Calendar No. 428

108th Congress *2d Session*	SENATE	REPORT 108–223

FEDERAL WORKFORCE FLEXIBILITY ACT OF 2003

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 129

TO PROVIDE FOR REFORM RELATING TO FEDERAL EMPLOYMENT, AND FOR OTHER PURPOSES

JANUARY 27, 2004.—Ordered to be printed

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Ms. COLLINS, from the Committee on Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 129]

The Committee on Governmental Affairs, to which was referred the bill (S. 129) to provide for reform relating to Federal employment, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

S. 129, the Federal Workforce Flexibility Act, is a bill to modernize and update certain rules relating to Federal employment. The purpose of the legislation is to augment existing statutory authorities and to provide additional flexibilities to Federal agencies in the management of their human resources. Several of the provisions are designed to assist the Federal government in recruiting and retaining a high quality workforce. 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, and establishes

career-reserve Senior Executive Service positions at the White House.

II. BACKGROUND

The average Federal employee is 47 years old, and by 2005, the Office of Personnel Management (OPM) reports that over 50 percent of the Federal workforce will be eligible for early or regular retirement.[1] Although OPM reports that those eligible for retirement are not immediately leaving the federal workforce and that the current retirement rate is similar to that in previous years, the potential departure of such a large number of Federal employees could result in the loss of considerable institutional knowledge and skills. In addition, fewer college graduates are expressing interest in pursuing public sector careers, creating the possibility that Federal agencies will not have adequate personnel to provide the services the American people expect from their government.[2] Among the reasons cited by young Americans for their decisions to pursue alternate employment is the Federal government's lengthy, impersonal hiring process and the perception that its dense bureaucratic processes stifle the ability of employees to realize the positive impact of their efforts or deny the opportunity to make a difference.

At the request of this Committee, the General Accounting Office (GAO) has issued a series of reports focusing on issues affecting the government's ability to recruit, retain, and motivate employees. One area of specific review is the effective use of human capital flexibilities as an essential element to acquiring, developing, and retaining high-quality federal employees. In 2002, GAO found that the flexibilities most effective in managing the workforce are work-life programs, such as alternative work schedules, child care assistance, and transit subsidies; monetary recruitment and retention incentives; special hiring authorities; and incentive awards for notable job performance and contributions, such as cash and time-off awards.[3]

HISTORY

Since 1999, the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia (and its predecessor, the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia) [hereinafter referred to as "OGM"] has conducted 13 hearings on the Federal government's strategic management of human capital.

In December 2000, Senator Voinovich issued a report titled "Report to the President: The Crisis in Human Capital," which outlined two important themes on which OGM worked during the 106th Congress: empowering federal employees and highlighting the critical importance of addressing the Federal government's human capital challenges.

During the 107th Congress, a group of interested and affected stakeholders began to coalesce around the need to provide solutions to the challenges this public policy issue presented for the Nation.

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[1] Office of Personnel Management, Central Personnel Data File, www.opm.gov/feddata.

[2] Partnership for Public Service/Hart-Teeter Survey: Recruitment Problem Remains, Despite Increasing Respect for Government's Work Since 9/11, (September 12, 2002).

[3] General Accounting Office, HUMAN CAPITAL: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces, GAO–03–2, November 2002.

In 2001, GAO designated strategic human capital management a government-wide "high-risk" area,[4] and President Bush included this issue as the first priority in his President's Management Agenda.[5]

In March 2001, former Defense Secretary James Schlesinger and Admiral Harry D. Train United States Navy (Ret.), members of the U.S. Commission on National Security/21st Century, testified before a joint hearing held by OGM and the House Government Reform Subcommittee on Civil Service and Agency Organization.[6] Secretary Schlesinger discussed a comprehensive evaluation on national security strategy and structure that was recently undertaken by the Commission. Regarding human capital, the Commission's final report concluded:

> As it enters the 21st century, the United States finds itself on the brink of an unprecedented crisis of competence in government. The maintenance of American power in the world depends on the quality of U.S. government personnel, civil and military, at all levels. We must take immediate action in the personnel area to ensure that the United States can meet future challenges.[7]

Secretary Schlesinger added further:

> * * * it is the Commission's view that fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy.[8]

The September 11, 2001, terrorist attacks on New York City and Washington, D.C. brought greater attention to the human capital crisis the Commission had described. No longer the "quiet crisis" the National Commission on the Public Service cited in 1989,[9] the Federal government's human capital challenges have received attention as potentially affecting the manner in which the Federal government delivers services to the taxpayer and protects the national interests of the United States.

Building on previous efforts on this issue, Senator George Voinovich convened a human capital working group to define the universe of human capital problems and work together to develop and take action on solutions. The working group, which met four times between June 2001 and July 2002, included Members of Congress, officials from the Clinton and Bush Administrations, and representatives of numerous nonprofit think tanks and academic institutions.

In addition, the John F. Kennedy School of Government at Harvard University played an important role in addressing the human capital crisis by organizing a series of four executive sessions on this topic during the 2001–2002 academic year. Approximately 40 leaders on this issue from the government, the private sector, think

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[4] High Risk Series: An Update (GAO–01–263, January 2001).
[5] The President's Management Agenda, Fiscal Year 2002, Office of Management and Budget, pp. 11–15.
[6] S. Hrg. 107–133.
[7] The United States Commission on National Security/21st Century, Road Map for National Security: Imperative for Change (2001), p. 86.
[8] S. Hrg. 107–133, p. 36.
[9] "Leadership for America: Rebuilding the Public Service," National Commission on the Public Service, 1989.

tanks and academia gathered to discuss this important public policy issue. The executive sessions addressed such issues as recruitment, hiring and retention at the entry and mid-career levels, compensation reform, and quality of life issues in the federal workplace.

As a result of the human capital working group and executive sessions, Senator George Voinovich introduced S. 1603, the Human Capital Act of 2001, on October 31, 2001, and subsequently S. 2651, the Federal Workforce Improvement Act of 2002, on June 20, 2002, which incorporated elements of S. 1603 and a similar Administration proposal. On March 18 and 19, 2002, Senator Daniel Akaka chaired a Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services hearing entitled: "The Federal Workforce: Legislative Proposals for Change," which reviewed these bills.[10] The hearing continued the dialogue on the proposed reforms, including the challenges of appropriately implementing the proposals and the needed commitment from the highest levels of government to allocate the resources necessary to achieve a strong and vibrant workforce. In the House of Representatives, Representative Connie Morella introduced a companion bill, H.R. 4580, the Good People, Good Government Act, in April 2002.

At the same time, the second National Commission on the Public Service was created to focus attention on the need for comprehensive reform in the federal public service. On July 18, 2002, Senator Daniel Akaka and Senator George Voinovich testified before the Commission along with other members of Congress and discussed the need for certain reforms to the federal service. In the Commission's final report, issued in January 2003, the Commission recommended that more flexible personnel management systems should be developed to meet agencies' needs.[11]

During the Governmental Affairs Committee's July 24–25, 2002, business meeting to consider S. 2452, the National Homeland Security and Combating Terrorism Act of 2002, Senators Voinovich and Akaka offered an amendment to add several major provisions of S. 2651 to S. 2452. The Committee agreed unanimously to the amendment. On November 22, 2002, Congress enacted the Homeland Security Act of 2002,[12] which included 11 government-wide human capital reform provisions from S. 2651. The enactment of this legislation marked the first major, government-wide revisions to civil service law since the enactment of the Civil Service Reform Act of 1978.[13]

To further improve the federal government's ability to recruit and retain a world-class 21st century workforce, Senator George Voinovich introduced in the 108th Congress the Federal Workforce Flexibility Act of 2003, S. 129, which included some of the remaining provisions in S. 2651. The sections that follow discuss the various elements of S. 129, as amended, as well as their significance.

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[10] S. Hrg. 107–470.

[11] National Commission on the Public Service, Urgent Business for America: Revitalizing the Federal Government for the 21st Century, January 2003, pp. 27.

[12] Public Law 107–296.

[13] Public Law 95–454.

ENHANCED BONUS AUTHORITY

S. 129 would allow federal agencies to use recruitment, relocation and retention bonuses in a more strategic manner to help the government improve its competitiveness in maintaining a high quality workforce. The current bonus authorities already offer agencies important tools for recruiting and retaining key employees to perform critical functions. The existing authorities were authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA).[14] Under FEPCA, agencies are authorized to pay a lump-sum recruitment or relocation bonus of up to 25 percent of the annual rate of basic pay to an employee newly appointed to a difficult-to-fill position. FEPCA also authorized agencies to pay a retention allowance of up to 25 percent of basic pay to an employee if 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 the agency determines that the employee would be likely to leave the Federal service without the allowance.

A 1999 OPM evaluation found that limited funding and limited opportunities for recruitment because of downsizing contributed to restricted agency use of these bonus authorities. Allowing flexibility in the methods of payment and raising the maximum amounts were among the suggestions raised by agencies in responding to the report.[15] S. 129 would allow an agency head to waive the 25% limitation based on a critical agency need, subject to OPM's regulations. Under a wavier, the amount of the bonus could be up to 50% of the employee's annual basic pay rate at the beginning of the service period, multiplied by the number of years in the service period, not to exceed 100% of the employee's annual basic pay rate at the beginning of the service period. Agencies would be required to establish plans for paying recruitment and relocation bonuses before paying such bonuses. By expanding the circumstances in which recruitment, relocation and retention bonuses may be paid and by enabling agencies to make the payments in more strategic ways that enhance their desired effect, this section would help federal agencies recruit and retain the kind of workforce they will need in the 21st century. These changes are particularly appropriate to the current environment in which federal agencies are engaged in keen competition for the most qualified candidates.

S. 129 would amend current law to add an additional basis for paying a retention allowance. Specifically, the legislation would amend current law to state that agencies which determine that an employee would likely leave for a different federal position, in the absence of a bonus, would be authorized to pay a retention bonus to the employee. Prior to receiving a retention allowance, an employee would have to enter into a written service agreement to complete a period of employment with the agency.

The enhanced bonus authority could not be used to pay an employee in a position to which an individual is appointed by the President, by and with the advice and consent of the Senate; a noncareer appointee position in the Senior Executive Service; or a posi-

[14] Public Law 101–509.

[15] U.S. Office of Personnel Management, Office of Merit Systems Oversight and Effectiveness, Report of a Special Study; The 3Rs: Lessons Learned from Recruitment, Relocation, and Retention Incentives (Washington: OPM, 1999), p. 33.

tion that has been excepted from the competitive service by reason of its confidential, policy-making, or policy-advocating character.

MODIFICATION OF CRITICAL PAY AUTHORITY

Under current law, the Office of Management and Budget (OMB), in consultation with OPM, may, upon the request of an agency head, grant authority to fix the rate of basic pay for one or more critical positions in an agency at not less than the rate that would otherwise be payable for that position, but not greater than the rate payable for Level I of the Executive Schedule, except upon the President's written approval.[16] In order to apply critical pay authority, the position must require a very high level of expertise in a scientific, technical, or administrative field and be crucial to the accomplishment of an agency's mission. Although the federal government is authorized to fill up to 800 critical pay provisions, at present only 13 have been filled.

S. 129 would shift oversight of the federal government's critical pay authority, from the Office of Management and Budget (OMB) to the Office of Personnel Management (OPM), in order to encourage increased application of this underutilized flexibility as a means of attracting talented individuals to critical positions in the federal government for short periods of time. As the agency charged with assisting the executive branch to meet its growing human capital demands, OPM currently works directly with other agencies to ensure that they strategically use the broad range of existing human resource management tools to recruit, retain, and manage a high-performing workforce. OPM is committed to increased use of this authority, which would allow the federal government to realize the benefits of talented individuals whose expertise could improve agencies' efficiency and effectiveness.

CORRECTION OF A RETIREMENT ANOMALY FOR PART-TIME SERVICE

The Federal Workforce Flexibility Act would also change the computation of Civil Service Retirement System (CSRS) annuities involving part-time service by correcting an anomaly that is a disincentive for employees nearing the end of their careers who would like to phase into retirement by working part-time schedules. Specifically, the legislation would clarify that CSRS annuities based in whole or in part on part-time service should be pro-rated for the period of service that was performed on a part-time basis. The correction allows agencies, as part of their succession planning efforts, to retain the expertise of senior staff who wish to work on a part-time basis at the end of their federal careers.

CSRS annuities are computed based on an average of an employee's highest three years of salary, multiplied by a factor representing their years of service. Before 1986, employees who worked part-time could switch to a full-time schedule in the last three years of service and thereby reap a benefit equal to that of an employee who worked full-time for an entire career. In 1986, Congress decided to reverse the computation formula so that the computation of part-time service performed after April 6, 1986, is based on a deemed full-time high-three average salary, multiplied by the factor representing years of service. The resulting benefit is

[16] 5 U.S.C. § 5377.

then reduced by a fraction representing the actual time worked over the equivalent full-time service. Because this new computation applied only to service performed after April 6, 1986, the old formula continued to apply to service performed before that date. Consequently, if an employee with substantial full-time service before 1986 switches to a part-time schedule at the end of his career, the high-three average salary that is applied to service before 1986 is the pro-rated salary or, if higher, the full-time salary from the years before the employee began working part-time. This often results in a disproportionate reduction in the employee's benefit.

Under current law, the adverse impact of working part-time just prior to retirement results from the requirement to use the actual salary received in computing the pre-April 1986 average salary. This results in using a pro-rated, or lower, salary even though all service before 1986 may have been full-time.

The following is an example of the change in part-time annuity computations that would result from enactment of S. 129. Assume an employee worked full-time from April 1976 through April 2001, converted to part-time status in April 2001 and worked 20 hours per week until retirement in April 2006, the employee's full-time and (part-time) salary rates are as follows:

2000—$40,000
2001—$41,000
2002—$42,000
2003—$43,000 ($21,500)
2004—$44,000 ($22,000)
2005—$45,000 ($22,500)
2006—$46,000 ($23,000)

Under current law, using the salary rates listed above, the employee would receive an annual benefit of $22,412, based on an average salary of $41,000 applied to pre-1986 service. Under S. 129, the employee would receive an annual benefit of $23,062 because the person's highest salary, including his or her deemed full-time salary for years of part-time work, would be used in computing the benefit derived from the pre-1986 service. The degree of difference in the computations in any particular case is dependent upon the employee's actual tour of duty, the length of part-time service before retirement, and the true salary progression. The computation follows:

Computation under current law

Annuity computation

Pre-April 1986: $41,000 × .1625 = $6,662

Post-April 1986: $45,000 × .40 = $18,000

× .875 (Proration factor) = $15,750

Annual benefit (Add pre- and post-April 1986 benefits)
$6,662 + $15,750 = $22,412

Computation under S. 129

Pre-April 1986: $45,000 × .1625 = $7,312

Post-April 1986: $45,000 × .40 = $18,000

× .875 (Proration factor) = $15,750

Annual benefit (Add pre- and post-April 1986 benefits)

$7,312 + $15,750 = $23,062

RETIREMENT CREDIT FOR CADETS AND MIDSHIPMAN

Under current law, a federal employee who served in the armed forces can count his or her military service toward a civilian retirement annuity, provided that the employee makes a deposit to the Civil Service Retirement and Disability Fund equal to the amount that would have been withheld from his or her military pay if military service had been covered under the civilian retirement system. S. 129 would ratify the long-standing practice of OPM (and, previously, the Civil Service Commission) of granting credit under the CSRS and the Federal Employees' Retirement System (FERS) for time spent as a cadet or midshipman at one of the military service academies, provided that he or she makes a deposit to the Civil Service Retirement and Disability Fund equal to the amount that would have been withheld from his or her cadet or midshipman stipend if the service had been covered. Granting retirement credit recognizes that some members of the armed services begin their federal service at the academies, and can serve as an incentive for those considering an extended career in the federal government.

SENIOR EXECUTIVE HIRING AUTHORITY

The Federal Workforce Flexibility Act would provide authority for the White House Office of Administration to employ senior executives. S. 129 would require that any permanent Senior Executive Service positions established be career reserved positions. The hiring process for career appointees to the Senior Executive Service is a merit-based selection process under existing law.[17] All statutory rights and protections that apply generally to senior executives in career reserved positions in agencies would be applicable. The employment of career senior executives will help build the capability needed to address administrative, knowledge and other challenges important to the analysis of current and future issues before the executive branch, while providing an opportunity for individual civilian employees to further develop their management skills.

This new section also would ensure that the ceiling applicable to General Schedule positions does not apply to the new senior executive positions, and it updates a reference to a grade of the General Schedule that no longer exists.

TRAINING COORDINATION

Continuous investment in training and workforce development is essential for improving the performance of the federal government. S. 129 contains several provisions that are designed to assist agencies in coordinating their training programs. The legislation would amend current law[18] to require agencies to link training activities with performance plans and strategic goals in performing the agency mission, in order to help ensure that the federal government's training resources are appropriately used. S. 129 would require each agency to appoint or designate a training officer, who would be responsible for developing, coordinating and administering agency training. The individual could be the same person as the Chief

[17] 5 U.S.C. § 3393.
[18] 5 U.S.C. § 4103.

Human Capital Officer. Agencies would also be required to institute comprehensive management succession programs designed to develop future leaders; and provide special training to managers to help them deal with poor performers. The training plans would be developed in consultation with OPM. Several agencies already have such initiatives, such as the Defense Leadership Management Program at the Department of Defense. Combined, the provisions create a renewed emphasis on the importance of training.

ANNUAL LEAVE ENHANCEMENTS

Current law provides for accrual of annual leave at four hours per biweekly pay period for individuals with less than three years of federal service, six hours of leave for any employee with between three and 15 years of service, and eight hours of leave for any employee with a minimum of 15 years of service.[19] The Federal Workforce Flexibility Act would reform the annual leave accrual policy for new mid-career federal employees, allowing agency heads to deem a period of qualified non-federal career experience for an individual an equal period of service performed as a federal employee. The legislation also provides that all senior executives and other senior level employees accrue annual leave at the maximum rate of eight hours for each bi-weekly pay period.

Individuals with substantial private sector experience may be hesitant to enter government service if they have to surrender a considerable amount of vacation time. By allowing them to accrue annual leave at the rate of six or eight hours per biweekly pay period (i.e., 20 and 26 days per annum, respectively) instead of the four hours (i.e., 13 days per annum) currently specified by law, agencies will have a greatly enhanced capability to recruit qualified mid-career individuals.

COMPENSATORY TIME FOR TRAVEL

Under current law, the time that an employee spends in a travel status away from his or her official duty station is not considered to be hours of employment unless specific requirements are met.[20] The requirements are that (1) the time spent is within the days and hours of the employee's regularly scheduled workweek, or (2) the travel involves the performance of work while traveling, is incident to travel that involves the performance of work while traveling, is carried out under arduous conditions, or results from an event that could not be scheduled or controlled administratively. In light of the fact that work-life programs are among the most effective recruitment and retention tools,[21] the Committee believes that federal employees should receive compensation while traveling on the government's business. S. 129 would require federal agencies to provide employees compensatory time off for time spent by employees in travel status away from their official duty stations, to the extent the time spent in travel status is not otherwise compensable. Employees receiving compensatory time off for travel would not be entitled to payment for unused compensatory time earned under this new statutory requirement. OPM would prescribe regu-

[19] 5 U.S.C. § 6303.
[20] 5 U.S.C. § 5542(b)(2).
[21] General Accounting Office, HUMAN CAPITAL: Effective Use of Flexibilities Can Assist Agencies in Managing Their Workforces, GAO–03–2, November 2002.

lations to implement the provision no later than 30 days after enactment.

III. Legislative History

S. 129 was introduced on January 9, 2003, by Senator George V. Voinovich and was referred to the Senate Committee on Governmental Affairs. On March 21, 2003, the bill was referred to the OGM Subcommittee. A hearing on S. 129 was held before the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia on April 8, 2003.

On June 11, 2003, the Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia favorably polled out S. 129. On October 22, 2003, the Committee on Governmental Affairs met in open session and by voice vote agreed to a manager's amendment to S. 129, offered by Senator Voinovich and cosponsored by Senator Akaka, and by voice vote, ordered S. 129 reported favorably with the amendment. The manager's amendment differed from the original bill by, among other things—(a) prohibiting the use of the enhanced bonus authority for political appointees; (b) requiring OPM to submit an annual report to the Senate Governmental Affairs Committee and the House Government Reform Committee describing agency use of the enhanced bonus authorities; (c) providing compensatory time off for federal employee travel during hours not otherwise compensable; (d) granting retirement credit for cadet or midshipman service at military service academies; (e) authorizing the White House Office of Administration to establish and fill career reserved senior executive positions, and (f) omitting provisions, which were in the original bill, involving streamlined personnel management demonstration projects and law enforcement officer relocation payments. Senators present: Akaka, Bennett, Coleman, Collins, Fitzgerald, Lautenberg, Levin, Pryor, and Voinovich.

IV. Section-by-Section Analysis of Bill as Amended

Sec. 101. Recruitment, relocation and retention bonuses

Subsection (a) adds new sections 5754a and 5754b to title 5, U.S. Code, to allow the Office of Personnel Management to 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 absence of such a bonus in certain cases. The new §§ 5754a and 5754b are in addition to existing bonus authority (5 U.S.C. § 5753 and 5 U.S.C. § 5754), which remains in effect. Agencies can use either or both existing and new authority.

New § 5754a. is entitled, "Recruitment and retention bonuses."

Subsection (a) of new § 5754a defines the term "employee."

Subsection (b) of new § 5754a 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 absence of a bonus.

Subsection (c)(1) of new § 5754a 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 § 5754a 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 the terms and conditions under which the bonus is payable, including the conditions under which the agreement may be terminated before the agreed-upon service period has been completed.

Subsection (c)(3) of new § 5754a states that the agreements shall be made effective upon employment or relocation, unless an exception is made to allow for an initial period of formal basic training.

Subsection (d)(1) of new § 5754a states that 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.

Subsection (d)(2) of new § 5754a states that bonuses may be paid as an initial lump sum, in installments, or as a final lump sum upon the completion of the service period, or in a combination of these forms of payment.

Subsection (d)(3) of new § 5754a clarifies that bonuses under this section are not part of the basic pay of an employee.

Subsection (d)(4) of new § 5754a states that the Office of Personnel Management may prescribe regulations to allow recruitment bonuses to be paid to an eligible individual before that individual enters on duty.

Subsection (e) of new § 5754a states that the Office of Personnel Management may authorize an agency head to waive the 25 percent cap under subsection (d)(1), allowing the amount of the bonus to be up to 50 percent of the employee's annual rate of basic pay multiplied by the number of years of the service period, not to exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period.

Subsection (f) of new § 5754a 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 § 5754a authorizes the Office of Personnel Management to issue regulations to carry out Section 101, including regulations relating to the repayment of recruitment or relocation bonuses when the agreed upon service period has not been met.

Subsection (h)(1) of new § 5754a states that, at the request of the head of an Executive agency, the Office of Personnel Management may extend coverage under this section to categories of employees otherwise not eligible.

Subsection (h)(2) of new § 5754a states that none of the bonuses authorized under Section 101 may be paid to an individual who holds a political appointment (Senate confirmed, non-career Senior Executive, or General Schedule) in an executive branch agency.

Subsection (i) of new § 5754a requires OPM to report annually to Congress on the bonuses paid under this authority to the Committee. The report must include the use of each agency of recruitment and relocation bonuses, including the number and amount of bonuses by grade.

Subsection (j) of new § 5754a makes it clear that individuals may not be paid a recruitment or relocation bonus under this section if

they are receiving the same category of bonus under 5 U.S.C. § 5753.

New § 5754b is entitled, "Retention bonuses."

Subsection (a) of new § 5754b defines the term "employee."

Subsection (b) of new § 5754b 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 possesses unusually high or unique qualifications make it essential for the employee's retention. Additionally, the agency is required to make a determination that in the absence of a retention bonus the employee would be likely to leave the federal service or take a different position in the federal service, as described in regulation.

Subsection (c) of new § 5754b 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 § 5754b states that except as provided in new § 5754j, a retention bonus under new § 5754b may be paid only to an employee covered by the General Schedule pay system established under subchapter III of chapter 53, title 5, United States Code.

Subsection (e) of new § 5754b 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.

Subsection (e)(2) of new § 5754b states that 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, including the conditions under which the agreement may be terminated before the agreed-upon service period has been completed.

Subsection (e)(3) of new § 5754b states that 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.

Subsection (e)(4) of new § 5754b states that a retention bonus for an employee may not be based on any period of service which is the basis for a recruitment or relocation bonus under 5 U.S.C. § 5753 or § 5754a.

Subsection (f) of new § 5754b 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), and 10 percent of the employee's basic pay if the bonus is paid to a group of employees under subsection (c).

Subsection (f)(2) of new § 5754b states that 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 in subsection (e).

Subsection (f)(3) of new § 5754b makes it clear that a retention bonus is not part of the basic pay of an employee.

Subsection (g) of new § 5754b states the Office of Personnel Management may, at the request of the head of an agency, may waive the percentage limit under subsection (f)(1) 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 critical need.

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

Subsection (i) of new § 5754b authorizes the Office of Personnel Management to issue regulations to carry out this section.

Subsection (j) of new § 5754b states that a retention bonus under this section may not be paid to an individual who holds a political appointment (Senate confirmed, non-career Senior Executive, or General Schedule) in an executive branch agency.

Subsection (k) of new § 5754b requires the Office of Personnel Management to submit an annual report to the Committee on retention bonuses paid under this section. The report shall include the use by each agency of retention bonuses, including the number and amount of bonuses by grade.

Subsection (l) of new § 5754b states that an employee may not be paid a retention bonus under this section and a retention allowance under 5 U.S.C. § 5754.

The new bonus authorities under section 101 will take effect on the first day of the first applicable pay period beginning on or after 180 days after the enactment date. It further provides that a recruitment or relocation bonus service agreement in effect prior to the changes would continue in effect. Additionally, payment of a retention allowance authorized previously shall continue in effect until reauthorized or terminated, but for no longer than one year.

Sec. 102. Streamlined critical pay authority

This section would amend 5 U.S.C. § 5377, by shifting oversight and the current statutorily required reporting authority from the Office of Management and Budget to the Office of Personnel Management.

Subsection (f) of amended § 5377 would limit the Office of Personnel Management's authority to offer critical pay to no more than 800 positions at any one time.

Subsection (g) of amended § 5377 would require the Office of Personnel Management to consult with the Office of Management and Budget before making any decision to grant or terminate any critical pay authority.

Sec. 103. Civil Service Retirement System computation for part-time service

This section would amend section 5 U.S.C. § 8339(p) by adding a new subsection (3) to provide a 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 § 8339(p)(3) would state that subparagraph (a) of § 8339(p)(1) would apply to any service performed before, on or

after April 7, 1986; subparagraph (b) of § 8339(p)(1) would apply to all service performed on a part-time or full-time basis on or after April 7, 1986; and subparagraph (c) of § 8339(p) would that any service performed on a part-time basis before April 7, 1986, would be credited as service performed on a full-time basis.

Sec. 104. Retirement service credit for cadet or midshipman service

Subsection (a) would amend 5 U.S.C. § 8331(13) to include an individuals 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. § 8401(31) to include an individuals 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.

Sec. 105. Senior Executive Service authority for White House Office of Administration

This section would amend chapter 2 of title 3, United States Code, by adding a new section to provide authority for the White House Office of Administration to establish Senior Executive Service positions. The new section would state that the positions are expressly designated as career reserved, restricting the use of limited appointments to temporary positions. This new section also would ensure that the ceiling applicable to General Schedule positions does not apply to the new senior executive positions, and it updates a reference to a grade of the General Schedule that no longer exists.

Sec. 201. Agency training

Subsection (a) would amend 5 U.S.C. § 4103 to require agencies to link training activities with performance plans and strategic goals, and clearly articulate how their training programs help to accomplish the agency's mission.

Subsection (b) would amend chapter 41 of title 5, United States Code, by adding a new section to require each agency to appoint or designate a training officer, who would be responsible for developing, coordinating and administering training for the agency.

Subsection (b) also would 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 to help those employees exhibiting unacceptable performance.

Sec. 202. Annual leave enhancements

Subsection (a) would amend 5 U.S.C. § 6303 to reform the policy which dictates the accrual of annual leave for newly-hired mid-career federal employees. This section would add a new subsection (e)

to 5 U.S.C. § 6303, that would allow the head of an agency to deem a period of qualified non-federal career experience for an individual an equal period of service performed as a federal employee. This subsection would take effect 120 days after the date of enactment of S. 129, and shall only apply to an individual hired on or after the effective date.

Subsection (b) would amend section 5 U.S.C. § 6303(a), to provide that all senior executives and other senior level employees accrue annual leave at the maximum rate: one day (eight hours) for each bi-weekly pay period. It also would authorize OPM to extend coverage of this section to other equivalent categories of employees. This subsection would take effect 120 days after the date of enactment of S. 129.

Sec. 203. Compensatory time off for travel

Subsection (a) of this section would amend 5 U.S.C. § 5550, to require federal agencies to provide employees compensatory time off for time spent by employees in travel status away from their official duty stations, to the extent the time spent in travel status is not otherwise compensable.

Subsection (b) states that employees receiving compensatory time off for travel would not be entitled to payment for unused compensatory time earned under this new statutory requirement.

V. Estimated Cost of Legislation

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 129—Federal Workforce Flexibility Act of 2003

Summary: S. 129 would amend laws affecting civilian employees of the federal government. Major provisions of the bill would increase federal retirement benefits for some workers who performed part-time service and would affect the way time spent at a U.S. military academy is credited for retirement purposes. The legislation also would amend current laws related to recruitment, relocation, and retention bonuses, as well as agency training.

CBO estimates that enacting S. 129 would increase direct spending by $4 million in 2004, $71 million over the 2004–2008 period, and $233 million over the 2004–2013 period. Enacting the bill would increase revenues by less than $500,000 annually starting in 2005. In addition, CBO estimates that implementing S. 129 would cost $351 million over the 2004–2008 period and $756 million over the 2004–2013 period for various administrative requirements—assuming appropriation of the necessary amounts.

S. 129 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of S. 129 is shown in the following table. The direct spending costs of this legislation fall within budget function 600 (income security); the spending subject to appropriation would fall across multiple budget functions.

	By fiscal year, in millions of dollars—									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING [1]										
CSRS Retirement Benefits for Part-Time Service:										
Estimated Budget Authority	4	10	14	18	21	24	26	28	30	31
Estimated Outlays	4	10	14	18	21	24	26	28	30	31
Retirement Benefits for Service Academy Credits:										
Estimated Budget Authority	0	*	1	2	2	3	4	5	5	6
Estimated Outlays	0	*	1	2	2	3	4	5	5	6
Refunds of Payments Made to CSRDF:										
Estimated Budget Authority	0	−1	0	0	0	0	0	0	0	0
Estimated Outlays	0	−1	0	0	0	0	0	0	0	0
Total Changes:										
Estimated Budget Authority	4	9	15	20	23	27	30	33	35	37
Estimated Outlays	4	9	15	20	23	27	30	33	35	37
CHANGES IN SPENDING SUBJECT TO APPROPRIATION										
Enhanced Recruitment, Relocation, and Retention Bonuses:										
Estimated Authorization Level	67	69	70	72	74	76	79	81	83	86
Estimated Outlays	66	69	70	72	74	76	79	81	83	86

[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 early in 2004.

Direct spending and revenues

Civil Service Retirement Benefits for Part-Time Service. Section 103 would alter the way retirement benefits under the Civil Service Retirement System (CSRS) are calculated for workers with part-time service. The bill would apply to workers who performed work prior to April 7, 1986, have some part-time service, and retire after the bill is enacted. Based on information from Office of Personnel Management (OPM), CBO estimates that this provision would cost $4 million in 2004, $67 million over the 2004–2008 period, and $206 million over the 2004–2013 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 tends to treat 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 103 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 103 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 104 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 programs, 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 1 percent have graduated from a U.S. service academy. Of the 120,000 federal employees who begin collecting retirement benefits each year, we further estimate that 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 in2 005, $5 million during the 2005–2008 period, and $28 million over the 2005–2013 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, the bill would also increase future deposits into the CSRDF. We estimate these deposits would increase federal revenues by less than $500,000 annually over the 2005–2013 period.

Spending subject to appropriation

Recruitment, Relocation, and Retention Bonuses. Section 101 allows 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 allows 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 can 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 this would result in a cost of $351 million over the 2004–2008 period and $756 million over the 2004–2013 period, assuming the appropriation of the necessary funds.

SES Authority for White House Office of Administration. Section 105 would allow the White House Office of Administration (OA) to hire new (or convert existing) employees to career Senior Executive Service (SES) positions. OA expects to convert 11 existing employees from General Schedule (GS) status to SES status, eventually resulting in higher pay and bonuses for these individuals. The section also changes the pay cap for non-SES employees of the Vice President, the White House Office, the executive residence, the domestic policy staff, and OA from $115,184 including locality pay (minimum for a GS–16) to $124,783 including locality pay (maximum for a GS–15). Relatively few of these employees are believed to be near the cap, however. CBO estimates that the cost of these two provisions would not be significant.

Agency Training. Section 201 would require each agency to designate a training officer to coordinate and administer training programs. In consultation with OPM, each agency would establish a comprehensive management program to train employees and develop managers. CBO expects that the new requirements would not add significant costs because the requirements mostly reflect current agency practices.

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.

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: Selena Caldera.

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

VI. Evaluation of Regulatory Impact

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. CBO states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on state, local, or tribal governments. The legislation contains no other regulatory impact.

VII. Changes to Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 and existing law, in which no change is proposed, is shown in roman):

TITLE 3, UNITED STATES CODE

* * * * * * *

CHAPTER 2—OFFICE AND COMPENSATION OF PRESIDENT

* * * * * * *

§ 107. Domestic Policy Staff and Office of Administration; personnel

* * * * * * *

(2) In addition to any authority granted under paragraph (1) of this subsection, the President (or his designee) is authorized to employ individuals in the Office of Administration in accordance with [section 3101] *sections 3101 and 3132* of title 5 and provisions relating thereto. Any individual so employed under the authority granted under such section 3101 shall be subject to the limitation specified in section 114 of this title.

(3) Any permanent Senior Executive Service position established under paragraph (2) shall be a career reserved position.

* * * * * * *

§ 114. General pay limitation

* * * * * * *

(a) Notwithstanding any provision of law, other than the provisions of this chapter, no employee of the White House Office, the Executive Residence at the White House, the Domestic Policy Staff, or the Office of Administration, nor any employee under the Vice President appointed under section 106 of this title, may be paid at a rate of basic pay in excess of the [minimum rate of basic pay

then currently paid for GS–16] *maximum rate of basic pay then currently paid for GS–15* of the General Schedule of section 5332 of title 5.

(b) The limitation established in subsection (a) shall not apply to an individual appointed under the authority in section 107(b)(2), in accordance with section 3132 of title 5.

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TITLE 5, UNITED STATES CODE

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CHAPTER 41—TRAINING

Sec.
4101. Definitions.
4102. Exceptions; Presidential authority.
4103. Establishment of training programs.
4104. Government facilities; use of.
4105. Non-Government facilities; use of.
(4106. Repealed.)
4107. Restriction on degree training.
4108. Employee agreements; service after training.
4109. Expenses of training.
4110. Expenses of attendance at meetings.
4111. Acceptance of contributions, awards, and other payments.
4112. Absorption of costs within funds available.
(4113. Repealed.)
(4114. Repealed.)
4115. Collection of training information.
4116. Training program assistance.
4117. Administration.
4118. Regulations.
4119. Training for employees under the Office of the Architect of the Capitol and the Botanic Garden.
4120. Agency training officer.
4121. Specific training programs.

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§ 4103. Establishment of training programs

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(c) The head of each agency shall—

(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 to accomplish such plans and goals.

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§ 4120. Agency training officer

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Each agency shall appoint or designate a training officer who shall be responsible for developing, coordinating, and administering training for the agency.

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§ 4121. Specific training programs

* * * * * * *

In consultation with the Office of Personnel Management, each head of an 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 performances; and

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

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CHAPTER 53—PAY RATES AND SYSTEMS

Subchapter VII—Miscellaneous Provisions

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§ 5377. Pay authority for critical positions

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[(c) The Office of Management and Budget, in consultation with the Office of Personnel Management, 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.**]**

(c) The Office of Personnel Management, in consultation with the 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.

(d)(1) The rate of basic pay fixed under this section by an agency head may not be less than the rate of basic pay (including any comparability payments) which would then otherwise be payable for the position involved if this section had never been enacted.

(2) Basic pay may not be fixed under this section at a rate greater than the rate payable for level I of the Executive Schedule, except upon written approval of the President.

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

(1) whenever the **[**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

(2) as of such date as such Office may otherwise specify, except that termination under this paragraph may not take effect before the authority has been available for such position for at least 1 calendar year.

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

(f) The Office of Personnel Management may not authorize the exercise of authority under this section with respect to more than 800 positions at any 1 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 Office of Personnel Management shall consult with the Office of Management and Budget before making any decision to grant or terminate any authority under this section.

(h) [The Office of Management and Budget shall report to the Committee on Post Office and Civil Service] *The Office of Personnel Management shall report to the 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) the number of positions, in the aggregate and by agency, for which higher rates of pay were authorized or paid under this section during any part of the period covered by such report; and

(2) the name of each employee to whom a higher rate of pay was paid under this section during any portion of the period covered by such report, the rate on rates paid under this section during such period, the dates between which each such higher rate was paid, and the rate or rates that would have been paid but for this section.

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CHAPTER 55—PAY ADMINISTRATION

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Subchapter V—Premium Pay

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§ 5550b. Compensatory time off for travel

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(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.

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CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Subchapter I—Travel and Subsistence Expenses; Mileage Allowances

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§ 5754a. Retention allowances

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

(b)(1) The Office of Personnel Management 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 such a bonus, if the individual—

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

(ii) is currently employed by the Federal Government and moves to a new position in the same geographic area under circumstances described in regulations of the Office; or

(B) is currently employed by the Federal Government and must relocate to accept a position stationed in a different geographic area.

(2) Except as provided by subsection (h), a bonus may be paid under this section only to an employee covered by the General Schedule pay system established under subchapter III of chapter 53.

(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 to exceed 4 years. The Office may, by regulation, prescribe a minimum service.

(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 subsections (d) and (e) 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) The agreement shall be made effective upon employment with the agency or movement to a new position or geographic area, as applicable, except that a service agreement with respect to a recruitment bonus may be made effective at a later date under circumstances described in 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 (or fractions thereof) in the service period, not to exceed 4 years.

(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 service period, 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 amount of the bonus may be up to 50 percent of the employee's annual rate of basic pay at the beginning of the service period multiplied by the number of years (or fractions thereof) in the service period, not to exceed 100 percent of the employee's annual rate of basic pay at the beginning of the service period.

(f) The Office shall require that, before paying a bonus under this section, an agency shall establish a plan for paying recruitment bonuses and a plan for paying relocation 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 recruitment or relocation bonus in appropriate circumstances when the agreed-upon service period has not been completed.

(h)(1) At the request of the head of an Executive agency, the Office may extend coverage under this section to categories of employees within the agency who otherwise would not be covered by this section.

(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.

(i)(1) The Office of Personnel Management shall submit an annual report on bonuses paid under this section to the Committee on

Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(2) Each report submitted under this subsection shall include the use by each agency of recruitment and relocation bonuses, including, with respect to each agency and each type of bonus, the number and amount of bonuses by grade (including the General Schedule, the Senior Executive Service, and positions on the Executive Schedule).

(j)(1) An individual may not be paid a recruitment bonus under this section and a recruitment bonus under section 5753.

(2) An individual may not be paid a relocation bonus under this section and a recruitment bonus under section 5753.

* * * * * * *

§ 5754b. Retention bonuses

* * * * * * *

(a) In this section, the term 'employee' has the meaning given that term under 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, subject to regulations prescribed by the Office, 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) Except as provided in subsection (j), a bonus may be paid only to an employee covered by the General Schedule pay system established under subchapter III of chapter 53.

(e)(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 subsections (f) and (g) 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.

(f)(1) Except as provided in subsection (g), 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 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. An installment payment may not exceed the product derived from 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. If the installment payment percentage is less than the bonus percentage rate, 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.

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

(g) Upon the request of the head of an agency, the Office may waive the limit established under subsection (f)(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.

(h) The Office shall require that, before paying a bonus under this section, an agency shall establish a plan for paying retention bonuses, subject to regulations prescribed by the Office.

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

(j)(1) At the request of the head of an Executive agency, the Office may extend coverage under this section to categories of employees within the agency who otherwise would not be covered by this section.

(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.

(k)(1) The Office of Personnel Management shall submit an annual report on bonuses paid under this section to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(2) Each report submitted under this subsection shall include the use by each agency of recruitment and relocation bonuses, including, with respect to each agency and each type of bonus, the number and amount of bonuses by grad (including the General Schedule, the Senior Executive Service, and positions on the Executive Schedule).

(l) An individual may not be paid a retention bonus under this section and a recruitment allowance under section 5754.

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CHAPTER 63—LEAVE

Subchapter I—Annual and Sick Leave

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§ 6303. Annual leave; accrual

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

(1) one-half day for each full biweekly pay period for an employee with less than 3 years of service;

(2) three-fourths day for each full biweekly pay period, except that the accrual for the last full biweekly pay period in the year is one and one-fourth days, for an employee with 3 but less than 15 years of service; **[**and**]**

(3) one day for each full biweekly pay period for an employee with 15 or more years of service**[**.**]***; and*

(4) one day for each full biweekly pay period for an employee in a position paid under section 5376 or 5383, or for an employee in an equivalent category for which the minimum rate of basic pay is greater than the rate payable at GS–15, step 10.

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. 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) his retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) that service was performed in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(C) on November 30, 1964, he was employed in a position to which this subchapter applies and thereafter he continued to be so employed without a break in service of more than 30 days.

The determination of years of service may be made on the basis of an affidavit of the employee. Leave provided by this subchapter accrues to an employee who is not paid on the basis of biweekly pay periods on the same basis as it would accrue if the employee were paid on the basis of biweekly pay periods.

(b) Notwithstanding subsection (a) of this section, an employee whose current employment is limited to less than 90 days is entitled to annual leave under this subchapter only after being currently employed for a continuous period of 90 days under successive appointments without a break in service. After completing the 90-day period, the employee is entitled to be credited with the leave that would have accrued to him under subsection (a) of this section except for this subsection.

(c) A change in the rate of accrual of annual leave by an employee under this section takes effect at the beginning of the pay period after the pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, in which the employee completed the prescribed period of service.

(d) Leave granted under this subchapter is exclusive of time actually and necessarily occupied in going to or from a post of duty and time necessarily occupied awaiting transportation, in the case of an employee—

(1) to whom section 6304(b) of this title applies;

(2) whose post of duty is outside the United States; and

(3) who returns on leave to the United States, or to his place of residence, which is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico.

This subsection does not apply to more than one period of leave in a prescribed tour of duty at a post outside the United States.

(e)(1) In this subsection, the term "period of qualified non-Federal career experience" means *any equal period of service performed by an individual that—*

(A) except for this subsection would not otherwise be service performed by an employee for purposes of subsection (a); and

(B) was performed in a position—

(i) the duties of which were directly related to the duties of the position in an agency that such individual holds; and

(ii) which meets such other conditions as the Office of Personnel Management shall prescribe by regulation.

(2) For purposes of subsection (a), the head of an agency may deem a period of qualified non-Federal career experience performed by an individual to be a period of service performed as an employee.

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CHAPTER 83—RETIREMENT

Subchapter III—Civil Service Retirement

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§ 8331. Definitions

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(13) "military service" means honorable active service—

(A) in the armed forces;

(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;

[but] *and includes service 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, but* does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

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§ 8339. Deferred retirement

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(p)(1) In computing an annuity under this subchapter for an employee whose service includes service that was performed on a part-time basis—

(A) the average pay of the employee, to the extent that it includes pay for service performed in any position on a part-time basis, shall be determined by using the annual rate of basic pay that would be payable for full-time service in the position; and

(B) the benefit so computed shall then be multiplied by a fraction equal to the ratio which the employee's actual service, as determined by prorating an employee's total service to reflect the service that was performed on a part-time basis, bears to the total service that would be creditable for the employee if all of the service had been performed on a full-time basis.

(2) For the purpose of this subsection, employment on a part-time basis shall not be considered to include employment on a temporary or intermittent basis.

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

(A) subparagraph (A) of such paragraph shall apply to any service performed before, on, or after April 7, 1986;

(B) subparagraph (B) of such paragraph shall apply to all service performed on part-time or full-time basis on or after April 7, 1986; and

(C) any service performed on a part-time basis before April 7, 1986, shall be credited as service performed on a full-time basis.

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CHAPTER 84—FEDERAL EMPLOYEES' RETIREMENT SYSTEM

Subchapter I—General Provisions

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§ 8401. Definitions

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(31) the term "military service" means honorable active service—

(A) in the armed forces;

(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;

[but] *and includes service 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, but* does not include service in the National Guard except when ordered to active duty in the service of the United States or full-time National Guard duty (as such term is defined in section 101(d) of title 10) if such service interrupts creditable civilian service under this subchapter and is followed by reemployment in accordance with chapter 43 of title 38 that occurs on or after August 1, 1990;

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