

CIVIL SERVICE AND NATIONAL SECURITY PERSONNEL
IMPROVEMENT ACT

—————
MAY 19, 2003.—Ordered to be printed
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Mr. TOM DAVIS of Virginia, from the Committee on Government
Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1836]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 1836) to make changes to certain areas of the Federal civil service in order to improve the flexibility and competitiveness of Federal human resources management, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Committee Statement and Views	30
Section-by-Section Analysis	32
Explanation of Amendments	41
Committee Consideration	42
Rollcall Votes	42
Application of Law to the Legislative Branch	50
Statement of Oversight Findings and Recommendations of the Committee	50
Statement of General Performance Goals and Objectives	50
Constitutional Authority Statement	50
Unfunded Mandate Statement	50
Committee Estimate	50
Budget Authority and Congressional Budget Office Cost Estimate	51
Changes in Existing Law Made by the Bill, as Reported	58
Minority Views	104

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Civil Service and National Security Personnel Improvement Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

Sec. 101. Short title.

Sec. 102. Department of Defense national security personnel system.

TITLE II—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Sec. 201. Modification of the overtime pay cap.

Sec. 202. Civil Service Retirement System computation for part-time service.

Sec. 203. Military leave for mobilized Federal civilian employees.

Sec. 204. Common occupational and health standards for differential payments as a consequence of exposure to asbestos.

Sec. 205. Increase in annual student loan repayment authority.

Sec. 206. Authorization for cabinet secretaries, secretaries of military departments, and heads of executive agencies to be paid on a biweekly basis.

Sec. 207. Additional classes of individuals eligible to participate in the Federal long-term care insurance program.

Sec. 208. Clarification to Hatch Act; limitation on disclosure of certain records.

Sec. 209. Senior Executive Service and performance.

Sec. 210. Design elements of pay-for-performance systems in demonstration projects.

Sec. 211. Federal flexible benefits plan administrative costs.

Sec. 212. Nonreduction in pay while Federal employee is serving on active duty in a reserve component of the uniformed services.

Sec. 213. Employee surveys.

TITLE III—PROVISIONS RELATING TO THE SECURITIES AND EXCHANGE COMMISSION AND THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Subtitle A—Securities and Exchange Commission

Sec. 301. Securities and Exchange Commission.

Subtitle B—National Aeronautics and Space Administration

Sec. 311. Workforce authorities and personnel provisions.

TITLE IV—HUMAN CAPITAL PERFORMANCE FUND

Sec. 401. Human Capital Performance Fund.

TITLE V—MISCELLANEOUS

Sec. 501. Prohibition on use of quotas.

TITLE I—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

SEC. 101. SHORT TITLE.

This title may be cited as the “National Security Personnel System Act”.

SEC. 102. DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM.

(a) **IN GENERAL.**—(1) Subpart I of part III of title 5, United States Code, is amended by adding at the end the following new chapter:

**“CHAPTER 99—DEPARTMENT OF DEFENSE NATIONAL SECURITY
PERSONNEL SYSTEM**

“Sec.

“9901. Definitions.

“9902. Establishment of human resources management system.

“9903. Attracting highly qualified experts.

“9904. Employment of older Americans.

“9905. Special pay and benefits for certain employees outside the United States.

“§ 9901. Definitions

“For purposes of this chapter—

“(1) the term ‘Director’ means the Director of the Office of Personnel Management; and

“(2) the term ‘Secretary’ means the Secretary of Defense.

“§ 9902. Establishment of human resources management system

“(a) **IN GENERAL.**—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a human resources management system for some or all of the organizational or functional units of the Department of Defense. If the Secretary certifies

that issuance or adjustment of a regulation, or the inclusion, exclusion, or modification of a particular provision therein, is essential to the national security, the Secretary may, subject to the decision of the President, waive the requirement in the preceding sentence that the regulation or adjustment be issued jointly with the Director.

“(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

“(1) be flexible;

“(2) be contemporary;

“(3) not waive, modify, or otherwise affect—

“(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

“(B) any provision of section 2302, relating to prohibited personnel practices;

“(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9);

or

“(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

“(I) providing for equal employment opportunity through affirmative action; or

“(II) providing any right or remedy available to any employee or applicant for employment in the public service;

“(D) any other provision of this part (as described in subsection (c)); or

“(E) any rule or regulation prescribed under any provision of law referred to in this paragraph;

“(4) ensure that employees may organize, bargain collectively as provided for in this chapter, and participate through labor organizations of their own choosing in decisions which affect them, subject to the provisions of this chapter and any exclusion from coverage or limitation on negotiability established pursuant to law;

“(5) not be limited by any specific law or authority under this title that is waivable under this chapter or by any provision of this chapter or any rule or regulation prescribed under this title that is waivable under this chapter, except as specifically provided for in this section; and

“(6) include a performance management system that incorporates the following elements:

“(A) adherence to merit principles set forth in section 2301;

“(B) a fair, credible, and transparent employee performance appraisal system;

“(C) a link between the performance management system and the agency’s strategic plan;

“(D) a means for ensuring employee involvement in the design and implementation of the system;

“(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;

“(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

“(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and

“(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.

“(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part referred to in subsection (b)(3)(D) are (to the extent not otherwise specified in this title)—

“(1) subparts A, B, E, G, and H of this part; and

“(2) chapters 41, 45, 47, 55 (except subchapter V thereof), 57, 59, 72, 73, and 79, and this chapter.

“(d) LIMITATIONS RELATING TO PAY.—(1) Nothing in this section shall constitute authority to modify the pay of any employee who serves in an Executive Schedule position under subchapter II of chapter 53 of this title.

“(2) Except as provided for in paragraph (1), the total amount in a calendar year of allowances, differentials, bonuses, awards, or other similar cash payments paid under this title to any employee who is paid under section 5376 or 5383 of this title or under title 10 or under other comparable pay authority established for payment of Department of Defense senior executive or equivalent employees may not exceed

the total annual compensation payable to the Vice President under section 104 of title 3.

“(3) To the maximum extent practicable, the rates of compensation for civilian employees at the Department of Defense shall be adjusted at the same rate, and in the same proportion, as are rates of compensation for members of the uniformed services.

“(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

(1) In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of, employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary and the Director shall provide for the following:

“(A) The Secretary and the Director shall, with respect to any proposed system or adjustment—

“(i) provide to the employee representatives representing any employees who might be affected a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

“(ii) give such representatives at least 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

“(iii) give any recommendations received from such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

“(B) Following receipt of recommendations, if any, from such employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

“(i) notify Congress of those parts of the proposal, together with the recommendations of the employee representatives;

“(ii) meet and confer for not less than 30 calendar days with the employee representatives, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

“(iii) at the Secretary’s option, or if requested by a majority of the employee representatives participating, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

“(C)(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which the recommendations are accepted by the Secretary and the Director, may be implemented immediately.

“(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary, in his discretion, determines that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts (including any modifications made in response to the recommendations as the Secretary determines advisable), but only after 30 days have elapsed after notifying Congress of the decision to implement the part or parts involved (as so modified, if applicable).

“(iii) The Secretary shall notify Congress promptly of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from the employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

“(D) If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

“(i) develop a method for the employee representatives to participate in any further planning or development which might become necessary; and

“(ii) give the employee representatives adequate access to information to make that participation productive.

“(2) The Secretary may, at the Secretary’s discretion, engage in any and all collaboration activities described in this subsection at an organizational level above the level of exclusive recognition.

“(3) In the case of any employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary and the Director may develop procedures for representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such

other manner as may be appropriate, consistent with the purposes of this subsection.

“(f) PROVISIONS REGARDING NATIONAL LEVEL BARGAINING.—(1) Any human resources management system implemented or modified under this chapter may include employees of the Department of Defense from any bargaining unit with respect to which a labor organization has been accorded exclusive recognition under chapter 71 of this title.

“(2) For any bargaining unit so included under paragraph (1), the Secretary may bargain at an organizational level above the level of exclusive recognition. Any such bargaining shall—

“(A) be binding on all subordinate bargaining units at the level of recognition and their exclusive representatives, and the Department of Defense and its subcomponents, without regard to levels of recognition;

“(B) supersede all other collective bargaining agreements, including collective bargaining agreements negotiated with an exclusive representative at the level of recognition, except as otherwise determined by the Secretary;

“(C) not be subject to further negotiations for any purpose, including bargaining at the level of recognition, except as provided for by the Secretary; and

“(D) except as otherwise specified in this chapter, not be subject to review or to statutory third-party dispute resolution procedures outside the Department of Defense.

“(3) The National Guard Bureau and the Army and Air Force National Guard are excluded from coverage under this subsection.

“(4) Any bargaining completed pursuant to this subsection with a labor organization not otherwise having national consultation rights with the Department of Defense or its subcomponents shall not create any obligation on the Department of Defense or its subcomponents to confer national consultation rights on such a labor organization.

“(g) PROVISIONS RELATING TO APPELLATE PROCEDURES.—(1) The Secretary shall—

“(A) establish an appeals process that provides that employees of the Department of Defense are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

“(B) in prescribing regulations for any such appeals process—

“(i) ensure that employees of the Department of Defense are afforded the protections of due process; and

“(ii) toward that end, be required to consult with the Merit Systems Protection Board before issuing any such regulations.

“(2) Any regulations establishing the appeals process required by paragraph (1) that relate to any matters within the purview of chapter 77 shall—

“(A) provide for an independent review panel, appointed by the President, which shall not include the Secretary or the Deputy Secretary of Defense or any of their subordinates;

“(B) be issued only after—

“(i) notification to the appropriate committees of Congress; and

“(ii) consultation with the Merit Systems Protection Board and the Equal Employment Opportunity Commission;

“(C) ensure the availability of procedures that—

“(i) are consistent with requirements of due process; and

“(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department of Defense; and

“(D) modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department of Defense.

“(h) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

“(2) For purposes of this section, the term ‘employee’ means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include—

“(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of this title, or another retirement system for employees of the Federal Government;

“(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in paragraph (1); or

“(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

“(3) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved pursuant to the program established under subsection (a).

“(4)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of—

“(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of this title, if the employee were entitled to payment under such section; or

“(ii) \$25,000.

“(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595 of this title, based on any other separation.

“(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient’s acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (5).

“(5)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee’s separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

“(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103–236; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105 of this title) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

“(6) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

“(i) PROVISIONS RELATING TO REEMPLOYMENT.—If annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Department of Defense, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of chapter 83 or 84.

“(j) PROVISIONS RELATING TO HIRING.—Notwithstanding subsection (c), the Secretary may exercise any hiring flexibilities that would otherwise be available to the Secretary under section 4703.

“§ 9903. Attracting highly qualified experts

“(a) IN GENERAL.—The Secretary may carry out a program using the authority provided in subsection (b) in order to attract highly qualified experts in needed occupations, as determined by the Secretary.

“(b) AUTHORITY.—Under the program, the Secretary may—

“(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101 of this title) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

“(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of this title, as increased by locality-based comparability payments under section 5304 of this title, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and

“(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limits applicable to the employee under subsection (d).

“(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Except as provided in paragraph (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years.

“(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 1 additional year if the Secretary determines that such action is necessary to promote the Department of Defense’s national security missions.

“(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1) The total amount of the additional payments paid to an employee under this section for any 12-month period may not exceed the lesser of the following amounts:

“(A) \$50,000 in fiscal year 2004, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

“(B) The amount equal to 50 percent of the employee’s annual rate of basic pay.

For purposes of this paragraph, the term ‘base quarter’ has the meaning given such term by section 5302(3).

“(2) An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under this section.

“(3) Notwithstanding any other provision of this subsection or of section 5307, no additional payments may be paid to an employee under this section in any calendar year if, or to the extent that, the employee’s total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

“(e) SAVINGS PROVISIONS.—In the event that the Secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—

“(1) the termination of the program does not terminate the employee’s employment in that position before the expiration of the lesser of—

“(A) the period for which the employee was appointed; or

“(B) the period to which the employee’s service is limited under subsection (c), including any extension made under this section before the termination of the program; and

“(2) the rate of basic pay prescribed for the position under this section may not be reduced as long as the employee continues to serve in the position without a break in service.

“§ 9904. Employment of older Americans

“(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may appoint older Americans into positions in the excepted service for a period not to exceed 2 years, provided that—

“(1) any such appointment shall not result in—

“(A) the displacement of individuals currently employed by the Department of Defense (including partial displacement through reduction of non-overtime hours, wages, or employment benefits); or

“(B) the employment of any individual when any other person is in a reduction-in-force status from the same or substantially equivalent job within the Department of Defense; and

“(2) the individual to be appointed is otherwise qualified for the position, as determined by the Secretary.

“(b) EFFECT ON EXISTING RETIREMENT BENEFITS.—Notwithstanding any other provision of law, an individual appointed pursuant to subsection (a) who otherwise is receiving an annuity, pension, social security payment, retired pay, or other similar

payment shall not have the amount of said annuity, pension, social security, or other similar payment reduced as a result of such employment.

“(c) EXTENSION OF APPOINTMENT.—Notwithstanding subsection (a), the Secretary may extend an appointment made pursuant to this section for up to an additional 2 years if the individual employee possesses unique knowledge or abilities that are not otherwise available to the Department of Defense.

“(d) DEFINITION.—For purposes of this section, the term ‘older American’ means any citizen of the United States who is at least 55 years of age.

“§ 9905. Special pay and benefits for certain employees outside the United States

“The Secretary may provide to certain civilian employees of the Department of Defense assigned to activities outside the United States as determined by the Secretary to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal Government employment—

“(1) allowances and benefits—

“(A) comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (Public Law 96–465, 22 U.S.C. 4081 et seq.) or any other provision of law; or

“(B) comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency; and

“(2) special retirement accrual benefits and disability in the same manner provided for by the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).”

(2) The table of chapters for part III of such title is amended by adding at the end of subpart I the following new item:

“99. Department of Defense National Security Personnel System 9901”.

(b) IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL.—(1) Any exercise of authority under chapter 99 of such title (as added by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

(2) No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

TITLE II—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

SEC. 201. MODIFICATION OF THE OVERTIME PAY CAP.

Section 5542(a)(2) of title 5, United States Code, is amended—

(1) by inserting “the greater of” before “one and one-half”; and

(2) by inserting “or the hourly rate of basic pay of the employee” after “law” the second place it appears.

SEC. 202. CIVIL SERVICE RETIREMENT SYSTEM COMPUTATION FOR PART-TIME SERVICE.

Section 8339(p) of title 5, United States Code, is amended by adding at the end the following new paragraphs:

“(3) In the administration of paragraph (1)—

“(A) subparagraph (A) of such paragraph shall apply with respect to pay for service performed before, on, or after April 7, 1986; and

“(B) subparagraph (B) of such paragraph—

“(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and

“(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.

“(4) Paragraph (3) shall be effective with respect to any annuity entitlement to which is based on a separation from service occurring on or after the date of the enactment of this paragraph.”

SEC. 203. MILITARY LEAVE FOR MOBILIZED FEDERAL CIVILIAN EMPLOYEES.

(a) IN GENERAL.—Subsection (b) of section 6323 of title 5, United States Code, is amended—

(1) in paragraph (2)—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and at the end of clause (ii), as so redesignated, by inserting “or”; and

(B) by inserting “(A)” after “(2)”; and

(2) by inserting the following before the text beginning with “is entitled”:

“(B) performs full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of title 10;”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall apply to military service performed on or after the date of the enactment of this Act.

SEC. 204. COMMON OCCUPATIONAL AND HEALTH STANDARDS FOR DIFFERENTIAL PAYMENTS AS A CONSEQUENCE OF EXPOSURE TO ASBESTOS.

(a) **PREVAILING RATE SYSTEMS.**—Section 5343(c)(4) of title 5, United States Code, is amended by inserting before the semicolon at the end the following: “, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970”.

(b) **GENERAL SCHEDULE PAY RATES.**—Section 5545(d) of such title is amended by inserting before the period at the end of the first sentence the following: “, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970”.

(c) **APPLICABILITY.**—Subject to any vested constitutional property rights, any administrative or judicial determination after the date of enactment of this Act concerning backpay for a differential established under section 5343(c)(4) or 5545(d) of such title shall be based on occupational safety and health standards described in the amendments made by subsections (a) and (b).

SEC. 205. INCREASE IN ANNUAL STUDENT LOAN REPAYMENT AUTHORITY.

Section 5379(b)(2)(A) of title 5, United States Code, is amended by striking “\$6,000” and inserting “\$10,000”.

SEC. 206. AUTHORIZATION FOR CABINET SECRETARIES, SECRETARIES OF MILITARY DEPARTMENTS, AND HEADS OF EXECUTIVE AGENCIES TO BE PAID ON A BIWEEKLY BASIS.

(a) **AUTHORIZATION.**—Section 5504 of title 5, United States Code, is amended—

(1) by redesignating subsection (c) as subsection (d);

(2) by striking the last sentence of both subsection (a) and subsection (b); and

(3) by inserting after subsection (b) the following:

“(c) For the purposes of this section:

“(1) The term ‘employee’ means—

“(A) an employee in or under an Executive agency;

“(B) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

“(C) an individual employed by the government of the District of Columbia.

“(2) The term ‘employee’ does not include—

“(A) an employee on the Isthmus of Panama in the service of the Panama Canal Commission; or

“(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by clauses (ii), (iii), and (xiv) through (xvii) of such section.

“(3) Notwithstanding paragraph (2), an individual who otherwise would be excluded from the definition of employee shall be deemed to be an employee for purposes of this section if the individual’s employing agency so elects, under guidelines in regulations promulgated by the Office of Personnel Management under subsection (d)(2).”.

(b) **GUIDELINES.**—Subsection (d) of section 5504 of such title, as redesignated by subsection (a), is amended—

(1) by inserting “(1)” after “(d)”; and

(2) by adding at the end the following new paragraph:

“(2) The Office of Personnel Management shall provide guidelines by regulation for exemptions to be made by the heads of agencies under subsection (c)(3). Such guidelines shall provide for such exemptions only under exceptional circumstances.”.

SEC. 207. ADDITIONAL CLASSES OF INDIVIDUALS ELIGIBLE TO PARTICIPATE IN THE FEDERAL LONG-TERM CARE INSURANCE PROGRAM.

(a) **CERTAIN EMPLOYEES OF THE DISTRICT OF COLUMBIA GOVERNMENT.**—Section 9001(1) of title 5, United States Code, is amended by striking “2105(c),” and all that follows and inserting “2105(c).”

(b) **FORMER FEDERAL EMPLOYEES WHO WOULD BE ELIGIBLE TO BEGIN RECEIVING AN ANNUITY UPON ATTAINING THE REQUISITE MINIMUM AGE.**—Section 9001(2) of title 5, United States Code, is amended—

- (1) in subparagraph (A), by striking “and” at the end;
- (2) in subparagraph (B), by striking the period and inserting “; and”; and
- (3) by adding at the end the following:

“(C) any former employee who, on the basis of his or her service, would meet all requirements for being considered an ‘annuitant’ within the meaning of subchapter III of chapter 83, chapter 84, or any other retirement system for employees of the Government, but for the fact that such former employee has not attained the minimum age for title to annuity.”

(c) **RESERVISTS TRANSFERRED TO THE RETIRED RESERVE WHO ARE UNDER AGE 60.**—Section 9001(4) of title 5, United States Code, is amended by striking “including” and all that follows through “who has” and inserting “and a member who has been transferred to the Retired Reserve and who would be entitled to retired pay under chapter 1223 of title 10 but for not having”.

SEC. 208. CLARIFICATION TO HATCH ACT; LIMITATION ON DISCLOSURE OF CERTAIN RECORDS.

(a) **CLARIFICATION TO HATCH ACT.**—No Federal employee or individual who voluntarily separates from the civil service (including by transferring to an international organization in the circumstances described in section 3582(a) of title 5, United States Code) shall be subject to enforcement of the provisions of section 7326 of such title (including any loss of rights under subchapter IV of chapter 35 of such title resulting from any proceeding under such section 7326), except that this subsection shall not apply in the event that such employee or individual subsequently becomes reemployed in the civil service. The preceding sentence shall apply to any complaint which is filed with or pending before the Merit Systems Protection Board after the date of the enactment of this Act.

(b) **LIMITATION ON DISCLOSURE OF CERTAIN RECORDS.**—Notwithstanding any other provision of law, rule, or regulation, nothing described in paragraph (2) or (3) of use “q” of the proposed revisions published in the Federal Register on July 12, 2001 (66 Fed. Reg. 36613) shall be considered to constitute a routine use of records maintained by the Office of Special Counsel.

(c) **DEFINITIONS.**—For purposes of this section—

- (1) the term “Federal employee or individual” means any employee or individual, as referred to in section 7326 of title 5, United States Code;
- (2) the term “civil service” has the meaning given such term by section 2101 of title 5, United States Code;
- (3) the term “international organization” has the meaning given such term by section 3581 of title 5, United States Code; and
- (4) the terms “routine use” and “record” have the respective meanings given such terms under section 552a(a) of title 5, United States Code.

SEC. 209. SENIOR EXECUTIVE SERVICE AND PERFORMANCE.

(a) **SENIOR EXECUTIVE PAY.**—Chapter 53 of title 5, United States Code, is amended—

- (1) in section 5304—
 - (A) in subsection (g)(2)—
 - (i) in subparagraph (A) by striking “subparagraphs (A)–(E)” and inserting “subparagraphs (A)–(D)”; and
 - (ii) in subparagraph (B) by striking “subsection (h)(1)(F)” and inserting “subsection (h)(1)(D)”; and
 - (B) in subsection (h)(1)—
 - (i) by striking subparagraphs (B) and (C);
 - (ii) by redesignating subparagraphs (D), (E), and (F) as subparagraphs (B), (C), and (D), respectively;
 - (iii) in clause (ii) by striking “or” at the end;
 - (iv) in clause (iii) by striking the period and inserting a semicolon; and
 - (v) by adding at the end the following new clauses:
 - “(iv) a Senior Executive Service position under section 3132;
 - “(v) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151; or

“(vi) a position in a system equivalent to the system in clause (iv), as determined by the President’s Pay Agent designated under subsection (d).”; and

(C) in subsection (h)(2)(B)—

(i) in clause (i)—

(I) by striking “subparagraphs (A) through (E)” and inserting “subparagraphs (A) through (C)”; and

(II) by striking “clause (i) or (ii)” and inserting “clause (i), (ii), (iii), (iv), (v), or (vii)”; and

(ii) in clause (ii)—

(I) by striking “paragraph (1)(F)” and inserting “paragraph (1)(D)”; and

(II) by striking “clause (i) or (ii)” and inserting “clause (i), (ii), (iii), (iv), (v), or (vi)”; and

(2) by amending section 5382 to read as follows:

“§ 5382. Establishment of rates of pay for the Senior Executive Service

“(a) Subject to regulations prescribed by the Office of Personnel Management, there shall be established a range of rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates within the range, based on individual performance, contribution to the agency’s performance, or both, as determined under a rigorous performance management system. The lowest rate of the range shall not be less than the minimum rate of basic pay payable under section 5376, and the highest rate, for any position under this system or an equivalent system as determined by the President’s Pay Agent designated under section 5304(d), shall not exceed the rate for level III of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373.

“(b) Notwithstanding the provisions of subsection (a), the applicable maximum shall be level II of the Executive Schedule for any agency that is certified under section 5307 as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance.

“(c) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under subsection (b) to an agency with an applicable maximum rate of pay prescribed under subsection (a).”; and

(3) in section 5383—

(A) in subsection (a) by striking “which of the rates established under section 5382 of this title” and inserting “which of the rates within a range established under section 5382”; and

(B) in subsection (c) by striking “for any pay adjustment under section 5382 of this title” and inserting “as provided in regulations prescribed by the Office under section 5385”.

(b) POST-EMPLOYMENT RESTRICTIONS.—(1) Clause (ii) of section 207(c)(2)(A) of title 18, United States Code is amended to read as follows:

“(ii) employed in a position which is not referred to in clause (i) and for which that person is paid at a rate of basic pay which is equal to or greater than 96 percent of the rate of basic pay for level II of the Executive Schedule, or, for a period of 2 years following the enactment of the Federal Employees Pay for Performance Act of 2003, a person who, on the day prior to the enactment of that Act, was employed in a position which is not referred to in clause (i) and for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5304 or section 5304a of title 5, was equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service on the day prior to the enactment of that Act.”.

(2) Subchapter I of chapter 73 of title 5, United States Code, is amended by inserting at the end the following new section:

“§ 7302. Post-employment notification

“(a) Not later than the effective date of the amendments made by sections 3 and 4 of the Federal Employees Pay for Performance Act of 2003, or 180 days after the date of enactment of that Act, whichever is later, the Office of Personnel Management shall, in consultation with the Attorney General and the Office of Government Ethics, promulgate regulations requiring that each Executive branch agency notify any employee of that agency who is subject to the provisions of section 207(c)(1) of title 18, as a result of the amendment to section 207(c)(2)(A)(ii) of that title by that Act.

“(b) The regulations shall require that notice be given before, or as part of, the action that affects the employee’s coverage under section 207(c)(1) of title 18, by vir-

tue of the provisions of section 207(c)(2)(A)(ii) of that title, and again when employment or service in the covered position is terminated.”.

(c) CLERICAL AMENDMENTS.—(1) The table of sections for chapter 53 of title 5, United States Code, is amended by striking the item relating to section 5382 and inserting the following:

“5382. Establishment of rates of pay for the Senior Executive Service.”.

(2) The table of sections for chapter 73 of title 5, United States Code, is amended by adding after the item relating to section 7301 the following:

“7302. Post-employment notification.”.

(d) EFFECTIVE DATE AND APPLICABILITY.—(1) The amendments made by this section shall take effect on the first day of the first pay period beginning on or after the first January 1 following the date of enactment of this section.

(2) The amendments made by subsection (a) may not result in a reduction in the rate of basic pay for any senior executive during the first year after the effective date of those amendments.

(3) For the purposes of paragraph (2), the rate of basic pay for a senior executive shall be deemed to be the rate of basic pay set for the senior executive under section 5383 of title 5, United States Code, plus applicable locality pay paid to that senior executive, as of the date of enactment of this Act.

SEC. 210. DESIGN ELEMENTS OF PAY-FOR-PERFORMANCE SYSTEMS IN DEMONSTRATION PROJECTS.

A pay-for-performance system may not be initiated under chapter 47 of title 5, United States Code, after the date of enactment of this Act, unless it incorporates the following elements:

- (1) adherence to merit principles set forth in section 2301 of such title;
- (2) a fair, credible, and transparent employee performance appraisal system;
- (3) a link between elements of the pay-for-performance system, the employee performance appraisal system, and the agency’s strategic plan;
- (4) a means for ensuring employee involvement in the design and implementation of the system;
- (5) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system;
- (6) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;
- (7) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and
- (8) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system.

SEC. 211. FEDERAL FLEXIBLE BENEFITS PLAN ADMINISTRATIVE COSTS.

(a) IN GENERAL.—Notwithstanding any other provision of law, an agency or other employing entity of the Government which provides or plans to provide a flexible spending account option for its employees shall not impose any fee with respect to any of its employees in order to defray the administrative costs associated therewith.

(b) OFFSET OF ADMINISTRATIVE COSTS.—Each such agency or employing entity that offers a flexible spending account option under a program established or administered by the Office of Personnel Management shall periodically forward to such Office, or entity designated by such Office, the amount necessary to offset the administrative costs of such program which are attributable to such agency.

(c) REPORTS.—(1) The Office shall submit a report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate no later than March 31, 2004, specifying the administrative costs associated with the Governmentwide program (referred to in subsection (b)) for fiscal year 2003, as well as the projected administrative costs of such program for each of the 5 fiscal years thereafter.

(2) At the end of each of the first 3 calendar years in which an agency or other employing entity offers a flexible spending account option under this section, such agency or entity shall submit a report to the Office of Management and Budget showing the amount of its employment tax savings in such year which are attributable to such option, net of administrative fees paid under section (b).

SEC. 212. NONREDUCTION IN PAY WHILE FEDERAL EMPLOYEE IS SERVING ON ACTIVE DUTY IN A RESERVE COMPONENT OF THE UNIFORMED SERVICES.

(a) IN GENERAL.—Subchapter IV of chapter 55 of title 5, United States Code, is amended by adding at the end the following new section:

“§ 5538. Nonreduction in pay while serving on active duty in a reserve component

“(a) An employee who is also a member of a reserve component and is absent from a position of employment with the Federal Government under a call or order to serve on active duty for a period of more than 30 days shall be entitled to receive, for each pay period described in subsection (b), an amount equal to the difference (if any) between—

“(1) the amount of civilian basic pay that would otherwise have been payable to the employee for such pay period if the employee’s civilian employment with the Government had not been interrupted by the service on active duty; and

“(2) the amount of military compensation that is payable to the employee for the service on active duty and is allocable to such pay period.

“(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee’s civilian employment had not been interrupted) that occurs—

“(A) while the employee serves on active duty for a period of more than 30 days;

“(B) while the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of such active duty; or

“(C) during the 14-day period beginning at the end of such active duty or the end of the period referred to in subparagraph (B).

“(2) Paragraph (1) shall not apply with respect to a pay period for which the employee receives civilian basic pay (including by taking any annual, military, or other paid leave) to which the employee is entitled by virtue of the employee’s civilian employment with the Government.

“(c) Any amount payable under this section to an employee shall be paid—

“(1) by employing agency of the employee;

“(2) from the appropriations or fund that would be used to pay the employee if the employee were in a pay status; and

“(3) to the extent practicable, at the same time and in the same manner as would civilian basic pay if the employee’s civilian employment had not been interrupted.

“(d) In consultation with the Secretary of Defense, the Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section.

“(e) In consultation with the Office of Personnel Management, the head of each employing agency shall prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

“(f) In this section:

“(1) The terms ‘active duty for a period of more than 30 days’, ‘member’, and ‘reserve component’ have the meanings given such terms in section 101 of title 37.

“(2) The term ‘civilian basic pay’ includes any amount payable under section 5304 of this title.

“(3) The term ‘employing agency’, as used with respect to an employee entitled to any payments under this section, means the agency with respect to which the employee has reemployment rights under chapter 43 of title 38. The term ‘agency’ has the meaning given such term in subparagraph (C) of section 2302(a)(2) of this title, except that the term includes Government corporations and agencies excluded by clause (i) or (ii) of such subparagraph.

“(4) The term ‘military compensation’ has the meaning given the term ‘pay’ in section 101(21) of title 37, except that the term includes allowances provided under chapter 7 of such title.”

(b) CLERICAL AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5537 the following:

“5538. Nonreduction in pay while serving on active duty in a reserve component.”.

(c) APPLICATION OF AMENDMENT.—Section 5538 of title 5, United States Code, as added by subsection (a), shall apply with respect to pay periods (as described in subsection (b) of such section) beginning on or after the date of the enactment of this Act.

SEC. 213. EMPLOYEE SURVEYS.

(a) IN GENERAL.—Each agency shall conduct an annual survey of its employees (including survey questions unique to the agency and questions prescribed under subsection (b)) to assess—

(1) leadership and management practices that contribute to agency performance; and

(2) employee satisfaction with—

- (A) leadership policies and practices;
- (B) work environment;
- (C) rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission;
- (D) opportunity for professional development and growth; and
- (E) opportunity to contribute to achieving organizational mission.

(b) REGULATIONS.—The Office of Personnel Management shall issue regulations prescribing survey questions that should appear on all agency surveys under subsection (a) in order to allow a comparison across agencies.

(c) AVAILABILITY OF RESULTS.—The results of the agency surveys under subsection (a) shall be made available to the public and posted on the website of the agency involved, unless the head of such agency determines that doing so would jeopardize or negatively impact national security.

(d) AGENCY DEFINED.—For purposes of this section, the term “agency” means an Executive agency (as defined by section 105 of title 5, United States Code).

TITLE III—PROVISIONS RELATING TO THE SECURITIES AND EXCHANGE COMMISSION AND THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Subtitle A—Securities and Exchange Commission

SEC. 301. SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—Subchapter I of chapter 31 of title 5, United States Code, is amended by adding at the end the following:

“§ 3114. Appointment of accountants, economists, and examiners by the Securities and Exchange Commission

“(a) APPLICABILITY.—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service.

“(b) APPOINTMENT AUTHORITY.—

“(1) IN GENERAL.—The Commission may appoint candidates to any position described in subsection (a)—

“(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and

“(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

“(2) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.

“(c) REPORTS.—No later than 90 days after the end of fiscal year 2003 (for fiscal year 2003) and 90 days after the end of fiscal year 2005 (for fiscal years 2004 and 2005), the Commission shall submit a report with respect to its exercise of the authority granted by subsection (b) during such fiscal years to the Committee on Government Reform and the Committee on Financial Services of the House of Representatives and the Committee on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such reports shall describe the changes in the hiring process authorized by such subsection, including relevant information related to—

“(1) the quality of candidates;

“(2) the procedures used by the Commission to select candidates through the streamlined hiring process;

“(3) the numbers, types, and grades of employees hired under the authority;

“(4) any benefits or shortcomings associated with the use of the authority;

“(5) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

“(6) the way in which managers were trained in the administration of the streamlined hiring system.

“(d) COMMISSION DEFINED.—For purposes of this section, the term ‘Commission’ means the Security and Exchange Commission.”

(b) CLERICAL AMENDMENT.—The table of sections for chapter 31 of title 5, United States Code, is amended by inserting after the item relating to section 3113 the following:

“3114. Appointment of accountants, economists, and examiners by the Securities and Exchange Commission.”.

Subtitle B—National Aeronautics and Space Administration

SEC. 311. WORKFORCE AUTHORITIES AND PERSONNEL PROVISIONS.

(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by inserting after chapter 97, as added by section 841(a)(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2229), the following:

“CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

“SUBCHAPTER I—WORKFORCE AUTHORITIES

“Sec.
 “9801. Definitions.
 “9802. Planning, notification, and reporting requirements.
 “9803. Workforce authorities.
 “9804. Recruitment, redesignation, and relocation bonuses.
 “9805. Retention bonuses.
 “9806. Term appointments.
 “9807. Pay authority for critical positions.
 “9808. Assignments of intergovernmental personnel.
 “9809. Enhanced demonstration project authority.
 “9810. Voluntary separation incentive payments.
 “9811. Limitations relating to bonuses.

“SUBCHAPTER II—PERSONNEL PROVISIONS

“9831. Definitions.
 “9832. NASA-Industry exchange program.
 “9833. Science and technology scholarship program.
 “9834. Distinguished scholar appointment authority.
 “9835. Travel and transportation expenses of certain new appointees.
 “9836. Annual leave enhancements.
 “9837. Limited appointments to Senior Executive Service positions.
 “9838. Superior qualifications pay.

“SUBCHAPTER I—WORKFORCE AUTHORITIES

“§ 9801. Definitions

“For purposes of this subchapter—

“(1) the term ‘Administration’ means the National Aeronautics and Space Administration;

“(2) the term ‘Administrator’ means the Administrator of the National Aeronautics and Space Administration;

“(3) the term ‘critical need’ means a specific and important requirement of the Administration’s mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—

“(A) of the inability to fill positions; or

“(B) employees do not possess the requisite skills;

“(4) the term ‘employee’ means an individual employed in or under the Administration;

“(5) the term ‘workforce plan’ means the plan required under section 9802(a);

“(6) the term ‘appropriate committees of Congress’ means—

“(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

“(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate; and

“(7) the term ‘redesignation bonus’ means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof.

“§ 9802. Planning, notification, and reporting requirements

“(a) Not later than 90 days before exercising any of the workforce authorities under this subchapter, the Administrator shall submit a written plan to the appropriate committees of Congress. A plan under this subchapter may not be implemented without the approval of the Office of Personnel Management.

“(b) A workforce plan shall include a description of—

“(1) each critical need of the Administration and the criteria used in the identification of that need;

“(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

- “(i) address critical needs; and
- “(ii) would be eligible for each authority proposed to be exercised under section 9803; and
- “(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);
- “(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this subchapter; and
- “(B) the reasons why those needs would not be so addressed;
- “(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804, 9805 (including the criteria for granting bonuses in the absence of a critical need), and 9810, and how the level of those benefits will be determined;
- “(5) the safeguards or other measures that will be applied to ensure that this subchapter is carried out in a manner consistent with merit system principles;
- “(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);
- “(7) the methods that will be used to determine if the authorities exercised under this subchapter have successfully addressed each critical need identified under paragraph (1); and
- “(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and
- “(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—
 - “(i) nongovernmental recruitment or placement agencies; and
 - “(ii) Internet technologies.

“(c) Not later than 60 days before first exercising any of the workforce authorities made available under this subchapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

“(d)(1)(A) The Administrator may submit any modifications to the workforce plan to the Office of Personnel Management. Modifications to the workforce plan may not be implemented without the approval of the Office of Personnel Management.

“(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

“(2) Any reference in this subchapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

“(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

- “(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);
- “(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and
- “(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

“(f) None of the workforce authorities made available under this subchapter may be exercised in a manner inconsistent with the workforce plan.

“(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

“(h) Not later than 6 years after date of enactment of this subchapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this subchapter, including—

- “(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this subchapter successfully addressed each critical need identified under subsection (b)(1);

“(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

“(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

“§ 9803. Workforce authorities

“(a) The workforce authorities under this subchapter are the following:

“(1) The authority to pay recruitment, redesignation, and relocation bonuses under section 9804.

“(2) The authority to pay retention bonuses under section 9805.

“(3) The authority to make term appointments and to take related personnel actions under section 9806.

“(4) The authority to fix rates of basic pay for critical positions under section 9807.

“(5) The authority to extend intergovernmental personnel act assignments under section 9808.

“(6) The authority to apply subchapter II of chapter 35 in accordance with section 9810.

“(b) No authority under this subchapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

“(c) Unless specifically stated otherwise, all authorities provided under this subchapter are subject to section 5307.

“§ 9804. Recruitment, redesignation, and relocation bonuses

“(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

“(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

“(2) the individual—

“(A) is newly appointed as an employee of the Federal Government;

“(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

“(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

“(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

“(1) 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

“(2) 100 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

“(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

“(1) 25 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

“(2) 100 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

“(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

“(B) At a minimum, the service agreement shall include—

“(i) the required service period;

“(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

“(iii) the amount of the bonus and the basis for calculating that amount; and

“(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth

part of a year. The service period may not be less than 6 months and may not exceed 4 years.

“(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

“(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

“(f) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter, a summary of all bonuses paid under subsections (b) and (c) during the preceding year. Such summary shall include the number of bonuses paid, the total amount of bonuses paid, and the average percentage used in calculating the total average bonus amount, under each such subsection.

“§ 9805. Retention bonuses

“(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

“(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee’s services makes it essential to retain the employee; and

“(2) the employee would be likely to leave in the absence of a retention bonus.

“(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

“(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

“(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

“(B) At a minimum, the service agreement shall include—

“(i) the required service period;

“(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

“(iii) the amount of the bonus and the basis for calculating the amount; and

“(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

“(2) The employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

“(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

“(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

“(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

“(g) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter, a summary of all bonuses paid under subsections (b) and (c) during the preceding year. Such summary shall include the number of bonuses paid, the total amount of bonuses paid, and the average percentage used in calculating the total average bonus amount, under each such subsection.

“§ 9806. Term appointments

“(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

“(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to

a permanent appointment in the competitive service within the Administration without further competition if—

“(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

“(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

“(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

“(4) the employee’s performance under such term appointment was at least fully successful or equivalent; and

“(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

“(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

“(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

“(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

“(f) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter—

“(1) the total number of term appointments converted during the previous calendar year; and

“(2) of that total number, the number of conversions that were made to address a critical need described in the Workforce Plan pursuant to section 9802(b)(2).

“§ 9807. Pay authority for critical positions

“(a) In this section, the term ‘position’ means—

“(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

“(2) a position under the Executive Schedule under sections 5312 through 5317;

“(3) a position established under section 3104; or

“(4) a senior-level position to which section 5376(a)(1) applies.

“(b) Authority under this section—

“(1) may be exercised only with respect to a position that—

“(A) is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and

“(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

“(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

“(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

“(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

“(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

“(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

“(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

“(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in

the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

“(e) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter—

“(1) the number of positions for which the rate of basic pay was fixed under this section during the preceding year; and

“(2) the number of positions for which a rate of basic pay under this section was terminated during the preceding year.

“§ 9808. Assignments of intergovernmental personnel

“For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee’s assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking ‘two’ and inserting ‘four’.

“§ 9809. Enhanced demonstration project authority

“When conducting a demonstration project at the Administration, section 4703(d)(1)(A) may be applied by substituting ‘such numbers of individuals as determined by the Administrator’ for ‘not more than 5,000 individuals’.

“§ 9810. Voluntary separation incentive payments

“(a) In applying subchapter II of chapter 35, the Administrator may provide for voluntary separation incentive payments in excess of the dollar-amount limitation that would otherwise apply under section 3523(b)(3)(B), subject to subsection (b).

“(b) Voluntary separation incentive payments described in subsection (a)—

“(1) may not exceed 50 percent of the annual rate of basic pay of the employee receiving such payments (computed disregarding any comparability payments under sections 5304–5304a);

“(2) may not, in any calendar year, be made to more than—

“(A) 10 employees; or

“(B) such greater number of employees as the Administrator may, with the approval of the Office of Management and Budget, establish in lieu of the number specified in subparagraph (A) following notification to the appropriate committees of Congress;

“(3) may not be made to an employee if the employee has within the last 12 months received, or if the employee is then receiving, a bonus or allowance under section 5753 or 5754 or under section 9804 or 9805; and

“(4) may be made only if the position in which the employee is serving addresses a critical need identified in the workforce plan pursuant to section 9802(b)(2).

“(c)(1) The proposed use of workforce authorities in this section shall be included in the plan required by section 3522.

“(2) Whenever the Office of Personnel Management approves the Administration’s plan required in such section 3522, the Administration shall submit a copy of the approved plan to the appropriate committees of Congress within 15 days after the date on which it is so approved.

“§ 9811. Limitations relating to bonuses

“(a) Of the total amount in bonuses awarded under sections 9804 and 9805, respectively, in any year, not to exceed 15 percent of any such total amount may be awarded to supervisors (within the meaning of section 7103(a)(10)).

“(b) A separate appropriations account shall be maintained for such bonuses.

“SUBCHAPTER II—PERSONNEL PROVISIONS

“§ 9831. Definitions

“For purposes of this subchapter, the terms ‘Administration’ and ‘Administrator’ have the meanings set forth in section 9801.

“§ 9832. NASA-Industry exchange program

“(a) For purposes of this section, the term ‘detail’ means—

“(1) the assignment or loan of an employee of the Administration to a private sector organization without a change of position from the Administration, or

“(2) the assignment or loan of an employee of a private sector organization to the Administration without a change of position from the private sector organization that employs the individual, whichever is appropriate in the context in which such term is used.

“(b)(1) On request from or with the agreement of a private sector organization, and with the consent of the employee concerned, the Administrator may arrange for the assignment of an employee of the Administration to a private sector organization or an employee of a private sector organization to the Administration. An employee of the Administration shall be eligible to participate in this program only if the employee is employed at the GS–11 level or above (or equivalent) and is serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service.

“(2) The Administrator shall provide for a written agreement between the Administration and the employee concerned regarding the terms and conditions of the employee’s assignment. The agreement shall—

“(A) require the employee to serve in the Administration, upon completion of the assignment, for a period equal to the length of the assignment; and

“(B) provide that, in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the Administrator), the employee shall be liable to the United States for payment of all expenses of the assignment.

An amount under subparagraph (B) shall be treated as a debt due the United States.

“(3) Assignments may be terminated by the Administration or the private sector organization concerned for any reason at any time.

“(4) Assignments under this section shall be for a period of between 6 months and 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year, except that no assignment under this section may commence after the end of the 5-year period beginning on the date of the enactment of this section.

“(c)(1) An employee of the Administration who is assigned to a private sector organization under this section is deemed, during the period of the assignment, to be on detail to a regular work assignment in the Administration.

“(2) Notwithstanding any other provision of law, an employee of the Administration who is assigned to a private sector organization under this section is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee’s dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

“(3) The assignment of an employee to a private sector organization under this section may be made with or without reimbursement by the private sector organization for the travel and transportation expenses to or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3375, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Administration used for paying the travel and transportation expenses or pay.

“(4) The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee of the Administration assigned to a private sector organization under this section. The supervision of the duties of an employee of the Administration who is so assigned to a private sector organization may be governed by an agreement between the Administration and the organization.

“(d)(1) An employee of a private sector organization assigned to the Administration under this section is deemed, during the period of the assignment, to be on detail to the Administration.

“(2) An employee of a private sector organization assigned to the Administration under this section—

“(A) may continue to receive pay and benefits from the private sector organization from which he is assigned;

“(B) is deemed, notwithstanding paragraph (1), to be an employee of the Administration for the purposes of—

“(i) chapter 73;

“(ii) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

“(iii) sections 1343, 1344, and 1349(b) of title 31;

“(iv) the Federal Tort Claims Act and any other Federal tort liability statute;

“(v) the Ethics in Government Act of 1978; and

“(vi) section 1043 of the Internal Revenue Code of 1986;

“(C) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he is assigned; and

“(D) is subject to such regulations as the President may prescribe.

The supervision of an employee of a private sector organization assigned to the Administration under this section may be governed by agreement between the Administration and the private sector organization concerned. Such an assignment may be made with or without reimbursement by the Administration for the pay, or a part thereof, of the employee during the period of assignment, or for any contribution of the private sector organization to employee benefit systems.

“(3) An employee of a private sector organization assigned to the Administration under this section who suffers disability or dies as a result of personal injury sustained while performing duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81, as an employee as defined by section 8101 who had sustained the injury in the performance of duty, except that, if the employee or the employee’s dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

“(4) A private sector organization may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to the Administration under this section for the period of the assignment.

“(e)(1) The Administration shall, not later than February 28 of each year, prepare and submit to the appropriate committees of Congress a report summarizing the operation of this section during the preceding year.

“(2) Each report shall include, with respect to the period to which such report relates—

“(A) the total number of individuals assigned to, and the total number of individuals assigned from, the Administration during such period;

“(B) a brief description of each assignment included under subparagraph (A), including—

“(i) the name of the assigned individual, as well as the private sector organization, to or from which such individual was assigned;

“(ii) the respective positions to and from which the individual was assigned, including the duties and responsibilities and the pay grade or level associated with each; and

“(iii) the duration and objectives of the individual’s assignment; and

“(C) such other information as the Administration considers appropriate.

“(3) A copy of each report submitted under paragraph (1)—

“(A) shall be published in the Federal Register; and

“(B) shall be made publicly available on the Internet.

“(f) The Administrator, in consultation with the Director of the Office of Personnel Management, shall prescribe regulations for the administration of this section.

“(g) Not later than 4 years after the date of the enactment of this section, the General Accounting Office shall prepare and submit to the appropriate committees of Congress a report on the operation of this section. Such report shall include—

“(1) an evaluation of the effectiveness of the program established by this section; and

“(2) a recommendation as to whether such program should be continued (with or without modification) or allowed to lapse.

“§ 9833. Science and technology scholarship program

“(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

“(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act.

“(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individ-

uals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

“(b) In order to be eligible to participate in the Program, an individual must—

“(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);

“(2) be a United States citizen; and

“(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

“(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

“(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

“(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

“(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

“(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

“(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

“(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

“(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided.

“(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

“(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

“(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

“(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

“(A) the total amount of scholarships received by such individual under this section; plus

“(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

“(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

“(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

“(i) For purposes of this section—

“(1) the term ‘cost of attendance’ has the meaning given that term in section 472 of the Higher Education Act of 1965;

“(2) the term ‘institution of higher education’ has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

“(3) the term ‘Program’ means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

“(j)(1) There is authorized to be appropriated to the Administration for the Program \$10,000,000 for each fiscal year.

“(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

“§ 9834. Distinguished scholar appointment authority

“(a) In this section—

“(1) the term ‘professional position’ means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

“(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

“(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

“(2) the term ‘research position’ means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

“(b) The Administration may appoint, without regard to the provisions of sections 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in the Administration for which public notice has been given, if—

“(1) with respect to a position at the GS-7 level, the individual—

“(A) received, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

“(2) with respect to a position at the GS-9 level, the individual—

“(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

“(3) with respect to a position at the GS-11 level, the individual—

“(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

“(4) with respect to a research position at the GS-12 level, the individual—

“(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that

degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

“(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

“(c) Veterans’ preference procedures shall apply when selecting candidates under this section. Preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of nonpreference eligibles.

“(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

“§ 9835. Travel and transportation expenses of certain new appointees

“(a) In this section, the term ‘new appointee’ means—

“(1) a person newly appointed or reinstated to Federal service to the Administration to—

“(A) a career or career-conditional appointment;

“(B) a term appointment;

“(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

“(D) a career or limited term Senior Executive Service appointment;

“(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

“(F) an appointment to a position established under section 3104; or

“(G) an appointment to a position established under section 5108; or

“(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

“(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

“(c) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter—

“(1) the average payment for travel and transportation expenses of certain new appointees provided under this section during the preceding year; and

“(2) the highest payment for travel and transportation expenses to an individual appointee provided under this section during the preceding year.

“§ 9836. Annual leave enhancements

“(a)(1) In this subsection—

“(A) the term ‘newly appointed employee’ means an individual who is first appointed—

“(i) regardless of tenure, as an employee of the Federal Government; or

“(ii) as an employee of the Federal Government following a break in service of at least 90 days after that individual’s last period of Federal employment, other than—

“(I) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

“(II) employment as a law clerk trainee;

“(III) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

“(IV) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

“(V) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

“(B) the term ‘period of qualified non-Federal service’ means any period of service performed by an individual that—

“(i) was performed in a position the duties of which were directly related to the duties of the position in the Administration to which that individual will fill as a newly appointed employee; and

“(ii) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and

“(C) the term ‘directly related to the duties of the position’ means duties and responsibilities in the same line of work which require similar qualifications.

“(2)(A) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

“(B) A period deemed by the Administrator under subparagraph (A) shall continue to apply to the employee during—

- “(i) the period of Federal service in which the deeming is made; and
- “(ii) any subsequent period of Federal service.

“(3)(A) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, shall be 1 day for each full biweekly pay period.

“(B) The accrual rate established under this paragraph shall continue to apply to the employee during—

- “(i) the period of Federal service in which such accrual rate first applies; and
- “(ii) any subsequent period of Federal service.

“§ 9837. Limited appointments to Senior Executive Service positions

“(a) In this section—

“(1) the term ‘career reserved position’ means a position in the Administration designated under section 3132(b) which may be filled only by—

“(A) a career appointee; or

“(B) a limited emergency appointee or a limited term appointee—

“(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

“(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

“(2) the term ‘limited emergency appointee’ has the meaning given under section 3132; and

“(3) the term ‘limited term appointee’ means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

“(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

“(c) Notwithstanding sections 3132 and 3394(b)—

“(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

“(A) 4 years or less to a position the duties of which will expire at the end of such term; or

“(B) 1 year or less to a position the duties of which are continuing; and

“(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

“(A) paragraph (1)(A) for a period not to exceed 2 years; and

“(B) paragraph (1)(B) for a period not to exceed 1 year.

“(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

“(e) Notwithstanding section 3394(b) and section 3395—

“(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

“(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

“(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

“(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

“§ 9838. Superior qualifications pay

“(a) In this section the term ‘employee’ means an employee as defined under section 2105 who is employed by the Administration.

“(b) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of the Administration.

“(c) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee’s contribution in the new position will exceed that in the former position, before setting pay under this section.

“(d) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

“(e) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

“(f) The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).

“(g) Before setting any employee’s pay under this section, the Administrator shall submit a plan to the Office of Personnel Management, that includes—

“(1) criteria for approval of actions to set pay under this section;

“(2) the level of approval required to set pay under this section;

“(3) all types of actions and positions to be covered;

“(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

“(5) a process to evaluate the effectiveness of this section.”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CHAPTERS.—The table of chapters for subchapter I of part III of title 5, United States Code, is amended by adding after the item relating to chapter 97 the following:

“98. National Aeronautics and Space Administration 9801”.

(2) COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking “the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,” and inserting “the rate of basic pay payable for level III of the Executive Schedule.”

(3) COMPENSATION CLARIFICATION.—Section 209 of title 18, United States Code, as amended by section 209(g)(2) of the E-Government Act of 2002 (Public Law 107-347; 116 Stat. 2932), is amended by adding at the end the following:

“(h) This section does not prohibit an employee of a private sector organization, while assigned to the National Aeronautics and Space Administration under section 9832 of title 5, from continuing to receive pay and benefits from that organization in accordance with section 9832 of that title.”

(4) CONTINUED TSP ELIGIBILITY.—Section 125(c)(1) of Public Law 100-238 (5 U.S.C. 8432 note), as amended by section 209(g)(3) of the E-Government Act of 2002 (Public Law 107-347; 116 Stat. 2932), is amended—

(A) in subparagraph (C), by striking “or” at the end;

(B) in subparagraph (D), by striking “and” at the end and inserting “or”;

and

(C) by adding at the end the following:

“(E) an individual assigned from the National Aeronautics and Space Administration to a private sector organization under section 9832 of title 5, United States Code; and”.

(5) ETHICS PROVISIONS.—

(A) ONE-YEAR RESTRICTION ON CERTAIN COMMUNICATIONS.—Section 207(c)(2)(A)(v) of title 18, United States Code, is amended by inserting “or section 9832” after “chapter 37”.

(B) DISCLOSURE OF CONFIDENTIAL INFORMATION.—Section 1905 of title 18, United States Code, is amended by inserting “or section 9832” after “chapter 37”.

(6) CONTRACT ADVICE.—Section 207(l) of title 18, United States Code, is amended by inserting “or section 9832” after “chapter 37”.

(7) AMENDMENTS TO TITLE 5, UNITED STATES CODE.—Title 5, United States Code, is amended—

(A) in section 3111(d), by inserting “or section 9832” after “chapter 37”;

and

(B) in section 7353(b)(4), by inserting “or section 9832” after “chapter 37”.

TITLE IV—HUMAN CAPITAL PERFORMANCE FUND

SEC. 401. HUMAN CAPITAL PERFORMANCE FUND.

(a) IN GENERAL.—Subpart D of part III of title 5, United States Code, is amended by inserting after chapter 53 the following:

“CHAPTER 54—HUMAN CAPITAL PERFORMANCE FUND

- “Sec.
- “5401. Purpose.
- “5402. Definitions.
- “5403. Human Capital Performance Fund.
- “5404. Human capital performance payments.
- “5405. Regulations.
- “5406. Agency plan.
- “5407. Nature of payment.
- “5408. Appropriations.

“§ 5401. Purpose

“The purpose of this chapter is to promote, through the creation of a Human Capital Performance Fund, greater performance in the Federal Government. Monies from the Fund will be used to reward agencies’ highest performing and most valuable employees. This Fund will offer Federal managers a new tool to recognize employee performance that is critical to the achievement of agency missions.

“§ 5402. Definitions

“For the purpose of this chapter—

“(1) ‘agency’ means an Executive agency under section 105, but does not include the General Accounting Office;

“(2) ‘employee’ includes—

“(A) an individual paid under a statutory pay system defined in section 5302(1);

“(B) a prevailing rate employee, as defined in section 5342(a)(2); and

“(C) a category of employees included by the Office of Personnel Management following the review of an agency plan under section 5403(b)(1);

but does not include—

“(i) an individual paid at an annual rate of basic pay for a level of the Executive Schedule, under subchapter II of chapter 53, or at a rate provided for one of those levels under another provision of law;

“(ii) a member of the Senior Executive Service paid under subchapter VIII of chapter 53, or an equivalent system;

“(iii) an administrative law judge paid under section 5372;

“(iv) a contract appeals board member paid under section 5372a;

“(v) an administrative appeals judge paid under section 5372b; and

“(vi) an individual in a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; and

“(3) ‘Office’ means the Office of Personnel Management.

“§ 5403. Human Capital Performance Fund

“(a) There is hereby established the Human Capital Performance Fund, to be administered by the Office for the purpose of this chapter.

“(b)(1)(A) An agency shall submit a plan as described in section 5406 to be eligible for consideration by the Office for an allocation under this section. An allocation shall be made only upon approval by the Office of an agency’s plan.

“(B)(i) After the reduction for training required under section 5408, ninety percent of the remaining amount appropriated to the Fund may be allocated by the Office to the agencies. Of the amount to be allocated, an agency’s pro rata distribution may not exceed its pro rata share of Executive branch payroll.

“(ii) If the Office does not allocate an agency’s full pro rata share, the undistributed amount remaining from that share will become available for distribution to other agencies, as provided in subparagraph (C).

“(C)(i) After the reduction for training under section 5408, ten percent of the remaining amount appropriated to the Fund, as well as the amount of the pro rata share not distributed because of an agency’s failure to submit a satisfactory plan, shall be allocated among agencies with exceptionally high-quality plans.

“(ii) An agency with an exceptionally high-quality plan is eligible to receive an additional distribution in addition to its full pro rata distribution.

“(2) Each agency is required to provide to the Office such payroll information as the Office specifies necessary to determine the Executive branch payroll.

“§ 5404. Human capital performance payments

“(a)(1) Notwithstanding any other provision of law, the Office may authorize an agency to provide human capital performance payments to individual employees based on exceptional performance contributing to the achievement of the agency mission.

“(2) The number of employees in an agency receiving payments from the Fund, in any year, shall not be more than the number equal to 15 percent of the agency’s average total civilian full- and part-time permanent employment for the previous fiscal year.

“(b)(1) A human capital performance payment provided to an individual employee from the Fund, in any year, shall not exceed 10 percent of the employee’s rate of basic pay.

“(2) The aggregate of an employee’s rate of basic pay, adjusted by any locality-based comparability payments, and human capital performance pay, as defined by regulation, may not exceed the rate of basic pay for Executive Level IV in any year.

“(3) Any human capital performance payment provided to an employee from the Fund is in addition to any annual pay adjustment (under section 5303 or any similar provision of law) and any locality-based comparability payment that may apply.

“(c) No monies from the Human Capital Performance Fund may be used to pay for a new position, for other performance-related payments, or for recruitment or retention incentives paid under sections 5753 and 5754.

“(d)(1) An agency may finance initial human capital performance payments using monies from the Human Capital Performance Fund, as available.

“(2) In subsequent years, continuation of previously awarded human capital performance payments shall be financed from other agency funds available for salaries and expenses.

“§ 5405. Regulations

“The Office shall issue such regulations as it determines to be necessary for the administration of this chapter, including the administration of the Fund. The Office’s regulations shall include criteria governing—

“(1) an agency plan under section 5406;

“(2) the allocation of monies from the Fund to agencies;

“(3) the nature, extent, duration, and adjustment of, and approval processes for, payments to individual employees under this chapter;

“(4) the relationship to this chapter of agency performance management systems;

“(5) training of supervisors, managers, and other individuals involved in the process of making performance distinctions; and

“(6) the circumstances under which funds may be allocated by the Office to an agency in amounts below or in excess of the agency’s pro rata share.

“§ 5406. Agency plan

“(a) To be eligible for consideration by the Office for an allocation under this section, an agency shall—

“(1) develop a plan that incorporates the following elements:

“(A) adherence to merit principles set forth in section 2301;

“(B) a fair, credible, and transparent employee performance appraisal system;

“(C) a link between the pay-for-performance system, the employee performance appraisal system, and the agency’s strategic plan;

“(D) a means for ensuring employee involvement in the design and implementation of the system;

“(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system;

“(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

“(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and

“(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system;

“(2) upon approval, receive an allocation of funding from the Office;

“(3) make payments to individual employees in accordance with the agency’s approved plan; and

“(4) provide such information to the Office regarding payments made and use of funds received under this section as the Office may specify.

“(b) The Office, in consultation with the Chief Human Capital Officers Council, shall review and approve an agency’s plan before the agency is eligible to receive an allocation of funding from the Office.

“(c) The Chief Human Capital Officers Council shall include in its annual report to Congress under section 1303(d) of the Homeland Security Act of 2002 an evaluation of the formulation and implementation of agency performance management systems.

“§ 5407. Nature of payment

“Any payment to an employee under this section shall be part of the employee’s basic pay for the purposes of subchapter III of chapter 83, and chapters 84 and 87, and for such other purposes (other than chapter 75) as the Office shall determine by regulation.

“§ 5408. Appropriations

“There is authorized to be appropriated \$500,000,000 for fiscal year 2004, and, for each subsequent fiscal year, such sums as may be necessary to carry out the provisions of this chapter. In the first year of implementation, up to 10 percent of the amount appropriated to the Fund shall be available to participating agencies to train supervisors, managers, and other individuals involved in the appraisal process on using performance management systems to make meaningful distinctions in employee performance and on the use of the Fund.”

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 53 the following:

“54. Human Capital Performance Fund 5401”.

TITLE V—MISCELLANEOUS

SEC. 501. PROHIBITION ON USE OF QUOTAS.

(a) IN GENERAL.—After the date of enactment of this Act, the Office of Management and Budget may not establish, apply, or enforce any numerical goal, target, or quota for subjecting the employees of a department or agency of the Government to public-private competitions or converting such employees or the work performed by such employees to contractor performance under Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy, unless the goal, target, or quota is based on considered research and sound analysis of past activities and is consistent with the stated mission of the department or agency.

(b) LIMITATIONS.—Subsection (a) shall not—

(1) otherwise affect the implementation or enforcement of the Government Performance and Results Act of 1993 (107 Stat. 285); or

(2) prevent any agency of the Executive branch from subjecting work performed by Federal employees or private contractors to public-private competition or conversions.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 1836, as amended, would make changes to certain areas of federal civil service, such as the Department of Defense (DOD) civilian workforce, the National Aeronautics and Space Administration (NASA), the Securities and Exchange Commission (SEC), and government-wide improvements, in order to improve the flexibility and competitiveness of federal human resources management.

BACKGROUND AND NEED FOR THE LEGISLATION

One of the top priorities for the Government Reform Committee in the 108th Congress is to advance comprehensive civil service reform for the federal government. The current system, put in place more than fifty years ago, does not adequately address the prior-

ities of a 21st century federal workforce. Although comprehensive reform is still the Committee's top priority, this legislation seeks to address some critical needs that face certain federal agencies and could be used as a model for other agencies while we continue to work on government-wide civil service reforms.

The primary focus of this legislation is to address the human capital management challenges facing three key federal agencies: the Department of Defense, the Securities and Exchange Commission and the National Aeronautics and Space Administration. In addition, the legislation includes a number of government-wide improvements to the civil service system, including a modification of the overtime pay cap, an increase in the annual student loan repayment authority and an increase in the pay cap for the Senior Executive Service. Finally, H.R. 1836 includes language authorizing the creation of a human capital performance fund.

HEARINGS

In addition to a year-long debate in Congress over granting almost identical human resources management flexibility to the Department of Homeland Security, followed by a months-long discussion within the Administration on what flexibilities to request for DOD, Congress has held a number of hearings to discuss the proposal since it was submitted to Congress last month.

On April 29, 2003, the Subcommittee on Civil Service and Agency Organization of the House Committee on Government Reform held a hearing entitled "Transforming the Defense Department: Exploring the Merits of the Proposed National Security Personnel System." The purpose of the hearing was to discuss the merits of the proposal to create a National Security Personnel System and to provide DOD the opportunity to discuss the individual elements of the proposal with Members of the Subcommittee. Witnesses at the hearing included: the Honorable David S. Chu, Under Secretary of Defense for Personnel and Readiness, Department of Defense; the Honorable Dan G. Blair, Deputy Director, Office of Personnel Management; the Honorable David M. Walker, Comptroller General, General Accounting Office; Mr. Bobby Harnage, National President, American Federation of Government Employees, AFL-CIO; and Mr. G. Jerry Shaw, General Counsel, Senior Executives Association.

On May 1, 2003, the House Committee on Armed Services held a hearing on the "Defense Transformation for the 21st Century Act" that was submitted to the Congress by the Administration. The hearing addressed the provisions in the proposal that related to civilian personnel and acquisition policy, provisions that were being considered in preparation for the fiscal year 2004 defense authorization act. Witnesses at the hearing included: the Honorable David S. Chu, Under Secretary of Defense for Personnel and Readiness, Department of Defense; the Honorable E.C. "Pete" Aldridge, Under Secretary of Defense for Acquisition, Technology and Logistics, Department of Defense; the Honorable David M. Walker, Comptroller General, General Accounting Office; and Mr. Bobby Harnage, National President, American Federation of Government Employees, AFL-CIO.

On May 6, 2003, the House Committee on Government Reform held a hearing entitled "Instilling Agility, Flexibility and a Culture

of Achievement in Critical Federal Agencies: A Review of H.R. 1836, the Civil Service and National Security Personnel Improvement Act of 2003.” The primary focus of this hearing was to discuss the Defense Department’s National Security Personnel System proposal. The hearing also focused on the civil service flexibility proposals for NASA, the SEC, the government-wide personnel provisions, and the proposal to create a human capital performance fund. All of these elements were included in H.R. 1836, which was introduced by Government Reform Committee Chairman Tom Davis (R–VA) and Armed Services Committee Chairman Duncan Hunter (R–CA) on April 29, 2003. Witnesses at the hearing included: the Honorable Paul Wolfowitz, Deputy Secretary, Department of Defense (accompanied by General Peter Pace, Vice Chairman of the Joint Chiefs of Staff and Admiral Vern Clark, Chief of Naval Operations); the Honorable Kay Coles James, Director, Office of Personnel Management; the Honorable Sean O’Keefe, Administration, National Aeronautics and Space Administration; the Honorable William Donaldson, Chairman, Securities and Exchange Commission; Dr. Paul Light, Director, Center for Public Service, the Brookings Institution; Mr. Bobby Harnage, National President, American Federation of Government Employees, AFL–CIO; Ms. Colleen Kelley, President, National Treasury Employees Union; and Ms. Mildred Turner, Member of the Department of Agriculture Conference of the Federal Managers Association.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

This Act may be cited as the “Civil Service and National Security Personnel Improvement Act.”

TITLE I—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

Section 101. Short title

This section may be cited as the “National Security Personnel System Act.”

Section 102. Department of Defense National Security Personnel System

This title would amend title 5 of the United States Code by adding a new chapter 99 at the end of subpart I of part III. The new chapter would contain the following sections:

Section 9901: This section would provide definitions of various terms used throughout the new chapter.

Section 9902: This section would authorize the Secretary of Defense, along with the Director of the Office of Personnel Management (OPM), to establish a civilian human resources management system through regulations for some or all of the organizational or functional units of the Department of Defense (DOD), which would enable the Department to fulfill its national security mission. In developing this system, the Director of OPM would serve as a strategic and collaborative partner. If the Secretary certified that an issuance or adjustment of a regulation, or the inclusion, exclusion, or modification or a particular provision therein, would be essential

to the national security, the Secretary would be able to, subject to the decision of the President, waive the requirement that the provision(s) be issued jointly with OPM. This system would have to be consistent with the merit system principles as set forth in title 5. It also would protect veterans' preference, ensure that employees may organize and bargain collectively, and allow the Secretary to engage in bargaining at the national level, in addition to local collective bargaining. The section would further:

(1) provide for a collaborative process, based on the model established in the Homeland Security Act, Public Law 107-296, for ensuring inclusion of employee representatives in the planning, development, and implementation of the human resources management system, while allowing the Secretary to conduct such collaboration at the national level;

(2) require the establishment of an appeals process that provides that employees of the Department of Defense are entitled to fair treatment in any appeals that they bring in decisions relating to their employment, which would include an independent review panel;

(3) establish a program under which employees would be eligible for early retirement, offered separation pay to separate from the service voluntarily, or both for purposes of reducing or restructuring the workforce;

(4) require the system developed under this chapter to comply with provisions in current law relating to political activity, oath of office, access to criminal history records for national security and other purposes, the Ethics in Government Act, and Inspector General Act;

(5) allow annuitants who become employed in the Department to retain their annuities;

(6) cap DOD Senior Executive Service pay, allowances, differentials, bonuses, awards and other payments at no more than the Vice President's total annual compensation;

(7) authorize the Secretary of Defense to waive those provisions of title 5, U.S. Code including chapters 71, 75, and 77, not specifically listed in the section as unwaivable; and

(8) allow the Secretary of Defense to include in the regulations issued jointly with OPM the hiring flexibilities that are currently available to the Secretary under section 4703 of title 5, which governs personnel demonstration projects.

Section 9903: This section would authorize DOD to hire highly qualified experts for up to five years, with the possibility of a one-year extension, and to prescribe the appropriate pay rates. It is consistent with the authority now available to the Defense Advanced Research Projects Agency and Military Departments for hiring scientists and engineers.

Section 9904: This section would authorize the Secretary of Defense to hire American citizens 55 years of age and older to work for the Department of Defense for up to two years, without a reduction in any annuity, pension, retirement pay, or similar payment, to fill needs that are not otherwise met by civilian employees.

Section 9905: This section would authorize DOD to align the allowances and benefits of certain employees outside the United States with those of the Foreign Service and the Central Intelligence Agency.

TITLE II—DEPARTMENT OF DEFENSE CIVILIAN
PERSONNEL

This title includes a number of government-wide civil service provisions.

Section 201. Modification of the overtime pay cap

Under current law, overtime pay is capped at 150% of GS-10, step 1. Employees whose regular pay exceeds this overtime cap are paid at a rate lesser than their regular hourly rate for their overtime work. This section would authorize the Secretary to provide overtime pay at a rate of either 150% of GS-10, step 1, or the employee's hourly rate of pay, whichever is greater.

Section 202. Civil Service Retirement System computation for part-time service

This section would amend 5 U.S.C. 8339(p) to provide a special annuity computation formula for employees who performed part-time service after April 6, 1986. For these employees, the section would extend application of the full-time rates of pay in computing average salary to all service, regardless of when it was performed. This would correct the anomaly in the current computation scheme; eliminate a disincentive for employees nearing the end of their careers who would like to phase into retirement by working part-time schedules; and allow agencies to keep senior staff on board as part of a succession planning effort.

Section 203. Military leave for mobilized Federal civilian employees

This section would help Federal civilian employees whose military pay is less than their Federal civilian salary "transition" to military service by allowing them to receive 22 additional workdays of military leave when mobilized. Such leave would help alleviate the difference in pay for the first month of service by enabling them to receive the difference between their Federal civilian pay and their military pay. Current law only entitles Reserve component members to the additional military leave.

Section 204. Common occupational and health standards for differential payments as a consequence of exposure to asbestos

This section would standardize the current law that allows employees to be paid differentials for duty involving severe working conditions or hazards. This provision specifies that for "any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970."

Section 205. Increase in annual student loan repayment authority

Current law authorizes the head of an agency to repay student loans for highly qualified personnel. The current repayment amount for an employee is limited to \$6,000 per year and \$40,000 total. This provision would raise the \$6,000 amount to \$10,000 per year, responding to the increases in annual college tuition costs

since the enactment of the original statute. The \$40,000 total cap would remain.

Section 206. Authorization for Cabinet secretaries, secretaries of military departments, and heads of executive agencies to be paid on a biweekly basis

This section would allow cabinet secretaries, secretaries of military departments and heads of executive agencies to be paid biweekly like most Federal employees. This proposal would save time and cost resources by relieving civilian pay and disbursing operations from having to utilize special manual procedures to accommodate these personnel.

Section 207. Additional classes of individuals eligible to participate in the Federal Long-Term Care Insurance Program

This section would amend title 5, United States Code, by enabling certain additional eligible classes of individuals to participate in the Federal Long-Term Care Insurance Program (FLTCIP). These classes are: (1) individuals who were employed by the District of Columbia Government before October 1, 1987, and who are covered by the Civil Service Retirement System; (2) former Federal employees who have met the service requirements for a deferred annuity but do not meet the age requirement to receive retirement annuity; (3) reservists who are now in the retired reserves, having completed the service requirements of retirement, but have not reached the age to receive retirement annuity.

Section 208. Clarification to Hatch Act; limitation on disclosure of certain records

This section includes legislation introduced by Chairman Davis (H.R. 1509) that would clarify that a Federal employee who voluntarily separates from the civil service shall not be subject to the enforcement provisions of the Hatch Act unless he or she re-enters the civil service.

Section 209. Senior Executive Service and performance

This section would amend provisions of chapter 53 of title 5, United States Code, relating to pay of senior executives. First, this section would add positions in the Senior Executive Service, and in any equivalent system determined by the President's Pay Agent, to the list of positions for which locality pay is unavailable. This section would also provide that there will be a range of rates of basic pay for the Senior Executive Service, established according to OPM regulations. Each senior executive's pay would be set by the employing agency at one of the rates of the range on the basis of individual performance, contribution to agency performance, or both, as determined under a rigorous performance management system. The provision in current law that sets the minimum rate of the range at the minimum rate for senior-level positions would be retained. However, the maximum rate for such positions would be raised from level IV to level III of the Executive Schedule. This section would also provide for the adjustment of the applicable maximum to level II of the Executive Schedule for any agency that is certified as having a performance appraisal system that makes meaningful distinctions among senior executives, based on their

relative performance, as that system is both designed and applied. No employee would suffer a reduction in pay by reason of transfer from an agency with the higher, level II maximum, to an agency with the lower level III maximum. This section would also provide a new standard for determining the applicability of one of the post-employment restrictions to those who are in the Senior Executive Service or equivalent positions in other pay systems. In this regard, that restriction would apply to those individuals whose rate of basic pay exceeds 96 percent of the rate for level II of the Executive Schedule. Employees in positions currently described by section 207(c)(2)(A)(ii) of title 18, U.S. Code, would continue to be subject to the one-year post-employment restriction upon leaving that senior position at any time during the two years following enactment of this Act. When that two-year period is complete, any such individual who is still an officer or employee in the executive branch in a position other than that described in clauses (i), (iii), and (iv) of section 207(c)(2)(A), will be a senior employee only if he or she meets the new salary threshold in clause (ii) of that section. Finally, this section would specify that the amendments concerning pay for senior executives could not result in a reduction in basic pay for any senior executive during the first year after enactment. The rate of basic pay which could not be reduced would be deemed to be the rate of basic pay for the senior executive.

Section 210. Design elements of pay-for-performance systems in demonstration projects

This section would provide specific elements to be incorporated into any pay-for-performance system established in a demonstration project under chapter 47, such as, among other things, adherence to merit principles, a fair, credible and transparent employee appraisal system, a link between the pay-for-performance system and the agency's strategic plan, adequate training, a means for ensuring employee feedback, and effective safeguards.

Section 211. Federal flexible benefits plan administrative costs

This section would prohibit agencies that provide or plan to provide flexible benefits plans for its employees from imposing any fees related to the program on its employees in order to defray the administrative costs associated with such option. This section would also require a number of reporting requirements associated with the benefits plans.

Section 212. Non-reduction in pay while Federal employee is serving on active duty in a Reserve Component of the uniformed services

This section would entitle a Federal employee who is also a member of the reserves and who is absent from his or her civilian employment position under a call or order for active duty service of more than 30 days, to receive an amount equal to the difference in pay between the military compensation received and the civilian compensation that otherwise would have been received during such period, to be paid by the individual's employing agency. This section would also make such amounts also payable during: (1) any period of hospitalization or convalescence required as a result of such service; and (2) the 14-day period following such service.

Section 213. Employee surveys

This section would authorize executive agencies to conduct annual surveys of their employees in order to assess: the leadership and management practices that contribute to agency performance; employee satisfaction with leadership policies and practices, work environment and rewards and recognition for professional accomplishment and personal contributions to achieving organization mission; opportunity for professional development and growth; and opportunity to contribute to achieving organizational mission. OPM would issue regulations prescribing survey questions to address these issues. Results of such surveys would be available to the public and posted on agency Web sites, unless the head of an agency determines that doing so would jeopardize or negatively impact national security.

TITLE III—PROVISIONS RELATING TO THE SECURITIES AND EXCHANGE COMMISSION AND THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

This title includes human resources management flexibilities for the Securities and Exchange Commission and the National Aeronautics and Space Administration.

Subtitle A—Securities and Exchange Commission

This section would add a new section 3114 to subchapter I of chapter 31 of title 5, United States Code.

Section 301. Securities and Exchange Commission

Section 3114: This subtitle would include a provision that would grant the Securities and Exchange Commission the flexibility to circumvent federal hiring procedures in hiring accountants, economists and compliance examiners at the Commission.

Subtitle B—National Aeronautics and Space Administration

This section would add a new chapter 98 to subpart I of part III of title 5, United States Code.

Section 311. Workforce authorities and personnel provisions

Subchapter I—Workforce Authorities

Section 9801: The section would provide definitions of various terms used throughout the new chapter.

Section 9802: This section would require that ninety days prior to exercising any of the workforce authorities under this subchapter, the NASA Administrator is required to submit to Congress a written plan for approval, and OPM must approve this workforce plan. The plan, and any subsequent modifications, must be circulated to employees 60 days prior to submission to OPM, and employee representatives must be given 30 calendar days to review and make recommendations to the plan or modifications.

Section 9803: Workforce authorities under this subchapter would include: authority to pay recruitment, redesignation and relocation bonuses; authority to pay retention bonuses; authority to make

term appointments; authority to extend intergovernmental personnel assignments; term appointments; and critical pay.

Section 9804: Under this section, bonuses would be available for new employees, redesignated employees and relocated employees. Different bonus authorities would be authorized based on whether such position is determined to be critical or non-critical. A service agreement (which factors in length of service, form of payment, amount of the bonus, and termination conditions) would be required before a bonus could be granted.

Section 9805: This section would authorize retention bonuses to be given to employees whose qualifications are unique and essential and who might potentially leave NASA without the bonus. Again, different bonus authorities would be authorized based on whether such position is determined to be critical or non-critical, and a service agreement would be required for the bonus (unless it is paid on a biweekly basis along with the employee's salary).

Section 9806: This section would authorize NASA to offer term appointments for 1–6 years. The NASA Administrator would be able to convert appointees into the civil service without competing the position, provided that (1) the appointment was made in compliance with chapter 33 of title 5, (2) the potential for conversion was clearly stated in the original announcement, (3) the individual has been there for more than two years and has demonstrated good performance, and (4) the civil service position is at the same level as the appointed position.

Section 9807: Under this section, the NASA Administrator would be authorized to offer enhanced pay for positions at an “extremely high level” in a scientific, technical, professional, or administrative field. Such authority would only be utilized to retain existing NASA personnel or to bring in someone from outside the federal government, and only 10 employees would be able to receive such pay under this section. The total pay received by such individuals would not be able to exceed the rate of pay of the Vice President.

Section 9808: This section would allow NASA to retain inter-governmental personnel up to six years.

Section 9809: This section would authorize NASA to establish personnel demonstration projects that encompass such numbers of employees as determined by the Administration (as opposed to the current government-wide limit of 5,000 employees in any demo project).

Section 9810: This section would authorize “voluntary separation incentive payments” for NASA of up to 50% of salary (subject to the availability of funds), allowing NASA to streamline its workforce.

Section 9811: This section would limit bonuses awarded to supervisors under sections 9804 and 9805 to 15% of total bonuses, and it would require the Administration to maintain a separate account for bonuses.

Subchapter II—Personnel Provisions

Section 9831: This section would include necessary definitions for the subchapter.

Section 9832: This section would provide a new exchange program that would limit the length of employee exchanges to one year, with authority for extensions of up to an additional year. This

section sets forth ethical standard requirements for employees involved in the assignments. Employees would only be able to serve in the exchange program if they commit to return to NASA after the assignment. This language closely resembles the exchange programs that Chairman Davis included in the Digital Tech Corps Act and the Services Acquisition Reform Act.

Section 9833: This section would provide a new science and technology scholarship program, added at the request of the Science Committee. The new language would require employees to serve as an employee of NASA for 2 years for each year of the scholarship.

Section 9834: This section would authorize the Administrator to appoint qualified individuals to professional or research positions within NASA without employing competitive service hiring procedures, provided that the individual graduated from an accredited university with a GPA of 3.5 or higher. Appointments would be career-conditional appointments in the competitive service. The terms “professional” position and “research” position would subsequently be defined.

Section 9835: This section would authorize the Administrator to pay the travel, transportation and relocation expenses of certain new appointees. Such benefits are available to current federal employees who accept a new position within the Federal government.

Section 9836: Under this section, NASA would be able to deem a period of qualified non-federal career experience for an individual an equal period of service performed as a federal employee for purposes of calculating leave accrual. It would also provide that all senior executives and other senior level employees at NASA accrue annual leave at the maximum rate: one day for each bi-weekly pay period.

Section 9837: This provision would permit limited SES appointees to be appointed to career reserved positions, provided that the limited appointee, immediately before the limited appointment, was serving under a career or career-conditional appointment outside of the SES. The limited appointment authority would be expanded to include any bona fide temporary need as determined by the Administrator. It would also authorize payment of performance bonuses for NASA limited term employees in the same amounts and in the same manner as career SES appointees.

Section 9838: Under this section, NASA would be able to set a GS employee at any step within the pay range based on the superior qualifications of the employee or special need of NASA (this authority exists for new hires, but not for current employees).

TITLE IV—HUMAN CAPITAL PERFORMANCE FUND

This title would insert a new chapter 54 in subpart D of part III, United States Code, authorizing the establishment of a Human Capital Performance Fund.

Section 401. Human Capital Performance Fund

This section would add a new chapter 54 to title 5, United States Code that would authorize \$500 million annually for a human capital performance fund.

Section 5401: This section would explain the purpose of the new chapter, which would be to promote, through the creation of a Human Capital Performance Fund, greater performance in the fed-

eral government. Monies from the fund would be used to reward agencies' highest performance and most valuable employees. This fund would offer federal managers a new tool to recognize employee performance that is critical to the achievement of agency missions.

Section 5402: This section would provide definitions necessary for the chapter.

Section 5403: This section would establish, and require OPM to administer, the new Human Capital Performance Fund, which would be used to make human capital performance payments. An agency would have to submit a plan for OPM's approval before it could receive allocations from the Fund. In FY 2004, up to 10 percent of the Fund would be set aside for agency training on the operation of the Fund plan, as well as on performance evaluation in general. Thereafter, the remainder of the Fund would be allocated by OPM to agencies, with up to 90 percent of that amount allocated on the basis of an agency's pro rata share of Executive branch payroll; OPM would have discretion over the distribution of the remaining 10 percent, and an agency with an exceptionally high-quality plan would be eligible to receive an additional distribution. In FY 2005 and beyond, OPM would allocate 90 percent of the amounts appropriated for the Fund to agencies on a pro rata basis, and would have discretion over allocation of the remainder. Each agency would be required to provide payroll information to OPM to facilitate the determination of the Executive branch payroll and the pro rata shares.

Section 5404: This section would permit OPM to allow an agency to provide human capital performance payments to employees, based on exceptional performance or contributions to the agency's mission, in a manner specified in the agency's approved plan.

Human Capital Performance Fund payments would not affect the operation of current basic pay systems such as the General Schedule. No more than 15 percent of an agency's eligible employees would be permitted to receive a Fund payment in any given year. Individual payments would be limited to no more than 10 percent of an employee's basic rate of pay in any given year, and in the aggregate, when combined with an employee's rate of basic pay as adjusted by any locality-based comparability payments, would not be permitted to exceed Executive Level IV. This section would also bar the use of the Fund to pay for a new position or for other types of performance-related payments or for any other payment not otherwise authorized by the new chapter, including recruitment and retention authorized under sections 5753 and 5754 of Title 5. Further, this section would provide that initial human capital performance payments could be made to individual employees using monies from the Human Capital Performance Fund, but, in subsequent years, agencies would be required to budget for and fund the continuation of those previously granted individual payments as part of their overall salaries and expenses budget.

Section 5405: This section would require OPM to prescribe regulations to administer the provisions of the new chapter 54 and the Fund. The regulations would have to include criteria governing agency plans, allocations to agencies from the Fund, payments to individual employees, and the various circumstances permitting allocations that are either less than or greater than the agency's pro rata share of the Fund. These criteria could include limits on the

aggregate annualized value of human capital performance payments authorized by each agency. In addition, the relationship of agency performance management systems to this chapter and the parameters of training for supervisors, managers, and other individuals involved in the process of making performance distinctions would be specified in the regulations.

Section 5406: This section would require an agency to submit to OPM a plan for making payments to employees under chapter 54. The plan would have to be approved by OPM before the agency could receive an allocation from the Fund. Each agency with an approved plan would have to give OPM whatever information OPM requires concerning how the agency has used its allocation from the Fund. Each agency would also be required to demonstrate that its performance management system supports its strategic goals and objectives, and is used to make meaningful distinctions in performance. This section would also require appropriate training.

Section 5407: This section would provide that any payment to an employee under chapter 54 is part of the employee's basic pay for retirement and life insurance purposes, and for any other purposes OPM determines by regulation. However, a payment under chapter 54 could not be part of basic pay for purposes of chapter 75 of title 5 (regarding adverse actions).

Section 5408: This section would authorize appropriations to implement chapter 54 in the amount of \$500 million for FY 2004, and, for each subsequent fiscal year, such sums as may be necessary to carry out the provisions of that chapter.

TITLE V—MISCELLANEOUS

This title would prohibit the use of quotas in public-private competitions unless it is based on considered research and sound analysis of past activities and is consistent with the stated mission of the department or agency.

Section 501. Prohibition on use of quotas

This section would prohibit the Office of Management and Budget from establishing, applying or enforcing any numerical goal, target, or quota for subjecting the employees of a department or agency of the Government to public-private competitions or converting such employees to contractor performance under OMB Circular A-76 or any other administrative regulation, directive or policy, unless the goal, target or quota is based on considered research and sound analysis of past analysis and is consistent with the stated mission of the department or agency. Such prohibition would not limit the implementation or enforcement of the Government Performance and Results Act or prevent any agency of the executive branch from subjecting work performed by federal employees or private contractors to public-private competitions or conversions.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

COMMITTEE CONSIDERATION

On May 8, 2003, the Committee met in open session and ordered reported favorably the bill, H.R. 1836, as amended, by roll call vote, a quorum being present.

ROLLCALL VOTES

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
 Amendment offered by Mr. Cooper #1- Strike section 9902 and insert a new section
 (HR 1836)

COMMITTEE ON GOVERNMENT REFORM
 108TH CONGRESS - 1ST SESSION
 ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON		X		MR. OWENS	X		
MS. ROS-LEHTINEN		X		MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS			
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN			
MR. DUNCAN		X		MS. SANCHEZ			
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 16 Nays 24 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)

Substitute amendment offered by Ms. Norton #1 to the Amendment offered by Mr. McHugh – Page 5, strike lines 14-1 and insert the following (HR 1836)

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS - 1ST SESSION
ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS	X		
MR. BURTON		X		MR. OWENS	X		
MS. ROS-LEHTINEN		X		MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY			
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK				MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL				MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 19 Nays 22 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
 Substitute amendment offered by Ms. Norton #2 to the Amendment offered by Mr. McHugh – Page 2, line 15, strike
 “and”
 (HR 1836)

COMMITTEE ON GOVERNMENT REFORM
 108TH CONGRESS - 1ST SESSION
 ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON		X		MR. OWENS			
MS. ROS-LEHTINEN		X		MR. TOWNS	X		
MR. MCHUGH		X		MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS	X		
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. FURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 18 Nays 24 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
Amendment offered by Mr. Lynch #1- In section 9902(c)of title 5, United States Code
(HR 1836)

COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS - 1ST SESSION
ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON		X		MR. OWENS			
MS. ROS-LEHTINEN				MR. TOWNS			
MR. MCHUGH				MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS			
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON			
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 15 Nays 22 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
 Amendment offered by Mr. Lynch #2- In section 9902(c) of title 5, United States Code
 (HR 1836)

COMMITTEE ON GOVERNMENT REFORM
 108TH CONGRESS - 1ST SESSION
 ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON				MR. OWENS			
MS. ROS-LEHTINEN				MR. TOWNS			
MR. MCHUGH				MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS			
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS			
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)		X		MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY	X		
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHIROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN		X		MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON	X		
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 15 Nays 20 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
Amendment offered by Mr. Van Hollen #2- Section 208- Pay Parity
(HR 1836)

COMMITTEE ON GOVERNMENT REFORM
 108TH CONGRESS - 1ST SESSION
 ROLL CALL

Rep.	Aye	No	Present	Dem.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)		X		MR. WAXMAN	X		
MR. SHAYS		X		MR. LANTOS			
MR. BURTON				MR. OWENS			
MS. ROS-LEHTINEN				MR. TOWNS	X		
MR. MCHUGH				MR. KANJORSKI	X		
MR. MICA		X		MR. SANDERS	X		
MR. SOUDER		X		MRS. MALONEY	X		
MR. LATOURETTE		X		MR. CUMMINGS			
MR. OSE		X		MR. KUCINICH	X		
MR. LEWIS (KY)	X			MR. DAVIS (IL)	X		
MRS. DAVIS (VA)		X		MR. TIERNEY	X		
MR. PLATTS		X		MR. CLAY			
MR. CANNON		X		MS. WATSON	X		
MR. PUTNAM		X		MR. LYNCH	X		
MR. SCHROCK		X		MR. VAN HOLLEN	X		
MR. DUNCAN				MS. SANCHEZ	X		
MR. SULLIVAN		X		MR. RUPPERSBERGER	X		
MR. DEAL		X		MS. NORTON			
MRS. MILLER (MI)		X		MR. COOPER	X		
MR. MURPHY		X		MR. BELL	X		
MR. TURNER (OH)		X					
MR. CARTER		X					
MR. JANKLOW		X					
MRS. BLACKBURN		X					

Totals: Ayes 16 Nays 19 Present

Business Meeting- H.R. 1836 and H.R. 1837 (5-7-03)
H.R. 1836 (as amended) ordered reported to the House of Representatives
Final Passage
COMMITTEE ON GOVERNMENT REFORM
108TH CONGRESS - 1ST SESSION
ROLL CALL

Rep.	Aye	No	Present	Deft.	Aye	No	Present
MR. DAVIS (VA) (CHAIRMAN)	X			MR. WAXMAN		X	
MR. SHAYS	X			MR. LANTOS			
MR. BURTON				MR. OWENS			
MS. ROS-LEHTINEN				MR. TOWNS		X	
MR. MCHUGH	X			MR. KANJORSKI		X	
MR. MICA	X			MR. SANDERS		X	
MR. SOUDER	X			MRS. MALONEY		X	
MR. LATOURETTE	X			MR. CUMMINGS		X	
MR. OSE	X			MR. KUCINICH		X	
MR. LEWIS (KY)	X			MR. DAVIS (IL)		X	
MRS. DAVIS (VA)	X			MR. TIERNEY		X	
MR. PLATTS	X			MR. CLAY			
MR. CANNON	X			MS. WATSON		X	
MR. PUTNAM	X			MR. LYNCH			
MR. SCHROCK	X			MR. VAN HOLLEN		X	
MR. DUNCAN				MS. SANCHEZ		X	
MR. SULLIVAN	X			MR. RUPPERSBERGER		X	
MR. DEAL	X			MS. NORTON		X	
MRS. MILLER (MI)	X			MR. COOPER			
MR. MURPHY	X			MR. BELL		X	
MR. TURNER (OH)	X						
MR. CARTER	X						
MR. JANKLOW	X						
MRS. BLACKBURN	X						

Totals: Ayes 21 Nays 15 Present

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of this bill to the legislative branch. This bill would make changes to certain areas of Federal civil service, such as the Department of Defense civilian workforce, the National Aeronautics and Space Administration, the Securities and Exchange Commission, and government-wide improvements, in order to improve the flexibility and competitiveness of Federal human resources management. The government wide provisions would apply to civil service positions within the legislative branch.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(2) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Clause 3(c)(4) of rule XIII of the Rules of the House of Representatives requires a statement of the Committee's general performance goals and objectives for reported measures that authorize funding. This bill does not authorize funding.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 1836. The constitutional authority to regulate the civil service of the Federal government lies within the Necessary and Proper clause of Article I, Section Eight of the United States Constitution.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1836. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1836 from the Director of Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 15, 2003.

Hon. TOM DAVIS,
*Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1836, the Civil Service and National Security Personnel Improvement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

H.R. 1836—Civil Service and National Security Personnel Improvement Act

Summary: H.R. 1836 would make governmentwide and agency-specific amendments to civil service law. Major provisions of the bill with budgetary impacts would:

- Establish a Human Capital Performance Fund across executive agencies to award high-performing employees;
- Apply Occupation Safety and Health Administration (OSHA) standards concerning asbestos exposure when determining the eligibility of certain Federal employees for hazardous pay;
- Prohibit fees from being charged to Federal employees to administer flexible spending accounts;
- Raise the current limit on overtime pay for certain Federal employees;
- Raise the pay cap for Senior Executive Service employees;
- Authorize funds to pay any difference between civilian and military compensation for Federal employees called to active military duty; and
- Grant broad new personnel authorities to the National Aeronautics and Space Administration (NASA) and the Department of Defense (DoD).

Most of the costs of implementing the bill would be funded through appropriations. Assuming appropriation of the necessary amounts, CBO estimates that such costs would total about \$300 million in 2004 and about \$7.6 billion over the 2004–2008 period. Those amounts assume a savings of \$1.5 billion over the 2004–2008 period from applying OSHA regulations on asbestos exposure to

cases involving back pay for DoD workers. This estimate does not include costs for implementing section 102, which would provide DoD with additional flexibility to operate its human resources management system. CBO does not have sufficient information about how DoD might implement those authorities to estimate their cost.

We also estimate the enacting H.R. 1836 would increase direct spending by about \$200 million over the 2004–2013 period because the bill would increase retirement benefits for certain workers with part-time service.

H.R. 1836 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). However, CBO estimates that any costs to state, local, or tribal governments from that mandate would be insignificant and would not, therefore, exceed the threshold established in UMRA (\$59 million in 2003, adjusted annually for inflation). The bill contains no new private-sector mandates as defined in UMRA.

Estimated costs to the Federal Government: The estimated budgetary impact of H.R. 1836 is shown in the following table. The costs of this legislation fall within many budget functions.

	By fiscal year, in millions of dollars—				
	2004	2005	2006	2007	2008
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Human Capital Performance Fund:					
Estimated Authorization Level	500	509	520	531	545
Estimated Outlays	400	507	518	529	542
Continue Human Capital Performance Fund Raises:					
Estimated Authorized Level	0	473	1,035	1,640	2,291
Estimated Outlays	0	454	1,012	1,616	2,265
Asbestos Differential Pay Savings:					
Estimated Authorization Level	-290	-290	-290	-290	-290
Estimated Outlays	-290	-290	-290	-290	-290
Modification of Overtime Pay Cap:					
Estimated Authorization Level	107	147	151	156	161
Estimated Outlays	103	145	151	156	161
Administration of Flexible Spending Accounts:					
Estimated Authorization Level	22	28	33	39	44
Estimated Outlays	20	27	33	38	44
Senior Executive Service and Performance:					
Estimated Authorization Level	23	31	31	31	31
Estimated Outlays	21	31	31	31	31
Reservists Pay:					
Estimated Authorization Level	40	18	14	10	7
Estimated Outlays	37	21	14	10	7
NASA Personnel and Workforce Practices:					
Estimated Authorization Level	15	17	19	22	22
Estimated Outlays	6	13	18	21	22
Total:					
Estimated Authorization Level	417	933	1,513	2,139	2,811
Estimated Outlays	297	908	1,487	2,111	2,782
CHANGES IN DIRECT SPENDING					
CSRS computation for part-time service:					
Estimated Authorization Level	4	10	14	18	21
Estimated Outlays	4	10	14	18	21

Note.—NASA = National Aeronautics and Space Administration; CSRS = Civil Service Retirement System.

This estimate excludes any costs for implementing section 102, which would create a new human resources management system for DoD; allow DoD to give certain employees outside the United States the same pay and benefits as the Foreign Service or Central Intelligence Agency; require DoD, to the maximum extend prac-

licable, to adjust rates of compensation for civilian employees at the same rate as military personnel; and allow DoD to provide additional pay to attract highly qualified experts. All of these authorities could potentially affect federal spending.

CBO cannot estimate the budgetary impact of implementing these provisions because DoD has not indicated how it would supplant—or improve upon—the personnel system currently governing the department; how many employees would benefit from receiving the same pay and benefits as the Foreign Service or Central Intelligence Agency (the number is classified); whether or how it might institute pay parity between its civilian employees and military members; or how many people it might hire under the authority to provide additional pay to attract highly qualified experts.

Basis of estimate: For the estimate, CBO assumes that H.R. 1836 will be enacted by the end of fiscal year 2003. We assume that the necessary amounts will be appropriated for each year and that outlays will occur at historical rates for similar programs.

Spending subject to appropriation

CBO estimates that seven sections of the bill would have significant impacts on spending subject to appropriation. The following paragraphs discuss those costs.

Human Capital Performance Fund. Section 401 of the bill would authorize the appropriation of \$500 million in 2004 and such sums as necessary for each subsequent year for the Office of Personnel Management (OPM) to establish a Human Capital Performance Fund. The fund would be available for agencies to give pay raises to employees based on superior performance or the possession of skills critical to an agency's mission. Those increases in pay would be in addition to regular cost-of-living pay raises given to civilian federal employees and would represent permanent increases in an employee's base pay. Federal civilian pay and benefits currently cost about \$140 billion governmentwide.

H.R. 1836 would allow only the initial pay raise to be made from the Human Capital Performance Fund. For this estimate, CBO assumes that the Human Capital Performance Fund would be continued at \$500 million a year, adjusted for anticipated inflation, for the next five years. We estimate that the program would cost \$2.5 billion over the 2004–2008 period.

In subsequent years, after pay raises made through the Human Capital Performance Fund are in place, each federal agency would have to cover the cost of continuing the pay raise from its regular appropriation. CBO estimates that maintaining the resulting higher pay levels and adjusting them for anticipated cost-of-living increases would cost participating agencies \$5.2 billion over the 2005–2008 period. Thus, in total, we estimate that implementing this provision would cost \$7.7 billion over the next five years.

Asbestos Differential Pay. Under Section 204, federal wage-grade employees would be subject to the same standards as general schedule employees when determining eligibility for environmental differential pay (EDP) due to exposure to asbestos. Under current law, general schedule employees are entitled to 8 percent hazard differential pay if they are exposed to asbestos that exceeds the permissible exposure limits established by OSHA. The current EDP standard for wage-grade employees entitles them to the same 8

percent of pay but does not set an objective measure for determining the level of asbestos exposure necessary to qualify for EDP. In several instances when wage-grade employees have sought back pay for EDP, arbitrators have found in favor of the employees when asbestos levels were below those consistent with OSHA standards. Based on information from DoD on prior and pending arbitration rulings, CBO expects that implementing section 204 would reduce the amount of back pay federal agencies would be required to pay for EDP due to asbestos exposure. Assuming those cases would be handled administratively, CBO estimates that establishing OSHA standards for asbestos EDP would save \$290 million in 2004 and \$1.5 billion over the 2004–2008 period, assuming appropriations to DoD and other affected agencies are reduced by the estimated amounts.

Modification of the Overtime Pay Cap. Under current law, overtime pay for work in excess of 40 hours per week for federal managers, supervisors, and other employees exempted under the Fair Labor Standards Act (FLSA) is limited to a set rate of roughly \$32 an hour (one and a half times the normal rate for a general schedule (GS) grade 10 (GS–10), step 1, employee). Employees who earn salaries above GS–12, step 5, receive overtime pay at a rate that is, on an hourly basis, less than their regular pay.

Section 201 would raise the overtime pay rate to either one and one-half times the hourly rate of a GS–10, step 1, or the hourly rate of the basic pay of the employee, whichever is greater. Although this change would not affect employees at GS–12, step 5, and lower, those above this pay rate would earn their hourly rate of pay for overtime work. Based on information from the Office of Personnel Management (OPM) on the number of FLSA-exempted employees at each grade and information on overtime worked, CBO estimates that implementing the proposal would cost approximately \$100 million in 2004 and \$0.7 billion over the 2004–2008 period.

About 680,000 federal employees at GS–10 and above are exempt from the FLSA, which is about 36.7 percent of the general schedule (and related) workforce. For this estimate, CBO assumes that this employee group worked 37 percent of all overtime performed by FLSA-exempt employees. We also assume that those overtime hours are distributed proportionately across GS–10 through GS–13 employees, with GS–14 and GS–15 employees working one-third of the hours. CBO estimated the cost of the proposal by calculating the cost of those overtime hours at the set rate under current law and then calculating the cost of that same amount of overtime at the set rate or the employee's hourly rate, whichever is greater.

Federal Flexible Benefits Plan Administrative Costs. Under current law, federal employees will be allowed to enroll in a flexible spending account (FSA) program offered through the Office of Personnel Management (OPM) beginning in May 2003. A FSA is an employee benefit that allows employees to set aside money, on a pre-tax basis, for health care and dependent care expenses. The administrative costs to the program will be paid by participating employees based on a formula to collect \$48 annually for each health care account and 1.5 percent of the total dependent care account.

Section 211 would prevent any fees from being charged to Federal employees for the administrative costs to operate the FSAs.

Based on information from the Federal judiciary's FSA program and the operation of private FSAs, CBO estimates that about 10 percent of Federal employees will initially enroll in the plan, and we expect participation to grow to about 20 percent of Federal employees over the next five years. Under the bill, administrative costs of operating the plans would be subject to appropriation of the necessary amounts. Based on the fees OPM plans to charge participants and expected employee participation rates, we estimate that implementing this provision of the bill would cost about \$160 million over the 2004–2008 period.

Senior Executive Service (SES) Performance Provisions. Under current law, SES employees are paid at six different pay levels. Base pay is capped at Level IV of the Executive Schedule (\$134,000) and the maximum pay with the locality-based comparability adjustment is set at Level III of the Executive Schedule (\$142,500). SES employees receive the same annual across-the-board pay raises and locality-based comparability adjustments that GS employees receive.

Effective January 1, 2004, section 209 would eliminate the six SES pay levels and raise the cap on base pay to \$142,500. Locality adjustment to SES pay would be eliminated. The proposal would affect roughly 7,900 employees.

The legislation specifies that no SES employee would experience a reduction in the rate of basic pay in the first year after this legislation is enacted, and CBO assumes that this would continue to be true after the first year. Because the salaries of many SES employees are at the current caps (or are expected to reach such caps over the next few years), raising the cap on base pay would allow those employees to get pay raises. Assuming that executive level salaries (and thus the caps) are raised by the full amount authorized under current law by the Ethics Reform Act, CBO estimates that the legislation would cost \$145 million over the 2004–2008 period.

Federal Employee Reservists Pay. Section 212 would authorize an increase in Federal salaries to pay for any difference between civilian and military compensation for Federal employees called to active duty in the uniformed service or National Guard following enactment of the bill. CBO estimates that implementing this provision would cost \$37 million in 2004 and \$89 million over the 2004–2008 period. Those payments would be subject to the availability of appropriated funds.

Based on information from DoD, CBO estimates that Federal employees account for approximately 120,000 positions or almost 15 percent of the total Ready Reserve (which includes the Selected Reserve and the Individual Ready Reserve/Inactive National Guard). For this estimate, we assume that 15 percent of those reserves called to active service at any time are Federal employees.

In a 2000 DoD survey of 35,000 reserve personnel, 59 percent of all reservists (including Federal employees) reported either no difference in their income while on active-duty military status, or an increase in their income while on active duty. Forty-one percent reported a loss of income during mobilization and deployment. For this estimate, CBO assumes that these self-reported survey data are accurate and applicable to the current call-up of reservists and National Guard forces.

Of the 41 percent of survey respondents who reported a loss of income during military reserve service, most (about 70 percent) said their income was reduced by \$3,750 or less while on active duty. On the other hand, some reported much larger losses. For example, approximately 7 percent of those reporting an income loss indicated a loss of \$37,000 to \$50,000 annually. Considering the loss in income reported by all survey respondents and the number who reported no loss or an increase in salary, CBO estimates that the average annual reduction in salary while serving in the active-duty military is about \$3,000.

The cost of implementing the legislation following enactment depends on the size of the future reserve force, which in turn depends on the duration of the military operation in Iraq and the force size required for it, as well as the size and duration of any future military conflicts, all of which are very uncertain. For this estimate, CBO assumes that the total number of reservists on active duty will decline to 88,000 person-years in fiscal year 2004 and to about 15,000 person-years by 2008. If the number of reservists called to active duty were to remain at current levels over the 2004–2008 period, the cost of implementing section 208 would be significantly greater. Based on the above assumptions about the future size of the reserve force, CBO estimates that an average of about 13,000 federal employees will be on active-duty military service in fiscal year 2004, diminishing to approximately 2,000 by 2008.

NASA Personnel and Workforce Practices. Subtitle B would allow NASA to modify its personnel and workforce practices in several ways. NASA would be allowed to pay higher amounts to attract and retain individuals with special expertise, exchange personnel with industrial firms, and expand the use of limited term appointments. In addition, the bill would authorize the appropriation of \$10 million a year for a new science and technology scholarship program. Based on information from NASA, CBO estimates that implementing this subtitle would cost \$15 million a year, depending on how extensively the agency uses some of the new authorities.

Direct spending

CBO estimates that one section of H.R. 1836 would increase direct spending by \$206 million over the 2004–2013 period. That cost is displayed in the following table and described below.

ESTIMATED DIRECT SPENDING EFFECT OF H.R. 1836

	By fiscal year, in millions of dollars—										
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	
Change in Civil Service Retirement Benefits:											
Estimated Budget Authority	4	10	14	18	21	24	26	28	30	31	
Estimated Outlays	4	0	14	18	21	24	26	28	30	31	

Civil Service Retirement Benefits for Part-Time Service. Section 202 would alter the way retirement benefits under the Civil Service Retirement System (CSRS) are calculated for workers with part-time service. The bill would apply to workers who performed work prior to April 7, 1986, have some part-time service, and retire after the bill is enacted. Based on information from OPM, CBO estimates that this provision would cost \$4 million in 2004, \$67 million

over the 2004–2008 period, and \$206 million over the 2004–2013 period.

Under current law, benefits for CSRS workers with part-time service are calculated using a two-step process. For workers with service prior to April 7, 1986, the current formula uses the highest salary the worker actually earned to reflect the part-time employment. For work on or after April 7, 1986, the formula uses a deemed salary (what the worker would have been earning if the worker had been working full time) to determine benefits and applies a pro-rata factor to adjust for part-time service. In effect the current formula tends to treat new retirees with part-time service early in their careers more favorably than those whose part-time service comes at the end of their careers.

Section 202 would calculate CSRS benefits for all part-time service according to the formula currently used to determine benefits for service performed on or after April 7, 1986. To ensure that benefits under the new formula would not be smaller than benefits calculated under the current formula, part-time service performed prior to April 7, 1986, would be credited as full time. CBO estimates this provision would affect benefits for several thousand new CSRS retirees each year. Depending on an individual employee's work history, benefits for those retirees could be more than 30 percent higher than they would be if calculated under the current formula.

Federal Long-Term Care Insurance Program. Section 207 would expand eligibility for the federal long-term care insurance program to former employees of the District of Columbia, former employees who have not attained the minimum age to qualify as annuitants, and retired reservists who have not reached the age of 60. CBO estimates that this provision would have no significant net cost.

The federal government does not contribute to enrollees' premiums for this program, and the private insurers are required to reimburse OPM for its expenses in administering the plan. Therefore, net federal spending for the long-term care insurance program is insignificant. Under the bill, the federal government would incur some new costs to inform additional people of their eligibility (primarily consisting of postage and printing more brochures about plan choices) and to register new participants. Those additional costs would be charged to the insurance carriers and OPM would be reimbursed for its expenses.

Estimated impact on state, local, and tribal governments: H.R. 1836 would authorize the Secretary to appoint older Americans to positions in the excepted service, and—notwithstanding any other provision of law—protect any retirement benefits they may be receiving from being reduced as a result of that appointment. To the extent that under current law retirement benefits provided by state, local, or tribal governments might be reduced for a beneficiary hired by the Secretary, enacting this provisions would prohibit such reductions and thereby impose an intergovernmental mandate as defined in UMRA. However, according to the National Association of State Retirement Administrators, few, if any, jurisdictions require such benefit reductions under current law. Therefore, CBO estimates that any costs to state, local, or tribal governments from the mandate would be insignificant and would not ex-

ceed the threshold established in UMRA (\$59 million in 2003, adjusted for inflation).

Estimated impact on the private sector: H.R. 1836 contains no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On May 1, 2003, CBO transmitted a cost estimate for S. 593, the Reservists Pay Secretary Act of 2003, as introduced by Senator Richard J. Durbin on March 11, 2003, which is similar to section 212 of H.R. 1836. However, S. 593 would authorize a retroactive pay differential for federal employees who, as members of the uniformed services or National Guard, were called to active duty military service since September 11, 2001: H.R. 1836 would not. Therefore, the estimated costs of section 212 are lower than those for S. 593.

Estimate prepared by: Federal Costs: Matthew Pickford and Kathleen Gramp, Ellen Hays, Michelle S. Patterson and Sunita D'Monte, Geoffrey Gerhardt, and Alexis K. Ahlstrom. Impact on State, Local, and Tribal Governments: Victoria Heid Hall. Impact on the Private Sector. Paige Piper/Bach.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart D—Pay and Allowances

51. Classification	5101
* * * * *	
54. <i>Human Capital Performance Fund</i>	5401
* * * * *	

Subpart I—Miscellaneous

* * * * *	
98. <i>National Aeronautics and Space Administration</i>	9801
99. <i>Department of Defense National Security Personnel System</i>	9901
* * * * *	

Subpart B—Employment and Retention

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

- Sec.
3101. General authority to employ.
* * * * *
3114. *Appointment of accountants, economists, and examiners by the Securities and Exchange Commission.*
* * * * *

SUBCHAPTER I—EMPLOYMENT AUTHORITIES

* * * * *

§ 3111. Acceptance of volunteer service

- (a) * * *
* * * * *

(d) Notwithstanding section 1342 of title 31, the head of an agency may accept voluntary service for the United States under chapter 37 or section 9832 of this title and regulations of the Office of Personnel Management.

* * * * *

§ 3114. Appointment of accountants, economists, and examiners by the Securities and Exchange Commission

(a) *APPLICABILITY.*—This section applies with respect to any position of accountant, economist, and securities compliance examiner at the Commission that is in the competitive service.

- (b) *APPOINTMENT AUTHORITY.*—
(1) *IN GENERAL.*—The Commission may appoint candidates to any position described in subsection (a)—
(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and
(B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service.

(2) *RULE OF CONSTRUCTION.*—The appointment of a candidate to a position under authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.

(c) *REPORTS.*—No later than 90 days after the end of fiscal year 2003 (for fiscal year 2003) and 90 days after the end of fiscal year 2005 (for fiscal years 2004 and 2005), the Commission shall submit a report with respect to its exercise of the authority granted by subsection (b) during such fiscal years to the Committee on Government Reform and the Committee on Financial Services of the House of Representatives and the Committee on Governmental Affairs and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such reports shall describe the changes in the hiring process authorized by such subsection, including relevant information related to—

- (1) the quality of candidates;
(2) the procedures used by the Commission to select candidates through the streamlined hiring process;

(3) the numbers, types, and grades of employees hired under the authority;

(4) any benefits or shortcomings associated with the use of the authority;

(5) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and

(6) the way in which managers were trained in the administration of the streamlined hiring system.

(d) COMMISSION DEFINED.—For purposes of this section, the term “Commission” means the Security and Exchange Commission.

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Subpart D—Pay and Allowances

* * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * *

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE.

5381. Definitions.

5382. Establishment and adjustment of rates of pay for the Senior Executive Service. **■**

5382. *Establishment of rates of pay for the Senior Executive Service*

* * * * *

SUBCHAPTER I—PAY COMPARABILITY SYSTEM

* * * * *

§ 5304. Locality-based comparability payments

(a) * * *

* * * * *

(g)(1) * * *

(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

(A) positions under **■**subparagraphs (A)–(E)**■** subparagraphs (A)–(D) of subsection (h)(1); and

(B) any positions under **■**subsection (h)(1)(F)**■** subsection (h)(1)(D) which the President may determine.

(h)(1) For the purpose of this subsection, the term “position” means—

(A) * * *

■(B) a Senior Executive Service position under section 3132;
■(C) a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151;**■**

■(D)**■** (B) a position to which section 5372 applies (relating to administrative law judges appointed under section 3105);

■(E)**■** (C) a position to which section 5372a applies (relating to contract appeals board members); and

■(F)**■** (D) a position within an Executive agency not covered under the General Schedule or any of the preceding subparagraphs, the rate of basic pay for which is (or, but for this sec-

tion, would be) no more than the rate payable for level IV of the Executive Schedule; but does not include—

(i) * * *

(ii) a position as to which a rate of pay is authorized under section 5377 (relating to critical positions); **or**

(iii) a position to which subchapter II applies (relating to the Executive Schedule)**【.】**;

(iv) a *Senior Executive Service position under section 3132; or a position in the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service under section 3151; or*

(v) a position in a system equivalent to the system in clause (iv), as determined by the President's Pay Agent designated under subsection (d).

(2)(A) * * *

(B) A request by an agency head or exercise of authority by the President under subparagraph (A) shall cover—

(i) with respect to the positions under **【subparagraphs (A) through (E)】** *subparagraphs (A) through (C)* of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under **【clause (i) or (ii)】** *clause (i), (ii), (iii), (iv), (v), or (vi)* of such paragraph); and

(ii) with respect to the positions under **【paragraph (1)(F)】** *paragraph (1)(D)*, such positions as may be considered appropriate (excluding any under **【clause (i) or (ii)】** *clause (i), (ii), (iii), (iv), (v), or (vi)* of paragraph (1)).

* * * * *

SUBCHAPTER IV—PREVAILING RATE SYSTEMS

* * * * *

§ 5343. Prevailing rate determinations; wage schedules; night differentials

(a) * * *

* * * * *

(c) The Office of Personnel Management, by regulation, shall prescribe practices and procedures for conducting wage surveys, analyzing wage survey data, developing and establishing wage schedules and rates, and administering the prevailing rate system. The regulations shall provide—

(1) * * *

* * * * *

(4) for proper differentials, as determined by the Office, for duty involving unusually severe working conditions or unusually severe hazards, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970;

* * * * *

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

* * * * *

§ 5379. Student loan repayments

(a) * * *

(b)(1) * * *

(2) Payments under this section shall be made subject to such terms, limitations, or conditions as may be mutually agreed to by the agency and employee concerned, except that the amount paid by an agency under this section may not exceed—

(A) ~~[\$6,000]~~ \$10,000 for any employee in any calendar year;

or

* * * * *

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

* * * * *

§ 5382. Establishment and adjustment of rates of pay for the Senior Executive Service

[(a) There shall be 5 or more rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates. The rates of basic pay shall be initially established and thereafter adjusted by the President subject to subsection (b) of this section.

[(b) In setting rates of basic pay, the lowest rate for the Senior Executive Service shall not be less than the minimum rate of basic pay payable under section 5376 and the highest rate shall not exceed the rate for level IV of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373 of this title.

[(c) Subject to subsection (b) of this section, effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of this title in the rates of pay under the General Schedule, each rate of basic pay for the Senior Executive Service shall be adjusted by an amount determined by the President to be appropriate.

[(d) The rates of basic pay that are established and adjusted under this section shall be printed in the Federal Register and shall supersede any prior rates of basic pay for the Senior Executive Service.]

§ 5382. Establishment of rates of pay for the Senior Executive Service

(a) Subject to regulations prescribed by the Office of Personnel Management, there shall be established a range of rates of basic pay for the Senior Executive Service, and each senior executive shall be paid at one of the rates within the range, based on individual performance, contribution to the agency's performance, or both, as determined under a rigorous performance management system. The lowest rate of the range shall not be less than the minimum rate of basic pay payable under section 5376, and the highest rate, for any position under this system or an equivalent system as determined

by the President's Pay Agent designated under section 5304(d), shall not exceed the rate for level III of the Executive Schedule. The payment of the rates shall not be subject to the pay limitation of section 5306(e) or 5373.

(b) Notwithstanding the provisions of subsection (a), the applicable maximum shall be level II of the Executive Schedule for any agency that is certified under section 5307 as having a performance appraisal system which, as designed and applied, makes meaningful distinctions based on relative performance.

(c) No employee may suffer a reduction in pay by reason of transfer from an agency with an applicable maximum rate of pay prescribed under subsection (b) to an agency with an applicable maximum rate of pay prescribed under subsection (a).

§ 5383. Setting individual senior executive pay

(a) Each appointing authority shall determine, in accordance with criteria established by the Office of Personnel Management, [which of the rates established under section 5382 of this title] which of the rates within a range established under section 5382 shall be paid to each senior executive under such appointing authority.

* * * * *

(c) Except [for any pay adjustment under section 5382 of this title] as provided in regulations prescribed by the Office under section 5385, the rate of basic pay for any senior executive may not be adjusted more than once during any 12-month period.

* * * * *

CHAPTER 54—HUMAN CAPITAL PERFORMANCE FUND

- Sec.
- 5401. Purpose.
- 5402. Definitions.
- 5403. Human Capital Performance Fund.
- 5404. Human capital performance payments.
- 5405. Regulations.
- 5406. Agency plan.
- 5407. Nature of payment.
- 5408. Appropriations.

§ 5401. Purpose

The purpose of this chapter is to promote, through the creation of a Human Capital Performance Fund, greater performance in the Federal Government. Monies from the Fund will be used to reward agencies' highest performing and most valuable employees. This Fund will offer Federal managers a new tool to recognize employee performance that is critical to the achievement of agency missions.

§ 5402. Definitions

For the purpose of this chapter—

- (1) "agency" means an Executive agency under section 105, but does not include the General Accounting Office;
- (2) "employee" includes—
 - (A) an individual paid under a statutory pay system defined in section 5302(1);

(B) a prevailing rate employee, as defined in section 5342(a)(2); and

(C) a category of employees included by the Office of Personnel Management following the review of an agency plan under section 5403(b)(1);

but does not include—

(i) an individual paid at an annual rate of basic pay for a level of the Executive Schedule, under subchapter II of chapter 53, or at a rate provided for one of those levels under another provision of law;

(ii) a member of the Senior Executive Service paid under subchapter VIII of chapter 53, or an equivalent system;

(iii) an administrative law judge paid under section 5372;

(iv) a contract appeals board member paid under section 5372a;

(v) an administrative appeals judge paid under section 5372b; and

(vi) an individual in a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; and

(3) “Office” means the Office of Personnel Management.

§ 5403. Human Capital Performance Fund

(a) There is hereby established the Human Capital Performance Fund, to be administered by the Office for the purpose of this chapter.

(b)(1)(A) An agency shall submit a plan as described in section 5406 to be eligible for consideration by the Office for an allocation under this section. An allocation shall be made only upon approval by the Office of an agency’s plan.

(B)(i) After the reduction for training required under section 5408, ninety percent of the remaining amount appropriated to the Fund may be allocated by the Office to the agencies. Of the amount to be allocated, an agency’s pro rata distribution may not exceed its pro rata share of Executive branch payroll.

(ii) If the Office does not allocate an agency’s full pro rata share, the undistributed amount remaining from that share will become available for distribution to other agencies, as provided in subparagraph (C).

(C)(i) After the reduction for training under section 5408, ten percent of the remaining amount appropriated to the Fund, as well as the amount of the pro rata share not distributed because of an agency’s failure to submit a satisfactory plan, shall be allocated among agencies with exceptionally high-quality plans.

(ii) An agency with an exceptionally high-quality plan is eligible to receive an additional distribution in addition to its full pro rata distribution.

(2) Each agency is required to provide to the Office such payroll information as the Office specifies necessary to determine the Executive branch payroll.

§ 5404. Human capital performance payments

(a)(1) *Notwithstanding any other provision of law, the Office may authorize an agency to provide human capital performance payments to individual employees based on exceptional performance contributing to the achievement of the agency mission.*

(2) *The number of employees in an agency receiving payments from the Fund, in any year, shall not be more than the number equal to 15 percent of the agency's average total civilian full- and part-time permanent employment for the previous fiscal year.*

(b)(1) *A human capital performance payment provided to an individual employee from the Fund, in any year, shall not exceed 10 percent of the employee's rate of basic pay.*

(2) *The aggregate of an employee's rate of basic pay, adjusted by any locality-based comparability payments, and human capital performance pay, as defined by regulation, may not exceed the rate of basic pay for Executive Level IV in any year.*

(3) *Any human capital performance payment provided to an employee from the Fund is in addition to any annual pay adjustment (under section 5303 or any similar provision of law) and any locality-based comparability payment that may apply.*

(c) *No monies from the Human Capital Performance Fund may be used to pay for a new position, for other performance-related payments, or for recruitment or retention incentives paid under sections 5753 and 5754.*

(d)(1) *An agency may finance initial human capital performance payments using monies from the Human Capital Performance Fund, as available.*

(2) *In subsequent years, continuation of previously awarded human capital performance payments shall be financed from other agency funds available for salaries and expenses.*

§ 5405. Regulations

The Office shall issue such regulations as it determines to be necessary for the administration of this chapter, including the administration of the Fund. The Office's regulations shall include criteria governing—

- (1) *an agency plan under section 5406;*
- (2) *the allocation of monies from the Fund to agencies;*
- (3) *the nature, extent, duration, and adjustment of, and approval processes for, payments to individual employees under this chapter;*
- (4) *the relationship to this chapter of agency performance management systems;*
- (5) *training of supervisors, managers, and other individuals involved in the process of making performance distinctions; and*
- (6) *the circumstances under which funds may be allocated by the Office to an agency in amounts below or in excess of the agency's pro rata share.*

§ 5406. Agency plan

(a) *To be eligible for consideration by the Office for an allocation under this section, an agency shall—*

- (1) *develop a plan that incorporates the following elements:*
 - (A) *adherence to merit principles set forth in section 2301;*

(B) a fair, credible, and transparent employee performance appraisal system;

(C) a link between the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan;

(D) a means for ensuring employee involvement in the design and implementation of the system;

(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system;

(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and

(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system;

(2) upon approval, receive an allocation of funding from the Office;

(3) make payments to individual employees in accordance with the agency's approved plan; and

(4) provide such information to the Office regarding payments made and use of funds received under this section as the Office may specify.

(b) The Office, in consultation with the Chief Human Capital Officers Council, shall review and approve an agency's plan before the agency is eligible to receive an allocation of funding from the Office.

(c) The Chief Human Capital Officers Council shall include in its annual report to Congress under section 1303(d) of the Homeland Security Act of 2002 an evaluation of the formulation and implementation of agency performance management systems.

§ 5407. Nature of payment

Any payment to an employee under this section shall be part of the employee's basic pay for the purposes of subchapter III of chapter 83, and chapters 84 and 87, and for such other purposes (other than chapter 75) as the Office shall determine by regulation.

§ 5408. Appropriations

There is authorized to be appropriated \$500,000,000 for fiscal year 2004, and, for each subsequent fiscal year, such sums as may be necessary to carry out the provisions of this chapter. In the first year of implementation, up to 10 percent of the amount appropriated to the Fund shall be available to participating agencies to train supervisors, managers, and other individuals involved in the appraisal process on using performance management systems to make meaningful distinctions in employee performance and on the use of the Fund.

CHAPTER 55—PAY ADMINISTRATION

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SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT

5531. Definitions.

* * * * *

5538. *Nonreduction in pay while serving on active duty in a reserve component.*

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SUBCHAPTER I—GENERAL PROVISIONS

* * * * *

§ 5504. Biweekly pay periods; computation of pay

(a) The pay period for an employee covers two administrative workweeks. [For the purpose of this subsection, “employee” means—

- [(1) an employee in or under an Executive agency;
- [(2) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and
- [(3) an individual employed by the government of the District of Columbia;

but does not include—

- [(A) an employee on the Isthmus of Panama in the service of the Panama Canal Commission; or
- [(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this title.]

(b) When, in the case of an employee, it is necessary for computation of pay under this subsection to convert an annual rate of basic pay to a basic hourly, daily, weekly, or biweekly rate, the following rules govern:

- (1) To derive an hourly rate, divide the annual rate by 2,087.
- (2) To derive a daily rate, multiply the hourly rate by the number of daily hours of service required.
- (3) To derive a weekly or biweekly rate, multiply the hourly rate by 40 or 80, as the case may be.

Rates are computed to the nearest cent, counting one-half and over as a whole cent. [For the purpose of this subsection, “employee” means—

- [(A) an employee in or under an Executive agency;
- [(B) an employee in or under the judicial branch;
- [(C) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and
- [(D) an individual employed by the government of the District of Columbia;

but does not include an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by section 5541(2)(xvi) of this title.]

(c) *For the purposes of this section:*

- (1) *The term “employee” means—*
 - (A) *an employee in or under an Executive agency;*

(B) an employee in or under the Office of the Architect of the Capitol, the Botanic Garden, and the Library of Congress, for whom a basic administrative workweek is established under section 6101(a)(5) of this title; and

(C) an individual employed by the government of the District of Columbia.

(2) The term “employee” does not include—

(A) an employee on the Isthmus of Panama in the service of the Panama Canal Commission; or

(B) an employee or individual excluded from the definition of employee in section 5541(2) of this title other than an employee or individual excluded by clauses (ii), (iii), and (xiv) through (xvii) of such section.

(3) Notwithstanding paragraph (2), an individual who otherwise would be excluded from the definition of employee shall be deemed to be an employee for purposes of this section if the individual’s employing agency so elects, under guidelines in regulations promulgated by the Office of Personnel Management under subsection (d)(2).

[(c)] (d)(1) The Office of Personnel Management may prescribe regulations, subject to the approval of the President, necessary for the administration of this section insofar as this section affects employees in or under an Executive agency.

(2) The Office of Personnel Management shall provide guidelines by regulation for exemptions to be made by the heads of agencies under subsection (c)(3). Such guidelines shall provide for such exemptions only under exceptional circumstances.

* * * * *

SUBCHAPTER IV—DUAL PAY AND DUAL EMPLOYMENT

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§ 5538. Nonreduction in pay while serving on active duty in a reserve component

(a) An employee who is also a member of a reserve component and is absent from a position of employment with the Federal Government under a call or order to serve on active duty for a period of more than 30 days shall be entitled to receive, for each pay period described in subsection (b), an amount equal to the difference (if any) between—

(1) the amount of civilian basic pay that would otherwise have been payable to the employee for such pay period if the employee’s civilian employment with the Government had not been interrupted by the service on active duty; and

(2) the amount of military compensation that is payable to the employee for the service on active duty and is allocable to such pay period.

(b)(1) Amounts under this section shall be payable with respect to each pay period (which would otherwise apply if the employee’s civilian employment had not been interrupted) that occurs—

(A) while the employee serves on active duty for a period of more than 30 days;

(B) while the employee is hospitalized for, or convalescing from, an illness or injury incurred in, or aggravated during, the performance of such active duty; or

(C) during the 14-day period beginning at the end of such active duty or the end of the period referred to in subparagraph (B).

(2) Paragraph (1) shall not apply with respect to a pay period for which the employee receives civilian basic pay (including by taking any annual, military, or other paid leave) to which the employee is entitled by virtue of the employee's civilian employment with the Government.

(c) Any amount payable under this section to an employee shall be paid—

(1) by employing agency of the employee;

(2) from the appropriations or fund that would be used to pay the employee if the employee were in a pay status; and

(3) to the extent practicable, at the same time and in the same manner as would civilian basic pay if the employee's civilian employment had not been interrupted.

(d) In consultation with the Secretary of Defense, the Office of Personnel Management shall prescribe such regulations as may be necessary to carry out this section.

(e) In consultation with the Office of Personnel Management, the head of each employing agency shall prescribe procedures to ensure that the rights under this section apply to the employees of such agency.

(f) In this section:

(1) The terms “active duty for a period of more than 30 days”, “member”, and “reserve component” have the meanings given such terms in section 101 of title 37.

(2) The term “civilian basic pay” includes any amount payable under section 5304 of this title.

(3) The term “employing agency”, as used with respect to an employee entitled to any payments under this section, means the agency with respect to which the employee has reemployment rights under chapter 43 of title 38. The term “agency” has the meaning given such term in subparagraph (C) of section 2302(a)(2) of this title, except that the term includes Government corporations and agencies excluded by clause (i) or (ii) of such subparagraph.

(4) The term “military compensation” has the meaning given the term “pay” in section 101(21) of title 37, except that the term includes allowances provided under chapter 7 of such title.

SUBCHAPTER V—PREMIUM PAY

* * * * *

§ 5542. Overtime rates; computation

(a) For full-time, part-time and intermittent tours of duty, hours of work officially ordered or approved in excess of 40 hours in an administrative workweek, or (with the exception of an employee engaged in professional or technical engineering or scientific activities for whom the first 40 hours of duty in an administrative workweek is the basic workweek and an employee whose basic pay exceeds the minimum rate for GS-10 (including any applicable locality-

based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) for whom the first 40 hours of duty in an administrative workweek is the basic workweek) in excess of 8 hours in a day, performed by an employee are overtime work and shall be paid for, except as otherwise provided by this subchapter, at the following rates:

(1) * * *

(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to *the greater of one and one-half times the hourly rate of the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law) or the hourly rate of basic pay of the employee*, and all that amount is premium pay.

* * * * *

§ 5545. Night, standby, irregular, and hazardous duty differential

(a) * * *

* * * * *

(d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard, and for any hardship or hazard related to asbestos, such differentials shall be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970. Under such regulations as the Office may prescribe, and for such minimum periods as it determines appropriate, an employee to whom chapter 51 and subchapter III of chapter 53 of this title applies is entitled to be paid the appropriate differential for any period in which he is subjected to physical hardship or hazard not usually involved in carrying out the duties of his position. However, the pay differential—

(1) * * *

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Subpart E—Attendance and Leave

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CHAPTER 63—LEAVE

* * * * *

SUBCHAPTER II—OTHER PAID LEAVE

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§ 6323. Military leave; Reserves and National Guardsmen

(a) * * *

(b) Except as provided by section 5519 of this title, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, who—

(1) * * *

(2)(A) performs, for the purpose of providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury—

[(A)] (i) Federal service under section 331, 332, 333, or 12406 of title 10, or other provision of law, as applicable, or

[(B)] (ii) full-time military service for his State, the District of Columbia, the Commonwealth of Puerto Rico, or a territory of the United States; or

(B) performs full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in section 101(a)(13) of title 10;

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Subpart F—Labor-Management and Employee Relations

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CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

Sec.

7301. Presidential regulations.

7302. *Post-employment notification.*

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SUBCHAPTER I—REGULATION OF CONDUCT

* * * * *

§ 7302. Post-employment notification

(a) Not later than the effective date of the amendments made by sections 3 and 4 of the Federal Employees Pay for Performance Act of 2003, or 180 days after the date of enactment of that Act, whichever is later, the Office of Personnel Management shall, in consultation with the Attorney General and the Office of Government Ethics, promulgate regulations requiring that each Executive branch agency notify any employee of that agency who is subject to the provisions of section 207(c)(1) of title 18, as a result of the amendment to section 207(c)(2)(A)(ii) of that title by that Act.

(b) The regulations shall require that notice be given before, or as part of, the action that affects the employee's coverage under section 207(c)(1) of title 18, by virtue of the provisions of section

207(c)(2)(A)(ii) of that title, and again when employment or service in the covered position is terminated.

* * * * *

SUBCHAPTER V—MISCONDUCT

* * * * *

§ 7353. Gifts to Federal employees

(a) * * *

(b)(1) * * *

* * * * *

(4) Nothing in this section precludes an employee of a private sector organization, while assigned to an agency under chapter 37 or section 9832, from continuing to receive pay and benefits from such organization in accordance with such chapter.

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Subpart G—Insurance and Annuities

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

* * * * *

§ 8339. Computation of annuity

(a) * * *

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(p)(1) * * *

* * * * *

(3) In the administration of paragraph (1)—

(A) subparagraph (A) of such paragraph shall apply with respect to pay for service performed before, on, or after April 7, 1986; and

(B) subparagraph (B) of such paragraph—

(i) shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986; and

(ii) shall not apply with respect to that portion of any annuity which is attributable to service performed before April 7, 1986.

(4) Paragraph (3) shall be effective with respect to any annuity entitlement to which is based on a separation from service occurring on or after the date of the enactment of this paragraph.

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CHAPTER 90—LONG-TERM CARE INSURANCE

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§ 9001. Definitions

For purposes of this chapter:

(1) EMPLOYEE.—The term “employee” means—

(A) * * *

* * * * *

(D) an employee of a nonappropriated fund instrumentality of the Department of Defense described in section [2105(c),

but does not include an individual employed by the government of the District of Columbia (other than an employee of the District of Columbia Courts).] 2105(c).

(2) ANNUITANT.—The term “annuitant” means—

(A) any individual who would satisfy the requirements of paragraph (3) of section 8901 if, for purposes of such paragraph, the term “employee” were considered to have the meaning given to it under paragraph (1) of this subsection; [and]

(B) any individual who—

(i) * * *

* * * * *

(iii) would not (but for this subparagraph) otherwise satisfy the requirements of this paragraph[.]; and

(C) any former employee who, on the basis of his or her service, would meet all requirements for being considered an “annuitant” within the meaning of subchapter III of chapter 83, chapter 84, or any other retirement system for employees of the Government, but for the fact that such former employee has not attained the minimum age for title to annuity.

* * * * *

(4) RETIRED MEMBER OF THE UNIFORMED SERVICES.—The term “retired member of the uniformed services” means a member or former member of the uniformed services entitled to retired or retainer pay, [including a member or former member retired under chapter 1223 of title 10 who has] and a member who has been transferred to the Retired Reserve and who would be entitled to retired pay under chapter 1223 of title 10 but for not having attained the age of 60 and who satisfies such eligibility requirements as the Office of Personnel Management prescribes under section 9008.

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Subpart I—Miscellaneous

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CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SUBCHAPTER I—WORKFORCE AUTHORITIES

- Sec. 9801. Definitions.
- 9802. Planning, notification, and reporting requirements.

- 9803. *Workforce authorities.*
- 9804. *Recruitment, redesignation, and relocation bonuses.*
- 9805. *Retention bonuses.*
- 9806. *Term appointments.*
- 9807. *Pay authority for critical positions.*
- 9808. *Assignments of intergovernmental personnel.*
- 9809. *Enhanced demonstration project authority.*
- 9810. *Voluntary separation incentive payments.*
- 9811. *Limitations relating to bonuses.*

SUBCHAPTER II—PERSONNEL PROVISIONS

- 9831. *Definitions.*
- 9832. *NASA-Industry exchange program.*
- 9833. *Science and technology scholarship program.*
- 9834. *Distinguished scholar appointment authority.*
- 9835. *Travel and transportation expenses of certain new appointees.*
- 9836. *Annual leave enhancements.*
- 9837. *Limited appointments to Senior Executive Service positions.*
- 9838. *Superior qualifications pay.*

SUBCHAPTER I—WORKFORCE AUTHORITIES

§ 9801. Definitions

For purposes of this subchapter—

- (1) *the term “Administration” means the National Aeronautics and Space Administration;*
- (2) *the term “Administrator” means the Administrator of the National Aeronautics and Space Administration;*
- (3) *the term “critical need” means a specific and important requirement of the Administration’s mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—*
 - (A) *of the inability to fill positions; or*
 - (B) *employees do not possess the requisite skills;*
- (4) *the term “employee” means an individual employed in or under the Administration;*
- (5) *the term “workforce plan” means the plan required under section 9802(a);*
- (6) *the term “appropriate committees of Congress” means—*
 - (A) *the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and*
 - (B) *the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate; and*
- (7) *the term “redesignation bonus” means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof.*

§ 9802. Planning, notification, and reporting requirements

(a) Not later than 90 days before exercising any of the workforce authorities under this subchapter, the Administrator shall submit a written plan to the appropriate committees of Congress. A plan under this subchapter may not be implemented without the approval of the Office of Personnel Management.

(b) A workforce plan shall include a description of—

- (1) *each critical need of the Administration and the criteria used in the identification of that need;*
- (2)(A) *the functions, approximate number, and classes or other categories of positions or employees that—*

- (i) address critical needs; and
 - (ii) would be eligible for each authority proposed to be exercised under section 9803; and
- (B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);
- (3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this subchapter; and
- (B) the reasons why those needs would not be so addressed;
- (4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804, 9805 (including the criteria for granting bonuses in the absence of a critical need), and 9810, and how the level of those benefits will be determined;
- (5) the safeguards or other measures that will be applied to ensure that this subchapter is carried out in a manner consistent with merit system principles;
- (6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);
- (7) the methods that will be used to determine if the authorities exercised under this subchapter have successfully addressed each critical need identified under paragraph (1); and
- (8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and
- (B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—
- (i) nongovernmental recruitment or placement agencies; and
 - (ii) Internet technologies.
- (c) Not later than 60 days before first exercising any of the workforce authorities made available under this subchapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.
- (d)(1)(A) The Administrator may submit any modifications to the workforce plan to the Office of Personnel Management. Modifications to the workforce plan may not be implemented without the approval of the Office of Personnel Management.
- (B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.
- (2) Any reference in this subchapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.
- (e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—
- (1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

(f) None of the workforce authorities made available under this subchapter may be exercised in a manner inconsistent with the workforce plan.

(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

(h) Not later than 6 years after date of enactment of this subchapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this subchapter, including—

(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this subchapter successfully addressed each critical need identified under subsection (b)(1);

(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

§9803. Workforce authorities

(a) The workforce authorities under this subchapter are the following:

(1) The authority to pay recruitment, redesignation, and relocation bonuses under section 9804.

(2) The authority to pay retention bonuses under section 9805.

(3) The authority to make term appointments and to take related personnel actions under section 9806.

(4) The authority to fix rates of basic pay for critical positions under section 9807.

(5) The authority to extend intergovernmental personnel act assignments under section 9808.

(6) The authority to apply subchapter II of chapter 35 in accordance with section 9810.

(b) No authority under this subchapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

(c) Unless specifically stated otherwise, all authorities provided under this subchapter are subject to section 5307.

§9804. Recruitment, redesignation, and relocation bonuses

(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

(1) *the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and*

(2) *the individual—*

(A) *is newly appointed as an employee of the Federal Government;*

(B) *is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or*

(C) *is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.*

(b) *If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—*

(1) *50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or*

(2) *100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.*

(c) *If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—*

(1) *25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or*

(2) *100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.*

(d)(1)(A) *Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.*

(B) *At a minimum, the service agreement shall include—*

(i) *the required service period;*

(ii) *the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;*

(iii) *the amount of the bonus and the basis for calculating that amount; and*

(iv) *the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.*

(2) *For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.*

(3) *A bonus under this section may not be considered to be part of the basic pay of an employee.*

(e) *Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and re-*

location bonuses, subject to approval by the Office of Personnel Management.

(f) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter, a summary of all bonuses paid under subsections (b) and (c) during the preceding year. Such summary shall include the number of bonuses paid, the total amount of bonuses paid, and the average percentage used in calculating the total average bonus amount, under each such subsection.

§ 9805. Retention bonuses

(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee's services makes it essential to retain the employee; and

(2) the employee would be likely to leave in the absence of a retention bonus.

(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

(B) At a minimum, the service agreement shall include—

(i) the required service period;

(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

(iii) the amount of the bonus and the basis for calculating the amount; and

(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(2) The employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus

through the end of the pay period in which such written notice is provided.

(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

(g) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter, a summary of all bonuses paid under subsections (b) and (c) during the preceding year. Such summary shall include the number of bonuses paid, the total amount of bonuses paid, and the average percentage used in calculating the total average bonus amount, under each such subsection.

§9806. Term appointments

(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

(f) *The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter—*

(1) *the total number of term appointments converted during the previous calendar year; and*

(2) *of that total number, the number of conversions that were made to address a critical need described in the Workforce Plan pursuant to section 9802(b)(2).*

§9807. Pay authority for critical positions

(a) *In this section, the term “position” means—*

(1) *a position to which chapter 51 applies, including a position in the Senior Executive Service;*

(2) *a position under the Executive Schedule under sections 5312 through 5317;*

(3) *a position established under section 3104; or*

(4) *a senior-level position to which section 5376(a)(1) applies.*

(b) *Authority under this section—*

(1) *may be exercised only with respect to a position that—*

(A) *is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and*

(B) *requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;*

(2) *may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and*

(3) *may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).*

(c)(1) *Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.*

(2) *The number of positions with pay fixed under this section may not exceed 10 at any time.*

(d)(1) *The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.*

(2) *The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.*

(3) *Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.*

(e) *The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter—*

(1) *the number of positions for which the rate of basic pay was fixed under this section during the preceding year; and*

(2) *the number of positions for which a rate of basic pay under this section was terminated during the preceding year.*

§9808. Assignments of intergovernmental personnel

For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking "two" and inserting "four".

§9809. Enhanced demonstration project authority

When conducting a demonstration project at the Administration, section 4703(d)(1)(A) may be applied by substituting "such numbers of individuals as determined by the Administrator" for "not more than 5,000 individuals".

§9810. Voluntary separation incentive payments

(a) *In applying subchapter II of chapter 35, the Administrator may provide for voluntary separation incentive payments in excess of the dollar-amount limitation that would otherwise apply under section 3523(b)(3)(B), subject to subsection (b).*

(b) *Voluntary separation incentive payments described in subsection (a)—*

(1) *may not exceed 50 percent of the annual rate of basic pay of the employee receiving such payments (computed disregarding any comparability payments under sections 5304–5304a);*

(2) *may not, in any calendar year, be made to more than—*

(A) *10 employees; or*

(B) *such greater number of employees as the Administrator may, with the approval of the Office of Management and Budget, establish in lieu of the number specified in subparagraph (A) following notification to the appropriate committees of Congress;*

(3) *may not be made to an employee if the employee has within the last 12 months received, or if the employee is then receiving, a bonus or allowance under section 5753 or 5754 or under section 9804 or 9805; and*

(4) *may be made only if the position in which the employee is serving addresses a critical need identified in the workforce plan pursuant to section 9802(b)(2).*

(c)(1) *The proposed use of workforce authorities in this section shall be included in the plan required by section 3522.*

(2) *Whenever the Office of Personnel Management approves the Administration's plan required in such section 3522, the Administration shall submit a copy of the approved plan to the appropriate*

committees of Congress within 15 days after the date on which it is so approved.

§9811. Limitations relating to bonuses

(a) Of the total amount in bonuses awarded under sections 9804 and 9805, respectively, in any year, not to exceed 15 percent of any such total amount may be awarded to supervisors (within the meaning of section 7103(a)(10)).

(b) A separate appropriations account shall be maintained for such bonuses.

SUBCHAPTER II—PERSONNEL PROVISIONS

§9831. Definitions

For purposes of this subchapter, the terms “Administration” and “Administrator” have the meanings set forth in section 9801.

§9832. NASA-Industry exchange program

(a) For purposes of this section, the term “detail” means—

(1) the assignment or loan of an employee of the Administration to a private sector organization without a change of position from the Administration, or

(2) the assignment or loan of an employee of a private sector organization to the Administration without a change of position from the private sector organization that employs the individual,

whichever is appropriate in the context in which such term is used.

(b)(1) On request from or with the agreement of a private sector organization, and with the consent of the employee concerned, the Administrator may arrange for the assignment of an employee of the Administration to a private sector organization or an employee of a private sector organization to the Administration. An employee of the Administration shall be eligible to participate in this program only if the employee is employed at the GS-11 level or above (or equivalent) and is serving under a career or career-conditional appointment or an appointment of equivalent tenure in the excepted service.

(2) The Administrator shall provide for a written agreement between the Administration and the employee concerned regarding the terms and conditions of the employee’s assignment. The agreement shall—

(A) require the employee to serve in the Administration, upon completion of the assignment, for a period equal to the length of the assignment; and

(B) provide that, in the event the employee fails to carry out the agreement (except for good and sufficient reason, as determined by the Administrator), the employee shall be liable to the United States for payment of all expenses of the assignment.

An amount under subparagraph (B) shall be treated as a debt due the United States.

(3) Assignments may be terminated by the Administration or the private sector organization concerned for any reason at any time.

(4) Assignments under this section shall be for a period of between 6 months and 1 year, and may be extended in 3-month increments for a total of not more than 1 additional year, except that no assign-

ment under this section may commence after the end of the 5-year period beginning on the date of the enactment of this section.

(c)(1) An employee of the Administration who is assigned to a private sector organization under this section is deemed, during the period of the assignment, to be on detail to a regular work assignment in the Administration.

(2) Notwithstanding any other provision of law, an employee of the Administration who is assigned to a private sector organization under this section is entitled to retain coverage, rights, and benefits under subchapter I of chapter 81, and employment during the assignment is deemed employment by the United States, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(3) The assignment of an employee to a private sector organization under this section may be made with or without reimbursement by the private sector organization for the travel and transportation expenses to or from the place of assignment, subject to the same terms and conditions as apply with respect to an employee of a Federal agency or a State or local government under section 3375, and for the pay, or a part thereof, of the employee during assignment. Any reimbursements shall be credited to the appropriation of the Administration used for paying the travel and transportation expenses or pay.

(4) The Federal Tort Claims Act and any other Federal tort liability statute apply to an employee of the Administration assigned to a private sector organization under this section. The supervision of the duties of an employee of the Administration who is so assigned to a private sector organization may be governed by an agreement between the Administration and the organization.

(d)(1) An employee of a private sector organization assigned to the Administration under this section is deemed, during the period of the assignment, to be on detail to the Administration.

(2) An employee of a private sector organization assigned to the Administration under this section—

(A) may continue to receive pay and benefits from the private sector organization from which he is assigned;

(B) is deemed, notwithstanding paragraph (1), to be an employee of the Administration for the purposes of—

(i) chapter 73;

(ii) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

(iii) sections 1343, 1344, and 1349(b) of title 31;

(iv) the Federal Tort Claims Act and any other Federal tort liability statute;

(v) the Ethics in Government Act of 1978; and

(vi) section 1043 of the Internal Revenue Code of 1986;

(C) may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which he is assigned; and

(D) is subject to such regulations as the President may prescribe.

The supervision of an employee of a private sector organization assigned to the Administration under this section may be governed by agreement between the Administration and the private sector organization concerned. Such an assignment may be made with or without reimbursement by the Administration for the pay, or a part thereof, of the employee during the period of assignment, or for any contribution of the private sector organization to employee benefit systems.

(3) An employee of a private sector organization assigned to the Administration under this section who suffers disability or dies as a result of personal injury sustained while performing duties during the assignment shall be treated, for the purpose of subchapter I of chapter 81, as an employee as defined by section 8101 who had sustained the injury in the performance of duty, except that, if the employee or the employee's dependents receive from the private sector organization any payment under an insurance policy for which the premium is wholly paid by the private sector organization, or other benefit of any kind on account of the same injury or death, then, the amount of such payment or benefit shall be credited against any compensation otherwise payable under subchapter I of chapter 81.

(4) A private sector organization may not charge the Federal Government, as direct or indirect costs under a Federal contract, the costs of pay or benefits paid by the organization to an employee assigned to the Administration under this section for the period of the assignment.

(e)(1) The Administration shall, not later than February 28 of each year, prepare and submit to the appropriate committees of Congress a report summarizing the operation of this section during the preceding year.

(2) Each report shall include, with respect to the period to which such report relates—

(A) the total number of individuals assigned to, and the total number of individuals assigned from, the Administration during such period;

(B) a brief description of each assignment included under subparagraph (A), including—

(i) the name of the assigned individual, as well as the private sector organization, to or from which such individual was assigned;

(ii) the respective positions to and from which the individual was assigned, including the duties and responsibilities and the pay grade or level associated with each; and

(iii) the duration and objectives of the individual's assignment; and

(C) such other information as the Administration considers appropriate.

(3) A copy of each report submitted under paragraph (1)—

(A) shall be published in the Federal Register; and

(B) shall be made publicly available on the Internet.

(f) The Administrator, in consultation with the Director of the Office of Personnel Management, shall prescribe regulations for the administration of this section.

(g) Not later than 4 years after the date of the enactment of this section, the General Accounting Office shall prepare and submit to the appropriate committees of Congress a report on the operation of this section. Such report shall include—

- (1) an evaluation of the effectiveness of the program established by this section; and
- (2) a recommendation as to whether such program should be continued (with or without modification) or allowed to lapse.

§9833. Science and technology scholarship program

(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act.

(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

(b) In order to be eligible to participate in the Program, an individual must—

- (1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);
- (2) be a United States citizen; and
- (3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided.

(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe the terms and conditions under which a service obligation may be deferred through regulation.

(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

(A) the total amount of scholarships received by such individual under this section; plus

(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual

agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

(i) For purposes of this section—

(1) the term “cost of attendance” has the meaning given that term in section 472 of the Higher Education Act of 1965;

(2) the term “institution of higher education” has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

(3) the term “Program” means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

(j)(1) There is authorized to be appropriated to the Administration for the Program \$10,000,000 for each fiscal year.

(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

§9834. Distinguished scholar appointment authority

(a) In this section—

(1) the term “professional position” means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

(2) the term “research position” means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

(b) The Administration may appoint, without regard to the provisions of sections 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in the Administration for which public notice has been given, if—

(1) with respect to a position at the GS-7 level, the individual—

(A) received, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

(2) with respect to a position at the GS-9 level, the individual—

(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

(3) with respect to a position at the GS-11 level, the individual—

(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

(4) with respect to a research position at the GS-12 level, the individual—

(A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

(c) Veterans' preference procedures shall apply when selecting candidates under this section. Preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of nonpreference eligibles.

(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

§ 9835. Travel and transportation expenses of certain new appointees

(a) In this section, the term "new appointee" means—

(1) a person newly appointed or reinstated to Federal service to the Administration to—

(A) a career or career-conditional appointment;

(B) a term appointment;

(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

(D) a career or limited term Senior Executive Service appointment;

(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

(F) an appointment to a position established under section 3104; or

- (G) an appointment to a position established under section 5108; or
- (2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.
- (b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.
- (c) The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years beginning after the date of enactment of this subchapter—
- (1) the average payment for travel and transportation expenses of certain new appointees provided under this section during the preceding year; and
 - (2) the highest payment for travel and transportation expenses to an individual appointee provided under this section during the preceding year.

§9836. Annual leave enhancements

- (a)(1) In this subsection—
- (A) the term “newly appointed employee” means an individual who is first appointed—
- (i) regardless of tenure, as an employee of the Federal Government; or
 - (ii) as an employee of the Federal Government following a break in service of at least 90 days after that individual’s last period of Federal employment, other than—
 - (I) employment under the Student Educational Employment Program administered by the Office of Personnel Management;
 - (II) employment as a law clerk trainee;
 - (III) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;
 - (IV) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or
 - (V) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;
- (B) the term “period of qualified non-Federal service” means any period of service performed by an individual that—
- (i) was performed in a position the duties of which were directly related to the duties of the position in the Administration to which that individual will fill as a newly appointed employee; and
 - (ii) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and
- (C) the term “directly related to the duties of the position” means duties and responsibilities in the same line of work which require similar qualifications.

(2)(A) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

(B) A period deemed by the Administrator under subparagraph (A) shall continue to apply to the employee during—

(i) the period of Federal service in which the deeming is made; and

(ii) any subsequent period of Federal service.

(3)(A) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, shall be 1 day for each full biweekly pay period.

(B) The accrual rate established under this paragraph shall continue to apply to the employee during—

(i) the period of Federal service in which such accrual rate first applies; and

(ii) any subsequent period of Federal service.

§9837. Limited appointments to Senior Executive Service positions

(a) In this section—

(1) the term “career reserved position” means a position in the Administration designated under section 3132(b) which may be filled only by—

(A) a career appointee; or

(B) a limited emergency appointee or a limited term appointee—

(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

(2) the term “limited emergency appointee” has the meaning given under section 3132; and

(3) the term “limited term appointee” means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

(c) Notwithstanding sections 3132 and 3394(b)—

(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

(A) 4 years or less to a position the duties of which will expire at the end of such term; or

(B) 1 year or less to a position the duties of which are continuing; and

(2) *in rare circumstances, the Administrator may authorize an extension of a limited appointment under—*

(A) *paragraph (1)(A) for a period not to exceed 2 years; and*

(B) *paragraph (1)(B) for a period not to exceed 1 year.*

(d) *A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.*

(e) *Notwithstanding section 3394(b) and section 3395—*

(1) *a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and*

(2) *a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.*

(f) *A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.*

(g) *Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.*

§9838. Superior qualifications pay

(a) *In this section the term “employee” means an employee as defined under section 2105 who is employed by the Administration.*

(b) *Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of the Administration.*

(c) *If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee’s contribution in the new position will exceed that in the former position, before setting pay under this section.*

(d) *Pay as set under this section is basic pay for such purposes as pay set under section 5334.*

(e) *If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.*

(f) *The Administrator may waive the restrictions in subsection (e), based on criteria established in the plan required under subsection (g).*

(g) *Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management, that includes—*

- (1) *criteria for approval of actions to set pay under this section;*
- (2) *the level of approval required to set pay under this section;*
- (3) *all types of actions and positions to be covered;*
- (4) *the relationship between the exercise of authority under this section and the use of other pay incentives; and*
- (5) *a process to evaluate the effectiveness of this section.*

CHAPTER 99—DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM

Sec.

9901. *Definitions.*

9902. *Establishment of human resources management system.*

9903. *Attracting highly qualified experts.*

9904. *Employment of older Americans.*

9905. *Special pay and benefits for certain employees outside the United States.*

§ 9901. Definitions

For purposes of this chapter—

- (1) *the term “Director” means the Director of the Office of Personnel Management; and*
- (2) *the term “Secretary” means the Secretary of Defense.*

§ 9902. Establishment of human resources management system

(a) *IN GENERAL.—Notwithstanding any other provision of this part, the Secretary may, in regulations prescribed jointly with the Director, establish, and from time to time adjust, a human resources management system for some or all of the organizational or functional units of the Department of Defense. If the Secretary certifies that issuance or adjustment of a regulation, or the inclusion, exclusion, or modification of a particular provision therein, is essential to the national security, the Secretary may, subject to the decision of the President, waive the requirement in the preceding sentence that the regulation or adjustment be issued jointly with the Director.*

(b) *SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—*

- (1) *be flexible;*
- (2) *be contemporary;*
- (3) *not waive, modify, or otherwise affect—*

(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

(B) any provision of section 2302, relating to prohibited personnel practices;

(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

(I) providing for equal employment opportunity through affirmative action; or

(II) providing any right or remedy available to any employee or applicant for employment in the public service;

(D) any other provision of this part (as described in subsection (c)); or

(E) any rule or regulation prescribed under any provision of law referred to in this paragraph;

(4) ensure that employees may organize, bargain collectively as provided for in this chapter, and participate through labor organizations of their own choosing in decisions which affect them, subject to the provisions of this chapter and any exclusion from coverage or limitation on negotiability established pursuant to law;

(5) not be limited by any specific law or authority under this title that is waivable under this chapter or by any provision of this chapter or any rule or regulation prescribed under this title that is waivable under this chapter, except as specifically provided for in this section; and

(6) include a performance management system that incorporates the following elements:

(A) adherence to merit principles set forth in section 2301;

(B) a fair, credible, and transparent employee performance appraisal system;

(C) a link between the performance management system and the agency's strategic plan;

(D) a means for ensuring employee involvement in the design and implementation of the system;

(E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;

(F) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period, and setting timetables for review;

(G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and

(H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.

(c) **OTHER NONWAIVABLE PROVISIONS.**—The other provisions of this part referred to in subsection (b)(3)(D) are (to the extent not otherwise specified in this title)—

(1) subparts A, B, E, G, and H of this part; and

(2) chapters 41, 45, 47, 55 (except subchapter V thereof), 57, 59, 72, 73, and 79, and this chapter.

(d) **LIMITATIONS RELATING TO PAY.**—(1) Nothing in this section shall constitute authority to modify the pay of any employee who serves in an Executive Schedule position under subchapter II of chapter 53 of this title.

(2) Except as provided for in paragraph (1), the total amount in a calendar year of allowances, differentials, bonuses, awards, or

other similar cash payments paid under this title to any employee who is paid under section 5376 or 5383 of this title or under title 10 or under other comparable pay authority established for payment of Department of Defense senior executive or equivalent employees may not exceed the total annual compensation payable to the Vice President under section 104 of title 3.

(3) To the maximum extent practicable, the rates of compensation for civilian employees at the Department of Defense shall be adjusted at the same rate, and in the same proportion, as are rates of compensation for members of the uniformed services.

(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—(1) In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of, employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary and the Director shall provide for the following:

(A) The Secretary and the Director shall, with respect to any proposed system or adjustment—

(i) provide to the employee representatives representing any employees who might be affected a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

(ii) give such representatives at least 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

(iii) give any recommendations received from such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

(B) Following receipt of recommendations, if any, from such employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

(i) notify Congress of those parts of the proposal, together with the recommendations of the employee representatives;

(ii) meet and confer for not less than 30 calendar days with the employee representatives, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

(iii) at the Secretary's option, or if requested by a majority of the employee representatives participating, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

(C)(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which the recommendations are accepted by the Secretary and the Director, may be implemented immediately.

(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days

have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary, in his discretion, determines that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts (including any modifications made in response to the recommendations as the Secretary determines advisable), but only after 30 days have elapsed after notifying Congress of the decision to implement the part or parts involved (as so modified, if applicable).

(iii) The Secretary shall notify Congress promptly of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from the employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

(D) If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

(i) develop a method for the employee representatives to participate in any further planning or development which might become necessary; and

(ii) give the employee representatives adequate access to information to make that participation productive.

(2) The Secretary may, at the Secretary's discretion, engage in any and all collaboration activities described in this subsection at an organizational level above the level of exclusive recognition.

(3) In the case of any employees who are not within a unit with respect to which a labor organization is accorded exclusive recognition, the Secretary and the Director may develop procedures for representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of this subsection.

(f) PROVISIONS REGARDING NATIONAL LEVEL BARGAINING.—(1) Any human resources management system implemented or modified under this chapter may include employees of the Department of Defense from any bargaining unit with respect to which a labor organization has been accorded exclusive recognition under chapter 71 of this title.

(2) For any bargaining unit so included under paragraph (1), the Secretary may bargain at an organizational level above the level of exclusive recognition. Any such bargaining shall—

(A) be binding on all subordinate bargaining units at the level of recognition and their exclusive representatives, and the Department of Defense and its subcomponents, without regard to levels of recognition;

(B) supersede all other collective bargaining agreements, including collective bargaining agreements negotiated with an exclusive representative at the level of recognition, except as otherwise determined by the Secretary;

(C) not be subject to further negotiations for any purpose, including bargaining at the level of recognition, except as provided for by the Secretary; and

(D) except as otherwise specified in this chapter, not be subject to review or to statutory third-party dispute resolution procedures outside the Department of Defense.

(3) The National Guard Bureau and the Army and Air Force National Guard are excluded from coverage under this subsection.

(4) Any bargaining completed pursuant to this subsection with a labor organization not otherwise having national consultation rights with the Department of Defense or its subcomponents shall not create any obligation on the Department of Defense or its subcomponents to confer national consultation rights on such a labor organization.

(g) PROVISIONS RELATING TO APPELLATE PROCEDURES.—(1) The Secretary shall—

(A) establish an appeals process that provides that employees of the Department of Defense are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

(B) in prescribing regulations for any such appeals process—

(i) ensure that employees of the Department of Defense are afforded the protections of due process; and

(ii) toward that end, be required to consult with the Merit Systems Protection Board before issuing any such regulations.

(2) Any regulations establishing the appeals process required by paragraph (1) that relate to any matters within the purview of chapter 77 shall—

(A) provide for an independent review panel, appointed by the President, which shall not include the Secretary or the Deputy Secretary of Defense or any of their subordinates;

(B) be issued only after—

(i) notification to the appropriate committees of Congress; and

(ii) consultation with the Merit Systems Protection Board and the Equal Employment Opportunity Commission;

(C) ensure the availability of procedures that—

(i) are consistent with requirements of due process; and

(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department of Defense; and

(D) modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department of Defense.

(h) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

(2) For purposes of this section, the term “employee” means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include—

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84 of this title, or another retirement system for employees of the Federal Government;

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in paragraph (1); or

(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(3) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved pursuant to the program established under subsection (a).

(4)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of—

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c) of this title, if the employee were entitled to payment under such section; or

(ii) \$25,000.

(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595 of this title, based on any other separation.

(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient’s acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (5).

(5)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee’s separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103–236; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105 of this title) other

than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(6) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

(i) *PROVISIONS RELATING TO REEMPLOYMENT.*—If annuitant receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed in a position within the Department of Defense, his annuity shall continue. An annuitant so reemployed shall not be considered an employee for purposes of chapter 83 or 84.

(j) *PROVISIONS RELATING TO HIRING.*—Notwithstanding subsection (c), the Secretary may exercise any hiring flexibilities that would otherwise be available to the Secretary under section 4703.

§ 9903. Attracting highly qualified experts

(a) *IN GENERAL.*—The Secretary may carry out a program using the authority provided in subsection (b) in order to attract highly qualified experts in needed occupations, as determined by the Secretary.

(b) *AUTHORITY.*—Under the program, the Secretary may—

(1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in section 2101 of this title) to positions in the Department of Defense without regard to any provision of this title governing the appointment of employees to positions in the Department of Defense;

(2) prescribe the rates of basic pay for positions to which employees are appointed under paragraph (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under section 5376 of this title, as increased by locality-based comparability payments under section 5304 of this title, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and

(3) pay any employee appointed under paragraph (1) payments in addition to basic pay within the limits applicable to the employee under subsection (d).

(c) *LIMITATION ON TERM OF APPOINTMENT.*—(1) Except as provided in paragraph (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years.

(2) The Secretary may, in the case of a particular employee, extend the period to which service is limited under paragraph (1) by up to 1 additional year if the Secretary determines that such action

is necessary to promote the Department of Defense's national security missions.

(d) **LIMITATIONS ON ADDITIONAL PAYMENTS.**—(1) The total amount of the additional payments paid to an employee under this section for any 12-month period may not exceed the lesser of the following amounts:

(A) \$50,000 in fiscal year 2004, which may be adjusted annually thereafter by the Secretary, with a percentage increase equal to one-half of 1 percentage point less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year.

(B) The amount equal to 50 percent of the employee's annual rate of basic pay.

For purposes of this paragraph, the term "base quarter" has the meaning given such term by section 5302(3).

(2) An employee appointed under this section is not eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under this section.

(3) Notwithstanding any other provision of this subsection or of section 5307, no additional payments may be paid to an employee under this section in any calendar year if, or to the extent that, the employee's total annual compensation will exceed the maximum amount of total annual compensation payable at the salary set in accordance with section 104 of title 3.

(e) **SAVINGS PROVISIONS.**—In the event that the Secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—

(1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—

(A) the period for which the employee was appointed; or

(B) the period to which the employee's service is limited under subsection (c), including any extension made under this section before the termination of the program; and

(2) the rate of basic pay prescribed for the position under this section may not be reduced as long as the employee continues to serve in the position without a break in service.

§ 9904. Employment of older Americans

(a) **IN GENERAL.**—Notwithstanding any other provision of law, the Secretary may appoint older Americans into positions in the accepted service for a period not to exceed 2 years, provided that—

(1) any such appointment shall not result in—

(A) the displacement of individuals currently employed by the Department of Defense (including partial displacement through reduction of nonovertime hours, wages, or employment benefits); or

(B) the employment of any individual when any other person is in a reduction-in-force status from the same or substantially equivalent job within the Department of Defense; and

(2) *the individual to be appointed is otherwise qualified for the position, as determined by the Secretary.*

(b) *EFFECT ON EXISTING RETIREMENT BENEFITS.—Notwithstanding any other provision of law, an individual appointed pursuant to subsection (a) who otherwise is receiving an annuity, pension, social security payment, retired pay, or other similar payment shall not have the amount of said annuity, pension, social security, or other similar payment reduced as a result of such employment.*

(c) *EXTENSION OF APPOINTMENT.—Notwithstanding subsection (a), the Secretary may extend an appointment made pursuant to this section for up to an additional 2 years if the individual employee possesses unique knowledge or abilities that are not otherwise available to the Department of Defense.*

(d) *DEFINITION.—For purposes of this section, the term “older American” means any citizen of the United States who is at least 55 years of age.*

§ 9905. Special pay and benefits for certain employees outside the United States

The Secretary may provide to certain civilian employees of the Department of Defense assigned to activities outside the United States as determined by the Secretary to be in support of Department of Defense activities abroad hazardous to life or health or so specialized because of security requirements as to be clearly distinguishable from normal Government employment—

(1) *allowances and benefits—*

(A) *comparable to those provided by the Secretary of State to members of the Foreign Service under chapter 9 of title I of the Foreign Service Act of 1980 (Public Law 96–465, 22 U.S.C. 4081 et seq.) or any other provision of law; or*

(B) *comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency; and*

(2) *special retirement accrual benefits and disability in the same manner provided for by the Central Intelligence Agency Retirement Act (50 U.S.C. 2001 et seq.) and in section 18 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403r).*

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

* * * * *

§ 207. Restrictions on former officers, employees, and elected officials of the executive and legislative branches

(a) * * *

* * * * *

(c) ONE-YEAR RESTRICTIONS ON CERTAIN SENIOR PERSONNEL OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES.—

(1) * * *

(2) PERSONS TO WHOM RESTRICTIONS APPLY.—(A) Paragraph

(1) shall apply to a person (other than a person subject to the restrictions of subsection (d))—

(i) * * *

[(ii) employed in a position which is not referred to in clause (i) and for which the basic rate of pay, exclusive of any locality-based pay adjustment under section 5302 of title 5 (or any comparable adjustment pursuant to interim authority of the President), is equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service,]

(ii) employed in a position which is not referred to in clause (i) and for which that person is paid at a rate of basic pay which is equal to or greater than 96 percent of the rate of basic pay for level II of the Executive Schedule, or, for a period of 2 years following the enactment of the Federal Employees Pay for Performance Act of 2003, a person who, on the day prior to the enactment of that Act, was employed in a position which is not referred to in clause (i) and for which the rate of basic pay, exclusive of any locality-based pay adjustment under section 5304 or section 5304a of title 5, was equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service on the day prior to the enactment of that Act,

* * * * *

(v) assigned from a private sector organization to an agency under chapter 37 or section 9832 of title 5.

* * * * *

(1) CONTRACT ADVICE BY FORMER DETAILS.—Whoever, being an employee of a private sector organization assigned to an agency under chapter 37 or section 9832 of title 5, within one year after the end of that assignment, knowingly represents or aids, counsels, or assists in representing any other person (except the United States) in connection with any contract with that agency shall be punished as provided in section 216 of this title.

* * * * *

§ 209. Salary of Government officials and employees payable only by United States

(a) * * *

* * * * *

(h) This section does not prohibit an employee of a private sector organization, while assigned to the National Aeronautics and Space Administration under section 9832 of title 5, from continuing to re-

ceive pay and benefits from that organization in accordance with section 9832 of that title.

* * * * *

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

* * * * *

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 or section 9832 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

* * * * *

SECTION 203 OF THE NATIONAL AERONAUTICS AND SPACE ACT OF 1958

FUNCTIONS OF THE ADMINISTRATION

SEC. 203. (a) * * *

* * * * *

(c) In the performance of its functions the Administration is authorized—

(1) * * *

(2) to appoint and fix the compensation of such officers and employees as may be necessary to carry out such functions. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949, except that (A) to the extent the Administrator deems such action necessary to the discharge of his responsibilities, he may appoint not more than four hundred and twenty-five of the scientific, engineering, and administrative personnel of the Administration without regard to such laws, and may fix the compensation of such personnel not in excess of [the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amend-

ed,] *the rate of basic pay payable for level III of the Executive Schedule*, and (B) to the extent the Administrator deems such action necessary to recruit specially qualified scientific and engineering talent, he may establish the entrance grade for scientific and engineering personnel without previous service in the Federal Government at a level up to two grades higher than the grade provided for such personnel under the General Schedule established by the Classification Act of 1949, and fix their compensation accordingly;

* * * * *

SECTION 125 OF THE ACT OF JANUARY 8, 1988

AN ACT Making technical corrections relating to the Federal Employees' Retirement System, and for other purposes.

SEC. 125. ELIGIBILITY OF CERTAIN INDIVIDUALS TO PARTICIPATE IN THE THRIFT SAVINGS PLAN.

(a) * * *

* * * * *

(c) **APPLICABILITY.**—This section applies with respect to—

(1) any individual participating in the Civil Service Retirement System or the Federal Employees' Retirement System as—

(A) * * *

* * * * *

(C) an individual appointed or otherwise assigned to one of the cooperative extension services, as defined by section 1404(5) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103(5)); **[or]**

(D) an individual assigned from a Federal agency to a private sector organization under chapter 37 of title 5, United States Code; **[and]** or

(E) *an individual assigned from the National Aeronautics and Space Administration to a private sector organization under section 9832 of title 5, United States Code; and*

* * * * *

MINORITY VIEWS

Over the past century, Congress has developed a comprehensive set of laws to prevent the patronage system that ruled the federal government during the first 100 years of the country's existence. Until the Civil Service Act of 1883, federal jobs were often awarded through the spoils system. Civil service jobs went to supporters of elected officials and loyal party members, which often led to incompetence and corruption.

With the passage of H.R. 1836, this Committee has embarked on the path of reversing many of the legislative reforms of the past century. The bill strips away fundamental rights from almost 700,000 civilian employees at the Department of Defense (DoD)—approximately one-third of all federal civilian employees. The bill also opens the door for the rest of the federal workforce to have their rights taken away as well.

We agree that DoD needs certain flexibilities to allow it to operate more effectively and more efficiently. We want the strongest possible national defense and are willing to give DoD the tools it needs to modernize its workforce. However, H.R. 1836 goes well beyond those flexibilities by giving DoD a blanket waiver from large parts of the civil service laws.

In two hearings before the Committee, DoD witnesses provided virtually no details about how it would exercise these flexibilities and no rationale for why statutory protections of employee rights should be waived. Often, the only rationale DoD provided for such waivers was that the Department of Homeland Security received the same waivers last year. However, the creation of the Homeland Security Department was a unique situation involving the combination of more than 20 different agencies from different parts of the federal government. Congress reasoned that the new Secretary of Homeland Security needed flexibilities to quickly organize the different components and functions. The Homeland Security Department was an experiment, not a precedent.

The bill approved by the Committee on a party-line vote is an improvement over the proposal initially submitted by DoD. On balance, however, H.R. 1836 still gives far too little direction to DoD without providing any meaningful safeguards to employees.

Our views on specific provisions in H.R. 1836 and the Committee's process for considering the bill are set forth below.

I. EXPEDITED CONSIDERATION OF BILL

Members of the Committee on both sides of the aisle argued that a bill of this magnitude deserves careful and thoughtful consideration by Congress. However, DoD did not send its personnel proposal to Congress until April 10, 2003, and the bill was not introduced until April 29, 2003.

Prior to marking up the bill, the Committee held only one subcommittee hearing and one full committee hearing—both in the eight days prior to the markup. Eight days was not enough time to consider a bill that will affect one-third of federal civilian employees and will likely become the de facto personnel system for the entire federal government. At the subcommittee hearing, Chairwoman Jo Ann Davis stated: “We’re doing this so quickly and so fast that I can’t say I’m very comfortable. I’m not anxious to run forward and vote for something when I just don’t know what it’s going to do to 700,000 people. * * * I think we’re all concerned with the sweeping power that would be given.”

DoD also failed to consult with interested parties about its legislative proposal. DoD never formally consulted with unions representing DoD employees during the development of the proposal. We also were not briefed on the proposal until after it was submitted to Congress.

Finally, we believe this bill is premature because the personnel provisions of the Homeland Security Act—the precedent for many of the changes sought by DoD—have not been implemented. Congress should wait until the Department of Homeland Security has implemented its new personnel system, before deciding that this novel approach should be extended to other agencies.

II. PERSONNEL PROVISIONS

We believe that H.R. 1836 provides a blank check to DoD to create a new personnel system for its almost 700,000 civilian employees without providing any details about what it would do. DoD has stated only that the new personnel system would be based on: (1) existing demonstration projects within the Department; and (2) DoD’s civilian human resources strategic plan.

Existing DoD demonstration projects cover approximately 30,000 employees, many of whom are scientists and engineers, at research labs. It is an open question as to whether these limited demonstration projects can be extrapolated to a more diverse workforce that is over 20 times larger the demonstration projects. At a minimum, more research is needed before DoD is granted such broad pay and hiring flexibilities.

DoD’s reliance on its human resources strategic plan is also problematic. In a report issued in March 2003 GAO found DoD’s strategic plan to be wholly inadequate:

The human capital strategic plans GAO reviewed for the most part lacked key elements found in fully developed plans. Most of the civilian human capital goals, objectives, and initiatives were not explicitly aligned with the over-reaching missions of the organizations. Consequently, DoD and the components cannot be sure that strategic goals are properly focused on mission achievement. Also, none of the plans contained results-oriented performance measure to assess the impact of their civilian human capital initiatives (i.e., programs, policies, and processes). Thus, DoD and the components cannot gauge the extent to which their human capital initiatives contribute to achieving their organizations’ mission. Finally, the plans did not con-

tain data on the skills and competencies needed to successfully accomplish future mission; therefore, DoD and the components risk not being able to put the right people, in the right place, and at the right time, which can result in diminished accomplishments of the overall defense mission. * * * Moreover, the civilian strategic plans did not address how the civilian workforce will be integrated with their military counterparts or sourcing initiatives.¹

At the Civil Service Subcommittee hearing, Comptroller General David Walker underscored these points, testifying that he had “serious concerns” about the proposal and that the Pentagon needs to improve its management systems to demonstrate that adequate safeguards would be in place to minimize the chance of abuse. Mr. Walker testified: “Unfortunately, based on GAO’s past work most existing federal performance appraisal systems, including a vast majority of DoD’s system, are not currently designed to support systems, including a vast majority of DoD’s system, are not currently designed to support a meaningful performance-based pay system.”

Despite GAO’s criticisms of DoD’s human resources strategic plan—and DoD’s failure to adequately address these criticisms—H.R. 1836 essentially allows the Department to implement a new personnel system modeled after the strategic plan.

Of equal concern is DoD’s inability to justify the need for these sweeping flexibilities. At the subcommittee hearing, Undersecretary of Defense David Chu testified that the new personnel system would make DoD into a more “agile” force but was unable to explain how the current personnel system had in any way hindered DoD’s efforts to wage war in Iraq.

Based on pre-markup negotiations and amendments passed during the markup, several changes were made to the initial proposal submitted by DoD in April. Some of these changes improved the bill. Most significantly, the number of waivable chapters under Title 5 of the U.S. Code was scaled back from 12 provisions in the original DoD proposal to the six chapters that were waived in the homeland security bill. A provision exempting the DoD personnel regulations from notice and comment requirements was dropped. A provision allowing the Defense Secretary to invoke national security and trump the Office of Personnel Management was modified to require that the national security exception be the President’s decision. And standards were added to the bill to require that a performance-based pay system incorporate elements of accountability and transparency.

Nevertheless, efforts by minority members to improve the bill during the markup were rejected on party-line votes. Minority amendments were defeated that would have: required DoD to submit a legislative proposal detailing its new personnel system prior to any authorities being granted; limited any new flexibilities only to DoD managers; and required DoD to receive an unqualified audit opinion before it could exercise any authorities.

¹ General Accounting Office, DOD Actions Needed to Strengthen Civilian Human Capital Strategic Planning and Integration with Military Personnel and Sourcing Decisions (Mar. 2003) (GAO-03-475).

III. LACK OF PROTECTION FOR EMPLOYEE RIGHTS

In its proposal, DoD sought a complete waiver from four chapters of the Title 5 of U.S. Code that protect fundamental rights of federal employees.

DoD sought waivers from Chapters 43, 75, and 77, which relate to due process and appeal rights. These chapters set forth basic employee protections, such as the right to have advance notice of suspension or removal, the right to respond in writing, the right to be represented by an attorney, and the right to a written decision explaining the action. In addition, these chapters set forth a procedure for employees to challenge personnel actions to the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC) and receive backpay for wrongful termination actions.

DoD also sought a waiver from Chapter 71, which relates to employees collective bargaining rights. Chapter 71 protects the rights of employees to join unions, requires that agencies and unions bargain in good faith, and prohibits discrimination based on union membership.

Even as DoD argued for a complete waiver from these chapters of Title 5, DoD witnesses continued to maintain that they were not revoking the rights contained in these chapters. Deputy Defense Secretary Paul Wolfowitz explained:

[W] are not talking about stripping all of those basic protections of civil service. In fact, we are very much keeping the basic prohibitions on prohibitive personnel practices. We are keeping appeals process in place. We are simply making it easier to hire people that ought to be hired, easier to reward people that ought to be rewarded.

When Mr. Wolfowitz was asked about employee protections against race and sex discrimination, he explained: "We are certainly not trying to change anything in the way that people are protected against that kind of discrimination."

Notwithstanding DoD's reassurance, the Department's new ability to waive Chapters 43, 75, and 77 effectively precludes employees from having a statutory remedy to redress employment discrimination or wrongful termination actions. DoD has not stated what due process and appeals provisions will be adopted in place of the current system. The amendment offered by Representative McHugh that was adopted by the Committee is an improvement upon DoD's initial proposal but still gives the Department too much discretion to determine what kind of due process and appeal rights will be given to their employees.

Two amendments by Representative Norton to strengthen the due process and appeals provisions were defeated on party-line votes. However, the Committee did adopt an amendment by Representative Norton to prohibit any DoD employee from serving on the new employee appeals panel, thus ensuring the panel's independence. Representative Norton's amendment also required that the Department consult with EEOC in designing its personnel regulations.

With regard to collective bargaining rights, DoD was unable to justify its request for a complete waiver from Chapter 71. In only

one area—the ability of DoD to bargain with unions at the national level, instead of the local level—was the Department able to identify a potential problem that needed to be addressed. Under Secretary of Defense David Chu explained: “[T]here’s no proposal here for anyone to lose his or her collective bargaining rights. * * * The proposal is designed to facilitate bargaining at the national level. That is the proposal.” Mr. Wolfowitz stated: “I read [the bill] as consolidating collective bargaining at the national level. Collective bargaining will still be very much a part of the process.”

On the issue of national-level bargaining, we are sympathetic to DoD’s arguments and are willing to give DoD the requested flexibility. However, there was great skepticism about DoD waiving all collective bargaining obligations. No explanation was given for the need to waive the obligations in 5 U.S.C. § 7116 that DoD not “encourage or discourage membership in any labor organization by discrimination in connection with hiring” and that DoD “negotiate in good faith with a labor organization.”

Notwithstanding DoD’s statement that it welcomes national-level bargaining, H.R. 1836 provides no guarantees that DoD will engage in collective bargaining at all. The bill requires only that the Department engage in “collaboration” with unions in the development of the new personnel system. If the Defense Secretary decides to implement any part of the proposal over the objections of labor organizations, the bill gives the Secretary the discretion to do so after notifying Congress.

In those instances in which DoD chooses to engage in collective bargaining, the bill specifically removes the current requirement that any agency-union impasse be mediated by the Federal Services Impasse Panel, whose members are all appointed by the President. Without any impasse resolution procedure—and without any legal duty to bargain in good faith—the Defense Department could always bargain to impasse and then unilaterally impose its will on employees.

Rep. Lynch offered two amendments that would have restored Chapter 71 and several key collective bargaining rights. Both amendments were defeated on party-line votes.

IV. OTHER BILL PROVISIONS

A. SEC provisions

The Securities and Exchange Commission (SEC) has sought flexibilities to hire accountants, economists, and compliance examiners to improve oversight of U.S. corporations. We support this flexibility but contend that these flexibilities should be temporary to meet current hiring needs caused by the passage of the Sarbanes-Oxley Act. An amendment by Representative Kanjorski to sunset these flexibilities at the end of FY 2008 was defeated.

B. NASA provisions

The National Aeronautics and Space Administration (NASA) also sought a variety of workforce flexibilities relating to greater pay and hiring authority. We believe, however, that it is premature to expand NASA’s authorities at this time. An outside board headed by Admiral Harold Gehman is currently investigating the Colum-

bia space shuttle accident and has indicated that it is examining whether workforce issues played a role in the accident. Until the board issues its report, Congress should not grant far-reaching waivers to NASA.

On the merits of NASA's request, we are most concerned about NASA's request to remove the current restriction that demonstration projects be limited to no more than 5,000 employees. This provision would allow NASA to exempt the entire agency from most federal civil service laws. We also are concerned about a provision in the bill that would allow employee exchanges between NASA and outside contractors. This provision could give contractors undue influence over NASA's operations and might create potential conflict of interest problems by allowing private sector detailees to NASA to review contract proposals from their competitors.

The NASA provisions of H.R. 1836 were improved during the markup. The Committee accepted an amendment by Representative Jo Ann Davis to require NASA to consider employee input into any workforce flexibilities employed by the agency. The Committee also accepted an amendment by Representative Kucinich to prohibit NASA supervisors from receiving more than 15% of the relocation, retention, and recruitment bonuses authorized under the bill.

C. Hatch Act provision

The manager's substitute amendment contained a provision relating to the Hatch Act that was never discussed with us prior to the Committee markup. This provision is intended to help one person, Alan White, who is currently being prosecuted by the Office of Special Counsel (OSC) for an alleged Hatch Act violation. The provision would prevent OSC from prosecuting Mr. White, while also prohibiting OSC from publicly discussing the case.

We believe this is a private relief measure that has no place in this legislation. The provision also has implications beyond Mr. White by creating a loophole for federal employees to avoid Hatch Act prosecution. Moreover, the provision imposes a "gag order" on OSC that will prevent the OSC from disclosing information about its cases to the media and public. According to OSC, disclosure of enforcement actions and accomplishments is important to deter violations and ensure accountability.

On May 13, 2003, Elaine Kaplan, the head of OSC, sent a letter to the chairman and ranking minority member of the House Armed Services Committee about this provision of H.R. 1836. In this letter, Ms. Kaplan states the provision "would significantly undermine OSC's ability to effectively enforce compliance with the Hatch Act." A copy of this letter is attached to these views.

D. Other provisions

During the markup, the Committee accepted other amendments offered by minority members:

- An amendment by Representatives Bell and Lantos was passed giving federal employees called up for duty in the military reserves the difference between their reserves salary and their civilian salary.

- An amendment by Representative Van Hollen was passed prohibiting agencies from charging fees to employees for setting up flexible spending accounts.
 - An amendment by Representative Ruppertsberger was passed requiring agencies to conduct annual employee surveys.
- In addition, an amendment by Representative Van Hollen was defeated which would have provided all federal civilian employees with the same pay increases as the military.

V. CONCLUSION

Although we support giving DoD the tools it needs to modernize its workforce, we cannot support H.R. 1836 in its current form. As reported by the Committee, the bill is a blank check to DoD to develop a new personnel system for its almost 700,000 civilian employees, without providing meaningful safeguards for those employees.

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 TOM LANTOS.
 MAJOR R. OWENS.
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 BERNARD SANDERS.
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