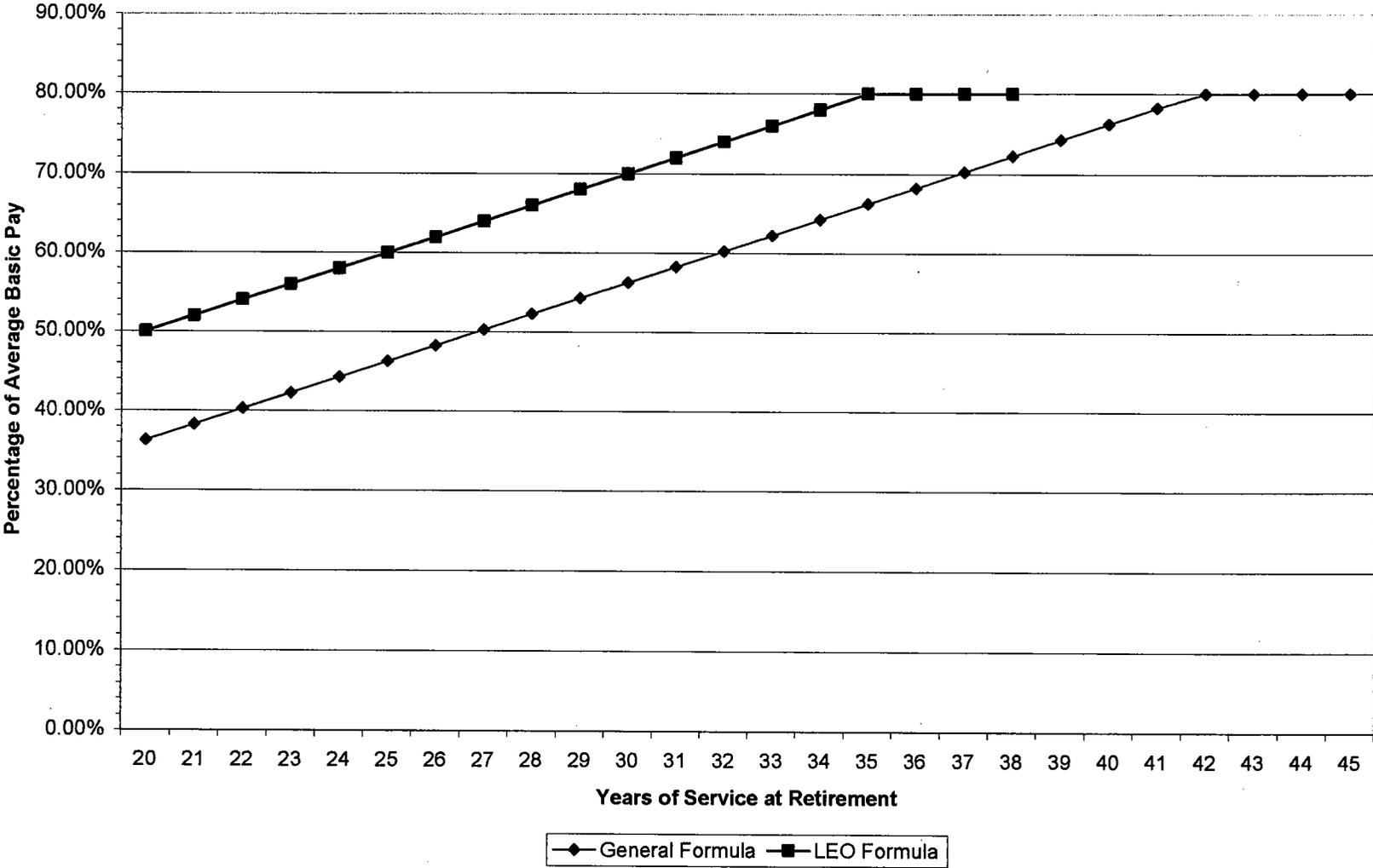
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25 percent higher due to LEO retirement coverage even before considering the effect of the enhanced LEO annuity computation formula. The effect that premium pay has on annuity rates is illustrated by Charts 3 and 4 (pgs. 15-16), which illustrate hypothetical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

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CHART 1

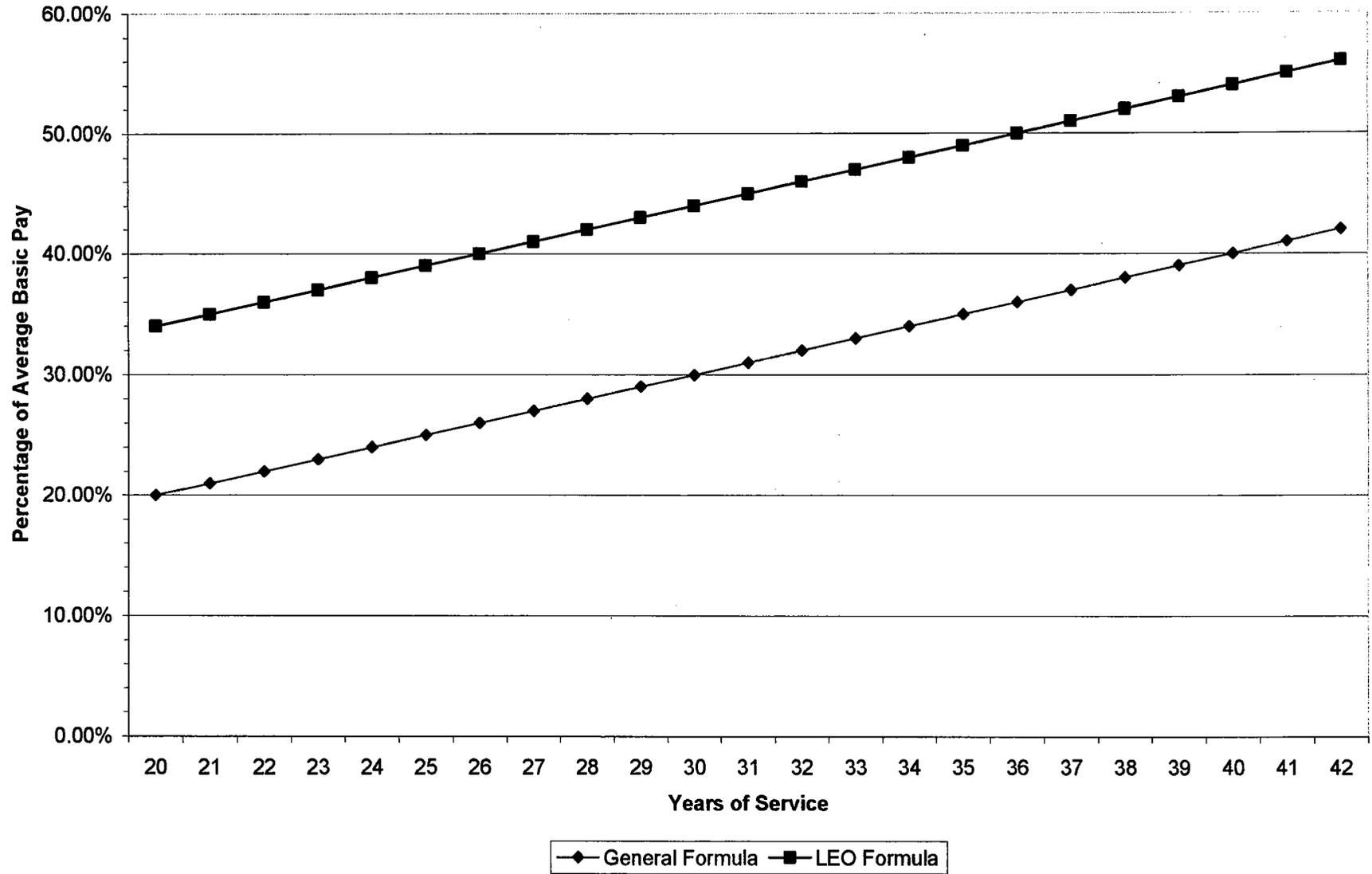
CSRS General Formula vs. CSRS LEO Formula



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CHART 2

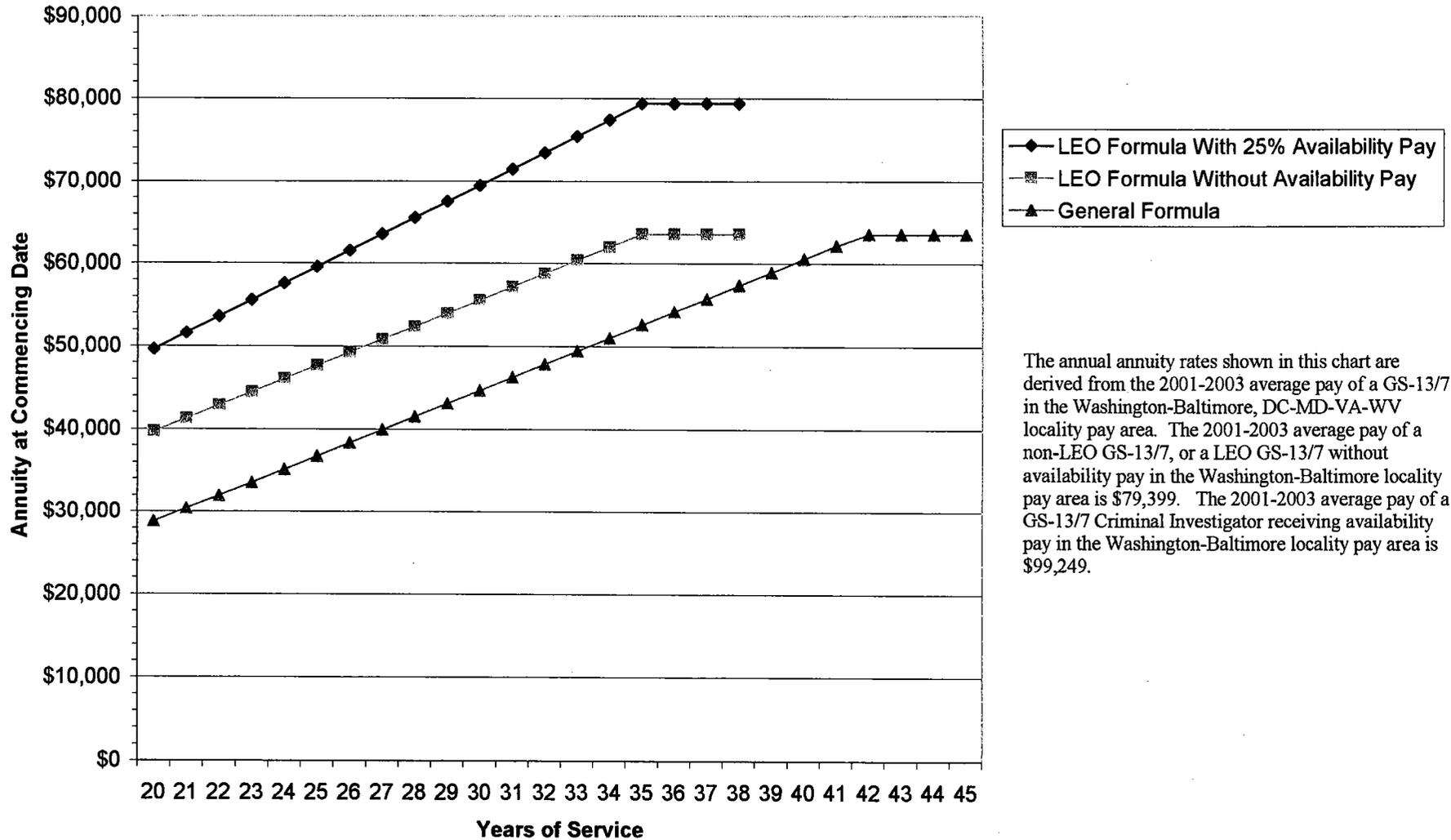
FERS General Formula vs. FERS LEO Formula



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CHART 3

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

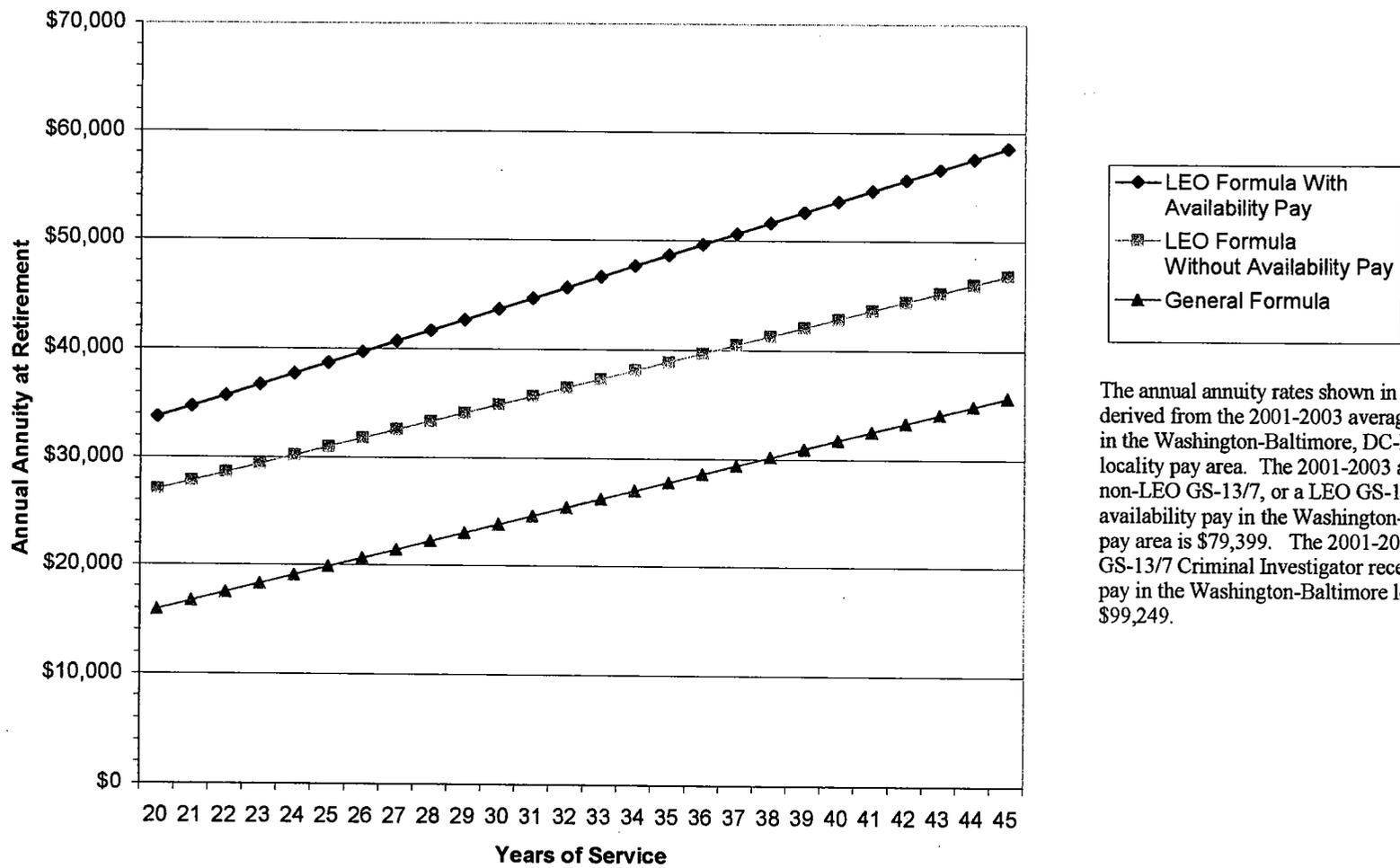


The annual annuity rates shown in this chart are derived from the 2001-2003 average pay of a GS-13/7 in the Washington-Baltimore, DC-MD-VA-WV locality pay area. The 2001-2003 average pay of a non-LEO GS-13/7, or a LEO GS-13/7 without availability pay in the Washington-Baltimore locality pay area is \$79,399.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

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CHART 4

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

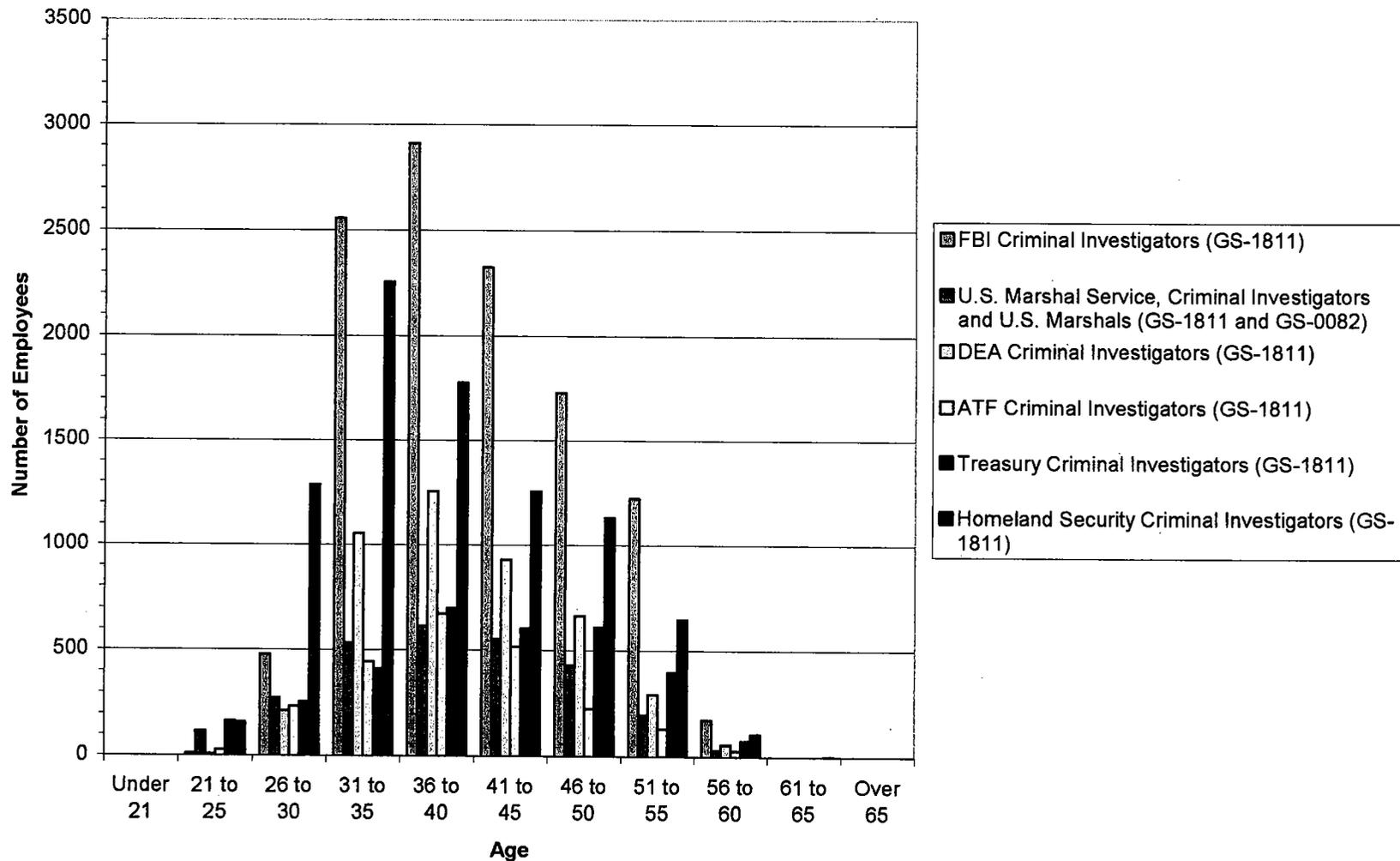


The annual annuity rates shown in this chart are derived from the 2001-2003 average pay of a GS-13/7 in the Washington-Baltimore, DC-MD-VA-WV locality pay area. The 2001-2003 average pay of a non-LEO GS-13/7, or a LEO GS-13/7 without availability pay in the Washington-Baltimore locality pay area is \$79,399.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

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CHART 5

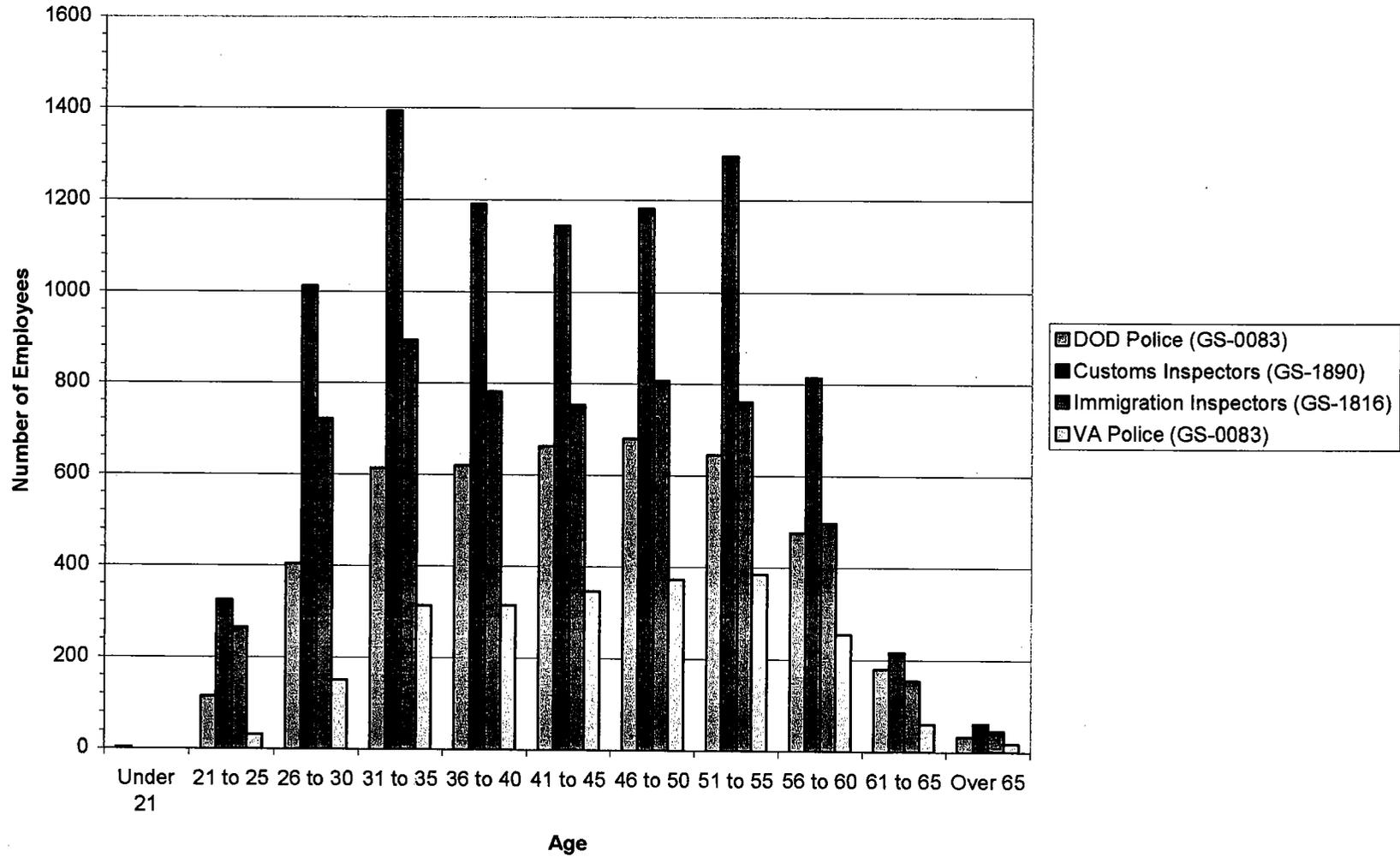
Age Distributions of Relevant Selected Employee Groups With LEO Coverage



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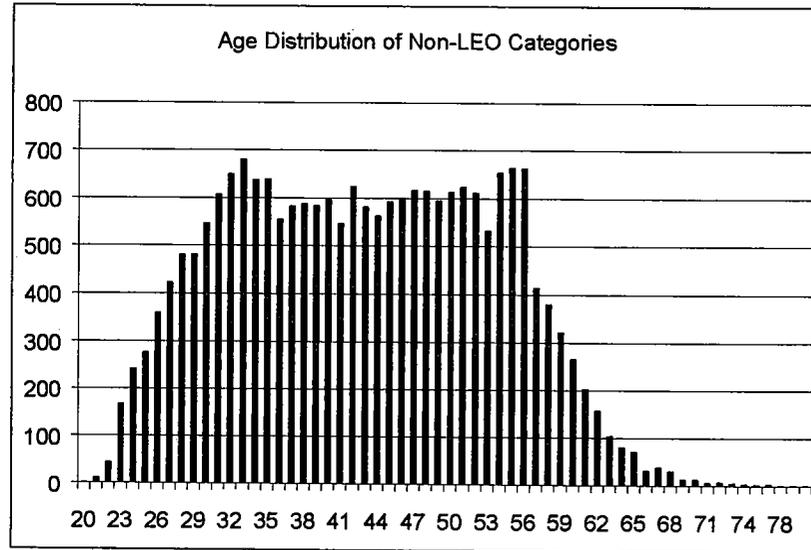
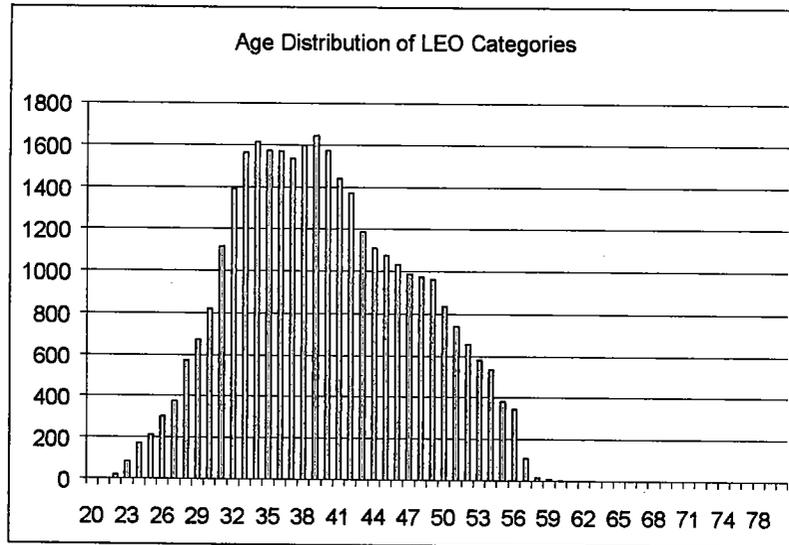
CHART 6

Age Distributions of Selected Relevant Employee Groups Without LEO Retirement



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**Chart 7: Statistical Analysis of Combined Age Distribution
Charts**



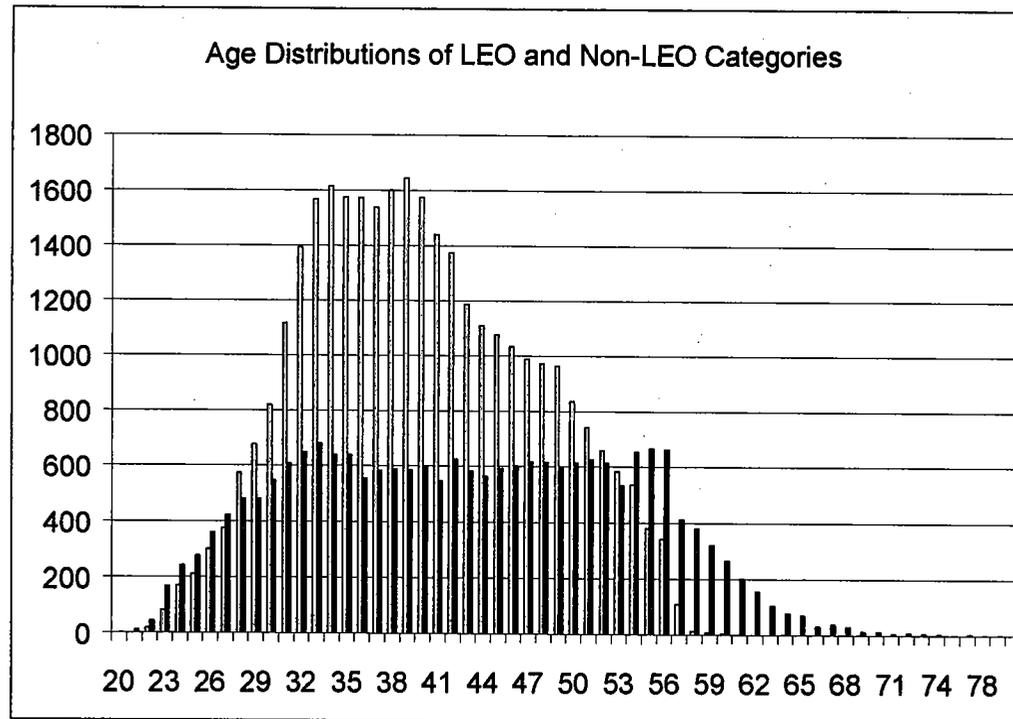
Category	N	Mean	Std. Deviation	Std. Error Mean	Skewness	Kurtosis
LEO	32,764	39.86204	7.538695	0.041648	0.203	-0.69585
Non-LEO	20,992	42.88215	10.60515	0.073196	0.078355	-0.90559

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.

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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.