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United States General Accounting Office
Washington, DC 20548

April 2, 2003

The Honorable Edward M. Kennedy
United States Senate

The Honorable John F. Kerry
United States Senate

Subject: Appointment and Qualifications of U.S. Marshals

This report responds to your June 6, 2002, request, with then Senators Strom Thurmond and Fred Thompson, for information on the appointment and qualifications of U.S. Marshals in the 94 federal judicial districts. As agreed with your offices, we obtained information on the (1) U.S. Marshals' appointment process and, for comparison, the processes used by the Bureau of Alcohol, Tobacco, and Firearms (ATF); Drug Enforcement Administration (DEA); and Internal Revenue Service-Criminal Investigation (IRS-CI) to select senior field supervisors; (2) experience, education and diversity of U.S. Marshals and senior field supervisors at the ATF, DEA, and IRS-CI; (3) authority of the Director of the U.S. Marshals Service (USMS) to guide and control activities of U.S. Marshals; and (4) past legislative and other proposals for reforming the U.S. Marshals' appointment process.

On November 21, 2002, we briefed your offices on the results of our review. This report summarizes material from that briefing and provides additional information related to the areas reviewed.

Background

The U.S. Marshal Service was created by the first Congress in the Judiciary Act of 1789. U.S. Marshals were placed in each federal judicial district and were given broad authority to support the federal courts and to carry out all lawful orders issued by judges, Congress, and the President. Early duties of U.S. Marshals included taking the census, distributing presidential proclamations, protecting the borders, and making arrests.

Beginning in the late nineteenth century, some responsibilities of U.S. Marshals were transferred to newly created federal agencies, including the U.S. Census Bureau, Immigration and Naturalization Service, and Federal Bureau of Investigation. Today, the primary responsibilities of U.S. Marshals include protecting federal judges and witnesses, transporting federal prisoners, apprehending federal fugitives, and managing assets seized from criminal enterprises.

Summary

U.S. Marshals' Appointment Process

The process used to appoint U.S. Marshals to the federal judicial districts has not changed since the founding of the USMS. The President, with the advice and consent of the Senate, appoints U.S. Marshals for a 4-year term.¹ According to the Congressional Research Service, custom dictates that the President generally nominates an individual recommended by the Senator(s) from the state in which the vacancy is being filled if they are from the same party as the President. If neither Senator is from the same party, the President normally defers to the recommendations of party leaders from the state.²

Federal law does not require specific qualifications for individuals to be appointed U.S. Marshals. However, the USMS has developed written qualification guidelines for the position of U.S. Marshal and provides them to interested persons. These guidelines include significant experience in the administration of justice, including experience in law enforcement at a supervisory level, and college-level training.

In contrast to the appointment of U.S. Marshals, the ATF, DEA, and IRS-CI all select their senior field supervisors under competitive, merit-based promotion criteria outlined in Title 5 of the U.S. Code. In other words, individuals must apply and compete for these positions and meet any identified minimum standards. Minimum qualifications used to select senior field supervisors at the ATF, DEA, and IRS-CI varied, but all required prior supervisory law enforcement experience within their respective agencies.

Experience, Education, and Diversity of U.S. Marshals and Field Supervisors at ATF, DEA, and IRS-CI

While the average length of overall law enforcement experience of current U.S. Marshals was not significantly different than that of senior field supervisors at the ATF, DEA, and IRS-CI, the level of government from which the experience was obtained differed. Specifically, as of January 2003, current U.S. Marshals averaged 23 years of law enforcement experience, compared with 26 years at the DEA, 22 years at the IRS-CI, and 21 years at the ATF for senior field supervisors. However, the majority of law enforcement experience of U.S. Marshals was at the state, local, or county level, while the majority of law enforcement experience for senior field supervisors at the ATF, DEA, and IRS-CI was within their respective federal agencies.³ We also noted differences in the amount of supervisory law enforcement

¹See 28 U.S.C. Section 561. The U.S. Marshal of the U.S. Virgin Islands is appointed by the Attorney General.

²CRS Report for Congress: Presidential Appointments to Full-Time Positions in Executive Departments During the 106th Congress, 1999-2000 (March 26, 2001)

³ Department of Justice officials stated that local law enforcement experience of U.S. Marshals was advantageous since the U.S. Marshals rely heavily on local law enforcement cooperation in performance of their duties.

experience among current U.S. Marshals and senior field supervisors at the ATF, DEA, and IRS-CI, as shown in table 1.⁴

Table 1: Comparison of U.S Marshals to ATF, DEA, and IRS-CI Regarding Law Enforcement

	USMS	ATF	DEA	IRS-CI
Total Number	86	20	21	35
Average years experience	23	21	26	22
Overall years experience:				
None	5	0	0	0
One to nine years	3	0	0	0
Ten years or more	78	20	21	35
Prior experience:				
With agency	22	20	21	35
Other federal	12	0	2	0
State, local, county	66	0	13	0
Undetermined prior experience	0	2	0	0
Supervisory experience:				
None	23	0	0	0
One year to four years	4	0	1	0
Five years or more	59	20	20	35

Regarding education, 54 out of 86 (63 percent) current U.S. Marshals, as of January 2003, had a bachelors or more advanced degree, as compared with 18 out of 20 (90 percent) senior field supervisors at the ATF, 19 out of 21 (90 percent) senior field supervisors at the DEA, and all 35 (100 percent) senior field supervisors at the IRS-CI. We also noted some differences between the gender and race/ethnicity profiles among U.S. Marshals and senior field supervisors at ATF, DEA, and IRS-CI, as shown in table 2.

⁴There are 94 judicial districts; however, we did not consider 8 U.S. Marshals in our analysis because 7 districts had an acting U.S. Marshal during the time of our review, and as noted, the Attorney General appoints the U.S. Marshal of the U.S. Virgin Islands. ATF has 23 Field Division Directors, however, 3 positions were vacant at the time of our review.

Table 2: Comparison of U.S Marshals to ATF, DEA, and IRS-CI Regarding Education, Race, and Gender

	USMS	ATF	DEA	IRS-CI
Total Number	86	20	21	35
Gender:				
Males	84	18	19	27
Females	2	2	2	8
Race/Ethnicity:				
African-American	8	4	3	8
American Indian	0	1	0	0
Asian	1	0	0	1
Caucasian	74	12	13	24
Hispanic	3	3	5	2
Highest Level of Education:				
High school diploma	22	0	0	0
Associates degree	8	0	2	0
Some College	2	2	0	0
Bachelors degree	36	17	18	28
Advanced degree	18	1	1	7

USMS Director’s Authority to Guide and Control Activities of U.S. Marshals

Prior to 1970s, individual U.S. Marshals operated without any centralized management over their activities. Although they were placed under the general supervision of the Attorney General under the original legislation creating the USMS, U.S. Marshals essentially operated independently within their individual districts. In the early 1970s, Attorney General orders established the USMS as a bureau within the Department of Justice led by a Director. In addition, the Anti-Drug Abuse Act of 1988⁵ statutorily established the USMS as a bureau within the DOJ, with a Director appointed by the President, with the advice and consent of the Senate.

The Attorney General orders and the subsequent legislation required U.S. Marshals to operate within the policies and direction established by the Director. However, although each authorized the Director to guide and control activities of U.S. Marshals, neither gave the Director the authority to discipline or remove them from service. Only the President has the authority to discipline or remove U.S. Marshals. According to USMS officials, this authority has been exercised in approximately 5 cases during the past 12 years.

Legislative and Other Proposals for the Reforming U.S. Marshals’ Appointment Process

Over the past century, Congress, along with a number of presidential commissions studying government reform, proposed abolishing the presidential appointment of

⁵Section 7608 of Title VII of the Anti-Drug Abuse Act of 1988 amends 28 U.S.C. Chapter 37, sections 561 through 569, to implement the USMS organizational changes discussed here.

U.S. Marshals and establishing a competitive selection process in its place. However, Congress has not adopted any of these recommendations. These presidential commissions and legislative actions include:

- President Taft's Commission on Economy and Efficiency, 1912.
- President Roosevelt's Commission on Administrative Management, 1937.
- President Hoover's two commissions on government efficiency, 1947 and 1955.
- A bill to provide for the appointment of U.S. Marshals by the Attorney General, 1973 (S. 1905).
- The Justice Department Reform Act of 1975 (S. 1682).
- Providing for consideration of a bill to provide a more effective, efficient and responsive government, 1993 (H. Res. 320)
- Violent repeat offenders Act of 1994 (H.R. 3721).
- Vice President Gore's National Performance Review, 1993.
- United States Marshals Service Improvement Act of 1995 (S. 1338).
- United States Marshals Service Improvement Act of 1995 and 1996 (H.R. 2641).
- United States Marshals Service Improvement Act of 1997 and 1998 (H.R. 927).
- United States Marshals Service Improvement Act of 1999 (H.R. 2336).
- United States Marshals Service Reform Act of 2002 (S. 1977).

The U.S. Marshals Service Reform Act of 2002 (S. 1977) was the latest legislative proposal to reform the appointment of U.S. Marshals. This bill, which was not enacted, would have provided for the appointment of U.S. Marshals by the Attorney General through the competitive civil service promotion process, as used by the ATF, DEA, and IRS-CI.

The most recent presidential commission, the September 1993 Report of the National Performance Review, recommended elimination of the requirement for the presidential appointment of U.S. Marshals. The National Performance Review's Accompanying Report for the Department of Justice cited concerns related to U.S. Marshals lacking managerial, law enforcement, and agency experience; the Director of the USMS lacking the authority to discipline U.S. Marshals; and the creation of an additional management layer under the U.S. Marshal that otherwise would not be needed.

Scope and Methodology

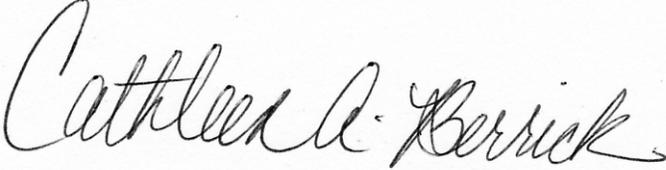
To address these areas, we obtained information on the U.S. Marshals' appointment process from the U.S. Marshals Service and Department of Justice. We also obtained information from the ATF, DEA and IRS-CI on their criteria and processes for selecting senior field supervisors, in order to compare their selection processes with the appointment process of U.S. Marshals. In addition, we obtained biographical information on U.S. Marshals and senior field supervisors from the ATF, DEA, and IRS-CI, as of January 2003, to compare law enforcement experience, supervisory law enforcement experience, education, race, and gender for these officials. We researched applicable federal law and obtained information from the USMS detailing the authority of USMS Director over U.S. Marshals in the field. We also researched

previous legislative and other proposals for reforming the U.S. Marshals' appointment process.

We performed our work between July 2002 and March 2003 in accordance with generally accepted government auditing standards.

We provided the Department of Justice, the U.S. Marshals Service, ATF, DEA, and IRS-CI officials with a draft of this report and incorporated their comments as appropriate. As agreed with your offices, this report concludes our work on the appointment and qualifications of U.S. Marshals.

If you have any further questions, please contact me at (202) 512-3404 or by e-mail at berrickc@gao.gov, or William Crocker, Assistant Director, at (202) 512-4533, or by e-mail at crockerw@gao.gov. Key contributors to this report were Michael Harmond, Ellen Wolfe, and Linda Kay Willard, David Alexander, Shirley Jones, and Katherine Davis. Copies of this report are available to other interested parties. This report will also be available on GAO's Web site at <http://www.gao.gov>.



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