

108TH CONGRESS  
1ST SESSION

# S. 610

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## AN ACT

To amend the provision of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

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

3        **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. COMPENSATION FOR CERTAIN EXCEPTED PER-**  
 2 **SONNEL.**

3 (a) IN GENERAL.—Subparagraph (A) of section  
 4 203(c)(2) of the National Aeronautics and Space Act of  
 5 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking  
 6 “the highest rate of grade 18 of the General Schedule of  
 7 the Classification Act of 1949, as amended,” and inserting  
 8 “the rate of basic pay payable for level III of the Executive  
 9 Schedule.”.

10 (b) EFFECTIVE DATE.—The amendment made by  
 11 this section shall take effect on the first day of the first  
 12 pay period beginning on or after the date of enactment  
 13 of this Act.

14 **SEC. 3. WORKFORCE AUTHORITIES.**

15 (a) IN GENERAL.—Subpart I of part III of title 5,  
 16 United States Code, is amended by inserting after chapter  
 17 97, as added by section 841(a)(2) of the Homeland Secu-  
 18 rity Act of 2002 (Public Law 107–296; 116 Stat. 2229),  
 19 the following:

20 **“CHAPTER 98—NATIONAL AERONAUTICS**  
 21 **AND SPACE ADMINISTRATION**

“Sec.

“9801. Definitions.

“9802. Planning, notification, and reporting requirements.

“9803. Restrictions.

“9804. Recruitment, redesignation, and relocation bonuses.

“9805. Retention bonuses.

“9806. Term appointments.

“9807. Pay authority for critical positions.

“9808. Assignments of intergovernmental personnel.

- “9809. Science and technology scholarship program.
- “9810. Distinguished scholar appointment authority.
- “9811. Travel and transportation expenses of certain new appointees
- “9812. Annual leave enhancements.
- “9813. Limited appointments to Senior Executive Service positions.
- “9814. Qualifications pay.
- “9815. Reporting requirement.

1 **“§ 9801. Definitions**

2 “For purposes of this chapter—

3 “(1) the term ‘Administration’ means the Na-  
4 tional Aeronautics and Space Administration;

5 “(2) the term ‘Administrator’ means the Ad-  
6 ministrator of the National Aeronautics and Space  
7 Administration;

8 “(3) the term ‘critical need’ means a specific  
9 and important safety, management, engineering,  
10 science, research, or operations requirement of the  
11 Administration’s mission that the Administration is  
12 unable to fulfill because the Administration lacks the  
13 appropriate employees because—

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

15 “(B) employees do not possess the req-  
16 uisite skills;

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

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

21 “(6) the term ‘appropriate committees of Con-  
22 gress’ means—

1           “(A) the Committees on Government Re-  
2           form, Science, and Appropriations of the House  
3           of Representatives; and

4           “(B) the Committees on Governmental Af-  
5           fairs, Commerce, Science, and Transportation,  
6           and Appropriations of the Senate;

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

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

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

14       **“§ 9802. Planning, notification, and reporting require-**  
15                               **ments**

16          “(a) Not later than 90 days before exercising any of  
17          the workforce authorities made available under this chap-  
18          ter, the Administrator shall submit a written plan to the  
19          appropriate committees of Congress. Such plan shall be  
20          approved by the Office of Personnel Management.

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

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

1           “(2)(A) the functions, approximate number,  
2           and classes or other categories of positions or em-  
3           ployees that—

4                   “(i) address critical needs; and

5                   “(ii) would be eligible for each authority  
6           proposed to be exercised under this chapter;  
7           and

8           “(B) how the exercise of those authorities with  
9           respect to the eligible positions or employees involved  
10          would address each critical need identified under  
11          paragraph (1);

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

15           “(B) the reasons why those needs would not be  
16          so addressed;

17           “(4) the specific criteria to be used in deter-  
18          mining which individuals may receive the benefits  
19          described under sections 9804 and 9805 (including  
20          the criteria for granting bonuses in the absence of  
21          a critical need), and how the level of those benefits  
22          will be determined;

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

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

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

8           “(8)(A) the recruitment methods used by the  
9           Administration before the enactment of this chapter  
10          to recruit highly qualified individuals; and

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

15                  “(i) nongovernmental recruitment or place-  
16                  ment agencies; and

17                  “(ii) Internet technologies; and

18          “(9) any workforce-related reforms required to  
19          resolve the findings and recommendations of the Co-  
20          lumbia Accident Investigation Board, the extent to  
21          which those recommendations were accepted, and, if  
22          necessary, the reasons why any of those rec-  
23          ommendations were not accepted.

24          “(c) Not later than 60 days before first exercising  
25          any of the workforce authorities made available under this

1 chapter, the Administrator shall provide to all employees  
2 the workforce plan and any additional information which  
3 the Administrator considers appropriate.

4 “(d)(1)(A) The Administrator may from time to time  
5 modify the workforce plan. Any modification to the work-  
6 force plan shall be submitted to the Office of Personnel  
7 Management for approval by the Office before the modi-  
8 fication may be implemented.

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

13 “(2) Any reference in this chapter or any other provi-  
14 sion of law to the workforce plan shall be considered to  
15 include any modification made in accordance with this  
16 subsection.

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

21 “(1) provide to each employee representative  
22 representing any employees who might be affected  
23 by such plan (or modification) a copy of the pro-  
24 posed 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  
4           respect 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 chapter may be exercised in a manner incon-  
12          sistent with the workforce plan.

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

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

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



1 cised under this chapter successfully addressed each  
2 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  
10 recurring.

11 “(i) The budget request for the Administration for  
12 the first fiscal year beginning after the date of enactment  
13 of this chapter and for each fiscal year thereafter shall  
14 include a statement of the total amount of appropriations  
15 requested for such fiscal year to carry out this chapter.

16 **“§ 9803. Restrictions**

17 “(a) None of the workforce authorities made available  
18 under this chapter may be exercised with respect to any  
19 officer who is appointed by the President, by and with the  
20 advice and consent of the Senate.

21 “(b) Unless specifically stated otherwise, all work-  
22 force authorities made available under this chapter shall  
23 be subject to section 5307.

24 “(c)(1) None of the workforce authorities made avail-  
25 able under section 9804, 9805, 9806, 9807, 9809, 9812,

1 9813, 9814, or 9815 may be exercised with respect to a  
 2 political appointee.

3 “(2) For purposes of this subsection, the term ‘polit-  
 4 ical appointee’ means an employee who holds—

5 “(A) a position which has been excepted from  
 6 the competitive service by reason of its confidential,  
 7 policy-determining, policy-making, or policy-advo-  
 8 cating character; or

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

12 **“§ 9804. Recruitment, redesignation, and relocation**  
 13 **bonuses**

14 “(a) Notwithstanding section 5753, the Adminis-  
 15 trator may pay a bonus to an individual, in accordance  
 16 with the workforce plan and subject to the limitations in  
 17 this section, if—

18 “(1) the Administrator determines that the Ad-  
 19 ministration would be likely, in the absence of a  
 20 bonus, to encounter difficulty in filling a position;  
 21 and

22 “(2) the individual—

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

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

4           “(C) is currently employed by the Federal  
5           Government and is required to relocate to a dif-  
6           ferent geographic area to accept a position with  
7           the Administration.

8           “(b) If the position is described as addressing a crit-  
9           ical need in the workforce plan under section  
10          9802(b)(2)(A), the amount of a bonus may not exceed—

11           “(1) 50 percent of the employee’s annual rate  
12          of basic pay (including comparability payments  
13          under sections 5304 and 5304a) as of the beginning  
14          of the service period multiplied by the service period  
15          specified under subsection (d)(1)(B)(i); or

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

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

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

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

6           “(i) the required service period;

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

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

13           “(iv) the conditions under which the agreement  
14 may be terminated before the agreed-upon service  
15 period has been completed, and the effect of the ter-  
16 mination.

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

24       “(3) A bonus under this section may not be consid-  
25 ered to be part of the basic pay of an employee.

1       “(e) Before paying a bonus under this section, the  
 2 Administration shall establish a plan for paying recruit-  
 3 ment, redesignation, and relocation bonuses, subject to ap-  
 4 proval by the Office of Personnel Management.

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

8       **“§ 9805. Retention bonuses**

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

13               “(1) the unusually high or unique qualifications  
 14 of the employee or a special need of the Administra-  
 15 tion for the employee’s services makes it essential to  
 16 retain the employee; and

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

19       “(b) If the position is described as addressing a crit-  
 20 ical need in the workforce plan under section  
 21 9802(b)(2)(A), the amount of a bonus may not exceed 50  
 22 percent of the employee’s annual rate of basic pay (includ-  
 23 ing comparability payments under sections 5304 and  
 24 5304a).

1       “(c) If the position is not described as addressing a  
2 critical need in the workforce plan under section  
3 9802(b)(2)(A), the amount of a bonus may not exceed 25  
4 percent of the employee’s annual rate of basic pay (exclud-  
5 ing comparability payments under sections 5304 and  
6 5304a).

7       “(d)(1)(A) Payment of a bonus under this section  
8 shall be contingent upon the employee entering into a serv-  
9 ice agreement with the Administration.

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

12               “(i) the required service period;

13               “(ii) the method of payment, including a pay-  
14 ment schedule, which may include a lump-sum pay-  
15 ment, installment payments, or a combination there-  
16 of;

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

19               “(iv) the conditions under which the agreement  
20 may be terminated before the agreed-upon service  
21 period has been completed, and the effect of the ter-  
22 mination.

23       “(2) The employee’s service period shall be expressed  
24 as the number equal to the full years and twelfth parts  
25 thereof, rounding the fractional part of a month to the

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

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

13 “(e) A bonus under this section may not be consid-  
14 ered to be part of the basic pay of an employee.

15 “(f) An employee is not entitled to a retention bonus  
16 under this section during a service period previously estab-  
17 lished for that employee under section 5753 or under sec-  
18 tion 9804.

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

22 **“§ 9806. Term appointments**

23 “(a) The Administrator may authorize term appoint-  
24 ments within the Administration under subchapter I of

1 chapter 33, for a period of not less than 1 year and not  
2 more than 6 years.

3 “(b) Notwithstanding chapter 33 or any other provi-  
4 sion of law relating to the examination, certification, and  
5 appointment of individuals in the competitive service, the  
6 Administrator may convert an employee serving under a  
7 term appointment to a permanent appointment in the  
8 competitive service within the Administration without fur-  
9 ther competition if—

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

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

17 “(3) the employee has completed at least 2  
18 years of current continuous service under a term ap-  
19 pointment in the competitive service;

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

23 “(5) the position to which such employee is  
24 being converted under this section is in the same oc-  
25 cupational series, is in the same geographic location,



1 and provides no greater promotion potential than  
2 the term position for which the competitive examina-  
3 tion was conducted.

4 “(c) Notwithstanding chapter 33 or any other provi-  
5 sion of law relating to the examination, certification, and  
6 appointment of individuals in the competitive service, the  
7 Administrator may convert an employee serving under a  
8 term appointment to a permanent appointment in the  
9 competitive service within the Administration through in-  
10 ternal competitive promotion procedures if the conditions  
11 under paragraphs (1) through (4) of subsection (b) are  
12 met.

13 “(d) An employee converted under this section be-  
14 comes a career-conditional employee, unless the employee  
15 has otherwise completed the service requirements for ca-  
16 reer tenure.

17 “(e) An employee converted to career or career-condi-  
18 tional employment under this section acquires competitive  
19 status upon conversion.

20 **“§ 9807. Pay authority for critical positions**

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

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

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

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

2 or

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

5 “(b) Authority under this section—

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

8 “(A) is described as addressing a critical  
9 need in the workforce plan under section  
10 9802(b)(2)(A); and

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

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

17 “(3) may be exercised only in retaining employ-  
18 ees of the Administration or in appointing individ-  
19 uals who were not employees of another Federal  
20 agency as defined under section 5102(a)(1).

21 “(c)(1) Notwithstanding section 5377, the Adminis-  
22 trator may fix the rate of basic pay for a position in the  
23 Administration in accordance with this section. The Ad-  
24 ministrator may not delegate this authority.

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

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

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

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

23 **“§ 9808. Assignments of intergovernmental personnel**

24       “For purposes of applying the third sentence of sec-  
25 tion 3372(a) (relating to the authority of the head of a

1 Federal agency to extend the period of an employee’s as-  
2 signment to or from a State or local government, institu-  
3 tion of higher education, or other organization), the Ad-  
4 ministrator may, with the concurrence of the employee and  
5 the government or organization concerned, take any action  
6 which would be allowable if such sentence had been  
7 amended by striking ‘two’ and inserting ‘four’.

8 **“§ 9809. Science and technology scholarship program**

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

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

20       “(3) To carry out the Program the Administrator  
21 shall enter into contractual agreements with individuals  
22 selected under paragraph (2) under which the individuals  
23 agree to serve as full-time employees of the Administra-  
24 tion, for the period described in subsection (f)(1), in posi-  
25 tions needed by the Administration and for which the indi-

1 individuals are qualified, in exchange for receiving a scholar-  
2 ship.

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

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

9 “(2) be a United States citizen or permanent  
10 resident; and

11 “(3) at the time of the initial scholarship  
12 award, not be an employee (as defined in section  
13 2105).

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

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

23 “(e)(1) The Administrator may provide a scholarship  
24 under the Program for an academic year if the individual  
25 applying for the scholarship has submitted to the Adminis-

1 trator, as part of the application required under sub-  
2 section (c), a proposed academic program leading to a de-  
3 gree in a program or field of study on the list made avail-  
4 able under subsection (d).

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

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

12 “(4) A scholarship provided under this section may  
13 be expended for tuition, fees, and other authorized ex-  
14 penses as established by the Administrator by regulation.

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

21 “(f)(1) The period of service for which an individual  
22 shall be obligated to serve as an employee of the Adminis-  
23 tration is, except as provided in subsection (h)(2), 24  
24 months for each academic year for which a scholarship  
25 under this section is provided. Under no circumstances

1 shall the total period of obligated service be more than  
2 4 years.

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

7       “(B) The Administrator may defer the obligation of  
8 an individual to provide a period of service under para-  
9 graph (1) if the Administrator determines that such a de-  
10 ferral is appropriate. The Administrator shall prescribe  
11 the terms and conditions under which a service obligation  
12 may be deferred through regulation.

13       “(g)(1) Scholarship recipients who fail to maintain  
14 a high level of academic standing, as defined by the Ad-  
15 ministrator by regulation, who are dismissed from their  
16 educational institutions for disciplinary reasons, or who  
17 voluntarily terminate academic training before graduation  
18 from the educational program for which the scholarship  
19 was awarded, shall be in breach of their contractual agree-  
20 ment and, in lieu of any service obligation arising under  
21 such agreement, shall be liable to the United States for  
22 repayment within 1 year after the date of default of all  
23 scholarship funds paid to them and to the institution of  
24 higher education on their behalf under the agreement, ex-  
25 cept as provided in subsection (h)(2). The repayment pe-

1 riod may be extended by the Administrator when deter-  
2 mined to be necessary, as established by regulation.

3       “(2) Scholarship recipients who, for any reason, fail  
4 to begin or complete their service obligation after comple-  
5 tion of academic training, or fail to comply with the terms  
6 and conditions of deferment established by the Adminis-  
7 trator pursuant to subsection (f)(2)(B), shall be in breach  
8 of their contractual agreement. When recipients breach  
9 their agreements for the reasons stated in the preceding  
10 sentence, the recipient shall be liable to the United States  
11 for an amount equal to—

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

14           “(B) the interest on the amounts of such  
15 awards which would be payable if at the time the  
16 awards were received they were loans bearing inter-  
17 est at the maximum legal prevailing rate, as deter-  
18 mined by the Treasurer of the United States,

19 multiplied by 3.

20       “(h)(1) Any obligation of an individual incurred  
21 under the Program (or a contractual agreement there-  
22 under) for service or payment shall be canceled upon the  
23 death of the individual.

24       “(2) The Administrator shall by regulation provide  
25 for the partial or total waiver or suspension of any obliga-



1 tion of service or payment incurred by an individual under  
2 the Program (or a contractual agreement thereunder)  
3 whenever compliance by the individual is impossible or  
4 would involve extreme hardship to the individual, or if en-  
5 forcement of such obligation with respect to the individual  
6 would be contrary to the best interests of the Government.

7 “(i) For purposes of this section—

8 “(1) the term ‘cost of attendance’ has the  
9 meaning given that term in section 472 of the High-  
10 er Education Act of 1965;

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

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

18 “(j)(1) There is authorized to be appropriated to the  
19 Administration for the Program \$10,000,000 for each fis-  
20 cal year.

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

23 **“§ 9810. Distinguished scholar appointment authority**

24 “(a) In this section—

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

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

10                   “(B) is covered by the Group Coverage  
11 Qualification Standard for Professional and Sci-  
12 entific Positions; and

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

20           “(b) The Administration may appoint, without regard  
21 to the provisions of section 3304(b) and sections 3309  
22 through 3318, but subject to subsection (c), candidates  
23 directly to General Schedule professional, competitive  
24 service positions in the Administration for which public

1 notice has been given (in accordance with regulations of  
2 the Office of Personnel Management), if—

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

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

15 “(B) achieved a cumulative grade point av-  
16 erage of 3.0 or higher on a 4.0 scale and a  
17 grade point average of 3.5 or higher for courses  
18 in the field of study required to qualify for the  
19 position;

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

22 “(A) received, within 2 years before the ef-  
23 fective date of the appointment, from an ac-  
24 credited institution authorized to grant grad-  
25 uate degrees, a graduate degree in a field of

1 study for which possession of that degree meets  
2 the qualification standards at this grade level as  
3 prescribed by the Office of Personnel Manage-  
4 ment for the position to which the individual is  
5 being appointed; and

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

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

12 “(A) received, within 2 years before the ef-  
13 fective date of the appointment, from an ac-  
14 credited institution authorized to grant grad-  
15 uate degrees, a graduate degree in a field of  
16 study for which possession of that degree meets  
17 the qualification standards at this grade level as  
18 prescribed by the Office of Personnel Manage-  
19 ment for the position to which the individual is  
20 being appointed; and

21 “(B) achieved a cumulative grade point av-  
22 erage of 3.5 or higher on a 4.0 scale in grad-  
23 uate coursework in the field of study required  
24 for the position; or

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

3                   “(A) received, within 2 years before the ef-  
4                   fective date of the appointment, from an ac-  
5                   credited institution authorized to grant grad-  
6                   uate degrees, a graduate degree in a field of  
7                   study for which possession of that degree meets  
8                   the qualification standards at this grade level as  
9                   prescribed by the Office of Personnel Manage-  
10                  ment for the position to which the individual is  
11                  being appointed; and

12                   “(B) achieved a cumulative grade point av-  
13                   erage of 3.5 or higher on a 4.0 scale in grad-  
14                   uate coursework in the field of study required  
15                   for the position.

16           “(c) In making any selections under this section,  
17           preference eligibles who meet the criteria for distinguished  
18           scholar appointments shall be considered ahead of non-  
19           preference eligibles.

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

1 **“§ 9811. Travel and transportation expenses of cer-**  
2 **tain new appointees**

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

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

7 “(A) a career or career-conditional ap-  
8 pointment or an excepted service appointment  
9 to a continuing position;

10 “(B) a term appointment;

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

14 “(D) a career or limited term Senior Exec-  
15 utive Service appointment;

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

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

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

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

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

7 **“§ 9812. Annual leave enhancements**

8 “(a) In this section—

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

11 “(A) as an employee of the Federal Gov-  
12 ernment; or

13 “(B) as an employee of the Federal Gov-  
14 ernment following a break in service of at least  
15 90 days after that individual’s last period of  
16 Federal employment, other than—

17 “(i) employment under the Student  
18 Educational Employment Program admin-  
19 istered by the Office of Personnel Manage-  
20 ment;

21 “(ii) employment as a law clerk train-  
22 ee;

23 “(iii) employment under a short-term  
24 temporary appointing authority while a  
25 student during periods of vacation from

1 the educational institution at which the  
2 student is enrolled;

3 “(iv) employment under a provisional  
4 appointment if the new appointment is per-  
5 manent and immediately follows the provi-  
6 sional appointment; or

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

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

13 “(A) was performed in a position the du-  
14 ties of which were directly related to the duties  
15 of the position in the Administration which that  
16 individual will fill as a newly appointed em-  
17 ployee; and

18 “(B) except for this section, would not oth-  
19 erwise be service performed by an employee for  
20 purposes of section 6303; and

21 “(3) the term ‘directly related to the duties of  
22 the position’ means duties and responsibilities in the  
23 same line of work which require similar qualifica-  
24 tions.



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

5       “(2) A decision under paragraph (1) to treat a period  
 6 of qualified non-Federal service as if it were service per-  
 7 formed as an employee shall continue to apply so long as  
 8 that individual serves in or under the Administration.

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

15       “(2) The accrual rate established under this sub-  
 16 section shall continue to apply to the employee so long as  
 17 such employee serves in or under the Administration.

18 **“§ 9813. Limited appointments to Senior Executive**

19 **Service positions**

20       “(a) In this section—

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

24                       “(A) a career appointee; or

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

3                   “(i) who, immediately before entering  
4                   the career reserved position, was serving  
5                   under a career or career-conditional ap-  
6                   pointment outside the Senior Executive  
7                   Service; or

8                   “(ii) whose limited emergency or lim-  
9                   ited term appointment is approved in ad-  
10                  vance by the Office of Personnel Manage-  
11                  ment;

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

14               “(3) the term ‘limited term appointee’ means  
15               an individual appointed to a Senior Executive Serv-  
16               ice position in the Administration to meet a bona  
17               fide temporary need, as determined by the Adminis-  
18               trator.

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

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

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

5                   “(A) 4 years or less to a position the du-  
6                   ties of which will expire at the end of such  
7                   term; or

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

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

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

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

17           “(d) A limited term appointee who has been ap-  
18           pointed in the Administration from a career or career-con-  
19           ditional appointment outside the Senior Executive Service  
20           shall have reemployment rights in the agency from which  
21           appointed, or in another agency, under requirements and  
22           conditions established by the Office of Personnel Manage-  
23           ment. The Office shall have the authority to direct such  
24           placement in any agency.

1       “(e) Notwithstanding section 3394(b) and section  
2 3395—

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

8           “(2) a limited term appointee serving under a  
9 term prescribed under this section may be reas-  
10 signed to another continuing Senior Executive Serv-  
11 ice position in the Administration, except that the  
12 appointee may not serve in 1 or more positions in  
13 the Administration under such appointment in ex-  
14 cess of 1 year, except that in rare circumstances, the  
15 Administrator may approve an extension up to an  
16 additional 1 year.

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

20       “(g) Notwithstanding section 5384, the Adminis-  
21 trator may authorize performance awards to limited term  
22 appointees in the Administration in the same amounts and  
23 in the same manner as career appointees.

1 **“§ 9814. Qualifications pay**

2 “(a) Notwithstanding section 5334, the Adminis-  
3 trator may set the pay of an employee paid under the Gen-  
4 eral Schedule at any step within the pay range for the  
5 grade of the position, if such employee—

6 “(1) possesses unusually high or unique quali-  
7 fications; and

8 “(2) is assigned—

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

11 “(B) to a new position.

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

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

20 “(d) If the employee serves for at least 1 year in the  
21 position for which the pay determination under this sec-  
22 tion was made, or a successor position, the pay earned  
23 under such position may be used in succeeding actions to  
24 set pay under chapter 53.

25 “(e) Before setting any employee’s pay under this  
26 section, the Administrator shall submit a plan to the Of-

1 fice of Personnel Management and the appropriate com-  
 2 mittees of Congress, that includes—

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

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

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

9 “(4) the relationship between the exercise of au-  
 10 thority under this section and the use of other pay  
 11 incentives; and

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

14 **“§ 9815. Reporting requirement**

15 “The Administrator shall submit to the appropriate  
 16 committees of Congress, not later than February 28 of  
 17 each of the next 6 years beginning after the date of enact-  
 18 ment of this chapter, a report that provides the following:

19 “(1) A summary of all bonuses paid under sub-  
 20 sections (b) and (c) of section 9804 during the pre-  
 21 ceding fiscal year. Such summary shall include the  
 22 total amount of bonuses paid, the total number of  
 23 bonuses paid, the percentage of the amount of bo-  
 24 nuses awarded to supervisors and management offi-  
 25 cials, and the average percentage used to calculate

1 the total average bonus amount, under each of those  
2 subsections.

3 “(2) A summary of all bonuses paid under sub-  
4 sections (b) and (c) of section 9805 during the pre-  
5 ceding fiscal year. Such summary shall include the  
6 total amount of bonuses paid, the total number of  
7 bonuses paid, the percentage of the amount of bo-  
8 nuses awarded to supervisors and management offi-  
9 cials, and the average percentage used to calculate  
10 the total average bonus amount, under each of those  
11 subsections.

12 “(3) The total number of term appointments  
13 converted during the preceding fiscal year under sec-  
14 tion 9806 and, of that total number, the number of  
15 conversions that were made to address a critical  
16 need described in the workforce plan pursuant to  
17 section 9802(b)(2).

18 “(4) The number of positions for which the rate  
19 of basic pay was fixed under section 9807 during the  
20 preceding fiscal year, the number of positions for  
21 which the rate of basic pay under such section was  
22 terminated during the preceding fiscal year, and the  
23 number of times the rate of basic pay was fixed  
24 under such section to address a critical need de-

1 scribed in the workforce plan pursuant to section  
2 9802(b)(2).

3 “(5) The number of scholarships awarded  
4 under section 9809 during the preceding fiscal year  
5 and the number of scholarship recipients appointed  
6 by the Administration during the preceding fiscal  
7 year.

8 “(6) The total number of distinguished scholar  
9 appointments made under section 9810 during the  
10 preceding fiscal year and, of that total number, the  
11 number of appointments that were made to address  
12 a critical need described in the workforce plan pur-  
13 suant to section 9802(b)(2).

14 “(7) The average amount paid per appointee,  
15 and the largest amount paid to any appointee, under  
16 section 9811 during the preceding fiscal year for  
17 travel and transportation expenses.

18 “(8) The total number of employees who were  
19 awarded enhanced annual leave under section 9812  
20 during the preceding fiscal year; of that total num-  
21 ber, the number of employees who were serving in a  
22 position addressing a critical need described in the  
23 workforce plan pursuant to section 9802(b)(2); and,  
24 for employees in each of those respective groups, the  
25 average amount of additional annual leave such em-



1 ployees earned in the preceding fiscal year (over and  
2 above what they would have earned absent section  
3 9812).

4 “(9) The total number of appointments made  
5 under section 9813 during the preceding fiscal year  
6 and, of that total number, the number of appoint-  
7 ments that were made to address a critical need de-  
8 scribed in the workforce plan pursuant to section  
9 9802(b)(2).

10 “(10) The number of employees for whom the  
11 Administrator set the pay under section 9814 during  
12 the preceding fiscal year and the number of times  
13 pay was set under such section to address a critical  
14 need described in the workforce plan pursuant to  
15 section 9802(b)(2).

16 “(11) A summary of all recruitment, relocation,  
17 redesignation, and retention bonuses paid under au-  
18 thorities other than this chapter and excluding the  
19 authorities provided in sections 5753 and 5754 of  
20 this title, during the preceding fiscal year. Such  
21 summary shall include, for each type of bonus, the  
22 total amount of bonuses paid, the total number of  
23 bonuses paid, the percentage of the amount of bo-  
24 nuses awarded to supervisors and management offi-

1 cials, and the average percentage used to calculate  
2 the total average bonus amount.”.

3 (b) CLERICAL AMENDMENT.—The table of chapters  
4 for part III of title 5, United States Code, is amended  
5 by adding at the end the following:

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

Passed the Senate November 24, 2003.

Attest:

*Secretary.*

108TH CONGRESS  
1ST SESSION

**S. 610**

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**AN ACT**

To amend the provision of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.