

Union Calendar No. 134

108TH CONGRESS
1ST SESSION

H. R. 1085

[Report No. 108-244, Part I]

To make certain workforce authorities available to the National Aeronautics and Space Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2003

Mr. BOEHLERT introduced the following bill; which was referred to the Committee on Science, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

AUGUST 4, 2003

Additional sponsors: Mr. BISHOP of Utah, Mr. BURGESS, Mr. ROHRABACHER, Mr. SCHROCK, Mr. BAKER, Mr. CRAMER, Mr. WICKER, and Ms. ESHOO

AUGUST 4, 2003

Reported from the Committee on Science with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

AUGUST 4, 2003

Referral to the Committee on Government Reform extended for a period ending not later than August 4, 2003

AUGUST 4, 2003

Committee on Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To make certain workforce authorities available to the National Aeronautics and Space Administration, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “NASA Flexibility Act*
5 *of 2003”.*

6 **SEC. 2. COMPENSATION FOR CERTAIN EXCEPTED PER-**
7 **SONNEL.**

8 *(a) IN GENERAL.—Subparagraph (A) of section*
9 *203(c)(2) of the National Aeronautics and Space Act of*
10 *1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking “the*
11 *highest rate of grade 18 of the General Schedule of the Clas-*
12 *sification Act of 1949, as amended,” and inserting “the rate*
13 *of basic pay payable for level III of the Executive Sched-*
14 *ule,”.*

15 *(b) EFFECTIVE DATE.—The amendment made by this*
16 *section shall take effect on the first day of the first pay pe-*
17 *riod beginning on or after the date of enactment of this Act.*

1 **SEC. 3. WORKFORCE AUTHORITIES.**

2 (a) *IN GENERAL.*—Subpart I of part III of title 5,
3 *United States Code*, is amended by inserting after chapter
4 97, as added by section 841(a)(2) of the *Homeland Security*
5 *Act of 2002 (Public Law 107–296; 116 Stat. 2229)*, the fol-
6 *lowing:*

7 **“CHAPTER 98—NATIONAL AERONAUTICS**
8 **AND SPACE ADMINISTRATION**

“Sec.

“9801. *Definitions.*

“9802. *Planning, notification, and reporting requirements.*

“9803. *Restrictions.*

“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. *Science and technology scholarship program.*

“9811. *Distinguished scholar appointment authority.*

“9812. *Travel and transportation expenses of certain new appointees.*

“9813. *Annual leave enhancements.*

“9814. *Limited appointments to Senior Executive Service positions.*

“9815. *Qualifications pay.*

“9816. *Reporting requirement.*

9 **“§9801. Definitions**

10 “*For purposes of this chapter—*

11 “(1) *the term ‘Administration’ means the Na-*
12 *tional Aeronautics and Space Administration;*

13 “(2) *the term ‘Administrator’ means the Admin-*
14 *istrator of the National Aeronautics and Space Ad-*
15 *ministration;*

16 “(3) *the term ‘critical need’ means a specific and*
17 *important requirement of the Administration’s mis-*

1 *sion that the Administration is unable to fulfill be-*
2 *cause the Administration lacks the appropriate em-*
3 *ployees because—*

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

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

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

9 *“(5) the term ‘workforce plan’ means the plan re-*
10 *quired under section 9802(a);*

11 *“(6) the term ‘appropriate committees of Con-*
12 *gress’ means—*

13 *“(A) the Committees on Government Re-*
14 *form, Science, and Appropriations of the House*
15 *of Representatives; and*

16 *“(B) the Committees on Governmental Af-*
17 *airs, Commerce, Science, and Transportation,*
18 *and Appropriations of the Senate;*

19 *“(7) the term ‘redesignation bonus’ means a*
20 *bonus under section 9804 paid to an individual de-*
21 *scribed in subsection (a)(2) thereof;*

22 *“(8) the term ‘supervisor’ has the meaning given*
23 *such term by section 7103(a)(10); and*

24 *“(9) the term ‘management official’ has the*
25 *meaning given such term by section 7103(a)(11).*

1 **“§ 9802. Planning, notification, and reporting require-**
2 **ments**

3 *“(a) Not later than 90 days before exercising any of*
4 *the workforce authorities made available under this chapter,*
5 *the Administrator shall submit a written plan to the appro-*
6 *priate committees of Congress. Such plan shall be developed*
7 *in consultation with the Office of Personnel Management.*

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

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

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

14 *“(i) address critical needs; and*

15 *“(ii) would be eligible for each authority*
16 *proposed to be exercised under this chapter; and*

17 *“(B) how the exercise of those authorities with*
18 *respect to the eligible positions or employees involved*
19 *would address each critical need identified under*
20 *paragraph (1);*

21 *“(3)(A) any critical need identified under para-*
22 *graph (1) which would not be addressed by the au-*
23 *thorities made available under this chapter; and*

24 *“(B) the reasons why those needs would not be*
25 *so addressed;*

1 “(4) the specific criteria to be used in deter-
2 mining which individuals may receive the benefits de-
3 scribed under sections 9804 and 9805 (including the
4 criteria for granting bonuses in the absence of a crit-
5 ical need), and how the level of those benefits will be
6 determined;

7 “(5) the safeguards or other measures that will
8 be applied to ensure that this chapter is carried out
9 in a manner consistent with merit system principles;

10 “(6) the means by which employees will be af-
11 forded the notification required under subsections (c)
12 and (d)(1)(B);

13 “(7) the methods that will be used to determine
14 if the authorities exercised under this chapter have
15 successfully addressed each critical need identified
16 under paragraph (1);

17 “(8)(A) the recruitment methods used by the Ad-
18 ministration before the enactment of this chapter to
19 recruit highly qualified individuals; and

20 “(B) the changes the Administration will imple-
21 ment after the enactment of this chapter in order to
22 improve its recruitment of highly qualified individ-
23 uals, including how it intends to use—

24 “(i) nongovernmental recruitment or place-
25 ment agencies; and

1 “(ii) Internet technologies;

2 “(9) any reforms to the Administration’s work-
3 force management practices recommended by the Co-
4 lumbia Accident Investigation Board, the extent to
5 which those recommendations were accepted, and, if
6 necessary, the reasons why any of those recommenda-
7 tions were not accepted; and

8 “(10) the safeguards and other measures that
9 will be applied to ensure that this chapter is carried
10 out in a manner that does not compromise the safety
11 or survival of any spacecraft or crew thereof.

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

17 “(d)(1)(A) The Administrator may from time to time
18 modify the workforce plan. Not later than 60 days before
19 implementing any such modifications, the Administrator
20 shall submit a description of the proposed modifications to
21 the appropriate committees of Congress.

22 “(B) Not later than 60 days before implementing any
23 such modifications, the Administrator shall provide an ap-
24 propriately modified plan to all employees of the Adminis-
25 tration and to the appropriate committees of Congress.

1 “(2) Any reference in this chapter or any other provi-
2 sion of law to the workforce plan shall be considered to in-
3 clude any modification made in accordance with this sub-
4 section.

5 “(e) Before submitting any written plan under sub-
6 section (a) (or modification under subsection (d)) to the ap-
7 propriate committees of Congress, the Administrator
8 shall—

9 “(1) provide to each employee representative rep-
10 resenting any employees who might be affected by
11 such plan (or modification) a copy of the proposed
12 plan (or modification);

13 “(2) give each representative 30 calendar days
14 (unless extraordinary circumstances require earlier
15 action) to review and make recommendations with re-
16 spect to the proposed plan (or modification); and

17 “(3) give any recommendations received from
18 any such representatives under paragraph (2) full
19 and fair consideration in deciding whether or how to
20 proceed with respect to the proposed plan (or modi-
21 fication).

22 “(f) None of the workforce authorities made available
23 under this chapter may be exercised in a manner incon-
24 sistent with the workforce plan.

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

6 “(h) Not later than 6 years after the date of enactment
7 of this chapter, the Administrator shall submit to the appro-
8 priate committees of Congress an evaluation and analysis
9 of the actions taken by the Administration under this chap-
10 ter, including—

11 “(1) an evaluation, using the methods described
12 in subsection (b)(7), of whether the authorities exer-
13 cised under this chapter successfully addressed each
14 critical need identified under subsection (b)(1);

15 “(2) to the extent that they did not, an expla-
16 nation of the reasons why any critical need (apart
17 from the ones under subsection (b)(3)) was not suc-
18 cessfully addressed; and

19 “(3) recommendations for how the Administra-
20 tion could address any remaining critical need and
21 could prevent those that have been addressed from re-
22 curring.

23 “(i) The budget request for the Administration for the
24 first fiscal year beginning after the date of enactment of
25 this chapter and for each fiscal year thereafter shall include

1 *a statement of the total amount of appropriations requested*
2 *for such fiscal year to carry out this chapter.*

3 **“§ 9803. Restrictions**

4 “(a) *None of the workforce authorities made available*
5 *under this chapter may be exercised with respect to any*
6 *officer who is appointed by the President, by and with the*
7 *advice and consent of the Senate.*

8 “(b) *Unless specifically stated otherwise, all workforce*
9 *authorities made available under this chapter shall be sub-*
10 *ject to section 5307.*

11 “(c)(1) *None of the workforce authorities made avail-*
12 *able under section 9804, 9805, 9806, 9807, 9810, 9813,*
13 *9814, 9815, or 9816 may be exercised with respect to a po-*
14 *litical appointee.*

15 “(2) *For purposes of this subsection, the term ‘political*
16 *appointee’ means an employee who holds—*

17 “(A) *a position which has been excepted from the*
18 *competitive service by reason of its confidential, pol-*
19 *icy-determining, policy-making, or policy-advocating*
20 *character; or*

21 “(B) *a position in the Senior Executive Service*
22 *as a noncareer appointee (as such term is defined in*
23 *section 3132(a)).*

1 **“§9804. Recruitment, redesignation, and relocation**
2 **bonuses**

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

7 *“(1) the Administrator determines that the Ad-*
8 *ministration would be likely, in the absence of a*
9 *bonus, to encounter difficulty in filling a position;*
10 *and*

11 *“(2) the individual—*

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

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

17 *“(C) is currently employed by the Federal*
18 *Government and is required to relocate to a dif-*
19 *ferent geographic area to accept a position with*
20 *the Administration.*

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

24 *“(1) 50 percent of the employee’s annual rate of*
25 *basic pay (including comparability payments under*
26 *sections 5304 and 5304a) as of the beginning of the*

1 *service period multiplied by the service period speci-*
2 *fied under subsection (d)(1)(B)(i); or*

3 “(2) 100 percent of the employee’s annual rate of
4 *basic pay (including comparability payments under*
5 *sections 5304 and 5304a) as of the beginning of the*
6 *service period.*

7 “(c) If the position is not described as addressing a
8 *critical need in the workforce plan under section*
9 *9802(b)(2)(A), the amount of a bonus may not exceed—*

10 “(1) 25 percent of the employee’s annual rate of
11 *basic pay (including comparability payments under*
12 *sections 5304 and 5304a) as of the beginning of the*
13 *service period multiplied by the service period speci-*
14 *fied under subsection (d)(1)(B)(i); or*

15 “(2) 100 percent of the employee’s annual rate of
16 *basic pay (including comparability payments under*
17 *sections 5304 and 5304a) as of the beginning of the*
18 *service period.*

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

22 “(B) *At a minimum, the service agreement shall in-*
23 *clude—*

24 “(i) *the required service period;*

1 “(ii) the method of payment, including a pay-
2 ment schedule, which may include a lump-sum pay-
3 ment, installment payments, or a combination there-
4 of;

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

7 “(iv) the conditions under which the agreement
8 may be terminated before the agreed-upon service pe-
9 riod has been completed, and the effect of the termi-
10 nation.

11 “(2) For purposes of determinations under subsections
12 (b)(1) and (c)(1), the employee’s service period shall be ex-
13 pressed as the number equal to the full years and twelfth
14 parts thereof, rounding the fractional part of a month to
15 the nearest twelfth part of a year. The service period may
16 not be less than 6 months and may not exceed 4 years.

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

19 “(e) Before paying a bonus under this section, the Ad-
20 ministration shall establish a plan for paying recruitment,
21 redesignation, and relocation bonuses, subject to approval
22 by the Office of Personnel Management.

23 “(f) No more than 25 percent of the total amount in
24 bonuses awarded under subsection (a) in any year may be
25 awarded to supervisors or management officials.

1 **“§ 9805. Retention bonuses**

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

6 “(1) the unusually high or unique qualifications
7 of the employee or a special need of the Administra-
8 tion for the employee’s services makes it essential to
9 retain the employee; and

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

12 “(b) If the position is described as addressing a critical
13 need in the workforce plan under section 9802(b)(2)(A), the
14 amount of a bonus may not exceed 50 percent of the employ-
15 ee’s annual rate of basic pay (including comparability pay-
16 ments under sections 5304 and 5304a).

17 “(c) If the position is not described as addressing a
18 critical need in the workforce plan under section
19 9802(b)(2)(A), the amount of a bonus may not exceed 25
20 percent of the employee’s annual rate of basic pay (includ-
21 ing comparability payments under sections 5304 and
22 5304a).

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

1 “(B) *At a minimum, the service agreement shall in-*
2 *clude—*

3 “(i) *the required service period;*

4 “(ii) *the method of payment, including a pay-*
5 *ment schedule, which may include a lump-sum pay-*
6 *ment, installment payments, or a combination there-*
7 *of;*

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

10 “(iv) *the conditions under which the agreement*
11 *may be terminated before the agreed-upon service pe-*
12 *riod has been completed, and the effect of the termi-*
13 *nation.*

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

19 “(3) *Notwithstanding paragraph (1), a service agree-*
20 *ment is not required if the Administration pays a bonus*
21 *in biweekly installments and sets the installment payment*
22 *at the full bonus percentage rate established for the em-*
23 *ployee, with no portion of the bonus deferred. In this case,*
24 *the Administration shall inform the employee in writing*
25 *of any decision to change the retention bonus payments. The*

1 *employee shall continue to accrue entitlement to the reten-*
2 *tion bonus through the end of the pay period in which such*
3 *written notice is provided.*

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

6 “(f) *An employee is not entitled to a retention bonus*
7 *under this section during a service period previously estab-*
8 *lished for that employee under section 5753 or under section*
9 *9804.*

10 “(g) *No more than 25 percent of the total amount in*
11 *bonuses awarded under subsection (a) in any year may be*
12 *awarded to supervisors or management officials.*

13 **“§9806. Term appointments**

14 “(a) *The Administrator may authorize term appoint-*
15 *ments within the Administration under subchapter I of*
16 *chapter 33, for a period of not less than 1 year and not*
17 *more than 6 years.*

18 “(b) *Notwithstanding chapter 33 or any other provi-*
19 *sion of law relating to the examination, certification, and*
20 *appointment of individuals in the competitive service, the*
21 *Administrator may convert an employee serving under a*
22 *term appointment to a permanent appointment in the com-*
23 *petitive service within the Administration without further*
24 *competition if—*

1 “(1) such individual was appointed under open,
2 competitive examination under subchapter I of chap-
3 ter 33 to the term position;

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

8 “(3) the employee has completed at least 2 years
9 of current continuous service under a term appoint-
10 ment in the competitive service;

11 “(4) the employee’s performance under such term
12 appointment was at least fully successful or equiva-
13 lent; and

14 “(5) the position to which such employee is being
15 converted under this section is in the same occupa-
16 tional series, is in the same geographic location, and
17 provides no greater promotion potential than the term
18 position for which the competitive examination was
19 conducted.

20 “(c) Notwithstanding chapter 33 or any other provi-
21 sion of law relating to the examination, certification, and
22 appointment of individuals in the competitive service, the
23 Administrator may convert an employee serving under a
24 term appointment to a permanent appointment in the com-
25 petitive service within the Administration through internal

1 *competitive promotion procedures if the conditions under*
2 *paragraphs (1) through (4) of subsection (b) are met.*

3 “(d) *An employee converted under this section becomes*
4 *a career-conditional employee, unless the employee has oth-*
5 *erwise completed the service requirements for career tenure.*

6 “(e) *An employee converted to career or career-condi-*
7 *tional employment under this section acquires competitive*
8 *status upon conversion.*

9 **“§9807. Pay authority for critical positions**

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

11 “(1) *a position to which chapter 51 applies, in-*
12 *cluding a position in the Senior Executive Service;*

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

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

16 “(4) *a senior-level position to which section*
17 *5376(a)(1) applies.*

18 “(b) *Authority under this section—*

19 “(1) *may be exercised only with respect to a po-*
20 *sition that—*

21 “(A) *is described as addressing a critical*
22 *need in the workforce plan under section*
23 *9802(b)(2)(A); and*

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

4 “(2) may be exercised only to the extent nec-
5 essary to recruit or retain an individual exceptionally
6 well qualified for the position; and

7 “(3) may be exercised only in retaining employ-
8 ees of the Administration or in appointing individ-
9 uals who were not employees of another Federal agen-
10 cy as defined under section 5102(a)(1).

11 “(c)(1) Notwithstanding section 5377, the Adminis-
12 trator may fix the rate of basic pay for a position in the
13 Administration in accordance with this section. The Ad-
14 ministrators may not delegate this authority.

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

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

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

1 “(3) Notwithstanding any provision of section 5307,
2 in the case of an employee who, during any calendar year,
3 is receiving pay at a rate fixed under this section, no allow-
4 ance, differential, bonus, award, or similar cash payment
5 may be paid to such employee if, or to the extent that, when
6 added to basic pay paid or payable to such employee (for
7 service performed in such calendar year as an employee in
8 the executive branch or as an employee outside the executive
9 branch to whom chapter 51 applies), such payment would
10 cause the total to exceed the per annum rate of salary which,
11 as of the end of such calendar year, is payable under section
12 104 of title 3.

13 **“§9808. Assignments of intergovernmental personnel**

14 “*For purposes of applying the third sentence of section*
15 *3372(a) (relating to the authority of the head of a Federal*
16 *agency to extend the period of an employee’s assignment*
17 *to or from a State or local government, institution of higher*
18 *education, or other organization), the Administrator may,*
19 *with the concurrence of the employee and the government*
20 *or organization concerned, take any action which would be*
21 *allowable if such sentence had been amended by striking*
22 *‘two’ and inserting ‘four’.*

1 **“§ 9809. Enhanced demonstration project authority**

2 *“When conducting a demonstration project at the Ad-*
3 *ministration, section 4703(d)(1)(A) may be applied by sub-*
4 *stituting ‘8,000’ for ‘5,000’.*

5 **“§ 9810. Science and technology scholarship program**

6 *“(a)(1) The Administrator shall establish a National*
7 *Aeronautics and Space Administration Science and Tech-*
8 *nology Scholarship Program to award scholarships to indi-*
9 *viduals that is designed to recruit and prepare students for*
10 *careers in the Administration.*

11 *“(2) Individuals shall be selected to receive scholar-*
12 *ships under this section through a competitive process pri-*
13 *marily on the basis of academic merit, with consideration*
14 *given to financial need and the goal of promoting the par-*
15 *ticipation of individuals identified in section 33 or 34 of*
16 *the Science and Engineering Equal Opportunities Act.*

17 *“(3) To carry out the Program the Administrator shall*
18 *enter into contractual agreements with individuals selected*
19 *under paragraph (2) under which the individuals agree to*
20 *serve as full-time employees of the Administration, for the*
21 *period described in subsection (f)(1), in positions needed by*
22 *the Administration and for which the individuals are quali-*
23 *fied, in exchange for receiving a scholarship.*

24 *“(b) In order to be eligible to participate in the Pro-*
25 *gram, an individual must—*

1 “(1) be enrolled or accepted for enrollment as a
2 full-time student at an institution of higher edu-
3 cation, as a junior or senior undergraduate or grad-
4 uate student, in an academic field or discipline de-
5 scribed in the list made available under subsection
6 (d);

7 “(2) be a United States citizen or permanent
8 resident; and

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

11 “(c) An individual seeking a scholarship under this
12 section shall submit an application to the Administrator
13 at such time, in such manner, and containing such infor-
14 mation, agreements, or assurances as the Administrator
15 may require.

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

20 “(e)(1) The Administrator may provide a scholarship
21 under the Program for an academic year if the individual
22 applying for the scholarship has submitted to the Adminis-
23 trator, as part of the application required under subsection
24 (c), a proposed academic program leading to a degree in

1 a program or field of study on the list made available under
2 subsection (d).

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

6 “(3) The dollar amount of a scholarship under this sec-
7 tion for an academic year shall be determined under regula-
8 tions issued by the Administrator, but shall in no case ex-
9 ceed the cost of attendance.

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

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

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

24 “(2)(A) Except as provided in subparagraph (B), obli-
25 gated service under paragraph (1) shall begin not later than

1 60 days after the individual obtains the educational degree
2 for which the scholarship was provided.

3 “(B) The Administrator may defer the obligation of
4 an individual to provide a period of service under para-
5 graph (1) if the Administrator determines that such a defer-
6 ral is appropriate. The Administrator shall prescribe the
7 terms and conditions under which a service obligation may
8 be deferred through regulation.

9 “(g)(1) Scholarship recipients who fail to maintain a
10 high level of academic standing, as defined by the Adminis-
11 trator by regulation, who are dismissed from their edu-
12 cational institutions for disciplinary reasons, or who volun-
13 tarily terminate academic training before graduation from
14 the educational program for which the scholarship was
15 awarded, shall be in breach of their contractual agreement
16 and, in lieu of any service obligation arising under such
17 agreement, shall be liable to the United States for repay-
18 ment within 1 year after the date of default of all scholar-
19 ship funds paid to them and to the institution of higher
20 education on their behalf under the agreement, except as
21 provided in subsection (h)(2). The repayment period may
22 be extended by the Administrator when determined to be
23 necessary, as established by regulation.

24 “(2) Scholarship recipients who, for any reason, fail
25 to begin or complete their service obligation after comple-

1 *tion of academic training, or fail to comply with the terms*
2 *and conditions of deferment established by the Adminis-*
3 *trator pursuant to subsection (f)(2)(B), shall be in breach*
4 *of their contractual agreement. When recipients breach their*
5 *agreements for the reasons stated in the preceding sentence,*
6 *the recipient shall be liable to the United States for an*
7 *amount equal to—*

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

10 *“(B) the interest on the amounts of such awards*
11 *which would be payable if at the time the awards*
12 *were received they were loans bearing interest at the*
13 *maximum legal prevailing rate, as determined by the*
14 *Treasurer of the United States,*
15 *multiplied by 3.*

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

20 *“(2) The Administrator shall by regulation provide for*
21 *the partial or total waiver or suspension of any obligation*
22 *of service or payment incurred by an individual under the*
23 *Program (or a contractual agreement thereunder) whenever*
24 *compliance by the individual is impossible or would involve*
25 *extreme hardship to the individual, or if enforcement of*

1 *such obligation with respect to the individual would be con-*
2 *trary to the best interests of the Government.*

3 *“(i) For purposes of this section—*

4 *“(1) the term ‘cost of attendance’ has the mean-*
5 *ing given that term in section 472 of the Higher Edu-*
6 *cation Act of 1965;*

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

10 *“(3) the term ‘Program’ means the National Aer-*
11 *onautics and Space Administration Science and*
12 *Technology Scholarship Program established under*
13 *this section.*

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

17 *“(2) Amounts appropriated under this section shall re-*
18 *main available for 2 fiscal years.*

19 **“§9811. Distinguished scholar appointment authority**

20 *“(a) In this section—*

21 *“(1) the term ‘professional position’ means a po-*
22 *sition that is classified to an occupational series iden-*
23 *tified by the Office of Personnel Management as a po-*
24 *sition that—*

1 “(A) requires education and training in the
2 principles, concepts, and theories of the occupa-
3 tion that typically can be gained only through
4 completion of a specified curriculum at a recog-
5 nized college or university; and

6 “(B) is covered by the Group Coverage
7 Qualification Standard for Professional and Sci-
8 entific Positions; and

9 “(2) the term ‘research position’ means a posi-
10 tion in a professional series that primarily involves
11 scientific inquiry or investigation, or research-type
12 exploratory development of a creative or scientific na-
13 ture, where the knowledge required to perform the
14 work successfully is acquired typically and primarily
15 through graduate study.

16 “(b) The Administration may appoint, without regard
17 to the provisions of section 3304(b) and sections 3309
18 through 3318, but subject to subsection (c), candidates di-
19 rectly to General Schedule professional, competitive service
20 positions in the Administration for which public notice has
21 been given (in accordance with regulations of the Office of
22 Personnel Management), if—

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

1 “(A) received, within 2 years before the ef-
2 fective date of the appointment, from an accred-
3 ited institution authorized to grant bacca-
4 laureate degrees, a baccalaureate degree in a
5 field of study for which possession of that degree
6 in conjunction with academic achievements
7 meets the qualification standards as prescribed
8 by the Office of Personnel Management for the
9 position to which the individual is being ap-
10 pointed; and

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

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

17 “(A) received, within 2 years before the ef-
18 fective date of the appointment, from an accred-
19 ited institution authorized to grant graduate de-
20 grees, a graduate degree in a field of study for
21 which possession of that degree meets the quali-
22 fication standards at this grade level as pre-
23 scribed by the Office of Personnel Management
24 for the position to which the individual is being
25 appointed; and

1 “(B) achieved a cumulative grade point av-
2 erage of 3.5 or higher on a 4.0 scale in graduate
3 coursework in the field of study required for the
4 position;

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

7 “(A) received, within 2 years before the ef-
8 fective date of the appointment, from an accred-
9 ited institution authorized to grant graduate de-
10 grees, a graduate degree in a field of study for
11 which possession of that degree meets the quali-
12 fication standards at this grade level as pre-
13 scribed by the Office of Personnel Management
14 for the position to which the individual is being
15 appointed; and

16 “(B) achieved a cumulative grade point av-
17 erage of 3.5 or higher on a 4.0 scale in graduate
18 coursework in the field of study required for the
19 position; or

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

22 “(A) received, within 2 years before the ef-
23 fective date of the appointment, from an accred-
24 ited institution authorized to grant graduate de-
25 grees, a graduate degree in a field of study for

1 *which possession of that degree meets the quali-*
2 *fication standards at this grade level as pre-*
3 *scribed by the Office of Personnel Management*
4 *for the position to which the individual is being*
5 *appointed; and*

6 *“(B) achieved a cumulative grade point av-*
7 *erage of 3.5 or higher on a 4.0 scale in graduate*
8 *coursework in the field of study required for the*
9 *position.*

10 *“(c) In making any selections under this section, pref-*
11 *erence eligibles who meet the criteria for distinguished schol-*
12 *ar appointments shall be considered ahead of nonpreference*
13 *eligibles.*

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

17 **“§9812. Travel and transportation expenses of certain**
18 ***new appointees***

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

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

22 *“(A) a career or career-conditional appoint-*
23 *ment;*

24 *“(B) a term appointment;*

1 “(C) *an excepted service appointment that*
2 *provides for noncompetitive conversion to a ca-*
3 *reer or career-conditional appointment;*

4 “(D) *a career or limited term Senior Execu-*
5 *tive Service appointment;*

6 “(E) *an appointment made under section*
7 *203(c)(2)(A) of the National Aeronautics and*
8 *Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));*

9 “(F) *an appointment to a position estab-*
10 *lished under section 3104; or*

11 “(G) *an appointment to a position estab-*
12 *lished under section 5108; or*

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

17 “(b) *The Administrator may pay the travel, transpor-*
18 *tation, and relocation expenses of a new appointee to the*
19 *same extent, in the same manner, and subject to the same*
20 *conditions as the payment of such expenses under sections*
21 *5724, 5724a, 5724b, and 5724c to an employee transferred*
22 *in the interests of the United States Government.*

23 **“§9813. Annual leave enhancements**

24 “(a) *In this section—*

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

3 “(A) as an employee of the Federal Govern-
4 ment; or

5 “(B) as an employee of the Federal Govern-
6 ment following a break in service of at least 90
7 days after that individual’s last period of Fed-
8 eral employment, other than—

9 “(i) employment under the Student
10 Educational Employment Program admin-
11 istered by the Office of Personnel Manage-
12 ment;

13 “(ii) employment as a law clerk train-
14 ee;

15 “(iii) employment under a short-term
16 temporary appointing authority while a
17 student during periods of vacation from the
18 educational institution at which the student
19 is enrolled;

20 “(iv) employment under a provisional
21 appointment if the new appointment is per-
22 manent and immediately follows the provi-
23 sional appointment; or

1 “(v) *employment under a temporary*
2 *appointment that is neither full-time nor*
3 *the principal employment of the individual;*

4 “(2) *the term ‘period of qualified non-Federal*
5 *service’ means any period of service performed by an*
6 *individual that—*

7 “(A) *was performed in a position the duties*
8 *of which were directly related to the duties of the*
9 *position in the Administration which that indi-*
10 *vidual will fill as a newly appointed employee;*
11 *and*

12 “(B) *except for this section, would not oth-*
13 *erwise be service performed by an employee for*
14 *purposes of section 6303; and*

15 “(3) *the term ‘directly related to the duties of the*
16 *position’ means duties and responsibilities in the*
17 *same line of work which require similar qualifica-*
18 *tions.*

19 “(b)(1) *For purposes of section 6303, the Adminis-*
20 *trator may deem a period of qualified non-Federal service*
21 *performed by a newly appointed employee to be a period*
22 *of service of equal length performed as an employee.*

23 “(2) *A decision under paragraph (1) to treat a period*
24 *of qualified non-Federal service as if it were service per-*

1 *formed as an employee shall continue to apply so long as*
2 *that individual serves in or under the Administration.*

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

9 “(2) *The accrual rate established under this subsection*
10 *shall continue to apply to the employee so long as such em-*
11 *ployee serves in or under the Administration.*

12 **“§9814. Limited appointments to Senior Executive**
13 **Service positions**

14 “(a) *In this section, the terms ‘career reserved posi-*
15 *tion’, ‘Senior Executive Service position’, ‘senior executive’*
16 *and ‘career appointee’ have the meanings set forth in sec-*
17 *tion 3132(a).*

18 “(b) *Subject to succeeding provisions of this section,*
19 *the Administrator may, notwithstanding any other provi-*
20 *sion of this title, fill a career reserved position on a tem-*
21 *porary basis, but only if—*

22 “(1) *such position is vacant as a result of—*

23 “(A) *the separation of the incumbent; or*

24 “(B) *the temporary absence of the incum-*
25 *bent due to illness, training, or reassignment; or*

1 “(2) such position is or would be difficult to fill
2 in any other manner due to the fact that such posi-
3 tion is likely to be eliminated within the next 2 years.

4 “(c) Notwithstanding sections 3132 and 3394(b), an
5 appointment made by the Administrator under subsection
6 (b) shall not exceed 2 years.

7 “(d) The Administrator may extend an appointment
8 under subsection (b) for as long as necessary to meet a con-
9 tingency described in subsection (b)(1), but for not to exceed
10 1 year and not if the circumstance described in subsection
11 (b)(2) pertains.

12 “(e) The number of career reserved positions filled
13 under subsection (b) may not at any time exceed 10 percent
14 of the total number of Senior Executive Service positions
15 then authorized for the Administration under section 3133.

16 “(f) An individual appointed to a career reserved posi-
17 tion on a temporary basis under subsection (b) shall, if such
18 individual was so appointed from a civil service position
19 held under a career or career-conditional appointment, be
20 entitled, upon completion of that temporary appointment,
21 to be reemployed in the position from which such individual
22 was so appointed (or an equivalent position), in accordance
23 with such regulations as the Office of Personnel Manage-
24 ment may prescribe.

1 “(g) An appointment to a career reserved position on
2 a temporary basis under subsection (b) may not be made
3 without the prior approval of the Office of Personnel Man-
4 agement if the individual—

5 “(1) is to be appointed—

6 “(A) from outside the Federal Government;

7 or

8 “(B) from a civil service position held
9 under an appointment other than a career or ca-
10 reer-conditional appointment; or

11 “(2) is a senior executive, but not a career ap-
12 pointee.

13 “(h) An individual appointed to a career reserved po-
14 sition on a temporary basis under subsection (b) who is
15 not a career appointee shall, for purposes of performance
16 awards under section 5384, be treated as a career appointee.

17 **“§9815. Qualifications pay**

18 “(a) Notwithstanding section 5334, the Administrator
19 may set the pay of an employee paid under the General
20 Schedule at any step within the pay range for the grade
21 of the position, if such employee—

22 “(1) possesses unusually high or unique quali-
23 fications; and

24 “(2) is assigned—

1 “(A) new duties, without a change of posi-
2 tion; or

3 “(B) to a new position.

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

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

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

17 “(e) Before setting any employee’s pay under this sec-
18 tion, the Administrator shall submit a plan to the Office
19 of Personnel Management and the appropriate committees
20 of Congress, that includes—

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

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

1 “(3) all types of actions and positions to be cov-
2 ered;

3 “(4) the relationship between the exercise of au-
4 thority under this section and the use of other pay in-
5 centives; and

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

8 **“§9816. Reporting requirement**

9 *“The Administrator shall submit to the appropriate*
10 *committees of Congress, not later than February 28 of each*
11 *of the next 6 years beginning after the date of enactment*
12 *of this chapter, a report that provides the following:*

13 “(1) A summary of all bonuses paid under sub-
14 sections (b)–(c) of section 9804 during the preceding
15 fiscal year. Such summary shall include the total
16 amount of bonuses paid, the total number of bonuses
17 paid, the percentage of bonuses awarded to super-
18 visors and management officials, and the average per-
19 centage used to calculate the total average bonus
20 amount, under each of those subsections.

21 “(2) A summary of all bonuses paid under sub-
22 sections (b)–(c) of section 9805 during the preceding
23 fiscal year. Such summary shall include the total
24 amount of bonuses paid, the total number of bonuses
25 paid, the percentage of bonuses awarded to super-

1 visors and management officials, and the average per-
2 centage used to calculate the total average bonus
3 amount, under each of those subsections.

4 “(3) The total number of term appointments con-
5 verted during the preceding fiscal year under section
6 9806 and, of that total number, the number of conver-
7 sions that were made to address a critical need de-
8 scribed in the workforce plan pursuant to section
9 9802(b)(2).

10 “(4) The number of positions for which the rate
11 of basic pay was fixed under section 9807 during the
12 preceding fiscal year, the number of positions for
13 which the rate of basic pay under such section was
14 terminated during the preceding fiscal year, and the
15 number of times the rate of basic pay was fixed under
16 such section to address a critical need described in the
17 workforce plan pursuant to section 9802(b)(2).

18 “(5) The number of scholarships awarded under
19 section 9810 during the preceding fiscal year and the
20 number of scholarship recipients appointed by the Ad-
21 ministration during the preceding fiscal year.

22 “(6) The total number of distinguished scholar
23 appointments made under section 9811 during the
24 preceding fiscal year and, of that total number, the
25 number of appointments that were made to address a

1 *critical need described in the workforce plan pursuant*
2 *to section 9802(b)(2).*

3 *“(7) The average amount paid per appointee,*
4 *and the largest amount paid to any appointee, under*
5 *section 9812 during the preceding fiscal year for trav-*
6 *el and transportation expenses.*

7 *“(8) The total number of employees who were*
8 *awarded enhanced annual leave under section 9813*
9 *during the preceding fiscal year; of that total number,*
10 *the number of employees who were serving in a posi-*
11 *tion addressing a critical need described in the work-*
12 *force plan pursuant to section 9802(b)(2); and, for*
13 *employees in each of those respective groups, the aver-*
14 *age amount of additional annual leave such employ-*
15 *ees earned in the preceding fiscal year (over and*
16 *above what they would have earned absent section*
17 *9813).*

18 *“(9) The total number of appointments made*
19 *under section 9814 during the preceding fiscal year*
20 *and, of that total number, the number of appoint-*
21 *ments that were made to address a critical need de-*
22 *scribed in the workforce plan pursuant to section*
23 *9802(b)(2).*

24 *“(10) The number of employees for whom the Ad-*
25 *ministrator set the pay under section 9815 during the*

1 *preceding fiscal year and the number of times pay*
2 *was set under such section to address a critical need*
3 *described in the workforce plan pursuant to section*
4 *9802(b)(2).”.*

5 *(b) CLERICAL AMENDMENT.—The table of chapters for*
6 *part III of title 5, United States Code, is amended by add-*
7 *ing at the end the following:*

 “98. National Aeronautics and Space Administration 9801”.

8 **SEC. 4. WORKFORCE DIVERSITY.**

9 *It is the sense of the Congress that the National Aero-*
10 *navitics and Space Administration should, in accordance*
11 *with section 7201 of title 5, United States Code, conduct*
12 *a continuing program for the recruitment of members of*
13 *minority groups for positions in the Administration to*
14 *carry out the policy set forth in subsection (b) of such sec-*
15 *tion in a manner designed to eliminate underrepresentation*
16 *of minorities in the various categories of civil service em-*
17 *ployment within the Federal service, with special efforts di-*
18 *rected at recruiting in minority communities, in edu-*
19 *cational institutions, and from other sources from which*
20 *minorities can be recruited.*

Union Calendar No. 134

108TH CONGRESS
1ST SESSION

H. R. 1085

[Report No. 108-244, Part I]

A BILL

To make certain workforce authorities available to the National Aeronautics and Space Administration, and for other purposes.

AUGUST 4, 2003

Reported from the Committee on Science with an amendment

AUGUST 4, 2003

Referral to the Committee on Government Reform extended for a period ending not later than August 4, 2003

AUGUST 4, 2003

Committee on Government Reform discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed