

# Union Calendar No. 131

108TH CONGRESS  
1ST SESSION

# H. R. 1836

**[Report No. 108–116, Part I]**

To make changes to certain areas of the Federal civil service in order to improve the flexibility and competitiveness of Federal human resources management.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2003

Mr. TOM DAVIS of Virginia (for himself and Mr. HUNTER) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on Armed Services and Science, 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

MAY 19, 2003

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

MAY 19, 2003

Referral to the Committee on Armed Services extended for a period ending not later than May 20, 2003

MAY 19, 2003

Referral to the Committee on Science extended for a period ending not later than July 25, 2003

MAY 20, 2003

Referral to the Committee on Armed Services extended for a period ending not later than July 25, 2003

JUNE 3, 2003

Referred to the Committee on Ways and Means for a period ending not later than July 25, 2003 for consideration of such provisions of the bill and

amendment as fall within the jurisdiction of that committee pursuant to clause 1(s), rule X

JULY 25, 2003

Committees on Armed Services, Science, Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 29, 2003]

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## A BILL

To make changes to certain areas of the Federal civil service in order to improve the flexibility and competitiveness of Federal human resources management.

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; TABLE OF CONTENTS.**

4       (a) *SHORT TITLE.*—*This Act may be cited as the*  
 5       *“Civil Service and National Security Personnel Improve-*  
 6       *ment Act”.*

7       (b) *TABLE OF CONTENTS.*—*The table of contents for*  
 8       *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.*

1 **TITLE I—DEPARTMENT OF DE-**  
 2 **FENSE NATIONAL SECURITY**  
 3 **PERSONNEL SYSTEM**

4 **SEC. 101. SHORT TITLE.**

5 *This title may be cited as the “National Security Per-*  
 6 *sonnel System Act”.*

7 **SEC. 102. DEPARTMENT OF DEFENSE NATIONAL SECURITY**  
 8 **PERSONNEL SYSTEM.**

9 *(a) IN GENERAL.—(1) Subpart I of part III of title*  
 10 *5, United States Code, is amended by adding at the end*  
 11 *the following new chapter:*

1 **“CHAPTER 99—DEPARTMENT OF DEFENSE**  
2 **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.*

3 **“§ 9901. Definitions**

4 “For purposes of this chapter—

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

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

9 **“§ 9902. Establishment of human resources manage-**  
10 **ment system**

11 “(a) *IN GENERAL.*—Notwithstanding any other provi-  
12 sion of this part, the Secretary may, in regulations pre-  
13 scribed jointly with the Director, establish, and from time  
14 to time adjust, a human resources management system for  
15 some or all of the organizational or functional units of the  
16 Department of Defense. If the Secretary certifies that  
17 issuance or adjustment of a regulation, or the inclusion, ex-  
18 clusion, or modification of a particular provision therein,  
19 is essential to the national security, the Secretary may, sub-  
20 ject to the decision of the President, waive the requirement  
21 in the preceding sentence that the regulation or adjustment  
22 be issued jointly with the Director.

1       “(b) *SYSTEM REQUIREMENTS.*—*Any system estab-*  
2 *lished under subsection (a) shall—*

3               “(1) *be flexible;*

4               “(2) *be contemporary;*

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

6                       “(A) *the public employment principles of*  
7 *merit and fitness set forth in section 2301, in-*  
8 *cluding the principles of hiring based on merit,*  
9 *fair treatment without regard to political affili-*  
10 *ation or other nonmerit considerations, equal*  
11 *pay for equal work, and protection of employees*  
12 *against reprisal for whistleblowing;*

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

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

17                               “(i) *any provision of law implementing*  
18 *any provision of law referred to in section*  
19 *2302(b)(1), (8), and (9) by—*

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

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

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

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

6           “(4) ensure that employees may organize, bar-  
7           gain collectively as provided for in this chapter, and  
8           participate through labor organizations of their own  
9           choosing in decisions which affect them, subject to the  
10          provisions of this chapter and any exclusion from cov-  
11          erage or limitation on negotiability established pursu-  
12          ant to law;

13          “(5) not be limited by any specific law or au-  
14          thority under this title that is waivable under this  
15          chapter or by any provision of this chapter or any  
16          rule or regulation prescribed under this title that is  
17          waivable under this chapter, except as specifically  
18          provided for in this section; and

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

21                  “(A) Adherence to merit principles set forth  
22                  in section 2301.

23                  “(B) A fair, credible, and transparent em-  
24                  ployee performance appraisal system.

1           “(C) *A link between the performance man-*  
2           *agement system and the agency’s strategic plan.*

3           “(D) *A means for ensuring employee in-*  
4           *volvement in the design and implementation of*  
5           *the system.*

6           “(E) *Adequate training and retraining for*  
7           *supervisors, managers, and employees in the im-*  
8           *plementation and operation of the performance*  
9           *management system.*

10          “(F) *A process for ensuring ongoing per-*  
11          *formance feedback and dialogue between super-*  
12          *visors, managers, and employees throughout the*  
13          *appraisal period, and setting timetables for re-*  
14          *view;*

15          “(G) *Effective safeguards to ensure that the*  
16          *management of the system is fair and equitable*  
17          *and based on employee performance.*

18          “(H) *A means for ensuring that adequate*  
19          *agency resources are allocated for the design, im-*  
20          *plementation, and administration of the per-*  
21          *formance management system.*

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

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

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

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

9           “(2) *Except as provided for in paragraph (1), the total*  
10 *amount in a calendar year of allowances, differentials, bo-*  
11 *nuses, awards, or other similar cash payments paid under*  
12 *this title to any employee who is paid under section 5376*  
13 *or 5383 of this title or under title 10 or under other com-*  
14 *parable pay authority established for payment of Depart-*  
15 *ment of Defense senior executive or equivalent employees*  
16 *may not exceed the total annual compensation payable to*  
17 *the Vice President under section 104 of title 3.*

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

23           “(e) *PROVISIONS TO ENSURE COLLABORATION WITH*  
24 *EMPLOYEE REPRESENTATIVES.*—(1) *In order to ensure*  
25 *that the authority of this section is exercised in collabora-*



1 *tion with, and in a manner that ensures the participation*  
2 *of, employee representatives in the planning, development,*  
3 *and implementation of any human resources management*  
4 *system or adjustments to such system under this section,*  
5 *the Secretary and the Director shall provide for the fol-*  
6 *lowing:*

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

9                   “(i) *provide to the employee representatives*  
10                   *representing any employees who might be af-*  
11                   *ected a written description of the proposed sys-*  
12                   *tem or adjustment (including the reasons why it*  
13                   *is considered necessary);*

14                   “(ii) *give such representatives at least 30*  
15                   *calendar days (unless extraordinary cir-*  
16                   *cumstances require earlier action) to review and*  
17                   *make recommendations with respect to the pro-*  
18                   *posal; and*

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

23           “(B) *Following receipt of recommendations, if*  
24           *any, from such employee representatives with respect*  
25           *to a proposal described in subparagraph (A), the Sec-*

1        *retary and the Director shall accept such modifica-*  
2        *tions to the proposal in response to the recommenda-*  
3        *tions as they determine advisable and shall, with re-*  
4        *spect to any parts of the proposal as to which they*  
5        *have not accepted the recommendations—*

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

9                *“(ii) meet and confer for not less than 30*  
10              *calendar days with the employee representatives,*  
11              *in order to attempt to reach agreement on wheth-*  
12              *er or how to proceed with those parts of the pro-*  
13              *posal; and*

14              *“(iii) at the Secretary’s option, or if re-*  
15              *quested by a majority of the employee represent-*  
16              *atives participating, use the services of the Fed-*  
17              *eral Mediation and Conciliation Service during*  
18              *such meet and confer period to facilitate the*  
19              *process of attempting to reach agreement.*

20              *“(C)(i) Any part of the proposal as to which the*  
21              *representatives do not make a recommendation, or as*  
22              *to which the recommendations are accepted by the*  
23              *Secretary and the Director, may be implemented im-*  
24              *mediately.*

1           “(ii) With respect to any parts of the proposal  
2 as to which recommendations have been made but not  
3 accepted by the Secretary and the Director, at any  
4 time after 30 calendar days have elapsed since the  
5 initiation of the congressional notification, consulta-  
6 tion, and mediation procedures set forth in subpara-  
7 graph (B), if the Secretary, in his discretion, deter-  
8 mines that further consultation and mediation is un-  
9 likely to produce agreement, the Secretary may imple-  
10 ment any or all of such parts (including any modi-  
11 fications made in response to the recommendations as  
12 the Secretary determines advisable), but only after 30  
13 days have elapsed after notifying Congress of the deci-  
14 sion to implement the part or parts involved (as so  
15 modified, if applicable).

16           “(iii) The Secretary shall notify Congress  
17 promptly of the implementation of any part of the  
18 proposal and shall furnish with such notice an expla-  
19 nation of the proposal, any changes made to the pro-  
20 posal as a result of recommendations from the em-  
21 ployee representatives, and of the reasons why imple-  
22 mentation is appropriate under this subparagraph.

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

1           “(i) develop a method for the employee rep-  
2           resentatives to participate in any further plan-  
3           ning or development which might become nec-  
4           essary; and

5           “(ii) give the employee representatives ade-  
6           quate access to information to make that partici-  
7           pation productive.

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

12          “(3) In the case of any employees who are not within  
13          a unit with respect to which a labor organization is ac-  
14          corded exclusive recognition, the Secretary and the Director  
15          may develop procedures for representation by any appro-  
16          priate organization which represents a substantial percent-  
17          age of those employees or, if none, in such other manner  
18          as may be appropriate, consistent with the purposes of this  
19          subsection.

20          “(f) PROVISIONS REGARDING NATIONAL LEVEL BAR-  
21          GAINING.—(1) Any human resources management system  
22          implemented or modified under this chapter may include  
23          employees of the Department of Defense from any bar-  
24          gaining unit with respect to which a labor organization has

1 *been accorded exclusive recognition under chapter 71 of this*  
2 *title.*

3       “(2) *For any bargaining unit so included under para-*  
4 *graph (1), the Secretary may bargain at an organizational*  
5 *level above the level of exclusive recognition. Any such bar-*  
6 *gaining shall—*

7               “(A) *be binding on all subordinate bargaining*  
8 *units at the level of recognition and their exclusive*  
9 *representatives, and the Department of Defense and*  
10 *its subcomponents, without regard to levels of recogni-*  
11 *tion;*

12               “(B) *supersede all other collective bargaining*  
13 *agreements, including collective bargaining agree-*  
14 *ments negotiated with an exclusive representative at*  
15 *the level of recognition, except as otherwise deter-*  
16 *mined by the Secretary;*

17               “(C) *not be subject to further negotiations for*  
18 *any purpose, including bargaining at the level of rec-*  
19 *ognition, except as provided for by the Secretary; and*

20               “(D) *except as otherwise specified in this chap-*  
21 *ter, not be subject to review or to statutory third-*  
22 *party dispute resolution procedures outside the De-*  
23 *partment of Defense.*

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

4       “(4) *Any bargaining completed pursuant to this sub-*  
5 *section with a labor organization not otherwise having na-*  
6 *tional consultation rights with the Department of Defense*  
7 *or its subcomponents shall not create any obligation on the*  
8 *Department of Defense or its subcomponents to confer na-*  
9 *tional consultation rights on such a labor organization.*

10       “(g) *PROVISIONS RELATING TO APPELLATE PROCE-*  
11 *DURES.—(1) The Secretary shall—*

12               “(A) *establish an appeals process that provides*  
13 *that employees of the Department of Defense are enti-*  
14 *tled to fair treatment in any appeals that they bring*  
15 *in decisions relating to their employment; and*

16               “(B) *in prescribing regulations for any such ap-*  
17 *peals process—*

18                       “(i) *ensure that employees of the Depart-*  
19 *ment of Defense are afforded the protections of*  
20 *due process; and*

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

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

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

8               “(B) *be issued only after—*

9                       “(i) *notification to the appropriate commit-*  
10 *tees of Congress; and*

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

14               “(C) *ensure the availability of procedures that—*

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

17                      “(ii) *provide, to the maximum extent prac-*  
18 *ticable, for the expeditious handling of any mat-*  
19 *ters involving the Department of Defense; and*

20               “(D) *modify procedures under chapter 77 only*  
21 *insofar as such modifications are designed to further*  
22 *the fair, efficient, and expeditious resolution of mat-*  
23 *ters involving the employees of the Department of De-*  
24 *fense.*

1           “(h) *PROVISIONS RELATED TO SEPARATION AND RE-*  
2 *TIREMENT INCENTIVES.*—(1) *The Secretary may establish*  
3 *a program within the Department of Defense under which*  
4 *employees may be eligible for early retirement, offered sepa-*  
5 *ration incentive pay to separate from service voluntarily,*  
6 *or both. This authority may be used to reduce the number*  
7 *of personnel employed by the Department of Defense or to*  
8 *restructure the workforce to meet mission objectives without*  
9 *reducing the overall number of personnel. This authority*  
10 *is in addition to, and notwithstanding, any other authori-*  
11 *ties established by law or regulation for such programs.*

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

16                   “(A) *a reemployed annuitant under subchapter*  
17 *III of chapter 83 or chapter 84 of this title, or an-*  
18 *other retirement system for employees of the Federal*  
19 *Government;*

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

24                   “(C) *for purposes of eligibility for separation in-*  
25 *centives under this section, an employee who is in re-*



1       *ceipt of a decision notice of involuntary separation*  
2       *for misconduct or unacceptable performance.*

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

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

16               “(i) *an amount equal to the amount the em-*  
17               *ployee would be entitled to receive under section*  
18               *5595(c) of this title, if the employee were entitled to*  
19               *payment under such section; or*

20               “(ii) *\$25,000.*

21       “(B) *Separation pay shall not be a basis for payment,*  
22       *and shall not be included in the computation, of any other*  
23       *type of Government benefit. Separation pay shall not be*  
24       *taken into account for the purpose of determining the*  
25       *amount of any severance pay to which an individual may*

1 *be entitled under section 5595 of this title, based on any*  
2 *other separation.*

3       “(C) *Separation pay, if paid in installments, shall*  
4 *cease to be paid upon the recipient’s acceptance of employ-*  
5 *ment by the Federal Government, or commencement of work*  
6 *under a personal services contract as described in para-*  
7 *graph (5).*

8       “(5)(A) *An employee who receives separation pay*  
9 *under such program may not be reemployed by the Depart-*  
10 *ment of Defense for a 12-month period beginning on the*  
11 *effective date of the employee’s separation, unless this prohi-*  
12 *bition is waived by the Secretary on a case-by-case basis.*

13       “(B) *An employee who receives separation pay under*  
14 *this section on the basis of a separation occurring on or*  
15 *after the date of the enactment of the Federal Workforce Re-*  
16 *structuring Act of 1994 (Public Law 103–236; 108 Stat.*  
17 *111) and accepts employment with the Government of the*  
18 *United States, or who commences work through a personal*  
19 *services contract with the United States within 5 years after*  
20 *the date of the separation on which payment of the separa-*  
21 *tion pay is based, shall be required to repay the entire*  
22 *amount of the separation pay to the Department of Defense.*  
23 *If the employment is with an Executive agency (as defined*  
24 *by section 105 of this title) other than the Department of*  
25 *Defense, the Director may, at the request of the head of that*

1 agency, waive the repayment if the individual involved pos-  
2 sesses unique abilities and is the only qualified applicant  
3 available for the position. If the employment is within the  
4 Department of Defense, the Secretary may waive the repay-  
5 ment if the individual involved is the only qualified appli-  
6 cant available for the position. If the employment is with  
7 an entity in the legislative branch, the head of the entity  
8 or the appointing official may waive the repayment if the  
9 individual involved possesses unique abilities and is the  
10 only qualified applicant available for the position. If the  
11 employment is with the judicial branch, the Director of the  
12 Administrative Office of the United States Courts may  
13 waive the repayment if the individual involved possesses  
14 unique abilities and is the only qualified applicant avail-  
15 able for the position.

16       “(6) Under this program, early retirement and separa-  
17 tion pay may be offered only pursuant to regulations estab-  
18 lished by the Secretary, subject to such limitations or condi-  
19 tions as the Secretary may require.

20       “(i) PROVISIONS RELATING TO REEMPLOYMENT.—If  
21 annuitant receiving an annuity from the Civil Service Re-  
22 tirement and Disability Fund becomes employed in a posi-  
23 tion within the Department of Defense, his annuity shall  
24 continue. An annuitant so reemployed shall not be consid-  
25 ered an employee for purposes of chapter 83 or 84.

1       “(j) *PROVISIONS RELATING TO HIRING.*—Notwith-  
2 *standing subsection (c), the Secretary may exercise any hir-*  
3 *ing flexibilities that would otherwise be available to the Sec-*  
4 *retary under section 4703.*

5       “**§ 9903. Attracting highly qualified experts**

6       “(a) *IN GENERAL.*—*The Secretary may carry out a*  
7 *program using the authority provided in subsection (b) in*  
8 *order to attract highly qualified experts in needed occupa-*  
9 *tions, as determined by the Secretary.*

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

12               “(1) *appoint personnel from outside the civil*  
13 *service and uniformed services (as such terms are de-*  
14 *fined in section 2101 of this title) to positions in the*  
15 *Department of Defense without regard to any provi-*  
16 *sion of this title governing the appointment of em-*  
17 *ployees to positions in the Department of Defense;*

18               “(2) *prescribe the rates of basic pay for positions*  
19 *to which employees are appointed under paragraph*  
20 *(1) at rates not in excess of the maximum rate of*  
21 *basic pay authorized for senior-level positions under*  
22 *section 5376 of this title, as increased by locality-*  
23 *based comparability payments under section 5304 of*  
24 *this title, notwithstanding any provision of this title*

1       *governing the rates of pay or classification of employ-*  
2       *ees in the executive branch; and*

3               “(3) *pay any employee appointed under para-*  
4       *graph (1) payments in addition to basic pay within*  
5       *the limits applicable to the employee under subsection*  
6       *(d).*

7       “(c) *LIMITATION ON TERM OF APPOINTMENT.—(1) Ex-*  
8       *cept as provided in paragraph (2), the service of an em-*  
9       *ployee under an appointment made pursuant to this section*  
10       *may not exceed 5 years.*

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

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

20               “(A) *\$50,000 in fiscal year 2004, which may be*  
21       *adjusted annually thereafter by the Secretary, with a*  
22       *percentage increase equal to one-half of 1 percentage*  
23       *point less than the percentage by which the Employ-*  
24       *ment Cost Index, published quarterly by the Bureau*  
25       *of Labor Statistics, for the base quarter of the year*

1       *before the preceding calendar year exceeds the Em-*  
2       *ployment Cost Index for the base quarter of the second*  
3       *year before the preceding calendar year.*

4               “(B) *The amount equal to 50 percent of the em-*  
5       *ployee’s annual rate of basic pay.*

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

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

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

19              “(e) *SAVINGS PROVISIONS.—In the event that the Sec-*  
20 *retary terminates this program, in the case of an employee*  
21 *who, on the day before the termination of the program, is*  
22 *serving in a position pursuant to an appointment under*  
23 *this section—*

1           “(1) the termination of the program does not ter-  
2           minate the employee’s employment in that position  
3           before the expiration of the lesser of—

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

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

10           “(2) the rate of basic pay prescribed for the posi-  
11           tion under this section may not be reduced as long as  
12           the employee continues to serve in the position with-  
13           out a break in service.

14   **“§ 9904. Employment of older Americans**

15           “(a) *IN GENERAL.*—Notwithstanding any other provi-  
16           sion of law, the Secretary may appoint older Americans  
17           into positions in the excepted service for a period not to  
18           exceed 2 years, provided that—

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

20                           “(A) the displacement of individuals cur-  
21                           rently employed by the Department of Defense  
22                           (including partial displacement through reduc-  
23                           tion of nonovertime hours, wages, or employment  
24                           benefits); or

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

5           “(2) the individual to be appointed is otherwise  
6           qualified for the position, as determined by the Sec-  
7           retary.

8           “(b) *EFFECT ON EXISTING RETIREMENT BENEFITS.*—  
9           Notwithstanding any other provision of law, an individual  
10          appointed pursuant to subsection (a) who otherwise is re-  
11          ceiving an annuity, pension, social security payment, re-  
12          tired pay, or other similar payment shall not have the  
13          amount of said annuity, pension, social security, or other  
14          similar payment reduced as a result of such employment.

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

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



1 **“§9905. Special pay and benefits for certain employ-**  
2 **ees outside the United States**

3 *“The Secretary may provide to certain civilian em-*  
4 *ployees of the Department of Defense assigned to activities*  
5 *outside the United States as determined by the Secretary*  
6 *to be in support of Department of Defense activities abroad*  
7 *hazardous to life or health or so specialized because of secu-*  
8 *rity requirements as to be clearly distinguishable from nor-*  
9 *mal Government employment—*

10 *“(1) allowances and benefits—*

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

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

20 *“(2) special retirement accrual benefits and dis-*  
21 *ability in the same manner provided for by the Cen-*  
22 *tral Intelligence Agency Retirement Act (50 U.S.C.*  
23 *2001 et seq.) and in section 18 of the Central Intel-*  
24 *ligence Agency Act of 1949 (50 U.S.C. 403r).”.*

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

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

4       (b) *IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN*  
 5 *PERSONNEL.—(1) Any exercise of authority under chapter*  
 6 *99 of such title (as added by subsection (a)), including*  
 7 *under any system established under such chapter, shall be*  
 8 *in conformance with the requirements of this subsection.*

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

14       ***TITLE II—DEPARTMENT OF***  
 15 ***DEFENSE CIVILIAN PERSONNEL***

16 ***SEC. 201. MODIFICATION OF THE OVERTIME PAY CAP.***

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

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

21           (2) *by inserting “or the hourly rate of basic pay*  
 22 *of the employee” after “law)” the second place it ap-*  
 23 *pears.*

1 **SEC. 202. CIVIL SERVICE RETIREMENT SYSTEM COMPUTA-**  
2 **TION FOR PART-TIME SERVICE.**

3 *Section 8339(p) of title 5, United States Code, is*  
4 *amended by adding at the end the following new para-*  
5 *graphs:*

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

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

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

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

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

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

21 **SEC. 203. MILITARY LEAVE FOR MOBILIZED FEDERAL CIVIL-**  
22 **IAN EMPLOYEES.**

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

25 *(1) in paragraph (2)—*

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

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

6           (2) by inserting the following before the text be-  
7           ginning with “is entitled”:

8           “(B) performs full-time military service as a re-  
9           sult of a call or order to active duty in support of a  
10          contingency operation as defined in section  
11          101(a)(13) of title 10;”.

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

15   **SEC. 204. COMMON OCCUPATIONAL AND HEALTH STAND-**  
16                **ARDS FOR DIFFERENTIAL PAYMENTS AS A**  
17                **CONSEQUENCE OF EXPOSURE TO ASBESTOS.**

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

1       (b) *GENERAL SCHEDULE PAY RATES.*—Section  
 2 5545(d) of such title is amended by inserting before the pe-  
 3 riod at the end of the first sentence the following: “, and  
 4 for any hardship or hazard related to asbestos, such dif-  
 5 ferentials shall be determined by applying occupational  
 6 safety and health standards consistent with the permissible  
 7 exposure limit promulgated by the Secretary of Labor under  
 8 the Occupational Safety and Health Act of 1970”.

9       (c) *APPLICABILITY.*—Subject to any vested constitu-  
 10 tional property rights, any administrative or judicial deter-  
 11 mination after the date of enactment of this Act concerning  
 12 backpay for a differential established under section  
 13 5343(c)(4) or 5545(d) of such title shall be based on occupa-  
 14 tional safety and health standards described in the amend-  
 15 ments made by subsections (a) and (b).

16 **SEC. 205. INCREASE IN ANNUAL STUDENT LOAN REPAY-**  
 17 **MENT AUTHORITY.**

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

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

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

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

3           (2) *by striking the last sentence of both sub-*  
4           *section (a) and subsection (b); and*

5           (3) *by inserting after subsection (b) the fol-*  
6           *lowing:*

7           “(c) *For the purposes of this section:*

8           “(1) *The term ‘employee’ means—*

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

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

16           “(C) *an individual employed by the govern-*  
17           *ment of the District of Columbia.*

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

19           “(A) *an employee on the Isthmus of Pan-*  
20           *ama in the service of the Panama Canal Com-*  
21           *mission; or*

22           “(B) *an employee or individual excluded*  
23           *from the definition of employee in section*  
24           *5541(2) of this title other than an employee or*

1           *individual excluded by clauses (ii), (iii), and*  
2           *(xiv) through (xvii) of such section.*

3           “(3) *Notwithstanding paragraph (2), an indi-*  
4           *vidual who otherwise would be excluded from the defi-*  
5           *inition of employee shall be deemed to be an employee*  
6           *for purposes of this section if the individual’s employ-*  
7           *ing agency so elects, under guidelines in regulations*  
8           *promulgated by the Office of Personnel Management*  
9           *under subsection (d)(2).”.*

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

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

13                 *(2) by adding at the end the following new para-*  
14 *graph:*

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

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

23          **(a) CERTAIN EMPLOYEES OF THE DISTRICT OF CO-**  
24 **LUMBIA GOVERNMENT.**—*Section 9001(1) of title 5, United*

1 *States Code, is amended by striking “2105(c),” and all that*  
2 *follows and inserting “2105(c).”.*

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

7 *(1) in subparagraph (A), by striking “and” at*  
8 *the end;*

9 *(2) in subparagraph (B), by striking the period*  
10 *and inserting “; and”; and*

11 *(3) by adding at the end the following:*

12 *“(C) any former employee who, on the basis*  
13 *of his or her service, would meet all requirements*  
14 *for being considered an ‘annuitant’ within the*  
15 *meaning of subchapter III of chapter 83, chapter*  
16 *84, or any other retirement system for employees*  
17 *of the Government, but for the fact that such*  
18 *former employee has not attained the minimum*  
19 *age for title to annuity.”.*

20 *(c) RESERVISTS TRANSFERRED TO THE RETIRED RE-*  
21 *SERVE WHO ARE UNDER AGE 60.—Section 9001(4) of title*  
22 *5, United States Code, is amended by striking “including”*  
23 *and all that follows through “who has” and inserting “and*  
24 *a member who has been transferred to the Retired Reserve*



1 *and who would be entitled to retired pay under chapter*  
2 *1223 of title 10 but for not having”.*

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

5 *(a) CLARIFICATION TO HATCH ACT.—No Federal em-*  
6 *ployee or individual who voluntarily separates from the*  
7 *civil service (including by transferring to an international*  
8 *organization in the circumstances described in section*  
9 *3582(a) of title 5, United States Code) shall be subject to*  
10 *enforcement of the provisions of section 7326 of such title*  
11 *(including any loss of rights under subchapter IV of chapter*  
12 *35 of such title resulting from any proceeding under such*  
13 *section 7326), except that this subsection shall not apply*  
14 *in the event that such employee or individual subsequently*  
15 *becomes reemployed in the civil service. The preceding sen-*  
16 *tence shall apply to any complaint which is filed with or*  
17 *pending before the Merit Systems Protection Board after*  
18 *the date of the enactment of this Act.*

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

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

2               (1) *the term “Federal employee or individual”*  
3       *means any employee or individual, as referred to in*  
4       *section 7326 of title 5, United States Code;*

5               (2) *the term “civil service” has the meaning*  
6       *given such term by section 2101 of title 5, United*  
7       *States Code;*

8               (3) *the term “international organization” has*  
9       *the meaning given such term by section 3581 of title*  
10       *5, United States Code; and*

11              (4) *the terms “routine use” and “record” have*  
12       *the respective meanings given such terms under sec-*  
13       *tion 552a(a) of title 5, United States Code.*

14   **SEC. 209. SENIOR EXECUTIVE SERVICE AND PERFORMANCE.**

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

17              (1) *in section 5304—*

18                      (A) *in subsection (g)(2)—*

19                              (i) *in subparagraph (A) by striking*  
20                              *“subparagraphs (A)–(E)” and inserting*  
21                              *“subparagraphs (A)–(D)”;* and

22                              (ii) *in subparagraph (B) by striking*  
23                              *“subsection (h)(1)(F)” and inserting “sub-*  
24                              *section (h)(1)(D)”;*

25                      (B) *in subsection (h)(1)—*

1                   (i) by striking subparagraphs (B) and  
2                   (C);

3                   (ii) by redesignating subparagraphs  
4                   (D), (E), and (F) as subparagraphs (B),  
5                   (C), and (D), respectively;

6                   (iii) in clause (ii) by striking “or” at  
7                   the end;

8                   (iv) in clause (iii) by striking the pe-  
9                   riod and inserting a semicolon; and

10                  (v) by adding at the end the following  
11                  new clauses:

12                  “(iv) a Senior Executive Service position under  
13                  section 3132;

14                  “(v) a position in the Federal Bureau of Inves-  
15                  tigation and Drug Enforcement Administration Sen-  
16                  ior Executive Service under section 3151; or

17                  “(vi) a position in a system equivalent to the  
18                  system in clause (iv), as determined by the Presi-  
19                  dent’s Pay Agent designated under subsection (d).”;  
20                  and

21                  (C) in subsection (h)(2)(B)—

22                         (i) in clause (i)—

23                                 (I) by striking “subparagraphs  
24                                 (A) through (E)” and inserting “sub-  
25                                 paragraphs (A) through (C)”; and

1                   (II) by striking “clause (i) or  
2                   (ii)” and inserting “clause (i), (ii),  
3                   (iii), (iv), (v), or (vii)”; and  
4                   (ii) in clause (ii)—

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

8                   (II) by striking “clause (i) or  
9                   (ii)” and inserting “clause (i), (ii),  
10                  (iii), (iv), (v), or (vi)”;  
11

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

12 **“§ 5382. Establishment of rates of pay for the Senior**  
13 **Executive Service**

14           “(a) Subject to regulations prescribed by the Office of  
15 Personnel Management, there shall be established a range  
16 of rates of basic pay for the Senior Executive Service, and  
17 each senior executive shall be paid at one of the rates within  
18 the range, based on individual performance, contribution  
19 to the agency’s performance, or both, as determined under  
20 a rigorous performance management system. The lowest  
21 rate of the range shall not be less than the minimum rate  
22 of basic pay payable under section 5376, and the highest  
23 rate, for any position under this system or an equivalent  
24 system as determined by the President’s Pay Agent des-  
25 igned under section 5304(d), shall not exceed the rate for

1 *level III of the Executive Schedule. The payment of the rates*  
2 *shall not be subject to the pay limitation of section 5306(e)*  
3 *or 5373.*

4 “(b) Notwithstanding the provisions of subsection (a),  
5 *the applicable maximum shall be level II of the Executive*  
6 *Schedule for any agency that is certified under section 5307*  
7 *as having a performance appraisal system which, as de-*  
8 *signed and applied, makes meaningful distinctions based*  
9 *on relative performance.*

10 “(c) No employee may suffer a reduction in pay by  
11 *reason of transfer from an agency with an applicable max-*  
12 *imum rate of pay prescribed under subsection (b) to an*  
13 *agency with an applicable maximum rate of pay prescribed*  
14 *under subsection (a).”;* and

15 (3) *in section 5383—*

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

20 (B) *in subsection (c) by striking “for any*  
21 *pay adjustment under section 5382 of this title”*  
22 *and inserting “as provided in regulations pre-*  
23 *scribed by the Office under section 5385”.*

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

4                   “(ii) *employed in a position which is not*  
5 *referred to in clause (i) and for which that per-*  
6 *son is paid at a rate of basic pay which is equal*  
7 *to or greater than 96 percent of the rate of basic*  
8 *pay for level II of the Executive Schedule, or, for*  
9 *a period of 2 years following the enactment of*  
10 *the Federal Employees Pay for Performance Act*  
11 *of 2003, a person who, on the day prior to the*  
12 *enactment of that Act, was employed in a posi-*  
13 *tion which is not referred to in clause (i) and for*  
14 *which the rate of basic pay, exclusive of any lo-*  
15 *cality-based pay adjustment under section 5304*  
16 *or section 5304a of title 5, was equal to or great-*  
17 *er than the rate of basic pay payable for level 5*  
18 *of the Senior Executive Service on the day prior*  
19 *to the enactment of that Act,”.*

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

23 **“§ 7302. *Post-employment notification***

24           “(a) *Not later than the effective date of the amend-*  
25 *ments made by sections 3 and 4 of the Federal Employees*

1 *Pay for Performance Act of 2003, or 180 days after the*  
2 *date of enactment of that Act, whichever is later, the Office*  
3 *of Personnel Management shall, in consultation with the At-*  
4 *torney General and the Office of Government Ethics, pro-*  
5 *mulgate regulations requiring that each Executive branch*  
6 *agency notify any employee of that agency who is subject*  
7 *to the provisions of section 207(c)(1) of title 18, as a result*  
8 *of the amendment to section 207(c)(2)(A)(ii) of that title*  
9 *by that Act.*

10       “(b) *The regulations shall require that notice be given*  
11 *before, or as part of, the action that affects the employee’s*  
12 *coverage under section 207(c)(1) of title 18, by virtue of the*  
13 *provisions of section 207(c)(2)(A)(ii) of that title, and*  
14 *again when employment or service in the covered position*  
15 *is terminated.”.*

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

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

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

      “7302. *Post-employment notification.”.*

23       (d) *EFFECTIVE DATE AND APPLICABILITY.—(1) The*  
24 *amendments made by this section shall take effect on the*

1 *first day of the first pay period beginning on or after the*  
2 *first January 1 following the date of enactment of this sec-*  
3 *tion.*

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

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

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

16       *A pay-for-performance system may not be initiated*  
17 *under chapter 47 of title 5, United States Code, after the*  
18 *date of enactment of this Act, unless it incorporates the fol-*  
19 *lowing elements:*

20               (1) *adherence to merit principles set forth in sec-*  
21 *tion 2301 of such title;*

22               (2) *a fair, credible, and transparent employee*  
23 *performance appraisal system;*



1           (3) a link between elements of the pay-for-per-  
2           formance system, the employee performance appraisal  
3           system, and the agency's strategic plan;

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

6           (5) adequate training and retraining for super-  
7           visors, managers, and employees in the implementa-  
8           tion and operation of the pay-for-performance system;

9           (6) a process for ensuring ongoing performance  
10          feedback and dialogue between supervisors, managers,  
11          and employees throughout the appraisal period, and  
12          setting timetables for review;

13          (7) effective safeguards to ensure that the man-  
14          agement of the system is fair and equitable and based  
15          on employee performance; and

16          (8) a means for ensuring that adequate agency  
17          resources are allocated for the design, implementation,  
18          and administration of the pay-for-performance sys-  
19          tem.

20 **SEC. 211. FEDERAL FLEXIBLE BENEFITS PLAN ADMINISTRA-**  
21 **TIVE COSTS.**

22          (a) *IN GENERAL.*—Notwithstanding any other provi-  
23          sion of law, an agency or other employing entity of the Gov-  
24          ernment which provides or plans to provide a flexible spend-  
25          ing account option for its employees shall not impose any

1 *fee with respect to any of its employees in order to defray*  
2 *the administrative costs associated therewith.*

3       **(b) OFFSET OF ADMINISTRATIVE COSTS.**—*Each such*  
4 *agency or employing entity that offers a flexible spending*  
5 *account option under a program established or adminis-*  
6 *tered by the Office of Personnel Management shall periodi-*  
7 *cally forward to such Office, or entity designated by such*  
8 *Office, the amount necessary to offset the administrative*  
9 *costs of such program which are attributable to such agency.*

10       **(c) REPORTS.**—*(1) The Office shall submit a report*  
11 *to the Committee on Government Reform of the House of*  
12 *Representatives and the Committee on Governmental Af-*  
13 *airs of the Senate no later than March 31, 2004, specifying*  
14 *the administrative costs associated with the Government-*  
15 *wide program (referred to in subsection (b)) for fiscal year*  
16 *2003, as well as the projected administrative costs of such*  
17 *program for each of the 5 fiscal years thereafter.*

18       *(2) At the end of each of the first 3 calendar years*  
19 *in which an agency or other employing entity offers a flexi-*  
20 *ble spending account option under this section, such agency*  
21 *or entity shall submit a report to the Office of Management*  
22 *and Budget showing the amount of its employment tax sav-*  
23 *ings in such year which are attributable to such option,*  
24 *net of administrative fees paid under section (b).*

1 **SEC. 212. NONREDUCTION IN PAY WHILE FEDERAL EM-**  
2 **EMPLOYEE IS SERVING ON ACTIVE DUTY IN A**  
3 **RESERVE COMPONENT OF THE UNIFORMED**  
4 **SERVICES.**

5       (a) *IN GENERAL.*—Subchapter IV of chapter 55 of title  
6 5, United States Code, is amended by adding at the end  
7 the following new section:

8 **“§5538. Nonreduction in pay while serving on active**  
9 **duty in a reserve component**

10       “(a) *An employee who is also a member of a reserve*  
11 *component and is absent from a position of employment*  
12 *with the Federal Government under a call or order to serve*  
13 *on active duty for a period of more than 30 days shall be*  
14 *entitled to receive, for each pay period described in sub-*  
15 *section (b), an amount equal to the difference (if any) be-*  
16 *tween—*

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

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

25       “(b)(1) *Amounts under this section shall be payable*  
26 *with respect to each pay period (which would otherwise*

1 *apply if the employee's civilian employment had not been*  
2 *interrupted) that occurs—*

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

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

9 *“(C) during the 14-day period beginning at the*  
10 *end of such active duty or the end of the period re-*  
11 *ferred to in subparagraph (B).*

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

17 *“(c) Any amount payable under this section to an em-*  
18 *ployee shall be paid—*

19 *“(1) by employing agency of the employee;*

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

23 *“(3) to the extent practicable, at the same time*  
24 *and in the same manner as would civilian basic pay*

1       *if the employee’s civilian employment had not been*  
2       *interrupted.*

3       “(d) *In consultation with the Secretary of Defense, the*  
4       *Office of Personnel Management shall prescribe such regula-*  
5       *tions as may be necessary to carry out this section.*

6       “(e) *In consultation with the Office of Personnel Man-*  
7       *agement, the head of each employing agency shall prescribe*  
8       *procedures to ensure that the rights under this section apply*  
9       *to the employees of such agency.*

10       “(f) *In this section:*

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

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

17               “(3) *The term ‘employing agency’, as used with*  
18               *respect to an employee entitled to any payments*  
19               *under this section, means the agency with respect to*  
20               *which the employee has reemployment rights under*  
21               *chapter 43 of title 38. The term ‘agency’ has the*  
22               *meaning given such term in subparagraph (C) of sec-*  
23               *tion 2302(a)(2) of this title, except that the term in-*  
24               *cludes Government corporations and agencies ex-*  
25               *cluded by clause (i) or (ii) of such subparagraph.*

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

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

*“5538. Nonreduction in pay while serving on active duty in a reserve compo-*  
*nent.”.*

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

14          **SEC. 213. EMPLOYEE SURVEYS.**

15          **(a) IN GENERAL.**—*Each agency shall conduct an an-*  
16          *nual survey of its employees (including survey questions*  
17          *unique to the agency and questions prescribed under sub-*  
18          *section (b)) to assess—*

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

21                  (2) *employee satisfaction with—*

22                          (A) *leadership policies and practices;*

23                          (B) *work environment;*

1           (C) rewards and recognition for professional  
2           accomplishment and personal contributions to  
3           achieving organizational mission;

4           (D) opportunity for professional develop-  
5           ment and growth; and

6           (E) opportunity to contribute to achieving  
7           organizational mission.

8           (b) *REGULATIONS.*—*The Office of Personnel Manage-*  
9           *ment shall issue regulations prescribing survey questions*  
10           *that should appear on all agency surveys under subsection*  
11           *(a) in order to allow a comparison across agencies.*

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

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

1 **TITLE III—PROVISIONS RELAT-**  
 2 **ING TO THE SECURITIES AND**  
 3 **EXCHANGE COMMISSION AND**  
 4 **THE NATIONAL AERONAUTICS**  
 5 **AND SPACE ADMINISTRATION**  
 6 **Subtitle A—Securities and**  
 7 **Exchange Commission**

8 **SEC. 301. SECURITIES AND EXCHANGE COMMISSION.**

9 (a) *IN GENERAL.*—Subchapter I of chapter 31 of title  
 10 5, United States Code, is amended by adding at the end  
 11 the following:

12 **“§ 3114. Appointment of accountants, economists, and**  
 13 **examiners by the Securities and Exchange**  
 14 **Commission**

15 “(a) *APPLICABILITY.*—This section applies with re-  
 16 spect to any position of accountant, economist, and securi-  
 17 ties compliance examiner at the Commission that is in the  
 18 competitive service.

19 “(b) *APPOINTMENT AUTHORITY.*—

20 “(1) *IN GENERAL.*—The Commission may ap-  
 21 point candidates to any position described in sub-  
 22 section (a)—

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



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

4           “(2) *RULE OF CONSTRUCTION.*—The appoint-  
5           ment of a candidate to a position under authority of  
6           this subsection shall not be considered to cause such  
7           position to be converted from the competitive service  
8           to the excepted service.

9           “(c) *REPORTS.*—No later than 90 days after the end  
10          of fiscal year 2003 (for fiscal year 2003) and 90 days after  
11          the end of fiscal year 2005 (for fiscal years 2004 and 2005),  
12          the Commission shall submit a report with respect to its  
13          exercise of the authority granted by subsection (b) during  
14          such fiscal years to the Committee on Government Reform  
15          and the Committee on Financial Services of the House of  
16          Representatives and the Committee on Governmental Af-  
17          fairs and the Committee on Banking, Housing, and Urban  
18          Affairs of the Senate. Such reports shall describe the changes  
19          in the hiring process authorized by such subsection, includ-  
20          ing relevant information related to—

21                 “(1) the quality of candidates;

22                 “(2) the procedures used by the Commission to  
23          select candidates through the streamlined hiring proc-  
24          ess;

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

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

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

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

10          “(d) *COMMISSION DEFINED.*—For purposes of this sec-  
11          tion, the term ‘Commission’ means the Security and Ex-  
12          change Commission.”.

13          (b) *CLERICAL AMENDMENT.*—The table of sections for  
14          chapter 31 of title 5, United States Code, is amended by  
15          inserting after the item relating to section 3113 the fol-  
16          lowing:

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

17          ***Subtitle B—National Aeronautics***  
18                   ***and Space Administration***

19          ***SEC. 311. WORKFORCE AUTHORITIES AND PERSONNEL PRO-***  
20                   ***VISIONS.***

21          (a) *IN GENERAL.*—Subpart I of part III of title 5,  
22          United States Code, is amended by inserting after chapter  
23          97, as added by section 841(a)(2) of the Homeland Security

1 *Act of 2002 (Public Law 107–296; 116 Stat. 2229), the fol-*  
 2 *lowing:*

3 **“CHAPTER 98—NATIONAL AERONAUTICS**  
 4 **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.*

5 “SUBCHAPTER I—WORKFORCE AUTHORITIES

6 **“§9801. *Definitions***

7 “*For purposes of this subchapter—*

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

10 “(2) *the term ‘Administrator’ means the Admin-*  
 11 *istrator of the National Aeronautics and Space Ad-*  
 12 *ministration;*

13 “(3) *the term ‘critical need’ means a specific and*  
 14 *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; and*

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

24 *“(a) Not later than 90 days before exercising any of*  
25 *the workforce authorities under this subchapter, the Admin-*

1 *istrator shall submit a written plan to the appropriate com-*  
2 *mittees of Congress. A plan under this subchapter may not*  
3 *be implemented without the approval of the Office of Per-*  
4 *sonnel Management.*

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

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

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

11 *“(i) address critical needs; and*

12 *“(ii) would be eligible for each authority*  
13 *proposed to be exercised under section 9803; and*

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

18 *“(3)(A) any critical need identified under para-*  
19 *graph (1) which would not be addressed by the au-*  
20 *thorities made available under this subchapter; and*

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

23 *“(4) the specific criteria to be used in deter-*  
24 *mining which individuals may receive the benefits de-*  
25 *scribed under sections 9804, 9805 (including the cri-*

1        *teria for granting bonuses in the absence of a critical*  
2        *need), and 9810, and how the level of those benefits*  
3        *will be determined;*

4            *“(5) the safeguards or other measures that will*  
5        *be applied to ensure that this subchapter is carried*  
6        *out in a manner consistent with merit system prin-*  
7        *ciples;*

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

11           *“(7) the methods that will be used to determine*  
12       *if the authorities exercised under this subchapter have*  
13       *successfully addressed each critical need identified*  
14       *under paragraph (1); and*

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

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

22                    *“(i) nongovernmental recruitment or place-*  
23                    *ment agencies; and*

24                    *“(ii) Internet technologies.*

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

6       “(d)(1)(A) The Administrator may submit any modi-  
7 fications to the workforce plan to the Office of Personnel  
8 Management. Modifications to the workforce plan may not  
9 be implemented without the approval of the Office of Per-  
10 sonnel Management.

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

15       “(2) Any reference in this subchapter or any other pro-  
16 vision of law to the workforce plan shall be considered to  
17 include any modification made in accordance with this sub-  
18 section.

19       “(e) Before submitting any written plan under sub-  
20 section (a) (or modification under subsection (d)) to the Of-  
21 fice of Personnel Management, the Administrator shall—

22               “(1) provide to each employee representative rep-  
23 resenting any employees who might be affected by  
24 such plan (or modification) a copy of the proposed  
25 plan (or modification);

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

5           “(3) give any recommendations received from  
6           any such representatives under paragraph (2) full  
7           and fair consideration in deciding whether or how to  
8           proceed with respect to the proposed plan (or modi-  
9           fication).

10          “(f) None of the workforce authorities made available  
11          under this subchapter may be exercised in a manner incon-  
12          sistent with the workforce plan.

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

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

23                 “(1) an evaluation, using the methods described  
24                 in subsection (b)(7), of whether the authorities exer-



1        *cised under this subchapter successfully addressed*  
2        *each critical need identified under subsection (b)(1);*

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

7            *“(3) recommendations for how the Administra-*  
8        *tion could address any remaining critical need and*  
9        *could prevent those that have been addressed from re-*  
10       *curring.*

11       **“§9803. Workforce authorities**

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

14            *“(1) The authority to pay recruitment, redesign-*  
15        *ation, and relocation bonuses under section 9804.*

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

18            *“(3) The authority to make term appointments*  
19        *and to take related personnel actions under section*  
20        *9806.*

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

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

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

3           “(b) *No authority under this subchapter may be exer-*  
4           *cised with respect to any officer who is appointed by the*  
5           *President, by and with the advice and consent of the Senate.*

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

8           **“§9804. Recruitment, redesignation, and relocation**  
9           **bonuses**

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

14           “(1) *the Administrator determines that the Ad-*  
15           *ministration would be likely, in the absence of a*  
16           *bonus, to encounter difficulty in filling a position;*  
17           *and*

18           “(2) *the individual—*

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

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

24                   “(C) *is currently employed by the Federal*  
25                   *Government and is required to relocate to a dif-*

1           *ferent geographic area to accept a position with*  
2           *the Administration.*

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

6           “(1) *50 percent of the employee’s annual rate of*  
7 *basic pay (including comparability payments under*  
8 *sections 5304 and 5304a) as of the beginning of the*  
9 *service period multiplied by the service period speci-*  
10 *fied under subsection (d)(1)(B)(i); or*

11           “(2) *100 percent of the employee’s annual rate of*  
12 *basic pay (including comparability payments under*  
13 *sections 5304 and 5304a) as of the beginning of the*  
14 *service period.*

15           “(c) *If the position is not described as addressing a*  
16 *critical need in the workforce plan under section*  
17 *9802(b)(2)(A), the amount of a bonus may not exceed—*

18           “(1) *25 percent of the employee’s annual rate of*  
19 *basic pay (including comparability payments under*  
20 *sections 5304 and 5304a) as of the beginning of the*  
21 *service period multiplied by the service period speci-*  
22 *fied under subsection (d)(1)(B)(i); or*

23           “(2) *100 percent of the employee’s annual rate of*  
24 *basic pay (including comparability payments under*

1       sections 5304 and 5304a) as of the beginning of the  
2       service period.

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

6       “(B) At a minimum, the service agreement shall in-  
7       clude—

8               “(i) the required service period;

9               “(ii) the method of payment, including a pay-  
10       ment schedule, which may include a lump-sum pay-  
11       ment, installment payments, or a combination there-  
12       of;

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

15               “(iv) the conditions under which the agreement  
16       may be terminated before the agreed-upon service pe-  
17       riod has been completed, and the effect of the termi-  
18       nation.

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

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

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

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

16 **“§9805. Retention bonuses**

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

21               “(1) the unusually high or unique qualifications  
22 of the employee or a special need of the Administra-  
23 tion for the employee’s services makes it essential to  
24 retain the employee; and

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

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

8           “(c) If the position is not described as addressing a  
9           critical need in the workforce plan under section  
10          9802(b)(2)(A), the amount of a bonus may not exceed 25  
11          percent of the employee’s annual rate of basic pay (includ-  
12          ing comparability payments under sections 5304 and  
13          5304a).

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

17          “(B) At a minimum, the service agreement shall in-  
18          clude—

19                  “(i) the required service period;

20                  “(ii) the method of payment, including a pay-  
21                  ment schedule, which may include a lump-sum pay-  
22                  ment, installment payments, or a combination there-  
23                  of;

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

1           “(iv) the conditions under which the agreement  
2           may be terminated before the agreed-upon service pe-  
3           riod has been completed, and the effect of the termi-  
4           nation.

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

10          “(3) Notwithstanding paragraph (1), a service agree-  
11          ment is not required if the Administration pays a bonus  
12          in biweekly installments and sets the installment payment  
13          at the full bonus percentage rate established for the em-  
14          ployee, with no portion of the bonus deferred. In this case,  
15          the Administration shall inform the employee in writing  
16          of any decision to change the retention bonus payments. The  
17          employee shall continue to accrue entitlement to the reten-  
18          tion bonus through the end of the pay period in which such  
19          written notice is provided.

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

22          “(f) An employee is not entitled to a retention bonus  
23          under this section during a service period previously estab-  
24          lished for that employee under section 5753 or under section  
25          9804.

1       “(g) *The Administrator shall submit to the appro-*  
2 *priate committees of Congress, not later than February 28*  
3 *of each of the next 10 years beginning after the date of en-*  
4 *actment of this subchapter, a summary of all bonuses paid*  
5 *under subsections (b) and (c) during the preceding year.*  
6 *Such summary shall include the number of bonuses paid,*  
7 *the total amount of bonuses paid, and the average percent-*  
8 *age used in calculating the total average bonus amount,*  
9 *under each such subsection.*

10 **“§9806. *Term appointments***

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

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

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



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

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

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

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

17          “(c) Notwithstanding chapter 33 or any other provi-  
18          sion of law relating to the examination, certification, and  
19          appointment of individuals in the competitive service, the  
20          Administrator may convert an employee serving under a  
21          term appointment to a permanent appointment in the com-  
22          petitive service within the Administration through internal  
23          competitive promotion procedures if the conditions under  
24          paragraphs (1) through (4) of subsection (b) are met.

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

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

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

11               “(1) the total number of term appointments con-  
12 verted during the previous calendar year; and

13               “(2) of that total number, the number of conver-  
14 sions that were made to address a critical need de-  
15 scribed in the Workforce Plan pursuant to section  
16 9802(b)(2).

17 **“§9807. Pay authority for critical positions**

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

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

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

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

24               “(4) a senior-level position to which section  
25 5376(a)(1) applies.

1       “(b) Authority under this section—

2               “(1) may be exercised only with respect to a po-  
3       sition that—

4                       “(A) is described as addressing a critical  
5       need in the workforce plan under section  
6       9802(b)(2)(A); and

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

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

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

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

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

23               “(d)(1) The rate of basic pay fixed under this section  
24       may not be less than the rate of basic pay (including any  
25       comparability payments) which would otherwise be payable

1 *for the position involved if this section had never been en-*  
2 *acted.*

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

6       “(3) *Notwithstanding any provision of section 5307,*  
7 *in the case of an employee who, during any calendar year,*  
8 *is receiving pay at a rate fixed under this section, no allow-*  
9 *ance, differential, bonus, award, or similar cash payment*  
10 *may be paid to such employee if, or to the extent that, when*  
11 *added to basic pay paid or payable to such employee (for*  
12 *service performed in such calendar year as an employee in*  
13 *the executive branch or as an employee outside the executive*  
14 *branch to whom chapter 51 applies), such payment would*  
15 *cause the total to exceed the per annum rate of salary which,*  
16 *as of the end of such calendar year, is payable under section*  
17 *104 of title 3.*

18       “(e) *The Administrator shall submit to the appro-*  
19 *priate committees of Congress, not later than February 28*  
20 *of each of the next 10 years beginning after the date of en-*  
21 *actment of this subchapter—*

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

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

4           **“§9808. Assignments of intergovernmental personnel**

5           “*For purposes of applying the third sentence of section*  
6 *3372(a) (relating to the authority of the head of a Federal*  
7 *agency to extend the period of an employee’s assignment*  
8 *to or from a State or local government, institution of higher*  
9 *education, or other organization), the Administrator may,*  
10 *with the concurrence of the employee and the government*  
11 *or organization concerned, take any action which would be*  
12 *allowable if such sentence had been amended by striking*  
13 *‘two’ and inserting ‘four’.*

14           **“§9809. Enhanced demonstration project authority**

15           “*When conducting a demonstration project at the Ad-*  
16 *ministration, section 4703(d)(1)(A) may be applied by sub-*  
17 *stituting ‘such numbers of individuals as determined by the*  
18 *Administrator’ for ‘not more than 5,000 individuals’.*

19           **“§9810. Voluntary separation incentive payments**

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

1       “(b) *Voluntary separation incentive payments de-*  
2 *scribed in subsection (a)—*

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

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

9                       “(A) *10 employees; or*

10                      “(B) *such greater number of employees as*  
11 *the Administrator may, with the approval of the*  
12 *Office of Management and Budget, establish in*  
13 *lieu of the number specified in subparagraph (A)*  
14 *following notification to the appropriate commit-*  
15 *tees of Congress;*

16               “(3) *may not be made to an employee if the em-*  
17 *ployee has within the last 12 months received, or if*  
18 *the employee is then receiving, a bonus or allowance*  
19 *under section 5753 or 5754 or under section 9804 or*  
20 *9805; and*

21               “(4) *may be made only if the position in which*  
22 *the employee is serving addresses a critical need iden-*  
23 *tified in the workforce plan pursuant to section*  
24 *9802(b)(2).*

1       “(c)(1) *The proposed use of workforce authorities in*  
2 *this section shall be included in the plan required by section*  
3 *3522.*

4       “(2) *Whenever the Office of Personnel Management ap-*  
5 *proves the Administration’s plan required in such section*  
6 *3522, the Administration shall submit a copy of the ap-*  
7 *proved plan to the appropriate committees of Congress*  
8 *within 15 days after the date on which it is so approved.*

9       **“§9811. Limitations relating to bonuses**

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

14       “(b) *A separate appropriations account shall be main-*  
15 *tained for such bonuses.*

16       **“SUBCHAPTER II—PERSONNEL PROVISIONS**

17       **“§9831. Definitions**

18       “*For purposes of this subchapter, the terms ‘Adminis-*  
19 *tration’ and ‘Administrator’ have the meanings set forth*  
20 *in section 9801.*

21       **“§9832. NASA-Industry exchange program**

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

24               “(1) *the assignment or loan of an employee of*  
25 *the Administration to a private sector organization*

1       *without a change of position from the Administra-*  
2       *tion, or*

3               “(2) *the assignment or loan of an employee of a*  
4       *private sector organization to the Administration*  
5       *without a change of position from the private sector*  
6       *organization that employs the individual,*

7       *whichever is appropriate in the context in which such term*  
8       *is used.*

9               “(b)(1) *On request from or with the agreement of a*  
10       *private sector organization, and with the consent of the em-*  
11       *ployee concerned, the Administrator may arrange for the*  
12       *assignment of an employee of the Administration to a pri-*  
13       *vate sector organization or an employee of a private sector*  
14       *organization to the Administration. An employee of the Ad-*  
15       *ministration shall be eligible to participate in this program*  
16       *only if the employee is employed at the GS-11 level or above*  
17       *(or equivalent) and is serving under a career or career-con-*  
18       *ditional appointment or an appointment of equivalent ten-*  
19       *ure in the excepted service.*

20               “(2) *The Administrator shall provide for a written*  
21       *agreement between the Administration and the employee*  
22       *concerned regarding the terms and conditions of the em-*  
23       *ployee’s assignment. The agreement shall—*



1           “(A) require the employee to serve in the Admin-  
2           istration, upon completion of the assignment, for a  
3           period equal to the length of the assignment; and

4           “(B) provide that, in the event the employee fails  
5           to carry out the agreement (except for good and suffi-  
6           cient reason, as determined by the Administrator), the  
7           employee shall be liable to the United States for pay-  
8           ment of all expenses of the assignment.

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

11          “(3) Assignments may be terminated by the Adminis-  
12          tration or the private sector organization concerned for any  
13          reason at any time.

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

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

24          “(2) Notwithstanding any other provision of law, an  
25          employee of the Administration who is assigned to a private

1 *sector organization under this section is entitled to retain*  
2 *coverage, rights, and benefits under subchapter I of chapter*  
3 *81, and employment during the assignment is deemed em-*  
4 *ployment by the United States, except that, if the employee*  
5 *or the employee's dependents receive from the private sector*  
6 *organization any payment under an insurance policy for*  
7 *which the premium is wholly paid by the private sector or-*  
8 *ganization, or other benefit of any kind on account of the*  
9 *same injury or death, then, the amount of such payment*  
10 *or benefit shall be credited against any compensation other-*  
11 *wise payable under subchapter I of chapter 81.*

12       “(3) *The assignment of an employee to a private sector*  
13 *organization under this section may be made with or with-*  
14 *out reimbursement by the private sector organization for*  
15 *the travel and transportation expenses to or from the place*  
16 *of assignment, subject to the same terms and conditions as*  
17 *apply with respect to an employee of a Federal agency or*  
18 *a State or local government under section 3375, and for*  
19 *the pay, or a part thereof, of the employee during assign-*  
20 *ment. Any reimbursements shall be credited to the appro-*  
21 *priation of the Administration used for paying the travel*  
22 *and transportation expenses or pay.*

23       “(4) *The Federal Tort Claims Act and any other Fed-*  
24 *eral tort liability statute apply to an employee of the Ad-*  
25 *ministration assigned to a private sector organization*

1 *under this section. The supervision of the duties of an em-*  
2 *ployee of the Administration who is so assigned to a private*  
3 *sector organization may be governed by an agreement be-*  
4 *tween the Administration and the organization.*

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

9       “(2) *An employee of a private sector organization as-*  
10 *signed to the Administration under this section—*

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

14               “(B) *is deemed, notwithstanding paragraph (1),*  
15 *to be an employee of the Administration for the pur-*  
16 *poses of—*

17                       “(i) *chapter 73;*

18                       “(ii) *sections 201, 203, 205, 207, 208, 209,*  
19 *603, 606, 607, 643, 654, 1905, and 1913 of title*  
20 *18;*

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

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

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

2                   *and*

3                   “(vi) *section 1043 of the Internal Revenue*

4                   *Code of 1986;*

5                   “(C) *may not have access to any trade secrets or*

6                   *to any other nonpublic information which is of com-*

7                   *mercial value to the private sector organization from*

8                   *which he is assigned; and*

9                   “(D) *is subject to such regulations as the Presi-*

10                  *dent may prescribe.*

11 *The supervision of an employee of a private sector organiza-*

12 *tion assigned to the Administration under this section may*

13 *be governed by agreement between the Administration and*

14 *the private sector organization concerned. Such an assign-*

15 *ment may be made with or without reimbursement by the*

16 *Administration for the pay, or a part thereof, of the em-*

17 *ployee during the period of assignment, or for any contribu-*

18 *tion of the private sector organization to employee benefit*

19 *systems.*

20                  “(3) *An employee of a private sector organization as-*

21 *signed to the Administration under this section who suffers*

22 *disability or dies as a result of personal injury sustained*

23 *while performing duties during the assignment shall be*

24 *treated, for the purpose of subchapter I of chapter 81, as*

25 *an employee as defined by section 8101 who had sustained*

1 *the injury in the performance of duty, except that, if the*  
2 *employee or the employee's dependents receive from the pri-*  
3 *vate sector organization any payment under an insurance*  
4 *policy for which the premium is wholly paid by the private*  
5 *sector organization, or other benefit of any kind on account*  
6 *of the same injury or death, then, the amount of such pay-*  
7 *ment or benefit shall be credited against any compensation*  
8 *otherwise payable under subchapter I of chapter 81.*

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

14       “(e)(1) *The Administration shall, not later than Feb-*  
15 *ruary 28 of each year, prepare and submit to the appro-*  
16 *priate committees of Congress a report summarizing the op-*  
17 *eration of this section during the preceding year.*

18       “(2) *Each report shall include, with respect to the pe-*  
19 *riod to which such report relates—*

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

23               “(B) *a brief description of each assignment in-*  
24 *cluded under subparagraph (A), including—*

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

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

8           “(iii) the duration and objectives of the in-  
9           dividual’s assignment; and

10          “(C) such other information as the Administra-  
11          tion considers appropriate.

12          “(3) A copy of each report submitted under paragraph  
13          (1)—

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

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

18          “(f) The Administrator, in consultation with the Di-  
19          rector of the Office of Personnel Management, shall prescribe  
20          regulations for the administration of this section.

21          “(g) Not later than 4 years after the date of the enact-  
22          ment of this section, the General Accounting Office shall  
23          prepare and submit to the appropriate committees of Con-  
24          gress a report on the operation of this section. Such report  
25          shall include—

1           “(1) an evaluation of the effectiveness of the pro-  
2           gram established by this section; and

3           “(2) a recommendation as to whether such pro-  
4           gram should be continued (with or without modifica-  
5           tion) or allowed to lapse.

6   **“§9833. Science and technology scholarship program**

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

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

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

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

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

7               “(2) *be a United States citizen; and*

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

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

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

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



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

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

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

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

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

22       “(2)(A) *Except as provided in subparagraph (B), obli-*  
23 *gated service under paragraph (1) shall begin not later than*  
24 *60 days after the individual obtains the educational degree*  
25 *for which the scholarship was provided.*

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

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

22           “(2) *Scholarship recipients who, for any reason, fail*  
23 *to begin or complete their service obligation after comple-*  
24 *tion of academic training, or fail to comply with the terms*  
25 *and conditions of deferment established by the Adminis-*

1 *trator pursuant to subsection (f)(2)(B), shall be in breach*  
2 *of their contractual agreement. When recipients breach their*  
3 *agreements for the reasons stated in the preceding sentence,*  
4 *the recipient shall be liable to the United States for an*  
5 *amount equal to—*

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

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

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

18           “(2) *The Administrator shall by regulation provide for*  
19 *the partial or total waiver or suspension of any obligation*  
20 *of service or payment incurred by an individual under the*  
21 *Program (or a contractual agreement thereunder) whenever*  
22 *compliance by the individual is impossible or would involve*  
23 *extreme hardship to the individual, or if enforcement of*  
24 *such obligation with respect to the individual would be con-*  
25 *trary to the best interests of the Government.*

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

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

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

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

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

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

17       **“§9834. Distinguished scholar appointment authority**

18       “(a) *In this section—*

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

23                       “(A) *requires education and training in the*  
24               *principles, concepts, and theories of the occupa-*  
25               *tion that typically can be gained only through*

1           *completion of a specified curriculum at a recog-*  
2           *nized college or university; and*

3           *“(B) is covered by the Group Coverage*  
4           *Qualification Standard for Professional and Sci-*  
5           *entific Positions; and*

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

13          *“(b) The Administration may appoint, without regard*  
14          *to the provisions of sections 3304(b) and 3309 through 3318,*  
15          *candidates directly to General Schedule professional posi-*  
16          *tions in the Administration for which public notice has been*  
17          *given, if—*

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

20                         *“(A) received, from an accredited institu-*  
21                         *tion authorized to grant baccalaureate degrees, a*  
22                         *baccalaureate degree in a field of study for which*  
23                         *possession of that degree in conjunction with*  
24                         *academic achievements meets the qualification*  
25                         *standards as prescribed by the Office of Per-*

1           *sonnel Management for the position to which the*  
2           *individual is being appointed; and*

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

7           “(2) with respect to a position at the GS–9 level,  
8           *the individual—*

9           “(A) received, from an accredited institu-  
10          tion authorized to grant graduate degrees, a  
11          graduate degree in a field of study for which pos-  
12          session of that degree meets the qualification  
13          standards at this grade level as prescribed by the  
14          Office of Personnel Management for the position  
15          to which the individual is being 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;

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

22          “(A) received, from an accredited institu-  
23          tion authorized to grant graduate degrees, a  
24          graduate degree in a field of study for which pos-  
25          session of that degree meets the qualification

1           standards at this grade level as prescribed by the  
2           Office of Personnel Management for the position  
3           to which the individual is being appointed; and

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

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

10                   “(A) received, from an accredited institu-  
11           tion authorized to grant graduate degrees, a  
12           graduate degree in a field of study for which pos-  
13           session of that degree meets the qualification  
14           standards at this grade level as prescribed by the  
15           Office of Personnel Management for the position  
16           to which the individual is being appointed; and

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

21                   “(c) Veterans’ preference procedures shall apply when  
22           selecting candidates under this section. Preference eligibles  
23           who meet the criteria for distinguished scholar appoint-  
24           ments shall be considered ahead of nonpreference eligibles.

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

4       **“§9835. Travel and transportation expenses of certain**  
5               **new appointees**

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

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

9                       “(A) a career or career-conditional appoint-  
10 ment;

11                      “(B) a term appointment;

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

15                      “(D) a career or limited term Senior Execu-  
16 tive Service appointment;

17                      “(E) an appointment made under section  
18 203(c)(2)(A) of the National Aeronautics and  
19 Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

20                      “(F) an appointment to a position estab-  
21 lished under section 3104; or

22                      “(G) an appointment to a position estab-  
23 lished under section 5108; or

24               “(2) a student trainee who, upon completion of  
25 academic work, is converted to an appointment in the



1       *Administration that is identified in paragraph (1) in*  
2       *accordance with an appropriate authority.*

3       “(b) *The Administrator may pay the travel, transpor-*  
4       *tation, and relocation expenses of a new appointee to the*  
5       *same extent, in the same manner, and subject to the same*  
6       *conditions as the payment of such expenses under sections*  
7       *5724, 5724a, 5724b, and 5724c to an employee transferred*  
8       *in the interests of the United States Government.*

9       “(c) *The Administrator shall submit to the appro-*  
10       *priate committees of Congress, not later than February 28*  
11       *of each of the next 10 years beginning after the date of en-*  
12       *actment of this subchapter—*

13               “(1) *the average payment for travel and trans-*  
14       *portation expenses of certain new appointees provided*  
15       *under this section during the preceding year; and*

16               “(2) *the highest payment for travel and trans-*  
17       *portation expenses to an individual appointee pro-*  
18       *vided under this section during the preceding year.*

19       **“§9836. Annual leave enhancements**

20       “(a)(1) *In this subsection—*

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

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

1           “(i) as an employee of the Federal Govern-  
2           ment following a break in service of at least 90  
3           days after that individual’s last period of Fed-  
4           eral employment, other than—

5                   “(I) employment under the Student  
6                   Educational Employment Program admin-  
7                   istered by the Office of Personnel Manage-  
8                   ment;

9                   “(II) employment as a law clerk train-  
10                  ee;

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

16                  “(IV) employment under a provisional  
17                  appointment if the new appointment is per-  
18                  manent and immediately follows the provi-  
19                  sional appointment; or

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

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

1           “(i) was performed in a position the duties  
2           of which were directly related to the duties of the  
3           position in the Administration to which that in-  
4           dividual will fill as a newly appointed employee;  
5           and

6           “(ii) except for this section, would not oth-  
7           erwise be service performed by an employee for  
8           purposes of section 6303; and

9           “(C) the term ‘directly related to the duties of the  
10          position’ means duties and responsibilities in the  
11          same line of work which require similar qualifica-  
12          tions.

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

17          “(B) A period deemed by the Administrator under sub-  
18          paragraph (A) shall continue to apply to the employee dur-  
19          ing—

20                 “(i) the period of Federal service in which the  
21                 deeming is made; and

22                 “(ii) any subsequent period of Federal service.

23          “(3)(A) Notwithstanding section 6303(a), the annual  
24          leave accrual rate for an employee of the Administration  
25          in a position paid under section 5376 or 5383, or for an

1 *employee in an equivalent category whose rate of basic pay*  
 2 *is greater than the rate payable at GS-15, step 10, shall*  
 3 *be 1 day for each full biweekly pay period.*

4       “(B) *The accrual rate established under this para-*  
 5 *graph shall continue to apply to the employee during—*

6               “(i) *the period of Federal service in which such*  
 7 *accrual rate first applies; and*

8               “(ii) *any subsequent period of Federal service.*

9 **“§9837. Limited appointments to Senior Executive**

10                       ***Service positions***

11       “(a) *In this section—*

12               “(1) *the term ‘career reserved position’ means a*  
 13 *position in the Administration designated under sec-*  
 14 *tion 3132(b) which may be filled only by—*

15                       “(A) *a career appointee; or*

16                       “(B) *a limited emergency appointee or a*  
 17 *limited term appointee—*

18                               “(i) *who, immediately before entering*  
 19 *the career reserved position, was serving*  
 20 *under a career or career-conditional ap-*  
 21 *pointment outside the Senior Executive*  
 22 *Service; or*

23                               “(ii) *whose limited emergency or lim-*  
 24 *ited term appointment is approved in ad-*

1                    *vance by the Office of Personnel Manage-*  
2                    *ment;*

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

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

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

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

15                   *“(1) the Administrator may appoint an indi-*  
16                   *vidual to any Senior Executive Service position in*  
17                   *the Administration as a limited term appointee under*  
18                   *this section for a period of—*

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

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

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

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

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

5                   “(d) A limited term appointee who has been appointed  
6 in the Administration from a career or career-conditional  
7 appointment outside the Senior Executive Service shall  
8 have reemployment rights in the agency from which ap-  
9 pointed, or in another agency, under requirements and con-  
10 ditions established by the Office of Personnel Management.  
11 The Office shall have the authority to direct such placement  
12 in any agency.

13                   “(e) Notwithstanding section 3394(b) and section  
14 3395—

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

20                   “(2) a limited term appointee serving under a  
21 term prescribed under this section may be reassigned  
22 to another continuing Senior Executive Service posi-  
23 tion in the Administration, except that the appointee  
24 may not serve in 1 or more positions in the Adminis-  
25 tration under such appointment in excess of 1 year,

1       *except that in rare circumstances, the Administrator*  
2       *may approve an extension up to an additional 1*  
3       *year.*

4       “(f) *A limited term appointee may not serve more than*  
5       *7 consecutive years under any combination of limited ap-*  
6       *pointments.*

7       “(g) *Notwithstanding section 5384, the Administrator*  
8       *may authorize performance awards to limited term ap-*  
9       *pointees in the Administration in the same amounts and*  
10       *in the same manner as career appointees.*

11       **“§9838. Superior qualifications pay**

12       “(a) *In this section the term ‘employee’ means an em-*  
13       *ployee as defined under section 2105 who is employed by*  
14       *the Administration.*

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

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

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

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

8       “(f) The Administrator may waive the restrictions in  
9 subsection (e), based on criteria established in the plan re-  
10 quired under subsection (g).

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

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

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

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

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

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

25       (b) *TECHNICAL AND CONFORMING AMENDMENTS.*—



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

“98. *National Aeronautics and Space Administration* ..... 9801”.

5           (2) *COMPENSATION FOR CERTAIN EXCEPTED*  
 6           *PERSONNEL.*—*Subparagraph (A) of section 203(c)(2)*  
 7           *of the National Aeronautics and Space Act of 1958*  
 8           *(42 U.S.C. 2473(c)(2)(A)) is amended by striking*  
 9           *“the highest rate of grade 18 of the General Schedule*  
 10           *of the Classification Act of 1949, as amended,” and*  
 11           *inserting “the rate of basic pay payable for level III*  
 12           *of the Executive Schedule,”.*

13           (3) *COMPENSATION CLARIFICATION.*—*Section*  
 14           *209 of title 18, United States Code, as amended by*  
 15           *section 209(g)(2) of the E-Government Act of 2002*  
 16           *(Public Law 107–347; 116 Stat. 2932), is amended*  
 17           *by adding at the end the following:*

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

24           (4) *CONTINUED TSP ELIGIBILITY.*—*Section*  
 25           *125(c)(1) of Public Law 100–238 (5 U.S.C. 8432*

1       *note), as amended by section 209(g)(3) of the E-Gov-*  
2       *ernment Act of 2002 (Public Law 107–347; 116 Stat.*  
3       *2932), is amended—*

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

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

8               *(C) by adding at the end the following:*

9               *“(E) an individual assigned from the Na-*  
10       *tional Aeronautics and Space Administration to*  
11       *a private sector organization under section 9832*  
12       *of title 5, United States Code; and”.*

13       *(5) ETHICS PROVISIONS.—*

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

18               *(B) DISCLOSURE OF CONFIDENTIAL INFOR-*  
19       *MATION.—Section 1905 of title 18, United States*  
20       *Code, is amended by inserting “or section 9832”*  
21       *after “chapter 37”.*

22       *(6) CONTRACT ADVICE.—Section 207(l) of title*  
23       *18, United States Code, is amended by inserting “or*  
24       *section 9832” after “chapter 37”.*

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

3                   (A) *in section 3111(d), by inserting “or sec-*  
 4                   *tion 9832” after “chapter 37”; and*

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

7                   ***TITLE IV—HUMAN CAPITAL***  
 8                   ***PERFORMANCE FUND***

9           ***SEC. 401. HUMAN CAPITAL PERFORMANCE FUND.***

10           (a) *IN GENERAL.—Subpart D of part III of title 5,*  
 11           *United States Code, is amended by inserting after chapter*  
 12           *53 the following:*

13                   ***“CHAPTER 54—HUMAN CAPITAL***  
 14                   ***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.*

15           ***“§ 5401. Purpose***

16                   *“The purpose of this chapter is to promote, through*  
 17                   *the creation of a Human Capital Performance Fund, great-*  
 18                   *er performance in the Federal Government. Monies from the*  
 19                   *Fund will be used to reward agencies’ highest performing*  
 20                   *and most valuable employees. This Fund will offer Federal*

1 *managers a new tool to recognize employee performance*  
2 *that is critical to the achievement of agency missions.*

3 **“§ 5402. Definitions**

4 *“For the purpose of this chapter—*

5 *“(1) ‘agency’ means an Executive agency under*  
6 *section 105, but does not include the General Account-*  
7 *ing Office;*

8 *“(2) ‘employee’ includes—*

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

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

13 *“(C) a category of employees included by*  
14 *the Office of Personnel Management following the*  
15 *review of an agency plan under section*  
16 *5403(b)(1);*

17 *but does not include—*

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

23 *“(ii) a member of the Senior Executive*  
24 *Service paid under subchapter VIII of chapter*  
25 *53, or an equivalent system;*

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

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

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

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

11          “(3) ‘Office’ means the Office of Personnel Man-  
12          agement.

13       **“§ 5403. Human Capital Performance Fund**

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

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

21          “(B)(i) After the reduction for training required under  
22          section 5408, ninety percent of the remaining amount ap-  
23          propriated to the Fund may be allocated by the Office to  
24          the agencies. Of the amount to be allocated, an agency’s pro

1 *rata distribution may not exceed its pro rata share of Exec-*  
2 *utive branch payroll.*

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

7       “(C)(i) *After the reduction for training under section*  
8 *5408, ten percent of the remaining amount appropriated*  
9 *to the Fund, as well as the amount of the pro rata share*  
10 *not distributed because of an agency’s failure to submit a*  
11 *satisfactory plan, shall be allocated among agencies with*  
12 *exceptionally high-quality plans.*

13       “(ii) *An agency with an exceptionally high-quality*  
14 *plan is eligible to receive an additional distribution in ad-*  
15 *dition to its full pro rata distribution.*

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

19 **“§ 5404. Human capital performance payments**

20       “(a)(1) *Notwithstanding any other provision of law,*  
21 *the Office may authorize an agency to provide human cap-*  
22 *ital performance payments to individual employees based*  
23 *on exceptional performance contributing to the achievement*  
24 *of the agency mission.*

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

6       “(b)(1) *A human capital performance payment pro-*  
7 *vided to an individual employee from the Fund, in any*  
8 *year, shall not exceed 10 percent of the employee’s rate of*  
9 *basic pay.*

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

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

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

1       “(d)(1) *An agency may finance initial human capital*  
2 *performance payments using monies from the Human Cap-*  
3 *ital Performance Fund, as available.*

4       “(2) *In subsequent years, continuation of previously*  
5 *awarded human capital performance payments shall be fi-*  
6 *nanced from other agency funds available for salaries and*  
7 *expenses.*

8       **“§ 5405. Regulations**

9       *“The Office shall issue such regulations as it deter-*  
10 *mines to be necessary for the administration of this chapter,*  
11 *including the administration of the Fund. The Office’s regu-*  
12 *lations shall include criteria governing—*

13               “(1) *an agency plan under section 5406;*

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

16               “(3) *the nature, extent, duration, and adjust-*  
17 *ment of, and approval processes for, payments to in-*  
18 *dividual employees under this chapter;*

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

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



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

4   **“§ 5406. Agency plan**

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

7           “(1) develop a plan that incorporates the fol-  
8           lowing elements:

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

11                  “(B) a fair, credible, and transparent em-  
12                  ployee performance appraisal system;

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

16                  “(D) a means for ensuring employee in-  
17                  volvement in the design and implementation of  
18                  the system;

19                  “(E) adequate training and retraining for  
20                  supervisors, managers, and employees in the im-  
21                  plementation and operation of the pay-for-per-  
22                  formance system;

23                  “(F) a process for ensuring ongoing per-  
24                  formance feedback and dialogue between super-  
25                  visors, managers, and employees throughout the

1           *appraisal period, and setting timetables for re-*  
2           *view;*

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

6           “(H) *a means for ensuring that adequate*  
7           *agency resources are allocated for the design, im-*  
8           *plementation, and administration of the pay-for-*  
9           *performance system;*

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

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

14          “(4) *provide such information to the Office re-*  
15          *garding payments made and use of funds received*  
16          *under this section as the Office may specify.*

17          “(b) *The Office, in consultation with the Chief Human*  
18          *Capital Officers Council, shall review and approve an agen-*  
19          *cy’s plan before the agency is eligible to receive an alloca-*  
20          *tion of funding from the Office.*

21          “(c) *The Chief Human Capital Officers Council shall*  
22          *include in its annual report to Congress under section*  
23          *1303(d) of the Homeland Security Act of 2002 an evalua-*  
24          *tion of the formulation and implementation of agency per-*  
25          *formance management systems.*

1 **“§ 5407. Nature of payment**

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

7 **“§ 5408. Appropriations**

8       *“There is authorized to be appropriated \$500,000,000*  
 9 *for fiscal year 2004, and, for each subsequent fiscal year,*  
 10 *such sums as may be necessary to carry out the provisions*  
 11 *of this chapter. In the first year of implementation, up to*  
 12 *10 percent of the amount appropriated to the Fund shall*  
 13 *be available to participating agencies to train supervisors,*  
 14 *managers, and other individuals involved in the appraisal*  
 15 *process on using performance management systems to make*  
 16 *meaningful distinctions in employee performance and on*  
 17 *the use of the Fund.”.*

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

*“54. Human Capital Performance Fund ..... 5401”.*

21       **TITLE V—MISCELLANEOUS**

22 **SEC. 501. PROHIBITION ON USE OF QUOTAS.**

23       **(a) IN GENERAL.**—*After the date of enactment of this*  
 24 *Act, the Office of Management and Budget may not estab-*  
 25 *lish, apply, or enforce any numerical goal, target, or quota*

1 *for subjecting the employees of a department or agency of*  
2 *the Government to public-private competitions or con-*  
3 *verting such employees or the work performed by such em-*  
4 *ployees to contractor performance under Office of Manage-*  
5 *ment and Budget Circular A-76 or any other administra-*  
6 *tive regulation, directive, or policy, unless the goal, target,*  
7 *or quota is based on considered research and sound analysis*  
8 *of past activities and is consistent with the stated mission*  
9 *of the department or agency.*

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

11 *(1) otherwise affect the implementation or en-*  
12 *forcement of the Government Performance and Results*  
13 *Act of 1993 (107 Stat. 285); or*

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



**Union Calendar No. 131**

108TH CONGRESS  
1ST SESSION

**H. R. 1836**

**[Report No. 108-116, Part I]**

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**A BILL**

To make changes to certain areas of the Federal civil service in order to improve the flexibility and competitiveness of Federal human resources management.

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JULY 25, 2003

Committees on Armed Services, Science, and Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed