

FEDERAL WORKFORCE FLEXIBILITY ACT OF 2004

OCTOBER 5, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 129]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (S. 129) to provide for reform relating to Federal employment, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) **TABLE OF CONTENTS.**—The table of contents of this 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.

TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION BONUSES.

(a) **BONUSES.**—

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

“§ 5753. Recruitment and relocation bonuses

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

“(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

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

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

“(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

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

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

“(3) In this section, the term ‘employee’ has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

“(b) The Office of Personnel Management may authorize the head of an agency to pay a bonus under this section to an individual only if—

“(1) the position to which such individual is appointed (as described in paragraph (2)(A)) or to which such individual moves or must relocate (as described in paragraph (2)(B)) is likely to be difficult to fill in the absence of such a bonus; and

“(2) the individual—

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

“(B)(i) is currently employed by the Federal Government; and

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

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

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

“(2)(A) The agreement shall include—

“(i) the commencement and termination dates of the required service period (or provisions for the determination thereof);

“(ii) the amount of the bonus;

“(iii) the method of payment; and

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

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

“(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

“(ii) the effect of the termination.

“(C) The required service period shall commence upon the commencement of service with the agency or movement to a new position or geographic area, as applicable, unless the service agreement provides for a later commencement date in circumstances and to the extent allowable under regulations of the Office, such as when there is an initial period of formal basic training.

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

“(2) A bonus under this section may be paid as an initial lump sum, in installments, as a final lump sum upon the completion of the full period of service required by the agreement, or in a combination of these forms of payment.

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

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

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

“(1) be equal to the maximum that would be determined if subsection (d)(1) were applied by substituting ‘50’ for ‘25’; but

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

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

“(f) The Office shall require that an agency establish a plan for the payment of recruitment bonuses before paying any such bonuses, and a plan for the payment of relocation bonuses before paying any such bonuses, subject to regulations prescribed by the Office.

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

“§ 5754. Retention bonuses

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

“(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

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

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

“(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

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

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

“(3) In this section, the term ‘employee’ has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

“(b) The Office of Personnel Management may authorize the head of an agency to pay a retention bonus to an employee if—

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

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

“(A) the Federal service; or

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

“(c) The Office may authorize the head of an agency to pay retention bonuses to a group of employees in 1 or more categories of positions in 1 or more geographic areas, subject to the requirements of subsection (b)(1) and regulations prescribed by the Office, if there is a high risk that a significant portion of employees in the group would be likely to leave in the absence of retention bonuses.

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

“(2)(A) The agreement shall include—

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

“(ii) the amount of the bonus;

“(iii) the method of payment; and

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

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

“(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

“(ii) the effect of the termination.

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

“(B) If an agency pays a retention bonus in accordance with subparagraph (A) and makes a determination to terminate the payments, the agency shall provide written notice to the employee of that determination. Except as provided in regulations of the Office, the employee shall continue to be paid the retention bonus through the end of the pay period in which such written notice is provided.

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

“(e)(1) Except as provided in subsection (f), a retention bonus, which shall be stated as a percentage of the employee’s basic pay for the service period associated with the bonus, may not exceed—

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

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

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

“(B) An installment payment is derived by multiplying the amount of basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate established for the employee.

“(C) If the installment payment percentage established for the employee is less than the bonus percentage rate established for the employee, the accrued but unpaid portion of the bonus is payable as part of the final installment payment to the employee after completion of the full service period under the terms of the service agreement.

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

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

“(f) Upon the request of the head of an agency, the Office may waive the limit established under subsection (e)(1) and permit the agency head to pay an otherwise eligible employee or category of employees retention bonuses of up to 50 percent of basic pay, based on a critical agency need.

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

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

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

“5754. Retention bonuses.”.

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

(A) should, each time a bonus is paid under the amendment made by paragraph (1) to recruit or relocate a Federal employee from one Government agency to another within the same geographic area or to retain a Fed-

eral employee who might otherwise leave one Government agency for another within the same geographic area, be notified of that payment within 60 days after the date on which such bonus is paid; and

(B) should monitor the payment of such bonuses (in the circumstances described in subparagraph (A)) to ensure that they are an effective use of the Federal Government's funds and have not adversely affected the ability of those Government agencies that lost employees to other Government agencies (in such circumstances) to carry out their mission.

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

(c) REPORTS.—

(1) RECRUITMENT AND RELOCATION BONUSES.—

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

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency and each type of bonus under such section—

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

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to individuals who moved between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

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

(2) RETENTION BONUSES.—

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

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency—

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

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to prevent individuals from moving between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

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

(d) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—Except as provided under paragraphs (2) and (3), this section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

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

(3) APPLICATION TO ALLOWANCES.—Payment of a retention allowance that was authorized under section 5754 of title 5, United States Code, before the effective date under paragraph (1) shall continue, subject to such section as in effect on the day before such effective date, until the retention allowance is reauthorized or terminated (but no longer than 1 year after such effective date).

SEC. 102. STREAMLINED CRITICAL PAY AUTHORITY.

Section 5377 of title 5, United States Code, is amended—

- (1) by striking “Office of Personnel Management” each place it appears and inserting “Office of Management and Budget”;
- (2) by striking “Office of Management and Budget” each place it appears and inserting “Office of Personnel Management”;
- (3) in subsection (g), by striking “prescribing regulations under this section or”; and
- (4) in subsection (h), by striking “Committee on Post Office and Civil Service” and inserting “Committee on Government Reform”.

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

Subtitle A—General Provisions

SEC. 201. AGENCY TRAINING.

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

- “(c) The head of each agency shall, on a regular basis—
 - “(1) evaluate each program or plan established, operated, or maintained under subsection (a) with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and
 - “(2) modify such program or plan as needed to accomplish such plans and goals.”

(b) SPECIFIC TRAINING PROGRAMS.—

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

“§ 4121. Specific training programs

“In consultation with the Office of Personnel Management, the head of each agency shall establish—

- “(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and
- “(2) a program to provide training to managers on actions, options, and strategies a manager may use in—
 - “(A) relating to employees with unacceptable performance;
 - “(B) mentoring employees and improving employee performance and productivity; and
 - “(C) conducting employee performance appraisals.”

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

“4121. Specific training programs.”.

SEC. 202. ANNUAL LEAVE ENHANCEMENTS.

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

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

“(e)(1) Not later than 180 days after the date of the enactment of this subsection, the Office of Personnel Management shall prescribe regulations under which, for purposes of determining years of service under subsection (a), credit shall, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes, if—

- “(A) such service—
 - “(i) was performed in a position the duties of which directly relate to the duties of the position to which such employee is so appointed; and
 - “(ii) meets such other requirements as the Office may prescribe; and
- “(B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.

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

- “(A) shall be creditable, for the purposes described in paragraph (1), as of the effective date of the employee’s appointment; and
- “(B) shall not thereafter cease to be so creditable, unless the employee fails to complete a full year of continuous service with the agency.

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

(2) CONFORMING AMENDMENT.—The second sentence of section 6303(a) of title 5, United States Code, is amended by striking the period and inserting “, and for all service which is creditable by virtue of subsection (e).”.

(b) OTHER ANNUAL LEAVE ENHANCEMENTS.—Section 6303 of title 5, United States Code, is amended by adding after subsection (e) (as added by subsection (a)) the following:

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

“(1) section 5376 or 5383; or

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

(c) APPLICABILITY.—None of the amendments made by subsection (a) shall apply in the case of any employee holding a position pursuant to an appointment made before the effective date of the regulations implementing such amendments.

SEC. 203. COMPENSATORY TIME OFF FOR TRAVEL.

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

“§ 5550b. Compensatory time off for travel

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

“(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.

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

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 55 of title 5, United States Code, is amended by inserting after the item relating to section 5550a the following:

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

Subtitle B—Provisions Relating to Retirement

SEC. 211. CIVIL SERVICE RETIREMENT SYSTEM COMPUTATION FOR PART-TIME SERVICE.

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

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

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

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

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

SEC. 212. RETIREMENT SERVICE CREDIT FOR CADET OR MIDSHIPMAN SERVICE.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8331(13) of title 5, United States Code, is amended by striking “or” at the end of subparagraph (B), by adding “or” at the end of subparagraph (C), and by inserting after subparagraph (C) the following:

“(D) as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy;”.

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

“(D) as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy;”.

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

- (1) any annuity entitlement to which is based on a separation from service occurring before, on, or after the date of the enactment of this Act; and
- (2) any period of service, described in the amendment made by subsection (a) or (b), which occurs before, on, or after the date of the enactment of this Act.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

SEC. 301. CORRECTIONS RELATING TO PAY ADMINISTRATION.

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

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

“(8) the term ‘rates of pay under the General Schedule’, ‘rates of pay for the General Schedule’, or ‘scheduled rates of basic pay’ means the rates of basic pay under the General Schedule as established by section 5332, excluding pay under section 5304 and any other additional pay of any kind; and”;

(2) in section 5305—

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

“(a)(1) Whenever the Office of Personnel Management finds that the Government’s recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped due to any of the circumstances described in subsection (b), the Office may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

“(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.”;

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

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

(C) in subsection (d)—

(i) by striking “President” and inserting “Office of Personnel Management”; and

(ii) by striking “or by such agency as he may designate” and inserting “(or by such other agency as the President may designate under the last sentence of subsection (a)(1))”;

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

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

“(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee’s special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).”;

(F) in subsection (g)(1)—

(i) by striking “basic pay” and inserting “pay”; and

(ii) by striking "President (or his designated agency)" and inserting "Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)";

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

"(h) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term 'basic pay' includes any applicable locality-based comparability payment under section 5304 or similar provision of law."; and

(H) by adding at the end the following:

"(i) If an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee's new rate of pay shall be initially established under conversion rules prescribed by the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following:

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

"(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

"(j) A rate determined under a schedule of special rates established under this section shall be considered to be part of basic pay for purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55, and section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.";

(3) in section 5334—

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

"If an employee's rate after promotion or transfer is greater than the maximum rate of basic pay for the employee's grade, that rate shall be treated as a retained rate under section 5363. The Office of Personnel Management shall prescribe by regulation the circumstances under which and the extent to which special rates under section 5305 (or similar provision of law) or locality-adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in applying this subsection."; and

(B) by adding at the end the following:

"(g) In the case of an employee who—

"(1) moves to a new official duty station, and

"(2) by virtue of such move, becomes subject to a different pay schedule, any rate adjustment under the preceding provisions of this section, with respect to such employee in connection with such move, shall be made—

"(A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move, and

"(B) then, by applying the provisions of this section that would otherwise apply (if any), treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment.";

(4) in section 5361—

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

"(4) 'rate of basic pay' means—

"(A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including—

"(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

"(ii) any applicable special pay under section 5305 or similar provision of law; and

"(iii) subject to such regulations as the Office of Personnel Management may prescribe, any applicable existing retained rate of pay established under section 5363 or similar provision of law; and

"(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343";

(B) in paragraph (6), by striking "and" at the end;

(C) in paragraph (7), by striking the period and inserting"; and"; and

(D) by adding at the end the following:

"(8) 'retained rate' means the rate of basic pay to which an employee is entitled under section 5363(b)(2).";

(5) in section 5363—

(A) in subsection (a), by striking the matter following paragraph (4) and inserting the following:
 “is entitled to a rate of basic pay in accordance with regulations prescribed by the Office of Personnel Management in conformity with the provisions of this section.”; and

(B) by striking subsections (b) and (c) and inserting the following:
 “(b)(1)(A) If, as a result of any event described in subsection (a), the employee’s former rate of basic pay is less than or equal to the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved, the employee is entitled to basic pay at the lowest rate of basic pay payable for such grade that equals or exceeds such former rate of basic pay.

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

“(2)(A) If, as a result of any event described in subsection (a), the employee’s former rate of basic pay is greater than the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved, the employee is entitled to basic pay at a rate equal to the lesser of—

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

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

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

“(3) For purposes of this subsection, the term ‘former rate of basic pay’, as used with respect to an employee in connection with an event described in subsection (a), means the rate of basic pay last received by such employee before the occurrence of such event.

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

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

“(B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the preceding provisions of this section, this section shall be applied—

“(i) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee’s position, grade, and step (or relative position in the pay range) before the move, and

“(ii) then, by applying the provisions of this section that would apply (if any), treating the rate determined under clause (i) as if it were the rate last received by the employee before the application of this section.

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

“(3) The rate of basic pay for an employee who is receiving a retained rate at the time of moving to a new official duty station at which different pay schedules apply shall be subject to regulations prescribed by the Office of Personnel Management consistent with the purposes of this section.

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

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

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

“(2) is entitled, by operation of this subchapter, chapter 51 or 53, or any other provision of law, to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the retained rate to which the employee would otherwise be entitled; or

“(3) is demoted for personal cause or at the employee’s request.”; and

(6) in section 5365(b), by inserting after “provisions of this subchapter” the following: “(subject to any conditions or limitations the Office may establish)”.

(b) SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.—Section 403(c) of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note) is amended by

striking all after “provision of law)” and inserting “and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).”.

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

- (1) by striking “(2)(A)” and inserting “(2)”; and
- (2) by striking subparagraph (B).

(d) EFFECTIVE DATE; CONVERSION RULES.—

(1) EFFECTIVE DATE.—This section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) CONVERSION RULES.—

(A) INDIVIDUALS RECEIVING A RETAINED RATE OR A RATE GREATER THAN THE MAXIMUM RATE FOR THE GRADE.—Subject to any regulations the Office of Personnel Management may prescribe, an employee under a covered pay schedule who, on the day before the effective date of this section, is receiving a retained rate under section 5363 of title 5, United States Code, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee’s position shall have that rate converted as of the effective date of this section, and the employee shall be considered to be receiving a retained rate under section 5363 of such title (as amended by this section). The newly applicable retained rate shall equal the formerly applicable retained rate as adjusted to include any applicable locality-based payment under section 5304 of title 5, United States Code, or similar provision of law.

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

SEC. 302. TECHNICAL CORRECTIONS.

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

- (A) in subsection (g)(2)(A), by striking “(A)–(D)” and inserting “(A)–(C)”; and
- (B) in subsection (h)(2)(B)(i), by striking “or (vii)” and inserting “or (vi)”.

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

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

“Administrator of the Office of Electronic Government.”.

COMMITTEE STATEMENT AND VIEWS

BACKGROUND AND NEED FOR LEGISLATION

S. 129, the Federal Workforce Flexibility Act, will modernize and update personnel flexibilities and authorities available to agencies of the Federal government. This legislation not only enhances existing statutory authorities, but provides additional flexibilities as well that will assist in the management of our most important resource—human capital. The federal government is not unlike any other organization in this respect—the most important asset is our people, and we must be able to recruit, retain and reward them. The legislation amends current law with regard to critical pay authority, computation of annuities for certain individuals with part-time service, agency training activities, annual leave, and recruitment and retention bonuses. In addition, the legislation codifies retirement service credit for individuals enrolled at the military service academies.

LEGISLATIVE HISTORY

S. 129 was introduced on January 9, 2003 by Senator George Voinovich, and referred to the Senate Committee on Governmental Affairs. On January 27, 2004, the bill was reported favorably with

an amendment in the nature of a substitute, and was agreed to in the Senate on April 8, 2004 by unanimous consent.

On May 18, 2004, the Subcommittee on Civil Service and Agency Organization referred S. 129 to the Full Committee with an amendment in the nature of a substitute, offered by Chairwoman Jo Ann Davis. The Committee on Government Reform reported the bill favorably by voice vote on June 24, 2004.

SECTION-BY-SECTION

Sec. 101. Recruitment, relocation and retention bonuses

Subsection (a)(1) replaces existing sections 5753 and 5754 of title 5, U.S. Code, with entirely revised sections concerning recruitment and relocation bonuses (Sec. 5753) and retention allowances (Sec. 5754).

New Sec. 5753 is entitled, "Recruitment and relocation bonuses"

Subsection (a) of new Sec. 5753 defines the class of employees to whom the section may be applied as those who are covered by the General Schedule and others as may be approved by OPM at the request of an agency head. Bonuses under this section may not be paid to an individual appointed by the President with the advice and consent of the Senate, a non-career appointee in the Senior Executive Service, or an individual in a position excepted from the competitive service due to its confidential, policy-determining, policy-making, or policy-advocating character. The term "employee" means an employee as defined in sec. 2105 of title 5, U.S. Code (the generally applicable definition of "employee" for purposes of title 5), including those paid with non-appropriated funds.

Subsection (b) of new Sec. 5753 states that OPM may authorize the head of an agency to pay a bonus to an individual appointed or moved to a position that is likely to be difficult to fill in the absence of a bonus. Also, a bonus may be paid only if the individual is newly appointed to a position in the civil service or is currently employed and moves to a new position in the same geographic area or must relocate to accept a position in a different area.

Subsection (c)(1) of new Sec. 5753 states that the bonuses shall be contingent upon the employee entering into a written service agreement to complete a certain period of employment, not to exceed four years.

Subsection (c)(2) of new Sec. 5753 states that the written service agreement must include the length of the required service period; the amount of the bonus; the method of payment; and other terms and conditions under which the bonus is payable, including the beginning and ending dates of the required service, or provisions for termination. The required service period begins upon employment or movement to a new position or geographic area, unless an exception is made under circumstances such as tying the beginning of the required service period to completion of an initial period of formal basic training.

Subsection (d) of new Sec. 5753 states that, unless an exception is authorized under subsection (e), bonuses shall not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years of the service period, not to exceed 4 years. The bonus is not considered

basic pay, may be paid in a variety of ways, including an initial lump sum, installments, or a final lump sum at the end of the required period of service and, for recruitment bonuses, may be paid before the individual enters on duty.

Subsection (e) of new Sec. 5753 states that the Office of Personnel Management may authorize an agency head to waive the 25 percent cap, based on a critical agency need. The amount of the bonus may not exceed 50 percent of the employee's annual rate of basic pay multiplied by the number of years of the service period, or 100 percent of the employee's annual rate of basic pay at the beginning of the service period.

Subsection (f) of new Sec. 5753 states that the Office of Personnel Management shall require that each agency establish a plan for paying recruitment and relocation bonuses before such bonuses are paid.

Subsection (g) of new Sec. 5753 authorizes the Office of Personnel Management to issue regulations to carry out Sec. 5753, including regulations relating to the repayment of recruitment or relocation bonuses when the agreed upon service period has not been met.

New Sec. 5754 is titled "Retention bonuses"

Subsection (a) of new Sec. 5754 defines the class of employees to whom the section may be applied as those who are covered by the General Schedule and others as may be approved by OPM at the request of an agency head. Bonuses under this section may not be paid to an individual appointed by the President with the advice and consent of the Senate, a non-career appointee in the Senior Executive Service, or an individual in a position excepted from the competitive service due to its confidential, policy-determining, policy-making, or policy-advocating character. The term "employee" means an employee as defined in sec. 2105 of title 5, U.S. Code (the generally applicable definition of "employee" for purposes of title 5), including those paid with non-appropriated funds.

Subsection (b) of new Sec. 5754 states that the Office of Personnel Management may authorize the head of an agency to pay a retention bonus to an employee if the employee's unusually high or unique qualifications, or a special need of the agency for the employee's service, make the employee's retention essential. Additionally, the agency is required to make a determination that in the absence of a retention bonus the employee would be likely to leave Federal service or take a different position in Federal service, as described in regulation.

Subsection (c) of new Sec. 5754 states that the Office of Personnel Management may authorize the head of an agency to pay retention bonuses to a group of employees in one or more categories of positions in certain geographic areas, if the agency perceives a high risk that a significant portion of employees in the group would be likely to leave without such bonus.

Subsection (d) of new Sec. 5754 states that payment of a retention bonus is contingent upon the employee entering into a written service agreement with the agency to complete a period of employment. The agreement must include the length of the required service period; the amount of the bonus; the method of payment; and the terms and conditions under which the bonus is payable, includ-

ing the conditions under which the agreement may be terminated before the agreed-upon service period has been completed and the effect of termination. A written service agreement is not required if the agency pays a retention bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred; if the bonus is being paid in biweekly installments, the agency must notify the employee before it terminates the payments and must pay the bonus through the end of the pay period in which the notice is provided. A retention bonus for an employee may not be based on any period of service that is the basis for a recruitment or relocation bonus under 5 U.S.C. 5753.

Subsection (e) of new Sec. 5754 states that a retention bonus may not exceed 25 percent of the employee's basic pay if the bonus is paid to an individual under subsection (b), or 10 percent of the employee's basic pay if the bonus is paid to a group of employees under subsection (c). The retention bonus may be paid to an employee in installments after completion of specified periods of service or in a single lump sum at the end of the full period of service required by the service agreement. An installment rate may not exceed the bonus percentage rate for the employee (that is, up to 25 percent under subsection (b) or up to 10 percent under subsection (c)), and if the payment percentage is less than the bonus percentage rate, the unpaid portion of the bonus is payable as part of the final installment under the service agreement. A retention bonus is not part of the basic pay of an employee.

Subsection (f) of new Sec. 5754 states the Office of Personnel Management may, at the request of the head of an agency, waive the percentage limit applicable under subsection (e) and permit the agency head to pay an otherwise eligible employee or group of employees retention bonuses of up to 50 percent of basic pay, based on a critical need of the agency.

Subsection (g) of new Sec. 5754 states that the Office of Personnel Management shall require that, before paying a bonus under this section, an agency must establish a plan for paying retention bonuses.

Subsection (h) of new Sec. 5754 authorizes the Office of Personnel Management to issue regulations to carry out this section.

Paragraph (a)(2) of Sec. 101 makes a clerical amendment to the table of section for chapter 57 of title 5, U.S. Code.

Paragraph (a)(3) of Sec. 101 states the sense of Congress concerning bonuses paid by one agency to recruit or relocate a Federal employee from another Government agency in the same geographic area or to retain an employee who might otherwise leave to work for another Government agency in the same geographic area. It is the sense of Congress that an agency paying a bonus in this circumstance should notify the Office of Personnel Management within 60 days after the bonus is paid. Also, the Office should monitor such payments to ensure they are an effective use of funds and have not harmed the ability of agencies that lost employees to carry out their mission.

Subsection (b) of Sec. 101 repeals a section of the Federal Employees Pay Comparability Act of 1990. Section 407 of that Act allows payment of up to \$15,000 as a relocation bonus for a law enforcement officer whose basic pay is less than \$60,000. New Sec.

5753 of title 5, U.S. Code, as created in section 101(a)(1) of this Act, will authorize payment of up to 100% of basic pay as a recruitment or relocation bonus in cases of a critical agency need. Therefore, if S. 129 is enacted, the authority in section 407 of the 1990 Act, which creates a special rule allowing certain law enforcement officers to receive bonuses that exceed 25% of basic pay, will no longer be needed.

Subsection (c) of Sec. 101 places two reporting requirements upon the Office of Personnel Management. The Office must report annually, for the first five years after the effective date of sec. 101, a report on the operation of the new Sec. 5753 of title 5, U.S. Code and another report on the operation of new Sec. 5754. Each report must include the number and dollar-amount of bonuses paid and a determination of the extent to which the bonuses furthered the purposes of the new provisions.

Subsection (d) of Sec. 101 establishes the effective date for the section as the first day of the first applicable pay period beginning on or after the 180th day after the date of enactment. However, a service agreement relating to a recruitment or relocation bonus under prior law shall remain in effect until its expiration, subject to the provisions of Sec. 5753 of title 5, U.S. Code as in effect on the day before the effective date of the new Sec. 5753. Also, a retention allowance authorized under Sec. 5754 of title 5, U.S. Code before effective date of Sec. 101 continues in effect, subject to Sec. 5754 as in effect on the day before the effective date of Sec. 101, until the allowance is reauthorized or terminated, but no longer than one year after the effective date of Sec. 101.

Sec. 102. Streamlined critical pay authority

This section would amend 5 U.S.C. Sec. 5377, to switch the respective roles of the Office of Management and Budget and the Office of Personnel Management concerning the authority to approve requests to fix pay for critical positions at a rate up to level I of the Executive Schedule. OPM would be authorized to approve requests, in consultation with OMB. Also, OPM would issue implementing regulations, after consulting with OMB, and would be responsible for reporting to the Government Reform Committee of the House and the Governmental Affairs Committee of the Senate concerning the operation of Sec. 5377.

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

Subtitle A—General Provisions

Sec. 201. Agency training

Subsection (a) would amend 5 U.S.C. Sec. 4103 to require each agency to evaluate, on a regular basis, its training programs and plans so as to ensure that its training activities are linked to the accomplishment of its specific performance plans and strategic goals, and to modify its training plans and programs as needed to accomplish the agency's performance plans and strategic goals.

Subsection (b)(1) would add a new Sec. 4121 to title 5, U.S. Code, to require agencies to work with the Office of Personnel Management to institute comprehensive management succession programs

designed to develop future managers for the agency. Subsection (b) would also require agencies, in consultation with the Office of Personnel Management, to provide special training to managers regarding how they relate to employees with unacceptable performance, mentor employees and improve their performance and productivity, and conduct employee performance appraisals. Subsection (b)(2) is a clerical amendment to the table of sections for chapter 41 of title 5, U.S. Code.

Sec. 202. Annual leave enhancements

Subsection (a) would amend 5 U.S.C. Sec. 6303 to reform the policy on accrual of annual leave for newly-hired Federal employees. A new subsection (e) would authorize the Office of Personnel Management to issue regulations (no later than 180 days after enactment) under which a newly-hired employee's prior work experience may be credited in determining the amount of annual leave the employee will earn. To be creditable, the employee's past service must have been performed in a position with duties that directly relate to the new position to which he or she is being appointed and must meet other requirements as OPM regulations may prescribe. Before granting such credit, the head of the new employee's agency must determine that it is necessary in order to achieve an agency mission or performance goal. Once credited upon the effective date of the employee's appointment, the past experience remains creditable for this purpose unless the employee does not complete one continuous year of service with the same agency. An individual who has been employed in the Federal civil service within 90 days before an appointment to an agency is not eligible for leave system service credit under this subsection.

Subsection (b) would amend section 5 U.S.C. Sec. 6303 by adding a new subsection (f) providing that members of the Senior Executive Service whose pay is set under Sec. 5383 of title 5, U.S. Code, and the senior level and scientific and professional employees whose pay is set under Sec. 5376 of title 5, U.S. Code, accrue annual leave at the maximum rate: one day (eight hours) for each bi-weekly pay period. New subsection (f) of Sec. 6303 would allow the same leave accrual rate for other employees in positions subject to an equivalent pay system, as determined by OPM.

Subsection (c) states that an employee occupying a position under an appointment made before the effective dating of the implementing regulations is not eligible for the enhanced leave accrual rate provided by Sec. 202(b).

Sec. 203. Compensatory time off for travel

Subsection (a) of this section would amend title 5, U.S. Code, by creating a new Sec. 5550b. Subsection (a) of new Sec. 5550b requires an employing agency to grant an employee compensatory time off for time spent in travel status away from his or her official duty station, if the time is not otherwise compensable.

Subsection (b) of new Sec. 5550b states that an employee whose travel time is credited as compensatory time off is not entitled to pay for those hours.

Subsection (c) of new Sec. 5550b requires OPM to issue implementing regulations not later than 30 days after enactment.

Subtitle B—Provisions Relating to Retirement

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

This section would amend section 5 U.S.C. Sec. 8339(p) by adding a new subsection (3) to amend the special annuity computation formula for employees who performed part-time service after April 7, 1986. For these employees, this section would extend application of full-time rates of pay in computing average salary to all service, regardless of when it was performed.

New Sec. 8339(p)(3) would state that subparagraph (A) of 8339(p)(1) (providing for use of full-time rates of pay in computing average salary) would apply to service performed before, on or after April 7, 1986; subparagraph (B) of 8339(p)(1) (providing for proration of the annuity benefit to reflect part-time service) would apply only to service performed on or after April 7, 1986.

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

Subsection (a) would amend 5 U.S.C. Sec. 8331(13) to include an individual's service as a cadet or midshipman for the purposes of calculating an annuity under the Civil Service Retirement System.

Subsection (b) would amend 5 U.S.C. Sec. 8401(31) to include an individual's service as a cadet or midshipman for the purposes of calculating an annuity under the Federal Employees Retirement System.

Subsection (c) provides the effective date and applicability of this section. The section shall apply to (1) any annuity, eligibility for which is based upon a separation before, on, or after the date of enactment; and (2) any period of service as a cadet or midshipman at the military service academy of the Army, Air Force, Coast Guard, or Navy occurring before, on, or after enactment.

TITLE III—PROVISIONS RELATING TO PAY
ADMINISTRATION

Sec. 301. Corrections relating to pay administration

Section 301(a) amends the following sections of chapter 53 of title 5, U.S. Code: Sec. 5302 (definitions), Sec. 5305 (special pay authority), 5334 (rate on change of position or type of appointment), Sec. 5361 (definitions) and Sec. 5363 (pay retention). The following analysis refers to those sections.

Sec. 301(a)(1) revises Sec. 5302 to define the terms "rates of pay under the General Schedule," "rates of pay for the General Schedule," and "rates of basic pay" to mean the General Schedule rates, excluding comparability pay under Sec. 5304, and any other additional pay. The current definition of these terms includes retained rates under Sec. 5363, which are rates above step 10 of any grade in the General Schedule. Under this amendment, locality pay would not be paid on top of a retained rate. This change, in combination with other changes in section 5361 and 5363 would prevent an unnecessary and unintended windfall increase in pay for employees who become entitled to pay retention because their special rates are terminated or reduced.

Sec. 301(a)(2)(A) revises Sec. 5305(a) to provide that (1) OPM may establish special pay rates. A minimum special rate could not

exceed the maximum General Schedule basic pay rate (excluding locality-based comparability payments) for the grade or level by more than 30% and no rate could exceed level IV of the Executive Schedule, which is higher than the current level V cap on special rates. The higher level IV cap would put special rates on the same footing as locality rates, which are subject to a level IV cap for GS employees. For individuals not subject to title 5 provisions governing appointment in the competitive service, the President could designate another agency to authorize special rates under this section; and (2) the agency head could determine that a category of agency employees would not be covered by a special rate authorization. The agency head would provide written notice to OPM (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)), which identifies the specific category or categories of employees that will not be covered by special rates. If the agency head removes a category of employees from coverage after the special rate authorization takes effect, the loss of coverage would take effect on the first day of the first pay period after the notice date. This amendment would allow the head of an agency to opt out of a special rate authorization. The agency head could provide a formal written notice to OPM (or other agency that is authorized by the President to establish special rates) that identified the specific category or categories of employees that would not be covered by a particular special rates authorization. Agencies could decide to use this authority when they determined that they did not need to pay higher rates of pay to recruit or retain employees in certain occupations or locations, or they did not have the additional funds needed to pay the higher special rates. If an agency removed employees from coverage after a special rate authorization took effect, the employees would be covered by the pay retention provisions of Sec. 5363, as applicable.

Sec. 301(a)(2)(B) would amend Sec. 5305(b)(4), which currently lists as one of the circumstances under which the special rates authority in Sec. 5305(a) may be exercised: any other circumstances which the President (or an agency duly authorized or designated by the President in accordance with the last sentence of subsection (a)) considers appropriate. To conform to the change made to Sec. 5305(a), Sec. 5305(b)(4) would be revised to provide that the authority could also be used in any other circumstances which OPM (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate. Subparagraphs (C), (E) and (F) of Sec. 301(a)(2) make similarly conforming changes to subsections (d), (f) and (g)(1), respectively, of Sec. 5305.

Sec. 301(a)(2)(D) would amend Sec. 5305(e), which now states that an increase in a rate of basic pay established under Sec. 5305 is not an equivalent increase in pay within the meaning of Sec. 5335 of title 5, U.S. Code, which governs periodic step increases under the General Schedule. The amended language would change "basic pay" to "pay," in order to clarify that special rates authorized under Sec. 5305 are not necessarily "basic pay" for all purposes. A similar change to replace "basic pay" with "pay" is incorporated in the amendment made by Sec. 301(a)(2)(F).

Sec. 301(a)(2)(E) amends Sec. 5305(f), which addresses adjustment of special pay rates, under conversion rules prescribed by the President or such agency he designates, when statutory pay rates

increase. The revised subsection (f) would provide that when special rates are adjusted under subsection (d), a covered employee's special rate would be adjusted in accordance with conversion rules prescribed by OPM (or by such other agency as the President may under the last sentence of subsection (a)(1) designate). This amendment would clarify that the reference to conversion rules applies to the conversion of an employee's pay to a new special rate schedule and not to the adjustment of the special rate schedule itself, as provided in Sec. 5305(d). This amendment would make clear that the Government has full authority to adjust or not to adjust special rate schedules based on staffing needs. It also would allow the Government to discontinue mandatory annual review of all special rate schedules (currently over 400), which poses an unnecessary administrative burden. Instead the Government would be allowed to pursue a targeted approach.

Sec. 301(a)(2)(G) would amend Sec. 5305(h), which now provides that pay cannot be less than basic pay (including locality pay) payable if special pay were not available. The new Sec. 5305(h) would provide that an employee would not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. "Basic pay" would include any applicable locality-based comparability payment under 5 U.S.C. Sec. 5304 or similar provision of law. This amendment is intended to clarify that an employee's entitlement to a special rate is eliminated if that employee is entitled to a higher locality rate. Under current law, an employee's special rate is not automatically terminated when surpassed by a locality rate, but remains as an underlying rate of basic pay that is used for certain pay administration purposes. Thus, different pay rules may apply to two employees being paid the same rate of pay. Under current law, the underlying special rate cannot be terminated without triggering pay retention and a windfall pay increase. The revised Sec. 5305(h), in combination with other changes in Sec. 301(a), is intended to prevent such illogical and inequitable results.

Sec. 301(a)(2)(H) would amend Sec. 5305 by adding a new subsection (i) which would provide that if an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee's new rate of pay would be initially established under conversion rules prescribed by OPM (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following: (1) First, determine the pay rate to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move. (2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment. This amendment is intended to clarify that local special rates are a Government tool to address a local labor market problem, not an employee entitlement that employees should be allowed to carry to another area where

there is no such problem. The new subsection would make it clear that an employee with the same work history as another employee will not have higher pay simply because he or she came from an area where higher pay rates applied, while also ensuring consistency between the treatment of locality rates and special rates. An employee who moves from a higher locality rate area to a lower locality rate area would not be entitled to pay retention even if the move is involuntary.

Sec. 301(a)(2)(H) would also amend Sec. 5305 by adding a new subsection (j), which would provide that a rate included in a special rates schedule would be part of basic pay for purposes of civil service retirement, federal employees' retirement system, life insurance, premium pay, miscellaneous allowances, and for such other purposes as may be expressly provided for by law or as OPM could prescribe by regulation.

Sec. 301(a)(3)(A) would amend Sec. 5334(b), which covers employee entitlement to basic pay rates upon promotion or transfer to a higher grade, by adding new text providing that if an employee's rate after promotion or transfer is greater than the maximum rate of basic pay for his or her grade, that rate would be treated as a retained rate. OPM would prescribe regulations on the circumstances under which and the extent to which special rates or locality-adjusted rates would be considered to be basic pay in applying this subsection. This amendment would authorize OPM to determine how special rates and locality rates should be used in applying the two-step promotion rule (upon promotion to a higher General Schedule grade, an employee is generally eligible for a pay increase at least equal to two steps in the grade from which he or she is promoted) in order to remedy existing pay administration problems arising in situations involving promotions, special rates, and retained pay when locality pay is not considered to be basic pay. This amendment would also allow OPM to prescribe regulations to avoid current windfalls resulting from employees receiving a two-step promotion (based on the higher special rate schedule) and then receiving locality pay on top of the adjusted rate. In addition, OPM could prescribe regulations to prevent unwarranted pay reductions when an employee receiving a retained rate plus a locality pay adjustment is promoted to a grade at which special rates apply, causing the employee to lose the locality pay adjustment.

Sec. 301(a)(3)(B) would amend Sec. 5334, by adding a new subsection (g) providing that in the case of an employee who (1) moves to a new official duty station, and (2) by virtue of such move, becomes subject to a different pay schedule, any rate adjustment under the preceding provisions of this section, with respect to such employee in connection with such move, would be made (A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move, and (B) then, by applying the provisions of this section that would otherwise apply (if any), treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment. See also the above description of the amendment made by Sec. 301(a)(2)(H).

Sec. 301(a)(4)(A) would amend Sec. 5361 by amending paragraph (4) to provide that "rate of basic pay" would mean (A) the rate of

basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including (i) any applicable locality-based comparability payment or (ii) any applicable special pay and (iii) subject to such regulations as OPM could prescribe, any applicable existing retained rate of pay; and (B) in the case of a prevailing rate employee, the scheduled rate of pay determined under Sec. 5343.

Sec. 301(a)(4)(B)–(D) would amend Sec. 5361 by adding at the end the following: (8) “retained rate” would mean the rate of basic pay to which an employee is entitled under Sec. 5363(b)(2).

Sec. 301(a)(5)(A) would amend Sec. 5363(a) by striking the matter following paragraph (4) and inserting: “is entitled to a rate of basic pay in accordance with regulations prescribed by OPM in conformity with the provisions of this section. The four paragraphs in current Sec. 5363(a), which establish the conditions under which an employee may qualify for pay retention, are unaffected by this amendment. However, the amendment sets out that OPM regulations are needed to clarify the various types of situations under which pay retention may apply. The material deleted from current Sec. 5363(a), which sets out the general formula for determining the amount of retained rate, is moved to a revised Sec. 5363(b). OPM regulations could establish additional limitations and conditions for employees to whom pay retention eligibility is extended. For example, this provision would allow OPM to limit adjustments of retained rates for former members of the Senior Executive Service who are involuntarily downgraded to General Schedule positions.

Sec. 301(a)(5)(B) would also amend Sec. 5363 by striking subsections (b) and (c) and inserting new subsections (b) and (c) addressing pay administration in pay retention cases when an employee moves to a new official duty station. See also the above description of Sec. 301(a)(2)(H), concerning pay setting in similar circumstances involving a move to a new official duty station.

Sec. 301(a)(5)(B) would also add a new subsection (d) of Sec. 5363 to provide that a retained rate would be considered part of basic pay for purposes of this subchapter and for purposes of civil service retirement, federal employees’ retirement system, life insurance, premium pay, miscellaneous allowances, and for such other purposes as could be expressly provided for by law or as OPM could prescribe by regulation.

Sec. 301(a)(5)(B) would also clarify, in a new Sec. 5363(e), that the currently specified conditions that terminate entitlement to pay retention also operate to deny initial entitlement to pay retention. Those conditions are: a 1-day break in service, entitlement to an equal or higher rate of basic pay or declining a reasonable offer of a position with such pay; and demotion for personal cause or at the employees request.

Sec. 301(a)(6) would amend Sec. 5365(b), which authorizes OPM to prescribe regulations to administer grade and pay retention, to provide that OPM regulations could provide for the application of all or portions of the provisions on grade and pay retention (subject to any conditions or limitations the Office may establish).

Sec. 301(b) amends Sec. 403(c) of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note) to clarify that the special statutory pay rates for law enforcement officers authorized

by the 1990 Act are basic pay for all purposes and must be adjusted when General Schedule rates are adjusted, so as to maintain these rates' linkage to the General Schedule steps, as provided in Sec. 403(b)(2) of the 1990 Act. These adjustments are automatic, unlike the special rate increases under Sec. 5305(f), which OPM administratively determines.

Sec. 301(c) repeals section 4505a(a)(2)(B), to ensure that performance-based cash awards may be based on an employee's rate of basic pay, including locality payments under Sec. 5304, as may be provided in OPM regulations.

Sec. 301(d)(1) provides that Sec. 301 takes effect on the first day of the first applicable pay period beginning on or after the 180th day after the act's enactment.

Sec. 301(d)(2) provides for conversion rules. Subject to OPM regulations, an employee under a covered pay schedule (as defined by Sec. 5361) who is receiving a retained rate under Sec. 5363, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee's position, would have that rate converted to a retained rate under Sec. 5363 (as amended by Sec. 301), which would equal the formerly applicable retained rate as adjusted to include any applicable locality-based comparability payment.

Sec. 302(a) amends Sec. 5304 of title 5, U.S. Code, to make technical corrections in subsections (g) and (h), effective as if included in Pub. L. 108-136, the National Defense Authorization Act for Fiscal Year 2004.

Sec. 302(b) amends Sec. 5314 of title 5, U.S. Code, by adding: "Administrator of the Office of Electronic Government," a position created under authority of Pub. L. 107-347, the E-Government Act of 2002. The salary of this position would therefore be set at level III of the Executive Schedule.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

COMMITTEE CONSIDERATION

On June 24, 2004 the Committee met in open session, and by voice vote, ordered reported favorably the bill, S. 129.

ROLLCALL VOTES

No rollcall votes were held.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104-1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill modernizes and updates personnel flexibilities and authorities available to agencies of the Federal government.

Some of the benefits of this bill will not be available to all legislative branch employees. The pay and certain benefits of Legislative branch employees are not subject to the same rules and regulations as the Federal civil service. To the extent that the provisions

of this bill regulate pay and time off, Legislative branch employees would not necessarily benefit from this legislation

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

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

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by S. 129. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

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

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out S. 129. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the

	By fiscal year, in millions of dollars—									
	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Estimated Outlays	-1	0	0	0	0	0	0	0	0	0
Total Changes:										
Estimated Budget Authority	2	9	13	16	20	23	26	27	29	31
Estimated Outlays	2	9	13	16	20	23	26	27	29	31
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
Enhanced Recruitment, Relocation, and Retention Bo- nuses:										
Estimated Authorization Level	69	70	72	74	77	79	82	85	88	91
Estimated Outlays	69	70	72	74	77	79	82	85	88	91

¹ The bill also would increase revenues, but by less than \$500,000 a year, beginning in 2005.

Notes.—CSRS = Civil Service Retirement System; CSRDF = Civil Service Retirement and Disability Fund. * = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that S. 129 will be enacted late in 2004.

Direct Spending and Revenues

Civil Service Retirement Benefits for Part-Time Service. Section 211 would alter the way retirement benefits under the Civil Service Retirement System (CSRS) are calculated for workers with part-time service. The act would apply to workers who performed work prior to April 7, 1986, have some part-time service, and retire after the legislation is enacted. Based on information from Office of Personnel Management (OPM), CBO estimates that this provision would cost \$3 million in 2005, \$53 million over the 2005–2009 period, and \$162 million over the 2005–2014 period.

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

Section 211 would calculate CSRS benefits for all part-time service according to the formula currently used to determine benefits for service performed on or after April 7, 1986. The legislation also contains a hold-harmless provision to ensure that no one receives a smaller annuity under the proposal than they would get under current law. CBO estimates section 211 would affect benefits for several thousand new CSRS retirees each year. Depending on an individual employee's work history, benefits for those retirees could be more than 30 percent higher than they would be if calculated under the current formula.

Allow Time Spent at Service Academies to Be Creditable For Civilian Retirement. Section 212 would continue to allow time spent at any of the four U.S. military academies be considered creditable service under CSRS and the Federal Employees' Retirement System (FERS). These two pension program, which cover most civilian federal workers, allow time served as an active-duty member of the U.S. armed forces to be used as creditable service provided that it

is not already being credited toward military retirement benefits and a deposit to purchase the credits is made to the Civil Service Retirement and Disability Fund (CSRDF). Virtually all civilian employees who have performed military service and are not collecting military retirement benefits choose to have their military service credited toward their civilian pensions.

Although current law is silent about whether time spent at a military service academy—typically four years—should be treated as creditable military service under CSRS and FERS, OPM historically has allowed such service to be credited. Following several court rulings, however, OPM has indicated that it no longer believes such treatment is permissible under the law. As a result, at some point in the near future, time spent at military academies will no longer be creditable under either civilian retirement program. CBO assumes this change will take place in early 2005.

Based on data from OPM and the Department of Defense, CBO estimates that, of the current federal civilian workforce (including Postal Service employees), approximately 2,200 employees or just less than 0.1 percent have graduated from a U.S. service academy. We estimate an average of 120,000 federal employees will begin collecting retirement benefits annually over the next 10 years, of whom about 100 will have graduated from a service academy. For those retiring with CSRS benefits, four years of creditable service represents 8 percentage points of their annuity. For those retiring under FERS, four years of service represents between 4.0 percentage points and 4.4 percentage points of their annuity. By allowing time spent at a service academy to continue being used as creditable service under CSRS and FERS, this bill would increase retirement benefits above what they would be once OPM stops crediting such service. CBO estimates this section of the bill would increase direct spending on retirement benefits by less than \$500,000 in 2005, \$8 million during the 2005–2009 period, and \$35 million over the 2005–2014 period.

In order to have military service credited toward civilian retirement benefits, a deposit must be made by the employee into the CSRDF. For those under the CSRS program, the deposit equals 7 percent of the basic pay received while performing the service, and under the FERS the deposit equals 3 percent of basic pay. Once OPM stops crediting time spent at an academy as military service, refunds will be made to employees who already made such deposits. Under this legislation, those refunds would not be made, which CBO estimates would reduce direct spending by \$1 million in 2005. By continuing to allow time spent at academies to be purchased as creditable service, S. 129 also increase future deposits into the CSRDF. We estimate these deposits would increase federal revenues by less than \$500,000 annually over the 2005–2014 period.

Spending Subject to Appropriation

Recruitment, Relocation and Relocation Bonuses. Section 101 would allow OPM to authorize agencies to pay enhanced recruitment and relocation bonuses for new or existing career employees (not political appointees). Unlike the current bonuses of 25 percent of basic pay, the enhanced bonuses could total up to 25 percent of annual basic pay for up to four consecutive years. Current law provides for retention allowances of up to 25 percent of basic pay over

the period of service. Section 101 would allow OPM to authorize agencies to pay enhanced retention bonuses to individual career employees (25 percent of basic pay) or groups of employees (10 percent of basic pay). With a waiver from OPM, all three of these bonuses could be further increased to up to 50 percent of basic pay in a given year.

Unlike the current bonuses and allowances, these enhanced bonuses could be paid in installments or in lump sums (or any suitable combination) and require the employee to enter into a written service agreement with the employing agency.

The cost of these enhanced bonuses depends on how extensively the agencies use the new authorities, and that information is not available. Based on information from OPM, in 2002 the existing authorities were used to pay bonuses totaling \$129 million to just under 20,000 new and existing employees across the government. Granting the maximum allowable level of enhanced bonuses to this number of employees could roughly double to quadruple this cost over time. CBO assumes that agencies paying recruitment bonuses would, on average, double the amount of these bonuses they award to new employees, and also would increase outlays for retention bonuses by one-quarter. CBO estimates that such actions would cost \$361 million over the 2005–2009 period and \$786 million over the 2005–2014 period, assuming the appropriation of the necessary funds.

Streamlined Critical Pay Authority. Section 102 would make OPM (instead of OMB) the lead agency for fixing the rate of basic pay for positions in an agency, in accordance with existing authorities governing pay for critical positions. CBO does not expect this provision would significantly affect federal spending.

Agency Training. Section 201 would require each agency to establish a comprehensive management program to train employees and develop managers. According to OPM, the legislation would codify and expand current agency practices regarding employee training. Based on information from OPM, CBO does not expect that these requirements would have any significant cost.

Annual Leave Enhancements. Section 202 would allow an agency head to deem nonfederal career experience prior to employment with an agency as federal employment for purposes of placing new hires in leave accrual categories, and would allow agencies to automatically place Senior Executive Service and other senior-level employees in the 8-hour leave accrual category.

Compensatory Time Off for Travel. Section 203 would allow employees to earn compensatory time off for any time spent in travel status, if that time is not otherwise compensable.

Section 301 includes provisions that would correct several pay administration anomalies associated with the current rules pertaining to special rates, locality pay, and pay retention. According to OPM, the provisions would, on net, have no effect on the amount of pay for affected employees, but would make the current pay administration system more effective.

Intergovernmental and private-sector impact: S. 129 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Previous CBO cost estimate: On December 1, 2003, CBO transmitted a cost estimate of S. 129, as ordered reported by the Senate Committee on Governmental Affairs on October 22, 2003. At that time, CBO estimated that the legislation would increase direct spending by \$233 million over the 2004–2013 period, with new spending subject to appropriation totaling \$756 million over the same period. The difference between that estimate and the current estimate reflect changes in assumptions about the number of workers with part-time service who will retire over the next decade and a later assumed enactment date.

Estimate prepared by: Federal Costs: Federal Employment Recruitment Benefits: Geoffrey Gerhardt; Federal Employee Pay and Bonuses: Ellen Hays; and Agency Training: Matthew Pickford. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

Subpart C—Employee Performance

CHAPTER 41—TRAINING

Sec.

4101. Definitions.

* * * * *

4121. *Specific training programs.*

* * * * *

§ 4103. Establishment of training programs

(a) * * *

* * * * *

(c) *The head of each agency shall, on a regular basis—*

(1) evaluate each program or plan established, operated, or maintained under subsection (a) with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and

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

* * * * *

§ 4121. Specific training programs

In consultation with the Office of Personnel Management, the head of each agency shall establish—

(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

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

(A) relating to employees with unacceptable performance;

(B) mentoring employees and improving employee performance and productivity; and

(C) conducting employee performance appraisals.

* * * * *

CHAPTER 45—INCENTIVE AWARDS

* * * * *

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

* * * * *

§ 4505a. Performance-based cash awards

(a)(1) * * *

ξ(2)(A) (2) A cash award under this section shall be equal to an amount determined appropriate by the head of the agency, but may not be more than 10 percent of the employee’s annual rate of basic pay. Notwithstanding the preceding sentence, the agency head may authorize a cash award equal to an amount exceeding 10 percent of the employee’s annual rate of basic pay if the agency head determines that exceptional performance by the employee justifies such an award, but in no case may an award under this section exceed 20 percent of the employee’s annual rate of basic pay.

ξ(B) For purposes of computing a percentage of a rate of basic pay under subparagraph (A), the rate of basic pay used shall be determined without taking into account any comparability payment under section 5304.

* * * * *

Subpart D—Pay and Allowances

* * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * *

§ 5302. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

ξ(8) the term “rates of pay under the General Schedule”, “rates of pay for the General Schedule”, or “scheduled rates of basic pay” means—

- ⊂(A) the rates of basic pay set forth in the General Schedule; and
- ⊂(B) in the case of an employee receiving a retained rate of basic pay under section 5363, the rate of basic pay payable under such section; and
- (8) the term “rates of pay under the General Schedule”, “rates of pay for the General Schedule”, or “scheduled rates of basic pay” means the rates of basic pay under the General Schedule as established by section 5332, excluding pay under section 5304 and any other additional pay of any kind; and

* * * * *

§ 5304. Locality-based comparability payments

(a) * * *

* * * * *

(g)(1) * * *

(2) The applicable maximum under this subsection shall be level III of the Executive Schedule for—

(A) positions under subparagraphs ⊂(A)–(D) (A)–(C) of subsection (h)(1); and

* * * * *

(h)(1) * * *

(2)(A) * * *

(B) A request by an agency head or exercise of authority by the President under subparagraph (A) shall cover—

(i) with respect to the positions under subparagraphs (A) through (C) of paragraph (1), all positions described in the subparagraph or subparagraphs involved (excluding any under clause (i), (ii), (iii), (iv), (v), ⊂ or (vii) or (vi) of such paragraph); and

* * * * *

§ 5305. Special pay authority

⊂(a) Whenever the President finds that the Government’s recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped, due to any of the circumstances described in subsection (b), he may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of basic pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all step rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum pay rate prescribed by statute for the grade or level by more than 30 percent, and no rate may be established under this section (disregarding any amount payable under subsection (g)) in excess of the rate of basic pay payable for level V of the Executive Schedule. The President may authorize the exercise of the authority conferred on him by this section by the Office of Personnel Management or, in the case of individuals not subject to the provisions of this title governing appointment in the competitive service, by such other agency as he may designate.

(a)(1) Whenever the Office of Personnel Management finds that the Government's recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped due to any of the circumstances described in subsection (b), the Office may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.

(b) The circumstances referred to in subsection (a) are—

(1) * * *

* * * * *

ε(4) any other circumstances which the President (or an agency duly authorized or designated by the President in accordance with the last sentence of subsection (a)) considers appropriate.

(4) any other circumstances which the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate.

* * * * *

(d) Within the limitations applicable under the preceding provisions of this section, rates of pay established under this section may be revised from time to time by the εPresident or by such agency as he may designate. Office of Personnel Management (or by such other agency as the President may designate under the last sentence of subsection (a)(1)). The actions and revisions have the force and effect of statute.

(e) An increase in a rate of εbasic pay established under this section is not an equivalent increase in pay within the meaning of section 5335.

¿(f) The rate of basic pay established under this section and received by an individual immediately before a statutory increase, which becomes effective prior to, on, or after the date of enactment of the statute, in the pay schedule applicable to such individual of any pay system specified in subsection (c) of this section, shall be initially adjusted, effective on the effective date of the statutory increase, under conversion rules prescribed by the President or by such agency as the President may designate.

(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee's special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).

(g)(1) The benefit of any comparability payments under section 5304 shall be available to individuals receiving rates of ¿basic pay established under this section to such extent as the ¿President (or his designated agency) *Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)* considers appropriate, subject to paragraph (2) and subsection (h).

* * * * *

¿(h) The rate of basic pay payable to an individual under this section may not, at any time, be less than the rate which would then be payable to such individual (taking comparability payments under section 5304 into account) if this section had never been enacted.

(h) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term "basic pay" includes any applicable locality-based comparability payment under section 5304 or similar provision of law.

(i) If an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee's new rate of pay shall be initially established under conversion rules prescribed by the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following:

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

(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

(j) A rate determined under a schedule of special rates established under this section shall be considered to be part of basic pay for purposes of subchapter III of chapter 83, chapter 84, chapter 87,

subchapter V of chapter 55, and section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe.

* * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

* * * * *

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

* * * * *

Administrator of the Office of Electronic Government.

* * * * *

SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

* * * * *

§ 5334. Rate on change of position or type of appointment; regulations

(a) * * *

(b) An employee who is promoted or transferred to a position in a higher grade is entitled to basic pay at the lowest rate of the higher grade which exceeds his existing rate of basic pay by not less than two step-increases of the grade from which he is promoted or transferred. If, in the case of an employee so promoted or transferred who is receiving basic pay at a rate in excess of the maximum rate of his grade, there is no rate in the higher grade which is at least two step-increases above his existing rate of basic pay, he is entitled to—

(1) * * *

* * * * *

If an employee's rate after promotion or transfer is greater than the maximum rate of basic pay for the employee's grade, that rate shall be treated as a retained rate under section 5363. The Office of Personnel Management shall prescribe by regulation the circumstances under which and the extent to which special rates under section 5305 (or similar provision of law) or locality-adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in applying this subsection.

* * * * *

(g) *In the case of an employee who—*

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

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

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

(A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move, and

(B) then, by applying the provisions of this section that would otherwise apply (if any), treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment.

* * * * *

SUBCHAPTER VI—GRADE AND PAY RETENTION

§ 5361. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

⌋(4) “rate of basic pay” means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

(4) “rate of basic pay” means—

(A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including—

(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

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

(iii) subject to such regulations as the Office of Personnel Management may prescribe, any applicable existing retained rate of pay established under section 5363 or similar provision of law; and

(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343;

* * * * *

(6) “position subject to this subchapter” means any position under a covered pay schedule; ⌋ and

(7) “reduction-in-force procedures” means procedures applied in carrying out any reduction in force due to a reorganization, due to lack of funds or curtailment of work, or due to any other factor ⌋. ; and

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

* * * * *

§ 5363. Pay retention

(a) Any employee—

(1) * * *

* * * * *

⌋ is entitled to basic pay at a rate equal to (A) the employee's allowable former rate of basic pay, plus (B) 50 percent of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction

in pay if such allowable former rate exceeds such maximum rate for such grade.

is entitled to a rate of basic pay in accordance with regulations prescribed by the Office of Personnel Management in conformity with the provisions of this section.

¿(b) For the purpose of subsection (a) of this section, “allowable former rate of basic pay” means the lower of—

¿(1) the rate of basic pay payable to the employee immediately before the reduction in pay; or

¿(2) 150 percent of the maximum rate of basic pay payable for the grade of the employee’s position immediately after such reduction in pay.

¿(c) The preceding provisions of this section shall cease to apply to an employee who—

¿(1) has a break in service of one workday or more;

¿(2) is entitled by operation of this subchapter or chapter 51 or 53 of this title to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the rate to which the employee is entitled under this section; or

¿(3) is demoted for personal cause or at the employee’s request.

(b)(1)(A) If, as a result of any event described in subsection (a), the employee’s former rate of basic pay is less than or equal to the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved, the employee is entitled to basic pay at the lowest rate of basic pay payable for such grade that equals or exceeds such former rate of basic pay.

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

(2)(A) If, as a result of any event described in subsection (a), the employee’s former rate of basic pay is greater than the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved, the employee is entitled to basic pay at a rate equal to the lesser of—

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

(ii) 150 percent of the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved,

as adjusted by subparagraph (B).

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

(3) For purposes of this subsection, the term “former rate of basic pay”, as used with respect to an employee in connection with an event described in subsection (a), means the rate of basic pay last received by such employee before the occurrence of such event.

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

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

(B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the

preceding provisions of this section, this section shall be applied—

(i) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the pay range) before the move, and

(ii) then, by applying the provisions of this section that would apply (if any), treating the rate determined under clause (i) as if it were the rate last received by the employee before the application of this section.

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

(3) The rate of basic pay for an employee who is receiving a retained rate at the time of moving to a new official duty station at which different pay schedules apply shall be subject to regulations prescribed by the Office of Personnel Management consistent with the purposes of this section.

(d) A retained rate shall be considered part of basic pay for purposes of this subchapter and for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55, section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe. The Office shall, for any purpose other than any of the purposes referred to in the preceding sentence, prescribe by regulation what constitutes basic pay for employees receiving a retained rate.

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

(1) has a break in service of 1 workday or more;

(2) is entitled, by operation of this subchapter, chapter 51 or 53, or any other provision of law, to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the retained rate to which the employee would otherwise be entitled; or

(3) is demoted for personal cause or at the employee's request.

* * * * *

§ 5365. Regulations

(a) * * *

(b) Under such regulations, the Office may provide for the application of all or portions of the provisions of this subchapter (*subject to any conditions or limitations the Office may establish*)—

(1) * * *

* * * * *

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

* * * * *

§ 5377. Pay authority for critical positions

(a) * * *

* * * * *

(c) The *ε*Office of Management and Budget *Office of Personnel Management*, in consultation with the *ε*Office of Personnel Management *Office of Management and Budget*, may, upon the request of the head of an agency, grant authority to fix the rate of basic pay for 1 or more positions in such agency in accordance with this section.

* * * * *

(e) The authority to fix the rate of basic pay under this section for a position shall terminate—

(1) whenever the *ε*Office of Management and Budget *Office of Personnel Management* determines (in accordance with such procedures and subject to such terms or conditions as such Office by regulation prescribes) that 1 or more of the requirements of subsection (b) are no longer met; or

* * * * *

(f) The *ε*Office of Management and Budget *Office of Personnel Management* may not authorize the exercise of authority under this section with respect to more than 800 positions at any time, of which not more than 30 may, at any such time, be positions the rate of basic pay for which would otherwise be determined under subchapter II.

(g) The *ε*Office of Management and Budget *Office of Personnel Management* shall consult with the *ε*Office of Personnel Management *Office of Management and Budget* before *ε*prescribing regulations under this section or making any decision to grant or terminate any authority under this section.

(h) The *ε*Office of Management and Budget *Office of Personnel Management* shall report to the *ε*Committee on Post Office and Civil Service *Committee on Government Reform* of the House of Representatives and the Committee on Governmental Affairs of the Senate each year, in writing, on the operation of this section. Each report under this subsection shall include—

(1) * * *

* * * * *

CHAPTER 55—PAY ADMINISTRATION

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
5501. Disposition of money accruing from lapsed salaries or unused appropriations for salaries.

* * * * *

SUBCHAPTER V—PREMIUM PAY

5541. Definitions.

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5550b. *Compensatory time off for travel.*

* * * * *

SUBCHAPTER V—PREMIUM PAY

* * * * *

§5550b. Compensatory time off for travel

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

(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.

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

* * * * *

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

SUBCHAPTER I—TRAVEL AND SUBSISTENCE EXPENSES; MILEAGE ALLOWANCES

Sec.

5701. Definitions.

* * * * *

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

5751. Travel expenses of witnesses.

* * * * *

§5754. Retention allowances.

5754. Retention bonuses.

* * * * *

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

* * * * *

§5753. Recruitment and relocation bonuses

(a) The Office of Personnel Management may authorize the head of an agency to pay a bonus to an employee who is newly appointed to a position under the General Schedule, or to an employee under the General Schedule or under any other pay authority in the executive, legislative, or judicial branch who must relocate to accept a position under the General Schedule, if the Office determines that the agency would be likely, in the absence of such a bonus, to encounter difficulty in filling the position.

(b)(1)(A) The amount of a bonus under this section shall be determined by regulations of the Office, but may not exceed 25 percent of the annual rate of basic pay of the position to which the employee is being appointed or relocated.

(B) For purposes of computing a percentage of a rate of basic pay under subparagraph (A), the rate of basic pay used shall be determined without taking into account any comparability payment under section 5304.

(2) Payment of a bonus under this section shall be contingent upon the employee entering into an agreement with the agency to complete a period of employment with the agency, with the required period determined pursuant to regulations of the Office. If

the employee voluntarily fails to complete such period of service or is separated from the service before completion of such period of service for cause on charges of misconduct or delinquency, the employee shall repay the bonus on a pro rata basis.

¿(3) A bonus under this section shall be paid as a lump sum, and may not be considered to be part of the basic pay of an employee.

¿(4) Under regulations of the Office, a recruitment bonus may be paid to a newly-hired employee before the employee enters on duty.

¿(c) For the purposes of this section—

¿(1) the terms “agency” and “employee” have the meanings given them by section 5102; and

¿(2) any reference to “a position under the General Schedule” or “an employee under the General Schedule” shall be considered to be a reference to any position or employee to which subchapter III of chapter 53 applies.

¿(d) The Office shall prescribe such regulations as it considers necessary for the administration of subsections (a) through (c).

¿(e) At the request of the head of an Executive agency, the President may authorize the application of the preceding provisions of this section with respect to 1 or more categories of employees within such agency who would not otherwise be covered by this section (including authority under subsection (d) to prescribe any necessary regulations).

¿§5754. Retention allowances

¿(a) The Office of Personnel Management may authorize the head of an agency to pay an allowance to an employee under the General Schedule if—

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

¿(2) the agency determines that the employee would be likely to leave in the absence of a retention allowance.

¿(b)(1) A retention allowance, which shall be stated as a percentage of the rate of basic pay (excluding any comparability payments under section 5304) of the employee, may not exceed 25 percent of such rate of basic pay.

¿(2) A retention allowance may not be considered to be part of the basic pay of an employee, and the reduction or elimination of a retention allowance may not be appealed. The preceding sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of chapter 12 or under any of the laws referred to in section 2302(d).

¿(3) A retention allowance shall be paid at the same time and in the same manner as the employee’s basic pay is paid.

¿(c) For the purpose of this section—

¿(1) the terms “agency” and “employee” have the meanings given them by section 5102; and

¿(2) any reference to “an employee under the General Schedule” shall be considered to be a reference to any employee holding a position to which subchapter III of chapter 53 applies.

¿(d) The Office shall prescribe such regulations as it considers necessary for the administration of subsections (a) through (c).

¿(e) At the request of the head of an Executive agency, the President may authorize the application of the preceding provisions of

this section with respect to 1 or more categories of employees within such agency who would not otherwise be covered by this section (including authority under subsection (d) to prescribe any necessary regulations).

§ 5753. Recruitment and relocation bonuses

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

(A) *employees covered by the General Schedule pay system established under subchapter III of chapter 53; and*

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

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

(A) *a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;*

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

(C) *a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.*

(3) *In this section, the term “employee” has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.*

(b) *The Office of Personnel Management may authorize the head of an agency to pay a bonus under this section to an individual only if—*

(1) *the position to which such individual is appointed (as described in paragraph (2)(A)) or to which such individual moves or must relocate (as described in paragraph (2)(B)) is likely to be difficult to fill in the absence of such a bonus; and*

(2) *the individual—*

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

(B)(i) *is currently employed by the Federal Government; and*

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

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

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

(2)(A) *The agreement shall include—*

(i) *the commencement and termination dates of the required service period (or provisions for the determination thereof);*

(ii) *the amount of the bonus;*

(iii) *the method of payment; and*

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

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

(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

(ii) the effect of the termination.

(C) *The required service period shall commence upon the commencement of service with the agency or movement to a new position or geographic area, as applicable, unless the service agreement provides for a later commencement date in circumstances and to the extent allowable under regulations of the Office, such as when there is an initial period of formal basic training.*

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

(2) A bonus under this section may be paid as an initial lump sum, in installments, as a final lump sum upon the completion of the full period of service required by the agreement, or in a combination of these forms of payment.

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

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

(e) The Office may authorize the head of an agency to waive the limitation under subsection (d)(1) based on a critical agency need, subject to regulations prescribed by the Office. Under such a waiver, the maximum bonus allowable shall—

(1) be equal to the maximum that would be determined if subsection (d)(1) were applied by substituting “50” for “25”; but

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

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

(f) The Office shall require that an agency establish a plan for the payment of recruitment bonuses before paying any such bonuses, and a plan for the payment of relocation bonuses before paying any such bonuses, subject to regulations prescribed by the Office.

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

§ 5754. Retention bonuses

(a)(1) This section may be applied to—

(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

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

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

(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

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

(C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

(3) In this section, the term "employee" has the meaning given that term in section 2105, except that such term also includes an employee described in subsection (c) of that section.

(b) The Office of Personnel Management may authorize the head of an agency to pay a retention bonus to an employee if—

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

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

(A) the Federal service; or

(B) for a different position in the Federal service under conditions described in regulations of the Office.

(c) The Office may authorize the head of an agency to pay retention bonuses to a group of employees in 1 or more categories of positions in 1 or more geographic areas, subject to the requirements of subsection (b)(1) and regulations prescribed by the Office, if there is a high risk that a significant portion of employees in the group would be likely to leave in the absence of retention bonuses.

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

(2)(A) The agreement shall include—

(i) the length of the required service period;

(ii) the amount of the bonus;

(iii) the method of payment; and

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

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

(i) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

(ii) the effect of the termination.

(3)(A) Notwithstanding paragraph (1), a written service agreement is not required if the agency pays a retention bonus in bi-weekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred.

(B) If an agency pays a retention bonus in accordance with subparagraph (A) and makes a determination to terminate the payments, the agency shall provide written notice to the employee of that determination. Except as provided in regulations of the Office, the employee shall continue to be paid the retention bonus through the end of the pay period in which such written notice is provided.

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

(e)(1) Except as provided in subsection (f), a retention bonus, which shall be stated as a percentage of the employee's basic pay for the service period associated with the bonus, may not exceed—

(A) 25 percent of the employee's basic pay if paid under subsection (b); or

(B) 10 percent of an employee's basic pay if paid under subsection (c).

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

(B) An installment payment is derived by multiplying the amount of basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate established for the employee.

(C) If the installment payment percentage established for the employee is less than the bonus percentage rate established for the employee, the accrued but unpaid portion of the bonus is payable as part of the final installment payment to the employee after completion of the full service period under the terms of the service agreement.

(D) For purposes of this paragraph, the bonus percentage rate established for an employee means the bonus percentage rate established for such employee in accordance with paragraph (1) or subsection (f), as the case may be.

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

(f) Upon the request of the head of an agency, the Office may waive the limit established under subsection (e)(1) and permit the agency head to pay an otherwise eligible employee or category of employees retention bonuses of up to 50 percent of basic pay, based on a critical agency need.

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

(h) The Office may prescribe regulations to carry out this section.

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Subpart E—Attendance and Leave

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CHAPTER 63—LEAVE

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SUBCHAPTER I—ANNUAL AND SICK LEAVE

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§ 6303. Annual leave; accrual

(a) An employee is entitled to annual leave with pay which accrues as follows—

(1) * * *

* * * * *

In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83, and for all service which is creditable by virtue of subsection (e). However, an employee who is a retired member of a uniformed service as defined by section 3501 of this title is entitled to credit for active military service only if—

(A) * * *

* * * * *

(e)(1) Not later than 180 days after the date of the enactment of this subsection, the Office of Personnel Management shall prescribe regulations under which, for purposes of determining years of service under subsection (a), credit shall, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes, if—

(A) such service—

(i) was performed in a position the duties of which directly relate to the duties of the position to which such employee is so appointed; and

(ii) meets such other requirements as the Office may prescribe; and

(B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.

(2) Service described in paragraph (1)—

(A) shall be creditable, for the purposes described in paragraph (1), as of the effective date of the employee's appointment; and

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

(3) An employee shall not be eligible for the application of paragraph (1) on the basis of any appointment if, within 90 days before the effective date of such appointment, such employee has held any position in the civil service.

(f) Notwithstanding any other provision of this section, the rate of accrual of annual leave under subsection (a) shall be 1 day for each full biweekly pay period in the case of any employee who holds a position which is subject to—

(1) section 5376 or 5383; or

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

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Subpart F—Labor-Management and Employee Relations

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CHAPTER 83—RETIREMENT

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SUBCHAPTER III—CIVIL SERVICE RETIREMENT

§ 8331. Definitions

For the purpose of this subchapter—

(1) * * *

* * * * *

(13) “military service” means honorable active service—

(A) * * *

(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

(C) as a commissioned officer of the Environmental Science Services Administration after June 30, 1961; or

(D) as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy;

* * * * *

§ 8339. Computation of annuity

(a) * * *

* * * * *

(p)(1) * * *

* * * * *

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

- (i) subparagraph (A) of such paragraph shall apply with respect to service performed before, on, or after April 7, 1986; and
- (ii) subparagraph (B) of such paragraph shall apply with respect to that portion of any annuity which is attributable to service performed on or after April 7, 1986.

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

* * * * *

CHAPTER 84—FEDERAL EMPLOYEES’ RETIREMENT SYSTEM

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SUBCHAPTER I—GENERAL PROVISIONS

§ 8401. Definitions

For the purpose of this chapter—

(1) * * *

* * * * *

(31) the term “military service” means honorable active service—

(A) * * *

(B) in the commissioned corps of the Public Health Service after June 30, 1960; or

(C) in the commissioned corps of the National Oceanic and Atmospheric Administration, or a predecessor entity in function, after June 30, 1961; or

(D) as a cadet at the United States Military Academy, the United States Air Force Academy, or the United States Coast Guard Academy, or as a midshipman at the United States Naval Academy;

* * * * *

FEDERAL EMPLOYEES PAY COMPARABILITY ACT OF 1990

* * * * *

TITLE IV—FEDERAL LAW ENFORCEMENT PAY REFORM

SEC. 401. SHORT TITLE.

This title may be cited as the “Federal Law Enforcement Pay Reform Act of 1990”.

* * * * *

SEC. 403. SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.

(a) * * *

(c) The higher minimum rates and corresponding higher rates for each step rate of each designated grade shall apply to every law enforcement officer in the designated grades (except in the case of any law enforcement officer for whom a higher rate is authorized under section 5305 of title 5, United States Code, as amended by section 101 of this Act, or similar provision of law) ζ in the same manner as rates established under section 5305 of such title, as so amended, and may be increased in accordance with subsection (f) of such section 5305. *and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).*

* * * * *

ζ SEC. 407. RELOCATION PAYMENTS.

ζ Notwithstanding section 5753(b)(1)(A) of title 5, United States Code, as added by this Act, a law enforcement officer whose rate of basic pay is less than \$60,000 may receive a relocation payment of up to \$15,000 under section 5753.

* * * * *

ADDITIONAL VIEWS

We support S. 129, the “Federal Workforce Flexibility Act.” S. 129 provides federal agencies with additional tools for recruiting employees for difficult-to-fill positions and for retaining employees with unusual qualifications. We are pleased that the flexibilities in this bill apply governmentwide. We think this is a far better approach than the agency-specific reform bills that Congress has passed in recent years.

We want to highlight a few important provisions of this bill. During the Civil Service and Agency Subcommittee mark up on March 18, 2004, a minority amendment was offered, and accepted, that would prohibit recruitment, relocation and retention bonuses from being paid to political appointees. There is no evidence that the federal government is having a difficult time recruiting or retaining political appointees.

In addition, the amendment requires the Office of Personnel Management (OPM) to report the number of bonuses paid under the bill. This will allow Congress to evaluate whether these bonuses are effective in improving the recruitment and retention of high-quality employees. Too often, the proper information is not collected in order to determine whether Congress should have granted additional personnel flexibilities. Congress also needs to know whether federal agencies are taking full advantage of the flexibilities. Earlier this month, a Government Accountability Officer (GAO) report found that agencies are not using all the hiring flexibilities that Congress has given them over the years. This troubling GAO finding deserves this Committee’s further oversight. After all, it does no good to authorize recruiting tools that are never used.

Furthermore, the minority amendment recommends that OPM monitor recruitment bonuses paid by one federal agency to hire an individual working in another federal agency in the same geographic area. OPM will also have to study bonuses that are used to keep current employees from leaving to go work at another federal agency. It is generally not in the government’s best interest for agencies to engage in bidding wars over each others employees. OPM should ensure that bonuses paid to employees moving within the federal government are an effective use of the governments resources and do not negatively impact the human capital needs of the entire federal government.

Finally, we also want to highlight one provision in this bill that provides compensatory time to federal employees when they travel on official business during non-working hours. If an employee has to travel on a Sunday to attend an out-of-town meeting on Monday, that employee should receive some type of credit for giving up his weekend to travel for the government. We are pleased that the majority was unsuccessful in its efforts to place caps on this compensatory time.

HENRY A. WAXMAN.
DANNY K. DAVIS.