

108TH CONGRESS
1ST SESSION

S. 610

AN ACT

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

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

3 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

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

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

“Sec.

“9801. Definitions.

“9802. Planning, notification, and reporting requirements.

“9803. Restrictions.

“9804. Recruitment, redesignation, and relocation bonuses.

“9805. Retention bonuses.

“9806. Term appointments.

“9807. Pay authority for critical positions.

“9808. Assignments of intergovernmental personnel.

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

1 **“§ 9801. Definitions**

2 “For purposes of this chapter—

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

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

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

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

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

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

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

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

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

4 “(i) address critical needs; and

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

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

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

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

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

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

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

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

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

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

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

17 “(ii) Internet technologies; and

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

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

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

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

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

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

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

21 “(1) provide to each employee representative
22 representing any employees who might be affected
23 by such plan (or modification) a copy of the pro-
24 posed plan (or modification);

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

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

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

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

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

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

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

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

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

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

16 **“§ 9803. Restrictions**

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

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

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

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

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

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

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

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

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

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

22 “(2) the individual—

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

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

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

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

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

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

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

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

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

6 “(i) the required service period;

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

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

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

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

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

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

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

8 **“§ 9805. Retention bonuses**

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

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

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

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

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

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

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

12 “(i) the required service period;

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

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

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

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

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

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

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

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

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

22 **“§ 9806. Term appointments**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 or

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

5 “(b) Authority under this section—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 “(B) the interest on the amounts of such
15 awards which would be payable if at the time the
16 awards were received they were loans bearing inter-
17 est at the maximum legal prevailing rate, as deter-
18 mined by the Treasurer of the United States,
19 multiplied by 3.

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

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

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

7 “(i) For purposes of this section—

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

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

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

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

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

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

24 “(a) In this section—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(B) a term appointment;

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

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

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

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

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

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

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

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

8 “(a) In this section—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **Service positions**

20 “(a) In this section—

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

24 “(A) a career appointee; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **“§ 9814. Qualifications pay**

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

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

8 “(2) is assigned—

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

11 “(B) to a new position.

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

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

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

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

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

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

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

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

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

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

14 **“§ 9815. Reporting requirement**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“98. National Aeronautics and Space Administration 9801”.

Passed the Senate November 24, 2003.

Attest:

Secretary.

108TH CONGRESS
1ST SESSION

S. 610

AN ACT

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