

Union Calendar No. 454

108TH CONGRESS
2D SESSION**S. 129****[Report No. 108-733]**

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 2004

Referred to the Committee on Government Reform

OCTOBER 5, 2004

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of referred bill, see copy of bill as referred in the House of Representatives on April
20, 2004]

AN ACTTo provide for reform relating to Federal employment, and
for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the*
5 *“Federal Workforce Flexibility Act of 2004”.*

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

Sec. 1. Short title; table of contents.

**TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL
MANAGEMENT**

Sec. 101. Recruitment, relocation, and retention bonuses.

Sec. 102. Streamlined critical pay authority.

**TITLE II—REFORMS RELATING TO FEDERAL EMPLOYEE CAREER
DEVELOPMENT AND BENEFITS**

Subtitle A—General Provisions

Sec. 201. Agency training.

Sec. 202. Annual leave enhancements.

Sec. 203. Compensatory time off for travel.

Subtitle B—Provisions Relating to Retirement

Sec. 211. Civil Service Retirement System computation for part-time service.

Sec. 212. Retirement service credit for cadet or midshipman service.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

Sec. 301. Corrections relating to pay administration.

Sec. 302. Technical corrections.

1 **TITLE I—REFORMS RELATING TO**
2 **FEDERAL HUMAN CAPITAL**
3 **MANAGEMENT**

4 **SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION**
5 **BONUSES.**

6 (a) *BONUSES.*—

7 (1) *IN GENERAL.*—Chapter 57 of title 5, United
8 States Code, is amended by striking sections 5753 and
9 5754 and inserting the following:

10 **“§ 5753. Recruitment and relocation bonuses**

11 “(a)(1) *This section may be applied to—*

12 “(A) *employees covered by the General Schedule*
13 *pay system established under subchapter III of chap-*
14 *ter 53; and*

1 “(B) employees in a category approved by the
2 Office of Personnel Management at the request of the
3 head of an Executive agency.

4 “(2) A bonus may not be paid under this section to
5 an individual who is appointed to or who holds—

6 “(A) a position to which an individual is ap-
7 pointed by the President, by and with the advice and
8 consent of the Senate;

9 “(B) a position in the Senior Executive Service
10 as a noncareer appointee (as such term is defined
11 under section 3132(a)); or

12 “(C) a position which has been excepted from the
13 competitive service by reason of its confidential, pol-
14 icy-determining, policy-making, or policy-advocating
15 character.

16 “(3) In this section, the term ‘employee’ has the mean-
17 ing given that term in section 2105, except that such term
18 also includes an employee described in subsection (c) of that
19 section.

20 “(b) The Office of Personnel Management may author-
21 ize the head of an agency to pay a bonus under this section
22 to an individual only if—

23 “(1) the position to which such individual is ap-
24 pointed (as described in paragraph (2)(A)) or to
25 which such individual moves or must relocate (as de-

1 *scribed in paragraph (2)(B)) is likely to be difficult*
2 *to fill in the absence of such a bonus; and*

3 *“(2) the individual—*

4 *“(A) is newly appointed as an employee of*
5 *the Federal Government; or*

6 *“(B)(i) is currently employed by the Fed-*
7 *eral Government; and*

8 *“(ii)(I) moves to a new position in the same*
9 *geographic area under circumstances described*
10 *in regulations of the Office; or*

11 *“(II) must relocate to accept a position in*
12 *a different geographic area.*

13 *“(c)(1) Payment of a bonus under this section shall*
14 *be contingent upon the employee entering into a written*
15 *service agreement to complete a period of employment with*
16 *the agency, not longer than 4 years. The Office may, by*
17 *regulation, prescribe a minimum service period for pur-*
18 *poses of this section.*

19 *“(2)(A) The agreement shall include—*

20 *“(i) the commencement and termination dates of*
21 *the required service period (or provisions for the de-*
22 *termination thereof);*

23 *“(ii) the amount of the bonus;*

24 *“(iii) the method of payment; and*

1 “(iv) other terms and conditions under which the
2 bonus is payable, subject to the requirements of this
3 section and regulations of the Office.

4 “(B) The terms and conditions for paying a bonus,
5 as specified in the service agreement, shall include—

6 “(i) the conditions under which the agreement
7 may be terminated before the agreed-upon service pe-
8 riod has been completed; and

9 “(ii) the effect of the termination.

10 “(C) The required service period shall commence upon
11 the commencement of service with the agency or movement
12 to a new position or geographic area, as applicable, unless
13 the service agreement provides for a later commencement
14 date in circumstances and to the extent allowable under reg-
15 ulations of the Office, such as when there is an initial pe-
16 riod of formal basic training.

17 “(d)(1) Except as provided in subsection (e), a bonus
18 under this section shall not exceed 25 percent of the annual
19 rate of basic pay of the employee at the beginning of the
20 service period multiplied by the number of years (including
21 a fractional part of a year, as determined under regulations
22 of the Office) in the required service period of the employee
23 involved.

24 “(2) A bonus under this section may be paid as an
25 initial lump sum, in installments, as a final lump sum

1 upon the completion of the full period of service required
2 by the agreement, or in a combination of these forms of pay-
3 ment.

4 “(3) A bonus under this section is not part of the basic
5 pay of an employee for any purpose.

6 “(4) Under regulations of the Office, a recruitment
7 bonus under this section may be paid to an eligible indi-
8 vidual before that individual enters on duty.

9 “(e) The Office may authorize the head of an agency
10 to waive the limitation under subsection (d)(1) based on
11 a critical agency need, subject to regulations prescribed by
12 the Office. Under such a waiver, the maximum bonus allow-
13 able shall—

14 “(1) be equal to the maximum that would be de-
15 termined if subsection (d)(1) were applied by sub-
16 stituting ‘50’ for ‘25’; but

17 “(2) in no event exceed 100 percent of the annual
18 rate of basic pay of the employee at the beginning of
19 the service period.

20 Nothing in this subsection shall be considered to permit the
21 waiver of any requirement under subsection (c).

22 “(f) The Office shall require that an agency establish
23 a plan for the payment of recruitment bonuses before pay-
24 ing any such bonuses, and a plan for the payment of reloca-

1 *tion bonuses before paying any such bonuses, subject to reg-*
2 *ulations prescribed by the Office.*

3 “(g) *The Office may prescribe regulations to carry out*
4 *this section, including regulations relating to the repayment*
5 *of a bonus under this section in appropriate circumstances*
6 *when the agreed-upon service period has not been completed.*

7 **“§ 5754. Retention bonuses**

8 “(a)(1) *This section may be applied to—*

9 “(A) *employees covered by the General Schedule*
10 *pay system established under subchapter III of chap-*
11 *ter 53; and*

12 “(B) *employees in a category approved by the*
13 *Office of Personnel Management at the request of the*
14 *head of an Executive agency.*

15 “(2) *A bonus may not be paid under this section to*
16 *an individual who is appointed to or who holds—*

17 “(A) *a position to which an individual is ap-*
18 *pointed by the President, by and with the advice and*
19 *consent of the Senate;*

20 “(B) *a position in the Senior Executive Service*
21 *as a noncareer appointee (as such term is defined*
22 *under section 3132(a)); or*

23 “(C) *a position which has been excepted from the*
24 *competitive service by reason of its confidential, pol-*

1 *icy-determining, policy-making, or policy-advocating*
2 *character.*

3 “(3) *In this section, the term ‘employee’ has the mean-*
4 *ing given that term in section 2105, except that such term*
5 *also includes an employee described in subsection (c) of that*
6 *section.*

7 “(b) *The Office of Personnel Management may author-*
8 *ize the head of an agency to pay a retention bonus to an*
9 *employee if—*

10 “(1) *the unusually high or unique qualifications*
11 *of the employee or a special need of the agency for the*
12 *employee’s services makes it essential to retain the*
13 *employee; and*

14 “(2) *the agency determines that, in the absence*
15 *of a retention bonus, the employee would be likely to*
16 *leave—*

17 “(A) *the Federal service; or*

18 “(B) *for a different position in the Federal*
19 *service under conditions described in regulations*
20 *of the Office.*

21 “(c) *The Office may authorize the head of an agency*
22 *to pay retention bonuses to a group of employees in 1 or*
23 *more categories of positions in 1 or more geographic areas,*
24 *subject to the requirements of subsection (b)(1) and regula-*
25 *tions prescribed by the Office, if there is a high risk that*

1 *a significant portion of employees in the group would be*
2 *likely to leave in the absence of retention bonuses.*

3 “(d)(1) *Payment of a retention bonus is contingent*
4 *upon the employee entering into a written service agreement*
5 *with the agency to complete a period of employment with*
6 *the agency.*

7 “(2)(A) *The agreement shall include—*

8 “(i) *the length of the required service period;*

9 “(ii) *the amount of the bonus;*

10 “(iii) *the method of payment; and*

11 “(iv) *other terms and conditions under which the*
12 *bonus is payable, subject to the requirements of this*
13 *section and regulations of the Office.*

14 “(B) *The terms and conditions for paying a bonus,*
15 *as specified in the service agreement, shall include—*

16 “(i) *the conditions under which the agreement*
17 *may be terminated before the agreed-upon service pe-*
18 *riod has been completed; and*

19 “(ii) *the effect of the termination.*

20 “(3)(A) *Notwithstanding paragraph (1), a written*
21 *service agreement is not required if the agency pays a reten-*
22 *tion bonus in biweekly installments and sets the installment*
23 *payment at the full bonus percentage rate established for*
24 *the employee with no portion of the bonus deferred.*

1 “(B) If an agency pays a retention bonus in accord-
2 ance with subparagraph (A) and makes a determination
3 to terminate the payments, the agency shall provide written
4 notice to the employee of that determination. Except as pro-
5 vided in regulations of the Office, the employee shall con-
6 tinue to be paid the retention bonus through the end of the
7 pay period in which such written notice is provided.

8 “(4) A retention bonus for an employee may not be
9 based on any period of such service which is the basis for
10 a recruitment or relocation bonus under section 5753.

11 “(e)(1) Except as provided in subsection (f), a reten-
12 tion bonus, which shall be stated as a percentage of the em-
13 ployee’s basic pay for the service period associated with the
14 bonus, may not exceed—

15 “(A) 25 percent of the employee’s basic pay if
16 paid under subsection (b); or

17 “(B) 10 percent of an employee’s basic pay if
18 paid under subsection (c).

19 “(2)(A) A retention bonus may be paid to an employee
20 in installments after completion of specified periods of serv-
21 ice or in a single lump sum at the end of the full period
22 of service required by the agreement.

23 “(B) An installment payment is derived by multi-
24 plying the amount of basic pay earned in the installment

1 *period by a percentage not to exceed the bonus percentage*
2 *rate established for the employee.*

3 “(C) *If the installment payment percentage established*
4 *for the employee is less than the bonus percentage rate estab-*
5 *lished for the employee, the accrued but unpaid portion of*
6 *the bonus is payable as part of the final installment pay-*
7 *ment to the employee after completion of the full service pe-*
8 *riod under the terms of the service agreement.*

9 “(D) *For purposes of this paragraph, the bonus per-*
10 *centage rate established for an employee means the bonus*
11 *percentage rate established for such employee in accordance*
12 *with paragraph (1) or subsection (f), as the case may be.*

13 “(3) *A retention bonus is not part of the basic pay*
14 *of an employee for any purpose.*

15 “(f) *Upon the request of the head of an agency, the*
16 *Office may waive the limit established under subsection*
17 *(e)(1) and permit the agency head to pay an otherwise eligi-*
18 *ble employee or category of employees retention bonuses of*
19 *up to 50 percent of basic pay, based on a critical agency*
20 *need.*

21 “(g) *The Office shall require that, before paying any*
22 *bonuses under this section, an agency shall establish a plan*
23 *for the payment of any such bonuses, subject to regulations*
24 *prescribed by the Office.*

1 “(h) The Office may prescribe regulations to carry out
2 this section.”.

3 (2) *CLERICAL AMENDMENT.*—The table of sec-
4 tions for chapter 57 of title 5, United States Code, is
5 amended by striking the item relating to section 5754
6 and inserting the following:

“5754. Retention bonuses.”.

7 (3) *SENSE OF CONGRESS.*—It is the sense of the
8 Congress that the Director of the Office of Personnel
9 Management—

10 (A) should, each time a bonus is paid under
11 the amendment made by paragraph (1) to re-
12 cruit or relocate a Federal employee from one
13 Government agency to another within the same
14 geographic area or to retain a Federal employee
15 who might otherwise leave one Government agen-
16 cy for another within the same geographic area,
17 be notified of that payment within 60 days after
18 the date on which such bonus is paid; and

19 (B) should monitor the payment of such bo-
20 nuses (in the circumstances described in sub-
21 paragraph (A)) to ensure that they are an effec-
22 tive use of the Federal Government’s funds and
23 have not adversely affected the ability of those
24 Government agencies that lost employees to other

1 *Government agencies (in such circumstances) to*
2 *carry out their mission.*

3 **(b) RELOCATION PAYMENTS.**—*Section 407 of the Fed-*
4 *eral Employees Pay Comparability Act of 1990 (5 U.S.C.*
5 *5305 note; 104 Stat. 1467) is repealed.*

6 **(c) REPORTS.**—

7 **(1) RECRUITMENT AND RELOCATION BONUSES.**—

8 **(A) IN GENERAL.**—*The Office of Personnel*
9 *Management shall submit to the Committee on*
10 *Governmental Affairs of the Senate and the*
11 *Committee on Government Reform of the House*
12 *of Representatives annually, for each of the first*
13 *5 years during which section 5753 of title 5,*
14 *United States Code (as amended by subsection*
15 *(a)(1)) is in effect, a report on the operation of*
16 *such section.*

17 **(B) CONTENTS.**—*Each report submitted*
18 *under this paragraph shall include, with respect*
19 *to the period covered by such report, a descrip-*
20 *tion of how the authority to pay bonuses under*
21 *the section of title 5, United States Code, referred*
22 *to in subparagraph (A) was used by the respec-*
23 *tive agencies, including, with respect to each*
24 *such agency and each type of bonus under such*
25 *section—*

1 (i) *the number and dollar-amount of*
2 *bonuses paid—*

3 (I) *to individuals holding posi-*
4 *tions within each pay grade, pay level,*
5 *or other pay classification; and*

6 (II) *if applicable, to individuals*
7 *who moved between positions that were*
8 *in different agencies but the same geo-*
9 *graphic area (including the names of*
10 *the agencies involved); and*

11 (ii) *a determination of the extent to*
12 *which such bonuses furthered the purposes of*
13 *such section.*

14 (2) *RETENTION BONUSES.—*

15 (A) *IN GENERAL.—The Office of Personnel*
16 *Management shall submit to the Committee on*
17 *Governmental Affairs of the Senate and the*
18 *Committee on Government Reform of the House*
19 *of Representatives annually, for each of the first*
20 *5 years during which section 5754 of title 5,*
21 *United States Code (as amended by subsection*
22 *(a)(1)) is in effect, a report on the operation of*
23 *such section.*

24 (B) *CONTENTS.—Each report submitted*
25 *under this paragraph shall include, with respect*

1 to the period covered by such report, a descrip-
2 tion of how the authority to pay bonuses under
3 the section of title 5, United States Code, referred
4 to in subparagraph (A) was used by the respec-
5 tive agencies, including, with respect to each
6 such agency—

7 (i) the number and dollar-amount of
8 bonuses paid—

9 (I) to individuals holding posi-
10 tions within each pay grade, pay level,
11 or other pay classification; and

12 (II) if applicable, to prevent indi-
13 viduals from moving between positions
14 that were in different agencies but the
15 same geographic area (including the
16 names of the agencies involved); and

17 (ii) a determination of the extent to
18 which such bonuses furthered the purposes of
19 such section.

20 (d) *EFFECTIVE DATE AND APPLICATION.*—

21 (1) *EFFECTIVE DATE.*—*Except as provided*
22 *under paragraphs (2) and (3), this section shall take*
23 *effect on the first day of the first applicable pay pe-*
24 *riod beginning on or after the 180th day after the*
25 *date of the enactment of this Act.*

1 (2) *APPLICATION TO AGREEMENTS.*—A recruit-
2 ment or relocation bonus service agreement that was
3 authorized under section 5753 of title 5, United
4 States Code, before the effective date under paragraph
5 (1) shall continue, until its expiration, to be subject
6 to such section as in effect on the day before such ef-
7 fective date.

8 (3) *APPLICATION TO ALLOWANCES.*—Payment of
9 a retention allowance that was authorized under sec-
10 tion 5754 of title 5, United States Code, before the ef-
11 fective date under paragraph (1) shall continue, sub-
12 ject to such section as in effect on the day before such
13 effective date, until the retention allowance is reau-
14 thorized or terminated (but no longer than 1 year
15 after such effective date).

16 **SEC. 102. STREAMLINED CRITICAL PAY AUTHORITY.**

17 Section 5377 of title 5, United States Code, is amend-
18 ed—

19 (1) by striking “Office of Personnel Manage-
20 ment” each place it appears and inserting “Office of
21 Management and Budget”;

22 (2) by striking “Office of Management and
23 Budget” each place it appears and inserting “Office
24 of Personnel Management”;

1 (3) in subsection (g), by striking “prescribing
2 regulations under this section or”; and

3 (4) in subsection (h), by striking “Committee on
4 Post Office and Civil Service” and inserting “Com-
5 mittee on Government Reform”.

6 **TITLE II—REFORMS RELATING**
7 **TO FEDERAL EMPLOYEE CA-**
8 **REER DEVELOPMENT AND**
9 **BENEFITS**

10 **Subtitle A—General Provisions**

11 **SEC. 201. AGENCY TRAINING.**

12 (a) *TRAINING TO ACCOMPLISH PERFORMANCE PLANS*
13 *AND STRATEGIC GOALS.*—Section 4103 of title 5, United
14 States Code, is amended by adding at the end the following:

15 “(c) The head of each agency shall, on a regular
16 basis—

17 “(1) evaluate each program or plan established,
18 operated, or maintained under subsection (a) with re-
19 spect to accomplishing specific performance plans and
20 strategic goals in performing the agency mission; and

21 “(2) modify such program or plan as needed to
22 accomplish such plans and goals.”.

23 (b) *SPECIFIC TRAINING PROGRAMS.*—

1 (1) *IN GENERAL.*—Chapter 41 of title 5, United
 2 States Code, is amended by adding after section 4120
 3 the following:

4 **“§4121. Specific training programs**

5 *“In consultation with the Office of Personnel Manage-*
 6 *ment, the head of each agency shall establish—*

7 *“(1) a comprehensive management succession*
 8 *program to provide training to employees to develop*
 9 *managers for the agency; and*

10 *“(2) a program to provide training to managers*
 11 *on actions, options, and strategies a manager may*
 12 *use in—*

13 *“(A) relating to employees with unaccept-*
 14 *able performance;*

15 *“(B) mentoring employees and improving*
 16 *employee performance and productivity; and*

17 *“(C) conducting employee performance ap-*
 18 *praisals.”.*

19 (2) *CLERICAL AMENDMENT.*—The table of sec-
 20 tions for chapter 41 of title 5, United States Code, is
 21 amended by adding at the end the following:

“4121. Specific training programs.”.

22 **SEC. 202. ANNUAL LEAVE ENHANCEMENTS.**

23 (a) *CREDITABILITY OF PRIOR NONGOVERNMENTAL*
 24 *SERVICE FOR PURPOSES OF DETERMINING RATE OF LEAVE*
 25 *ACCRUAL.*—

1 (1) *IN GENERAL.*—Section 6303 of title 5,
2 *United States Code, is amended by adding at the end*
3 *the following:*

4 “(e)(1) *Not later than 180 days after the date of the*
5 *enactment of this subsection, the Office of Personnel Man-*
6 *agement shall prescribe regulations under which, for pur-*
7 *poses of determining years of service under subsection (a),*
8 *credit shall, in the case of a newly appointed employee, be*
9 *given for any prior service of such employee that would not*
10 *otherwise be creditable for such purposes, if—*

11 “(A) *such service—*

12 “(i) *was performed in a position the*
13 *duties of which directly relate to the duties*
14 *of the position to which such employee is so*
15 *appointed; and*

16 “(ii) *meets such other requirements as*
17 *the Office may prescribe; and*

18 “(B) *in the judgment of the head of the appoint-*
19 *ing agency, the application of this subsection is nec-*
20 *essary in order to achieve an important agency mis-*
21 *sion or performance goal.*

22 “(2) *Service described in paragraph (1)—*

23 “(A) *shall be creditable, for the purposes de-*
24 *scribed in paragraph (1), as of the effective date of the*
25 *employee’s appointment; and*

1 “(B) shall not thereafter cease to be so creditable,
2 unless the employee fails to complete a full year of
3 continuous service with the agency.

4 “(3) An employee shall not be eligible for the applica-
5 tion of paragraph (1) on the basis of any appointment if,
6 within 90 days before the effective date of such appointment,
7 such employee has held any position in the civil service.”.

8 (2) *CONFORMING AMENDMENT.*—The second sen-
9 tence of section 6303(a) of title 5, United States Code,
10 is amended by striking the period and inserting “,
11 and for all service which is creditable by virtue of
12 subsection (e).”.

13 (b) *OTHER ANNUAL LEAVE ENHANCEMENTS.*—Section
14 6303 of title 5, United States Code, is amended by adding
15 after subsection (e) (as added by subsection (a)) the fol-
16 lowing:

17 “(f) Notwithstanding any other provision of this sec-
18 tion, the rate of accrual of annual leave under subsection
19 (a) shall be 1 day for each full biweekly pay period in the
20 case of any employee who holds a position which is subject
21 to—

22 “(1) section 5376 or 5383; or

23 “(2) a pay system equivalent to either of the
24 foregoing, as determined by the Office of Personnel
25 Management.”.

1 (c) *APPLICABILITY.*—None of the amendments made by
 2 subsection (a) shall apply in the case of any employee hold-
 3 ing a position pursuant to an appointment made before the
 4 effective date of the regulations implementing such amend-
 5 ments.

6 **SEC. 203. COMPENSATORY TIME OFF FOR TRAVEL.**

7 (a) *IN GENERAL.*—Subchapter V of chapter 55 of title
 8 5, United States Code, is amended by adding at end the
 9 following:

10 **“§ 5550b. Compensatory time off for travel**

11 “(a) Notwithstanding section 5542(b)(2), each hour
 12 spent by an employee in travel status away from the official
 13 duty station of the employee, that is not otherwise compen-
 14 sable, shall be treated as an hour of work or employment
 15 for purposes of calculating compensatory time off.

16 “(b) An employee who has any hours treated as hours
 17 of work or employment for purposes of calculating compen-
 18 satory time under subsection (a), shall not be entitled to
 19 payment for any such hours that are unused as compen-
 20 satory time.

21 “(c) Not later than 30 days after the date of enactment
 22 of this section, the Office of Personnel Management shall
 23 prescribe regulations to implement this section.”.

24 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
 25 table of sections for chapter 55 of title 5, United States

1 Code, is amended by inserting after the item relating to
2 section 5550a the following:

“5550b. Compensatory time off for travel.”.

3 ***Subtitle B—Provisions Relating to***
4 ***Retirement***

5 ***SEC. 211. CIVIL SERVICE RETIREMENT SYSTEM COMPUTA-***
6 ***TION FOR PART-TIME SERVICE.***

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

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

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

13 “(ii) subparagraph (B) of such paragraph shall
14 apply with respect to that portion of any annuity
15 which is attributable to service performed on or after
16 April 7, 1986.

17 “(B) This paragraph 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. 212. RETIREMENT SERVICE CREDIT FOR CADET OR***
22 ***MIDSHIPMAN SERVICE.***

23 (a) *CIVIL SERVICE RETIREMENT SYSTEM.*—Section
24 8331(13) of title 5, United States Code, is amended by strik-
25 ing “or” at the end of subparagraph (B), by adding “or”

1 *at the end of subparagraph (C), and by inserting after sub-*
2 *paragraph (C) the following:*

3 “(D) *as a cadet at the United States Mili-*
4 *tary Academy, the United States Air Force*
5 *Academy, or the United States Coast Guard*
6 *Academy, or as a midshipman at the United*
7 *States Naval Academy;”.*

8 (b) *FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—*
9 *Section 8401(31) of title 5, United States Code, is amended*
10 *by striking “or” at the end of subparagraph (B), by adding*
11 *“or” at the end of subparagraph (C), and by inserting after*
12 *subparagraph (C) the following:*

13 “(D) *as a cadet at the United States Mili-*
14 *tary Academy, the United States Air Force*
15 *Academy, or the United States Coast Guard*
16 *Academy, or as a midshipman at the United*
17 *States Naval Academy;”.*

18 (c) *APPLICABILITY.—The amendments made by this*
19 *section shall apply with respect to—*

20 (1) *any annuity entitlement to which is based on*
21 *a separation from service occurring before, on, or*
22 *after the date of the enactment of this Act; and*

23 (2) *any period of service, described in the*
24 *amendment made by subsection (a) or (b), which oc-*

1 *curs before, on, or after the date of the enactment of*
 2 *this Act.*

3 **TITLE III—PROVISIONS RELAT-**
 4 **ING TO PAY ADMINISTRATION**

5 **SEC. 301. CORRECTIONS RELATING TO PAY ADMINISTRA-**
 6 **TION.**

7 *(a) IN GENERAL.—Chapter 53 of title 5, United States*
 8 *Code, is amended—*

9 *(1) in section 5302, by striking paragraph (8)*
 10 *and inserting the following:*

11 *“(8) the term ‘rates of pay under the General*
 12 *Schedule’, ‘rates of pay for the General Schedule’, or*
 13 *‘scheduled rates of basic pay’ means the rates of basic*
 14 *pay under the General Schedule as established by sec-*
 15 *tion 5332, excluding pay under section 5304 and any*
 16 *other additional pay of any kind; and”;*

17 *(2) in section 5305—*

18 *(A) by striking subsection (a) and inserting*
 19 *the following:*

20 *“(a)(1) Whenever the Office of Personnel Management*
 21 *finds that the Government’s recruitment or retention efforts*
 22 *with respect to 1 or more occupations in 1 or more areas*
 23 *or locations are, or are likely to become, significantly*
 24 *handicapped due to any of the circumstances described in*
 25 *subsection (b), the Office may establish for the areas or loca-*

1 tions involved, with respect to individuals in positions paid
2 under any of the pay systems referred to in subsection (c),
3 higher minimum rates of pay for 1 or more grades or levels,
4 occupational groups, series, classes, or subdivisions thereof,
5 and may make corresponding increases in all rates of the
6 pay range for each such grade or level. However, a min-
7 imum rate so established may not exceed the maximum rate
8 of basic pay (excluding any locality-based comparability
9 payment under section 5304 or similar provision of law)
10 for the grade or level by more than 30 percent, and no rate
11 may be established under this section in excess of the rate
12 of basic pay payable for level IV of the Executive Schedule.
13 In the case of individuals not subject to the provisions of
14 this title governing appointment in the competitive service,
15 the President may designate another agency to authorize
16 special rates under this section.

17 “(2) The head of an agency may determine that a cat-
18 egory of employees of the agency will not be covered by a
19 special rate authorization established under this section.
20 The head of an agency shall provide written notice to the
21 Office of Personnel Management (or other agency designated
22 by the President to authorize special rates under the last
23 sentence of paragraph (1)) which identifies the specific cat-
24 egory or categories of employees that will not be covered
25 by special rates authorized under this section. If the head

1 *of an agency removes a category of employees from coverage*
 2 *under a special rate authorization after that authorization*
 3 *takes effect, the loss of coverage will take effect on the first*
 4 *day of the first pay period after the date of the notice.”;*

5 *(B) in subsection (b), by striking paragraph*
 6 *(4) and inserting the following:*

7 *“(4) any other circumstances which the Office of*
 8 *Personnel Management (or such other agency as the*
 9 *President may under the last sentence of subsection*
 10 *(a)(1) designate) considers appropriate.”;*

11 *(C) in subsection (d)—*

12 *(i) by striking “President” and insert-*
 13 *ing “Office of Personnel Management”; and*

14 *(ii) by striking “or by such agency as*
 15 *he may designate” and inserting “(or by*
 16 *such other agency as the President may des-*
 17 *ignate under the last sentence of subsection*
 18 *(a)(1))”;*

19 *(D) in subsection (e), by striking “basic*
 20 *pay” and inserting “pay”;*

21 *(E) by striking subsection (f) and inserting*
 22 *the following:*

23 *“(f) When a schedule of special rates established under*
 24 *this section is adjusted under subsection (d), a covered em-*
 25 *ployee’s special rate will be adjusted in accordance with*

1 *conversion rules prescribed by the Office of Personnel Man-*
 2 *agement (or by such other agency as the President may*
 3 *under the last sentence of subsection (a)(1) designate).”;*

4 (F) *in subsection (g)(1)—*

5 (i) *by striking “basic pay” and insert-*
 6 *ing “pay”; and*

7 (ii) *by striking “President (or his des-*
 8 *ignated agency)” and inserting “Office of*
 9 *Personnel Management (or such other agen-*
 10 *cy as the President may under the last sen-*
 11 *tence of subsection (a)(1) designate)”;*

12 (G) *by striking subsection (h) and inserting*
 13 *the following:*

14 “(h) *An employee shall not for any purpose be consid-*
 15 *ered to be entitled to a rate of pay established under this*
 16 *section with respect to any period for which such employee*
 17 *is entitled to a higher rate of basic pay under any other*
 18 *provision of law. For purposes of this subsection, the term*
 19 *‘basic pay’ includes any applicable locality-based com-*
 20 *parability payment under section 5304 or similar provision*
 21 *of law.”; and*

22 (H) *by adding at the end the following:*

23 “(i) *If an employee who is receiving a rate of pay*
 24 *under this section becomes subject, by virtue of moving to*
 25 *a new official duty station, to a different pay schedule, such*

1 *employee's new rate of pay shall be initially established*
2 *under conversion rules prescribed by the Office of Personnel*
3 *Management (or such other agency as the President may*
4 *under the last sentence of subsection (a)(1) designate) in*
5 *conformance with the following:*

6 “(1) *First, determine the rate of pay to which*
7 *such employee would be entitled at the new official*
8 *duty station based on such employee's position, grade,*
9 *and step (or relative position in the rate range) before*
10 *the move.*

11 “(2) *Then, if (in addition to the change in pay*
12 *schedule) the move also involves any personnel action*
13 *or other change requiring a rate adjustment under*
14 *any other provision of law, rule, or regulation, apply*
15 *the applicable rate adjustment provisions, treating the*
16 *rate determined under paragraph (1) as if it were the*
17 *rate last received by the employee before the rate ad-*
18 *justment.*

19 “(j) *A rate determined under a schedule of special rates*
20 *established under this section shall be considered to be part*
21 *of basic pay for purposes of subchapter III of chapter 83,*
22 *chapter 84, chapter 87, subchapter V of chapter 55, and*
23 *section 5941, and for such other purposes as may be ex-*
24 *pressly provided for by law or as the Office of Personnel*
25 *Management may by regulation prescribe.”;*

1 (3) in section 5334—

2 (A) in subsection (b), by adding at the end

3 the following:

4 *“If an employee’s rate after promotion or transfer is greater*
5 *than the maximum rate of basic pay for the employee’s*
6 *grade, that rate shall be treated as a retained rate under*
7 *section 5363. The Office of Personnel Management shall pre-*
8 *scribe by regulation the circumstances under which and the*
9 *extent to which special rates under section 5305 (or similar*
10 *provision of law) or locality-adjusted rates under section*
11 *5304 (or similar provision of law) are considered to be basic*
12 *pay in applying this subsection.”; and*

13 (B) by adding at the end the following:

14 *“(g) In the case of an employee who—*

15 *“(1) moves to a new official duty station, and*

16 *“(2) by virtue of such move, becomes subject to*
17 *a different pay schedule,*

18 *any rate adjustment under the preceding provisions of this*
19 *section, with respect to such employee in connection with*
20 *such move, shall be made—*

21 *“(A) first, by determining the rate of pay to*
22 *which such employee would be entitled at the new offi-*
23 *cial duty station based on such employee’s position,*
24 *grade, and step (or relative position in the rate*
25 *range) before the move, and*

1 “(B) then, by applying the provisions of this sec-
2 tion that would otherwise apply (if any), treating the
3 rate determined under subparagraph (A) as if it were
4 the rate last received by the employee before the rate
5 adjustment.”;

6 (4) in section 5361—

7 (A) by amending paragraph (4) to read as
8 follows:

9 “(4) ‘rate of basic pay’ means—

10 “(A) the rate of basic pay payable to an
11 employee under law or regulations before any de-
12 ductions or additions of any kind, but includ-
13 ing—

14 “(i) any applicable locality-based com-
15 parability payment under section 5304 or
16 similar provision of law;

17 “(ii) any applicable special pay under
18 section 5305 or similar provision of law;
19 and

20 “(iii) subject to such regulations as the
21 Office of Personnel Management may pre-
22 scribe, any applicable existing retained rate
23 of pay established under section 5363 or
24 similar provision of law; and

1 “(B) in the case of a prevailing rate em-
2 ployee, the scheduled rate of pay determined
3 under section 5343;”;

4 (B) in paragraph (6), by striking “and” at
5 the end;

6 (C) in paragraph (7), by striking the period
7 and inserting“; and”; and

8 (D) by adding at the end the following:

9 “(8) ‘retained rate’ means the rate of basic pay
10 to which an employee is entitled under section
11 5363(b)(2).”;

12 (5) in section 5363—

13 (A) in subsection (a), by striking the matter
14 following paragraph (4) and inserting the fol-
15 lowing:

16 “is entitled to a rate of basic pay in accordance with regu-
17 lations prescribed by the Office of Personnel Management
18 in conformity with the provisions of this section.”; and

19 (B) by striking subsections (b) and (c) and
20 inserting the following:

21 “(b)(1)(A) If, as a result of any event described in sub-
22 section (a), the employee’s former rate of basic pay is less
23 than or equal to the maximum rate of basic pay payable
24 for the grade of the employee’s position immediately after
25 the occurrence of the event involved, the employee is entitled

1 to basic pay at the lowest rate of basic pay payable for
2 such grade that equals or exceeds such former rate of basic
3 pay.

4 “(B) This section shall cease to apply to an employee
5 to whom subparagraph (A) applies once the appropriate
6 rate of basic pay has been determined for such employee
7 under this paragraph.

8 “(2)(A) If, as a result of any event described in sub-
9 section (a), the employee’s former rate of basic pay is great-
10 er than the maximum rate of basic pay payable for the
11 grade of the employee’s position immediately after the oc-
12 currence of the event involved, the employee is entitled to
13 basic pay at a rate equal to the lesser of—

14 “(i) the employee’s former rate of basic pay; or

15 “(ii) 150 percent of the maximum rate of basic
16 pay payable for the grade of the employee’s position
17 immediately after the occurrence of the event involved,
18 as adjusted by subparagraph (B).

19 “(B) A rate to which an employee is entitled under
20 this paragraph shall be increased at the time of any in-
21 crease in the maximum rate of basic pay payable for the
22 grade of the employee’s position by 50 percent of the dollar
23 amount of each such increase.

24 “(3) For purposes of this subsection, the term ‘former
25 rate of basic pay’, as used with respect to an employee in

1 *connection with an event described in subsection (a), means*
2 *the rate of basic pay last received by such employee before*
3 *the occurrence of such event.*

4 “(c)(1) *Notwithstanding any other provision of this*
5 *section, in the case of an employee who—*

6 “(A) *moves to a new official duty station, and*

7 “(B) *in conjunction with such move, becomes*
8 *subject to both a different pay schedule and (dis-*
9 *regarding this subsection) the preceding provisions of*
10 *this section,*

11 *this section shall be applied—*

12 “(i) *first, by determining the rate of pay to*
13 *which such employee would be entitled at the new offi-*
14 *cial duty station based on such employee’s position,*
15 *grade, and step (or relative position in the pay*
16 *range) before the move, and*

17 “(ii) *then, by applying the provisions of this sec-*
18 *tion that would apply (if any), treating the rate de-*
19 *termined under clause (i) as if it were the rate last*
20 *received by the employee before the application of this*
21 *section.*

22 “(2) *A reduction in an employee’s rate of basic pay*
23 *resulting from a determination under paragraph (1)(ii) is*
24 *not a basis for an entitlement under this section.*

1 “(3) *The rate of basic pay for an employee who is re-*
2 *ceiving a retained rate at the time of moving to a new offi-*
3 *cial duty station at which different pay schedules apply*
4 *shall be subject to regulations prescribed by the Office of*
5 *Personnel Management consistent with the purposes of this*
6 *section.*

7 “(d) *A retained rate shall be considered part of basic*
8 *pay for purposes of this subchapter and for purposes of sub-*
9 *chapter III of chapter 83, chapters 84 and 87, subchapter*
10 *V of chapter 55, section 5941, and for such other purposes*
11 *as may be expressly provided for by law or as the Office*
12 *of Personnel Management may by regulation prescribe. The*
13 *Office shall, for any purpose other than any of the purposes*
14 *referred to in the preceding sentence, prescribe by regulation*
15 *what constitutes basic pay for employees receiving a re-*
16 *tained rate.*

17 “(e) *This section shall not apply, or shall cease to*
18 *apply, to an employee who—*

19 “(1) *has a break in service of 1 workday or*
20 *more;*

21 “(2) *is entitled, by operation of this subchapter,*
22 *chapter 51 or 53, or any other provision of law, to*
23 *a rate of basic pay which is equal to or higher than,*
24 *or declines a reasonable offer of a position the rate of*
25 *basic pay for which is equal to or higher than, the re-*

1 *tained rate to which the employee would otherwise be*
 2 *entitled; or*

3 *“(3) is demoted for personal cause or at the em-*
 4 *ployee’s request.”; and*

5 *(6) in section 5365(b), by inserting after “provi-*
 6 *sions of this subchapter” the following: “(subject to*
 7 *any conditions or limitations the Office may estab-*
 8 *lish)”.*

9 *(b) SPECIAL RATES FOR LAW ENFORCEMENT OFFI-*
 10 *CERS.—Section 403(c) of the Federal Employees Pay Com-*
 11 *parability Act of 1990 (5 U.S.C. 5305 note) is amended*
 12 *by striking all after “provision of law)” and inserting “and*
 13 *shall be basic pay for all purposes. The rates shall be ad-*
 14 *justed at the time of adjustments in the General Schedule*
 15 *to maintain the step linkage set forth in subsection (b)(2).”.*

16 *(c) REPEAL.—Section 4505a(a)(2) of title 5, United*
 17 *States Code, is amended—*

18 *(1) by striking “(2)(A)” and inserting “(2)”;*

19 *and*

20 *(2) by striking subparagraph (B).*

21 *(d) EFFECTIVE DATE; CONVERSION RULES.—*

22 *(1) EFFECTIVE DATE.—This section shall take ef-*
 23 *fect on the first day of the first applicable pay period*
 24 *beginning on or after the 180th day after the date of*
 25 *the enactment of this Act.*

1 (2) *CONVERSION RULES.*—

2 (A) *INDIVIDUALS RECEIVING A RETAINED*
3 *RATE OR A RATE GREATER THAN THE MAXIMUM*
4 *RATE FOR THE GRADE.*—Subject to any regula-
5 tions the Office of Personnel Management may
6 prescribe, an employee under a covered pay
7 schedule who, on the day before the effective date
8 of this section, is receiving a retained rate under
9 section 5363 of title 5, United States Code, or is
10 receiving under similar authority a rate of basic
11 pay that is greater than the maximum rate of
12 basic pay payable for the grade of the employee’s
13 position shall have that rate converted as of the
14 effective date of this section, and the employee
15 shall be considered to be receiving a retained rate
16 under section 5363 of such title (as amended by
17 this section). The newly applicable retained rate
18 shall equal the formerly applicable retained rate
19 as adjusted to include any applicable locality-
20 based payment under section 5304 of title 5,
21 United States Code, or similar provision of law.

22 (B) *DEFINITION.*—For purposes of this
23 paragraph, the term “covered pay schedule” has
24 the meaning given such term by section 5361 of
25 title 5, United States Code.

1 **SEC. 302. TECHNICAL CORRECTIONS.**

2 (a)(1) *Section 5304 of title 5, United States Code, as*
3 *amended by section 1125 of the National Defense Authoriza-*
4 *tion Act for Fiscal Year 2004 (Public Law 108–136), is*
5 *amended—*

6 (A) *in subsection (g)(2)(A), by striking “(A)–*
7 *(D)” and inserting “(A)–(C)”;* and

8 (B) *in subsection (h)(2)(B)(i), by striking “or*
9 *(vii)” and inserting “or (vi)”.*

10 (2) *The amendments made by this subsection shall take*
11 *effect as if included in the enactment of the National De-*
12 *fense Authorization Act for Fiscal Year 2004 (Public Law*
13 *108–136).*

14 (b) *Section 5314 of title 5, United States Code, is*
15 *amended by adding at the end the following:*

16 *“Administrator of the Office of Electronic Gov-*
17 *ernment.”.*

Union Calendar No. 454

108TH CONGRESS
2^D SESSION

S. 129

[Report No. 108-733]

AN ACT

To provide for reform relating to Federal
employment, and for other purposes.

OCTOBER 5, 2004

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed