

108TH CONGRESS  
1ST SESSION

# H. R. 1836

To make changes to certain areas of the Federal civil service in order to improve the flexibility and competitiveness of Federal human resources management.

---

## IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2003

Mr. TOM DAVIS of Virginia (for himself and Mr. HUNTER) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on Armed Services and Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To make changes to certain areas of the Federal civil service in order to improve the flexibility and competitiveness of Federal human resources management.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Civil Service and National Security Personnel Improve-  
6 ment Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—DEPARTMENT OF DEFENSE NATIONAL SECURITY  
 PERSONNEL SYSTEM

Sec. 101. Short title.

Sec. 102. Department of Defense national security personnel system.

TITLE II—DEPARTMENT OF DEFENSE CIVILIAN PERSONNEL

Sec. 201. Modification of the overtime pay cap.

Sec. 202. Civil Service Retirement System computation for part-time service.

Sec. 203. Military leave for mobilized Federal civilian employees.

Sec. 204. Common occupational and health standards for differential payments  
 as a consequence of exposure to asbestos.

Sec. 205. Increase in annual student loan repayment authority.

Sec. 206. Authorization for cabinet secretaries, secretaries of military depart-  
 ments, and heads of executive agencies to be paid on a bi-  
 weekly basis.

Sec. 207. Additional classes of individuals eligible to participate in the Federal  
 long-term care insurance program.

TITLE III—PROVISIONS RELATING TO THE SECURITIES AND EX-  
 CHANGE COMMISSION AND THE NATIONAL AERONAUTICS AND  
 SPACE ADMINISTRATION

Subtitle A—Securities and Exchange Commission

Sec. 301. Securities and Exchange Commission.

Subtitle B—National Aeronautics and Space Administration

Sec. 311. Workforce authorities and personnel provisions.

Sec. 312. Effective date.

TITLE IV—HUMAN CAPITAL PERFORMANCE FUND

Sec. 401. Human Capital Performance Fund.

3 **TITLE I—DEPARTMENT OF DE-**  
 4 **FENSE NATIONAL SECURITY**  
 5 **PERSONNEL SYSTEM**

6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the “National Security Per-  
 8 sonnel System Act”.

1 **SEC. 102. DEPARTMENT OF DEFENSE NATIONAL SECURITY**  
2 **PERSONNEL SYSTEM.**

3 (a) IN GENERAL.—(1) Subpart I of part III of title  
4 5, United States Code, is amended by adding at the end  
5 the following new chapter:

6 **“CHAPTER 99—DEPARTMENT OF DEFENSE**  
7 **NATIONAL SECURITY PERSONNEL SYSTEM**

“Sec.

“9901. Definitions.

“9902. Establishment of human resources management system.

“9903. Attracting highly qualified experts.

“9904. Employment of older Americans.

“9905. Special pay and benefits for certain employees outside the United States.

8 **“§ 9901. Definitions**

9 “For purposes of this chapter—

10 “(1) the term ‘Director’ means the Director of  
11 the Office of Personnel Management; and

12 “(2) the term ‘Secretary’ means the Secretary  
13 of Defense.

14 **“§ 9902. Establishment of human resources manage-**  
15 **ment system**

16 “(a) IN GENERAL.—(1) Notwithstanding any other  
17 provision of this part or of part II of this title, the Sec-  
18 retary may, in regulations prescribed jointly with the Di-  
19 rector, establish, and from time to time adjust, a human  
20 resources management system for some or all of the orga-  
21 nizational or functional units of the Department of De-

1 fense. If the Secretary certifies that issuance or adjust-  
2 ment of a regulation, or the inclusion, exclusion, or modi-  
3 fication of a particular provision therein, is essential to  
4 the national security, the Secretary may, subject to the  
5 direction of the President, waive the requirement in the  
6 preceding sentence that the regulation or adjustment be  
7 issued jointly with the Director.

8 “(2) Any regulations established pursuant to this  
9 chapter shall be established as internal rules of depart-  
10 mental procedure, consistent with section 553 of this title.

11 “(b) SYSTEM REQUIREMENTS.—Any system estab-  
12 lished under subsection (a) shall—

13 “(1) be flexible;

14 “(2) be contemporary;

15 “(3) not waive, modify, or otherwise affect—

16 “(A) the public employment principles of  
17 merit and fitness set forth in section 2301, in-  
18 cluding the principles of hiring based on merit,  
19 fair treatment without regard to political affili-  
20 ation or other nonmerit considerations, equal  
21 pay for equal work, and protection of employees  
22 against reprisal for whistleblowing;

23 “(B) any provision of section 2302, relat-  
24 ing to prohibited personnel practices;

1           “(C)(i) any provision of law referred to in  
2 section 2302(b)(1), (8), and (9); or

3           “(ii) any provision of law implementing  
4 any provision of law referred to in section  
5 2302(b)(1), (8), and (9) by—

6           “(I) providing for equal employment  
7 opportunity through affirmative action; or

8           “(II) providing any right or remedy  
9 available to any employee or applicant for  
10 employment in the public service;

11          “(D) any other provision of this part (as  
12 described in subsection (c)); or

13          “(E) any rule or regulation prescribed  
14 under any provision of law referred to in this  
15 paragraph;

16          “(4) ensure that employees may organize, bar-  
17 gain collectively as provided for in this chapter, and  
18 participate through labor organizations of their own  
19 choosing in decisions which affect them, subject to  
20 the provisions of this chapter and any exclusion from  
21 coverage or limitation on negotiability established  
22 pursuant to law; and

23          “(5) not be limited by any specific law or au-  
24 thority under this title that is waivable under this  
25 chapter or by any provision of this chapter or any

1 rule or regulation prescribed under this title that is  
2 waivable under this chapter, except as specifically  
3 provided for in this section.

4 “(c) OTHER NONWAIVABLE PROVISIONS.—The other  
5 provisions of this part referred to in subsection (b)(3)(D)  
6 are (to the extent not otherwise specified in this title)—

7 “(1) subparts A, E, G, and H of this part;

8 “(2) chapters 34, 45, 47, 57, 72, 73, and 79;

9 and

10 “(3) sections 3131, 3132(a), 3305(b), 3309,  
11 3310, 3311, 3312, 3313, 3314, 3315, 3316,  
12 3317(b), 3318, 3320, 3351, 3352, 3363, 3501,  
13 3502(b), and 3504.

14 “(d) LIMITATIONS RELATING TO PAY.—(1) Nothing  
15 in this section shall constitute authority to modify the pay  
16 of any employee who serves in an Executive Schedule posi-  
17 tion under subchapter II of chapter 53 of this title.

18 “(2) Except as provided for in paragraph (1), the  
19 total amount in a calendar year of allowances, differen-  
20 tials, bonuses, awards, or other similar cash payments  
21 paid under this title to any employee who is paid under  
22 section 5376 or 5383 of this title or under title 10 or  
23 under other comparable pay authority established for pay-  
24 ment of Department of Defense senior executive or equiva-  
25 lent employees may not exceed the total annual compensa-

1 tion payable to the Vice President under section 104 of  
2 title 3.

3 “(e) PROVISIONS TO ENSURE COLLABORATION WITH  
4 EMPLOYEE REPRESENTATIVES.—(1) In order to ensure  
5 that the authority of this section is exercised in collabora-  
6 tion with, and in a manner that ensures the participation  
7 of, employee representatives in the planning, development,  
8 and implementation of any human resources management  
9 system or adjustments to such system under this section,  
10 the Secretary and the Director shall provide for the fol-  
11 lowing:

12 “(A) The Secretary and the Director shall, with  
13 respect to any proposed system or adjustment—

14 “(i) provide to the employee representa-  
15 tives representing any employees who might be  
16 affected a written description of the proposed  
17 system or adjustment (including the reasons  
18 why it is considered necessary);

19 “(ii) give such representatives at least 30  
20 calendar days (unless extraordinary cir-  
21 cumstances require earlier action) to review and  
22 make recommendations with respect to the pro-  
23 posal; and

24 “(iii) give any recommendations received  
25 from such representatives under clause (ii) full

1           and fair consideration in deciding whether or  
2           how to proceed with the proposal.

3           “(B) Following receipt of recommendations, if  
4           any, from such employee representatives with re-  
5           spect to a proposal described in subparagraph (A),  
6           the Secretary and the Director shall accept such  
7           modifications to the proposal in response to the rec-  
8           ommendations as they determine advisable and shall,  
9           with respect to any parts of the proposal as to which  
10          they have not accepted the recommendations—

11                   “(i) notify Congress of those parts of the  
12                   proposal, together with the recommendations of  
13                   the employee representatives;

14                   “(ii) meet and confer for not less than 30  
15                   calendar days with the employee representa-  
16                   tives, in order to attempt to reach agreement on  
17                   whether or how to proceed with those parts of  
18                   the proposal; and

19                   “(iii) at the Secretary’s option, or if re-  
20                   quested by a majority of the employee rep-  
21                   resentatives participating, use the services of  
22                   the Federal Mediation and Conciliation Service  
23                   during such meet and confer period to facilitate  
24                   the process of attempting to reach agreement.



1           “(C)(i) Any part of the proposal as to which the  
2           representatives do not make a recommendation, or  
3           as to which the recommendations are accepted by  
4           the Secretary and the Director, may be implemented  
5           immediately.

6           “(ii) With respect to any parts of the proposal  
7           as to which recommendations have been made but  
8           not accepted by the Secretary and the Director, at  
9           any time after 30 calendar days have elapsed since  
10          the initiation of the congressional notification, con-  
11          sultation, and mediation procedures set forth in sub-  
12          paragraph (B), if the Secretary determines, in the  
13          Secretary’s sole and unreviewable discretion, that  
14          further consultation and mediation is unlikely to  
15          produce agreement, the Secretary may implement  
16          any or all of such parts, including any modifications  
17          made in response to the recommendations as the  
18          Secretary determines advisable.

19          “(iii) The Secretary shall notify Congress  
20          promptly of the implementation of any part of the  
21          proposal and shall furnish with such notice an expla-  
22          nation of the proposal, any changes made to the pro-  
23          posal as a result of recommendations from the em-  
24          ployee representatives, and of the reasons why im-

1        plementation is appropriate under this subpara-  
2        graph.

3            “(D) If a proposal described in subparagraph  
4        (A) is implemented, the Secretary and the Director  
5        shall—

6            “(i) develop a method for the employee  
7        representatives to participate in any further  
8        planning or development which might become  
9        necessary; and

10           “(ii) give the employee representatives ade-  
11        quate access to information to make that par-  
12        ticipation productive.

13           “(2) The Secretary may, at the Secretary’s discre-  
14        tion, engage in any and all collaboration activities de-  
15        scribed in this subsection at an organizational level above  
16        the level of exclusive recognition.

17           “(3) In the case of any employees who are not within  
18        a unit with respect to which a labor organization is ac-  
19        corded exclusive recognition, the Secretary and the Direc-  
20        tor may develop procedures for representation by any ap-  
21        propriate organization which represents a substantial per-  
22        centage of those employees or, if none, in such other man-  
23        ner as may be appropriate, consistent with the purposes  
24        of this subsection.

1       “(4) Any procedures necessary to carry out this sub-  
2 section shall be established as internal rules of department  
3 procedure which shall not be subject to review.

4       “(f) PROVISIONS REGARDING NATIONAL LEVEL  
5 BARGAINING.—(1) Any human resources management  
6 system implemented or modified under this chapter may  
7 include employees of the Department of Defense from any  
8 bargaining unit with respect to which a labor organization  
9 has been accorded exclusive recognition under chapter 71  
10 of this title.

11       “(2) For any bargaining unit so included under para-  
12 graph (1), the Secretary at his sole and exclusive discre-  
13 tion may bargain at an organizational level above the level  
14 of exclusive recognition. Any such bargaining shall—

15               “(A) be binding on all subordinate bargaining  
16 units at the level of recognition and their exclusive  
17 representatives, and the Department of Defense and  
18 its subcomponents, without regard to levels of rec-  
19 ognition;

20               “(B) supersede all other collective bargaining  
21 agreements, including collective bargaining agree-  
22 ments negotiated with an exclusive representative at  
23 the level of recognition, except as otherwise deter-  
24 mined by the Secretary;

1           “(C) not be subject to further negotiations for  
2           any purpose, including bargaining at the level of rec-  
3           ognition, except as provided for by the Secretary;  
4           and

5           “(D) except as otherwise specified in this chap-  
6           ter, not be subject to review or to statutory third-  
7           party dispute resolution procedures outside the De-  
8           partment of Defense.

9           “(3) The National Guard Bureau and the Army and  
10          Air Force National Guard are excluded from coverage  
11          under this subsection.

12          “(4) Any bargaining completed pursuant to this sub-  
13          section with a labor organization not otherwise having na-  
14          tional consultation rights with the Department of Defense  
15          or its subcomponents shall not create any obligation on  
16          the Department of Defense or its subcomponents to confer  
17          national consultation rights on such a labor organization.

18          “(g) PROVISIONS RELATING TO APPELLATE PROCE-  
19          DURES.—(1) It is the sense of Congress that—

20                 “(A) employees of the Department of Defense  
21                 are entitled to fair treatment in any appeals that  
22                 they bring in decisions relating to their employment;  
23                 and

24                 “(B) in prescribing regulations for any such ap-  
25                 peals procedures, the Secretary—

1           “(i) should ensure that employees of the  
2           Department of Defense are afforded the protec-  
3           tions of due process; and

4           “(ii) toward that end, should be required  
5           to consult with the Merit Systems Protection  
6           Board before issuing any such regulations.

7           “(2) Any regulations under this section that relate  
8           to any matters within the purview of chapter 77 of this  
9           title shall—

10           “(A) be issued only after consultation with the  
11           Merit Systems Protection Board;

12           “(B) ensure the availability of procedures  
13           that—

14           “(i) are consistent with requirements of  
15           due process; and

16           “(ii) provide, to the maximum extent prac-  
17           ticable, for the expeditious handling of any mat-  
18           ters involving the Department of Defense; and

19           “(C) modify procedures under chapter 77 only  
20           insofar as such modifications are designed to further  
21           the fair, efficient, and expeditious resolution of mat-  
22           ters involving the employees of the Department of  
23           Defense.

24           “(h) PROVISIONS RELATED TO SEPARATION AND RE-  
25           TIREMENT INCENTIVES.—(1) The Secretary may establish

1 a program within the Department of Defense under which  
2 employees may be eligible for early retirement, offered sep-  
3 aration incentive pay to separate from service voluntarily,  
4 or both. This authority may be used to reduce the number  
5 of personnel employed by the Department of Defense or  
6 to restructure the workforce to meet mission objectives  
7 without reducing the overall number of personnel. This au-  
8 thority is in addition to, and notwithstanding, any other  
9 authorities established by law or regulation for such pro-  
10 grams.

11 “(2) For purposes of this section, the term ‘employee’  
12 means an employee of the Department of Defense, serving  
13 under an appointment without time limitation, except that  
14 such term does not include—

15 “(A) a reemployed annuitant under subchapter  
16 III of chapter 83 or chapter 84 of this title, or an-  
17 other retirement system for employees of the Fed-  
18 eral Government;

19 “(B) an employee having a disability on the  
20 basis of which such employee is or would be eligible  
21 for disability retirement under any of the retirement  
22 systems referred to in paragraph (1); or

23 “(C) for purposes of eligibility for separation  
24 incentives under this section, an employee who is in

1 receipt of a decision notice of involuntary separation  
2 for misconduct or unacceptable performance.

3 “(3) An employee who is at least 50 years of age and  
4 has completed 20 years of service, or has at least 25 years  
5 of service, may, pursuant to regulations promulgated  
6 under this section, apply and be retired from the Depart-  
7 ment of Defense and receive benefits in accordance with  
8 chapter 83 or 84 if the employee has been employed con-  
9 tinuously within the Department of Defense for more than  
10 30 days before the date on which the determination to con-  
11 duct a reduction or restructuring within 1 or more Depart-  
12 ment of Defense Component is approved pursuant to the  
13 program established under subsection (a).

14 “(4)(A) Separation pay shall be paid in a lump sum  
15 or in installments and shall be equal to the lesser of—

16 “(i) an amount equal to the amount the em-  
17 ployee would be entitled to receive under section  
18 5595(c) of this title, if the employee were entitled to  
19 payment under such section; or

20 “(ii) \$25,000.

21 “(B) Separation pay shall not be a basis for payment,  
22 and shall not be included in the computation, of any other  
23 type of Government benefit. Separation pay shall not be  
24 taken into account for the purpose of determining the  
25 amount of any severance pay to which an individual may

1 be entitled under section 5595 of this title, based on any  
2 other separation.

3 “(C) Separation pay, if paid in installments, shall  
4 cease to be paid upon the recipient’s acceptance of employ-  
5 ment by the Federal Government, or commencement of  
6 work under a personal services contract as described in  
7 paragraph (6).

8 “(5)(A) An employee who receives separation pay  
9 under such program may not be reemployed by the De-  
10 partment of Defense for a 12-month period beginning on  
11 the effective date of the employee’s separation, unless this  
12 prohibition is waived by the Secretary on a case-by-case  
13 basis.

14 “(B) An employee who receives separation pay under  
15 this section on the basis of a separation occurring on or  
16 after the date of the enactment of the Federal Workforce  
17 Restructuring Act of 1994 (Public Law 103–236; 108  
18 Stat. 111) and accepts employment with the Government  
19 of the United States, or who commences work through a  
20 personal services contract with the United States within  
21 5 years after the date of the separation on which payment  
22 of the separation pay is based, shall be required to repay  
23 the entire amount of the separation pay to the Depart-  
24 ment of Defense. If the employment is with an Executive  
25 agency (as defined by section 105 of this title) other than



1 the Department of Defense, the Director may, at the re-  
2 quest of the head of that agency, waive the repayment if  
3 the individual involved possesses unique abilities and is the  
4 only qualified applicant available for the position. If the  
5 employment is within the Department of Defense, the Sec-  
6 retary may waive the repayment if the individual involved  
7 is the only qualified applicant available for the position.  
8 If the employment is with an entity in the legislative  
9 branch, the head of the entity or the appointing official  
10 may waive the repayment if the individual involved pos-  
11 sesses unique abilities and is the only qualified applicant  
12 available for the position. If the employment is with the  
13 judicial branch, the Director of the Administrative Office  
14 of the United States Courts may waive the repayment if  
15 the individual involved possesses unique abilities and is the  
16 only qualified applicant available for the position.

17       “(6) Under this program, early retirement and sepa-  
18 ration pay may be offered only pursuant to regulations  
19 established by the Secretary, subject to such limitations  
20 or conditions as the Secretary may require.

21       “(i) PROVISIONS RELATING TO REEMPLOYMENT.—  
22 If annuitant receiving an annuity from the Civil Service  
23 Retirement and Disability Fund becomes employed in a  
24 position within the Department of Defense, his annuity

1 shall continue. An annuitant so reemployed shall not be  
2 considered an employee for purposes of chapter 83 or 84.

3 **“§ 9903. Attracting highly qualified experts**

4 “(a) IN GENERAL.—The Secretary may carry out a  
5 program using the authority provided in subsection (b) in  
6 order to attract highly qualified experts in needed occupa-  
7 tions, as determined by the Secretary.

8 “(b) AUTHORITY.—Under the program, the Sec-  
9 retary may—

10 “(1) appoint personnel from outside the civil  
11 service and uniformed services (as such terms are  
12 defined in section 2101 of this title) to positions in  
13 the Department of Defense without regard to any  
14 provision of this title governing the appointment of  
15 employees to positions in the Department of De-  
16 fense;

17 “(2) prescribe the rates of basic pay for posi-  
18 tions to which employees are appointed under para-  
19 graph (1) at rates not in excess of the maximum  
20 rate of basic pay authorized for senior-level positions  
21 under section 5376 of this title, as increased by lo-  
22 cality-based comparability payments under section  
23 5304 of this title, notwithstanding any provision of  
24 this title governing the rates of pay or classification  
25 of employees in the executive branch; and

1           “(3) pay any employee appointed under para-  
2           graph (1) payments in addition to basic pay within  
3           the limits applicable to the employee under sub-  
4           section (d).

5           “(c) LIMITATION ON TERM OF APPOINTMENT.—(1)  
6           Except as provided in paragraph (2), the service of an em-  
7           ployee under an appointment made pursuant to this sec-  
8           tion may not exceed 5 years.

9           “(2) The Secretary may, in the case of a particular  
10          employee, extend the period to which service is limited  
11          under paragraph (1) by up to 1 additional year if the Sec-  
12          retary determines that such action is necessary to promote  
13          the Department of Defense’s national security missions.

14          “(d) LIMITATIONS ON ADDITIONAL PAYMENTS.—(1)  
15          The total amount of the additional payments paid to an  
16          employee under this section for any 12-month period may  
17          not exceed the lesser of the following amounts:

18                 “(A) \$50,000 in fiscal year 2004, which may be  
19                 adjusted annually thereafter by the Secretary, with  
20                 a percentage increase equal to one-half of one per-  
21                 centage point less than the percentage by which the  
22                 Employment Cost Index, published quarterly by the  
23                 Bureau of Labor Statistics, for the base quarter of  
24                 the year before the preceding calendar year exceeds

1 the Employment Cost Index for the base quarter of  
2 the second year before the preceding calendar year.

3 “(B) The amount equal to 50 percent of the  
4 employee’s annual rate of basic pay.

5 For purposes of this paragraph, the term ‘base quarter’  
6 has the meaning given such term by section 5302(3).

7 “(2) An employee appointed under this section is not  
8 eligible for any bonus, monetary award, or other monetary  
9 incentive for service except for payments authorized under  
10 this section.

11 “(3) Notwithstanding any other provision of this sub-  
12 section or of section 5307, no additional payments may  
13 be paid to an employee under this section in any calendar  
14 year if, or to the extent that, the employee’s total annual  
15 compensation will exceed the maximum amount of total  
16 annual compensation payable at the salary set in accord-  
17 ance with section 104 of title 3.

18 “(e) SAVINGS PROVISIONS.—In the event that the  
19 Secretary terminates this program, in the case of an em-  
20 ployee who, on the day before the termination of the pro-  
21 gram, is serving in a position pursuant to an appointment  
22 under this section—

23 “(1) the termination of the program does not  
24 terminate the employee’s employment in that posi-  
25 tion before the expiration of the lesser of—

1           “(A) the period for which the employee  
2 was appointed; or

3           “(B) the period to which the employee’s  
4 service is limited under subsection (c), including  
5 any extension made under this section before  
6 the termination of the program; and

7           “(2) the rate of basic pay prescribed for the po-  
8 sition under this section may not be reduced as long  
9 as the employee continues to serve in the position  
10 without a break in service.

11 **“§ 9904. Employment of older Americans**

12           “(a) IN GENERAL.—Notwithstanding any other pro-  
13 vision of law, the Secretary may appoint older Americans  
14 into positions in the excepted service for a period not to  
15 exceed 2 years, provided that—

16           “(1) any such appointment shall not result in—

17           “(A) the displacement of individuals cur-  
18 rently employed by the Department of Defense  
19 (including partial displacement through reduc-  
20 tion of nonovertime hours, wages, or employ-  
21 ment benefits); or

22           “(B) the employment of any individual  
23 when any other person is in a reduction-in-force  
24 status from the same or substantially equivalent  
25 job within the Department of Defense; and

1           “(2) the individual to be appointed is otherwise  
2       qualified for the position, as determined by the Sec-  
3       retary.

4       “(b) EFFECT ON EXISTING RETIREMENT BENE-  
5 FITS.—Notwithstanding any other provision of law, an in-  
6 dividual appointed pursuant to subsection (a) who other-  
7 wise is receiving an annuity, pension, social security pay-  
8 ment, retired pay, or other similar payment shall not have  
9 the amount of said annuity, pension, social security, or  
10 other similar payment reduced as a result of such employ-  
11 ment.

12       “(c) EXTENSION OF APPOINTMENT.—Notwith-  
13 standing subsection (a), the Secretary may extend an ap-  
14 pointment made pursuant to this section for up to an addi-  
15 tional 2 years if the individual employee possesses unique  
16 knowledge or abilities that are not otherwise available to  
17 the Department of Defense.

18       “(d) DEFINITION.—For purposes of this section, the  
19 term ‘older American’ means any citizen of the United  
20 States who is at least 55 years of age.

21       **“§ 9905. Special pay and benefits for certain employ-**  
22   **ees outside the United States**

23       “The Secretary may provide to certain civilian em-  
24 ployees of the Department of Defense assigned to activi-  
25 ties outside the United States as determined by the Sec-

1 retary to be in support of Department of Defense activities  
 2 abroad hazardous to life or health or so specialized be-  
 3 cause of security requirements as to be clearly distinguish-  
 4 able from normal government employment—

5 “(1) allowances and benefits—

6 “(A) comparable to those provided by the  
 7 Secretary of State to members of the Foreign  
 8 Service under chapter 9 of title I of the Foreign  
 9 Service Act of 1980 (Public Law 96–465, 22  
 10 U.S.C. 4081 et seq.) or any other provision of  
 11 law; or

12 “(B) comparable to those provided by the  
 13 Director of Central Intelligence to personnel of  
 14 the Central Intelligence Agency; and

15 “(2) special retirement accrual benefits and dis-  
 16 ability in the same manner provided for by the Cen-  
 17 tral Intelligence Agency Retirement Act (50 U.S.C.  
 18 2001 et seq.) and in section 18 of the Central Intel-  
 19 ligence Agency Act of 1949 (50 U.S.C. 403r).”.

20 (2) The table of chapters for part III of such title  
 21 is amended by adding at the end of subpart I the following  
 22 new item:

“99. Department of Defense National Security Personnel System ..... 9901.”.

23 (b) IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN  
 24 PERSONNEL.—(1) Any exercise of authority under chap-  
 25 ter 99 of such title (as added by subsection (a)), including

1 under any system established under such chapter, shall  
2 be in conformance with the requirements of this sub-  
3 section.

4 (2) No other provision of this Act or of any amend-  
5 ment made by this Act may be construed or applied in  
6 a manner so as to limit, supersede, or otherwise affect the  
7 provisions of this section, except to the extent that it does  
8 so by specific reference to this section.

9 (c) CONFORMING AMENDMENTS.—(1) Section 6 of  
10 the Civil Service Miscellaneous Amendments Act of 1983  
11 (Public Law 98–224; 98 Stat. 49), as amended, is re-  
12 pealed.

13 (2) Section 342 of the National Defense Authoriza-  
14 tion Act for Fiscal Year 1995 (Public Law 103–337; 108  
15 Stat. 2721), as amended, is repealed.

16 (3) Section 1101 of the Strom Thurmond National  
17 Defense Authorization Act for Fiscal Year 1999 (Public  
18 Law 105–261; 112 Stat. 2139), as amended, is repealed.

19 (4) Section 4308 of the National Defense Authoriza-  
20 tion Act for Fiscal Year 1996 (Public Law 104–106; 110  
21 Stat. 669), as amended, is repealed.



1           **TITLE II—DEPARTMENT OF**  
2           **DEFENSE CIVILIAN PERSONNEL**

3           **SEC. 201. MODIFICATION OF THE OVERTIME PAY CAP.**

4           Section 5542(a)(2) of title 5, United States Code, is  
5 amended—

6           (1) by inserting “the greater of” before “one  
7 and one-half”; and

8           (2) by inserting “or the hourly rate of basic pay  
9 of the employee” after “law)” the second place it ap-  
10 pears.

11           **SEC. 202. CIVIL SERVICE RETIREMENT SYSTEM COMPUTA-**  
12                                   **TION FOR PART-TIME SERVICE.**

13           Section 8339(p) of title 5, United States Code, is  
14 amended by adding at the end the following new para-  
15 graphs:

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

17           “(A) subparagraph (A) of such paragraph shall  
18 apply with respect to pay for service performed be-  
19 fore, on, or after April 7, 1986; and

20           “(B) subparagraph (B) of such paragraph—

21           “(i) shall apply with respect to that portion  
22 of any annuity which is attributable to service  
23 performed on or after April 7, 1986; and

1           “(ii) shall not apply with respect to that  
2           portion of any annuity which is attributable to  
3           service performed before April 7, 1986.

4           “(4) Paragraph (3) shall be effective with respect to  
5           any annuity entitlement to which is based on a separation  
6           from service occurring on or after the date of the enact-  
7           ment of this paragraph.”.

8   **SEC. 203. MILITARY LEAVE FOR MOBILIZED FEDERAL CI-**  
9                                   **VILIAN EMPLOYEES.**

10           (a) IN GENERAL.—Subsection (b) of section 6323 of  
11           title 5, United States Code, is amended—

12                           (1) in paragraph (2)—

13                                   (A) by redesignating subparagraphs (A)  
14                                   and (B) as clauses (i) and (ii), respectively, and  
15                                   at the end of clause (ii), as so redesignated, by  
16                                   inserting “or”; and

17                                   (B) by inserting “(A)” after “(2)”; and

18                           (2) by inserting the following before the text be-  
19                           ginning with “is entitled”:

20                                   “(B) performs full-time military service as a re-  
21                                   sult of a call or order to active duty in support of  
22                                   a contingency operation as defined in section  
23                                   101(a)(13) of title 10;”.

1 (b) EFFECTIVE DATE.—The amendments made by  
2 subsection (a) shall apply to military service performed on  
3 or after the date of the enactment of this Act.

4 **SEC. 204. COMMON OCCUPATIONAL AND HEALTH STAND-**  
5 **ARDS FOR DIFFERENTIAL PAYMENTS AS A**  
6 **CONSEQUENCE OF EXPOSURE TO ASBESTOS.**

7 (a) PREVAILING RATE SYSTEMS.—Section  
8 5343(c)(4) of title 5, United States Code, is amended by  
9 inserting before the semicolon at the end the following:  
10 “, and for any hardship or hazard related to asbestos, such  
11 differentials shall be determined by applying occupational  
12 safety and health standards consistent with the permis-  
13 sible exposure limit promulgated by the Secretary of  
14 Labor under the Occupational Safety and Health Act of  
15 1970”.

16 (b) GENERAL SCHEDULE PAY RATES.—Section  
17 5545(d) of such title is amended by inserting before the  
18 period at the end of the first sentence the following: “,  
19 and for any hardship or hazard related to asbestos, such  
20 differentials shall be determined by applying occupational  
21 safety and health standards consistent with the permis-  
22 sible exposure limit promulgated by the Secretary of  
23 Labor under the Occupational Safety and Health Act of  
24 1970”.

1 (c) APPLICABILITY.—Subject to any vested constitu-  
2 tional property rights, any administrative or judicial deter-  
3 mination after the date of enactment of this Act con-  
4 cerning backpay for a differential established under sec-  
5 tions 5343(e)(4) or 5545(d) of such title shall be based  
6 on occupational safety and health standards described in  
7 the amendments made by subsections (a) and (b).

8 **SEC. 205. INCREASE IN ANNUAL STUDENT LOAN REPAY-**  
9 **MENT AUTHORITY.**

10 Section 5379(b)(2)(A) of title 5, United States Code,  
11 is amended by striking “\$6,000” and inserting  
12 “\$10,000”.

13 **SEC. 206. AUTHORIZATION FOR CABINET SECRETARIES,**  
14 **SECRETARIES OF MILITARY DEPARTMENTS,**  
15 **AND HEADS OF EXECUTIVE AGENCIES TO BE**  
16 **PAID ON A BIWEEKLY BASIS.**

17 (a) AUTHORIZATION.—Section 5504 of title 5, United  
18 States Code, is amended—

19 (1) by redesignating subsection (c) as sub-  
20 section (d);

21 (2) by striking the last sentence of both sub-  
22 section (a) and subsection (b); and

23 (3) by inserting after subsection (b) the fol-  
24 lowing:

25 “(c) For the purposes of this section:

1 “(1) The term ‘employee’ means—

2 “(A) an employee in or under an Executive  
3 agency;

4 “(B) an employee in or under the Office of  
5 the Architect of the Capitol, the Botanic Gar-  
6 den, and the Library of Congress, for whom a  
7 basic administrative workweek is established  
8 under section 6101(a)(5) of this title; and

9 “(C) an individual employed by the govern-  
10 ment of the District of Columbia.

11 “(2) The term ‘employee’ does not include—

12 “(A) an employee on the Isthmus of Pan-  
13 ama in the service of the Panama Canal Com-  
14 mission; or

15 “(B) an employee or individual excluded  
16 from the definition of employee in section  
17 5541(2) of this title other than an employee or  
18 individual excluded by clauses (ii), (iii), and  
19 (xiv) through (xvii) of such section.

20 “(3) Notwithstanding paragraph (2), an indi-  
21 vidual who otherwise would be excluded from the  
22 definition of employee shall be deemed to be an em-  
23 ployee for purposes of this section if the individual’s  
24 employing agency so elects, under guidelines in regu-

1 lations promulgated by the Office of Personnel Man-  
2 agement under subsection (d)(2).”.

3 (b) GUIDELINES.—Subsection (d) of section 5504 of  
4 such title, as redesignated by subsection (a), is amended—

5 (1) by inserting “(1)” after “(d)”; and

6 (2) by adding at the end the following new  
7 paragraph:

8 “(2) The Office of Personnel Management shall pro-  
9 vide guidelines by regulation for exemptions to be made  
10 by the heads of agencies under subsection (c)(3). Such  
11 guidelines shall provide for such exemptions only under  
12 exceptional circumstances.”.

13 **SEC. 207. ADDITIONAL CLASSES OF INDIVIDUALS ELIGIBLE**  
14 **TO PARTICIPATE IN THE FEDERAL LONG-**  
15 **TERM CARE INSURANCE PROGRAM.**

16 (a) CERTAIN EMPLOYEES OF THE DISTRICT OF CO-  
17 LUMBIA GOVERNMENT.—Section 9001(1) of title 5,  
18 United States Code, is amended by striking “2105(c),”  
19 and all that follows and inserting “2105(c).”.

20 (b) FORMER FEDERAL EMPLOYEES WHO WOULD BE  
21 ELIGIBLE TO BEGIN RECEIVING AN ANNUITY UPON AT-  
22 TAINING THE REQUISITE MINIMUM AGE.—Section  
23 9001(2) of title 5, United States Code, is amended—

24 (1) in subparagraph (A), by striking “and” at  
25 the end;

1           (2) in subparagraph (B), by striking the period  
2           and inserting “; and”; and

3           (3) by adding at the end the following:

4                   “(C) any former employee who, on the  
5                   basis of his or her service, would meet all re-  
6                   quirements for being considered an ‘annuitant’  
7                   within the meaning of subchapter III of chapter  
8                   83, chapter 84, or any other retirement system  
9                   for employees of the Government, but for the  
10                  fact that such former employee has not attained  
11                  the minimum age for title to annuity.”.

12          (c) RESERVISTS TRANSFERRED TO THE RETIRED  
13 RESERVE WHO ARE UNDER AGE 60.—Section 9001(4)  
14 of title 5, United States Code, is amended by striking “in-  
15 cluding” and all that follows through “who has” and in-  
16 serting “and a member who has been transferred to the  
17 Retired Reserve and who would be entitled to retired pay  
18 under chapter 1223 of title 10 but for not having”.

1 **TITLE III—PROVISIONS RELAT-**  
2 **ING TO THE SECURITIES AND**  
3 **EXCHANGE COMMISSION AND**  
4 **THE NATIONAL AERO-**  
5 **NAUTICS AND SPACE ADMIN-**  
6 **ISTRATION**

7 **Subtitle A—Securities and**  
8 **Exchange Commission**

9 **SEC. 301. SECURITIES AND EXCHANGE COMMISSION.**

10 Subchapter I of chapter 31 of title 5, United States  
11 Code, is amended by adding at the end the following:

12 **“§ 3114. APPOINTMENT OF ACCOUNTANTS,**  
13 **ECONOMISTS, AND EXAMINERS BY**  
14 **THE SECURITIES AND EXCHANGE**  
15 **COMMISSION.**

16 “(a) **APPLICABILITY.**—This section applies with re-  
17 spect to any position of accountant, economist, and securi-  
18 ties compliance examiner at the Commission that is in the  
19 competitive service.

20 “(b) **APPOINTMENT AUTHORITY.**—

21 “(1) **IN GENERAL.**—The Commission may ap-  
22 point candidates to any position described in sub-  
23 section (a)—



1           “(A) in accordance with the statutes, rules,  
2           and regulations governing appointments in the  
3           excepted service; and

4           “(B) notwithstanding any statutes, rules,  
5           and regulations governing appointments in the  
6           competitive service.

7           “(2) RULE OF CONSTRUCTION.—The appoint-  
8           ment of a candidate to a position under authority of  
9           this subsection shall not be considered to cause such  
10          position to be converted from the competitive service  
11          to the excepted service.

12          “(c) REPORTS.—No later than 90 days after the end  
13          of fiscal year 2003 (for fiscal year 2003) and 90 days after  
14          the end of fiscal year 2005 (for fiscal years 2004 and  
15          2005), the Commission shall submit a report with respect  
16          to its exercise of the authority granted by subsection (b)  
17          during such fiscal years to the Committee on Government  
18          Reform and the Committee on Financial Services of the  
19          House of Representatives and the Committee on Govern-  
20          mental Affairs and the Committee on Banking, Housing,  
21          and Urban Affairs of the Senate. Such reports shall de-  
22          scribe the changes in the hiring process authorized by such  
23          subsection, including relevant information related to—

24                 “(1) the quality of candidates;

1           “(2) the procedures used by the Commission to  
2           select candidates through the streamlined hiring  
3           process;

4           “(3) the numbers, types, and grades of employ-  
5           ees hired under the authority;

6           “(4) any benefits or shortcomings associated  
7           with the use of the authority;

8           “(5) the effect of the exercise of the authority  
9           on the hiring of veterans and other demographic  
10          groups; and

11          “(6) the way in which managers were trained in  
12          the administration of the streamlined hiring system.

13          “(c) COMMISSION DEFINED.—For purposes of this  
14          section, the term ‘Commission’ means the Security and  
15          Exchange Commission.”.

16          **Subtitle B—National Aeronautics**  
17                   **and Space Administration**

18          **SEC. 311. WORKFORCE AUTHORITIES AND PERSONNEL**  
19                   **PROVISIONS.**

20          (a) IN GENERAL.—Subpart I of part III of title 5,  
21          United States Code, is amended by inserting after chapter  
22          97, as added by section 841(a)(2) of the Homeland Secu-  
23          rity Act of 2002 (Public Law 107–296; 116 Stat. 2229),  
24          the following:

1    **“CHAPTER 98—NATIONAL AERONAUTICS**  
 2                   **AND SPACE ADMINISTRATION**

                  “SUBCHAPTER I—WORKFORCE AUTHORITIES

“Sec.

“9801. Definitions.

“9802. Planning, notification, and reporting requirements.

“9803. Workforce authorities.

“9804. Recruitment, redesignation, and relocation bonuses.

“9805. Retention bonuses.

“9806. Term appointments.

“9807. Pay authority for critical positions.

“9808. Assignments of intergovernmental personnel.

“9809. Enhanced demonstration project authority.

                  “SUBCHAPTER II—PERSONNEL PROVISIONS

“9831. Definitions.

“9832. Administration and private sector exchange assignments.

“9833. Science and technology scholarship program.

“9834. Distinguished scholar appointment authority.

“9835. Travel and transportation expenses of certain new appointees.

“9836. Annual leave enhancements.

“9837. Limited appointments to Senior Executive Service positions.

“9838. Superior qualifications pay.

3    “SUBCHAPTER I—WORKFORCE AUTHORITIES

4    **“§ 9801. Definitions**

5           “For purposes of this subchapter—

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

8                   “(2) the term ‘Administrator’ means the Ad-  
 9           ministrator of the National Aeronautics and Space  
 10          Administration;

11                   “(3) the term ‘critical need’ means a specific  
 12          and important requirement of the Administration’s  
 13          mission that the Administration is unable to fulfill  
 14          because the Administration lacks the appropriate  
 15          employees because—

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

2 “(B) employees do not possess the req-  
3 uisite skills;

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

6 “(5) the term ‘workforce plan’ means the plan  
7 required under section 9802(a).

8 **“§ 9802. Planning, notification, and reporting require-**  
9 **ments**

10 “(a) Before exercising any of the workforce authori-  
11 ties under this subchapter, the Administrator shall submit  
12 a written plan to the Office of Personnel Management for  
13 approval. A plan under this subchapter may not be imple-  
14 mented without the approval of the Office of Personnel  
15 Management.

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

17 “(1) each critical need of the Administration  
18 and the criteria used in the identification of that  
19 need;

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

23 “(i) address critical needs; and

1           “(ii) would be eligible for each authority  
2           proposed to be exercised under section 9803;  
3           and

4           “(B) how the exercise of those authorities with  
5           respect to the eligible positions or employees involved  
6           would address each critical need identified under  
7           paragraph (1);

8           “(3)(A) any critical need identified under para-  
9           graph (1) which would not be addressed by the au-  
10          thorities made available under section 9803; and

11          “(B) the reasons why those needs would not be  
12          so addressed;

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

19          “(5) the safeguards or other measures that will  
20          be applied to ensure that this subchapter is carried  
21          out in a manner consistent with merit system prin-  
22          ciples;

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

1           “(7) the methods that will be used to determine  
2           if the authorities exercised under section 9803 have  
3           successfully addressed each critical need identified  
4           under paragraph (1); and

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

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

12                   “(i) nongovernmental recruitment or place-  
13                   ment agencies; and

14                   “(ii) Internet technologies.

15          “(c) Not later than 60 days before first exercising  
16          any of the workforce authorities made available under this  
17          subchapter, the Administrator shall provide to all employ-  
18          ees the workforce plan and any additional information  
19          which the Administrator considers appropriate.

20          “(d)(1)(A) The Administrator may submit any modi-  
21          fications to the workforce plan to the Office of Personnel  
22          Management. Modifications to the workforce plan may not  
23          be implemented without the approval of the Office of Per-  
24          sonnel Management.

1 “(B) Not later than 60 days before implementing any  
2 such modifications, the Administrator shall provide an ap-  
3 propriately modified plan to all employees of the Adminis-  
4 tration.

5 “(2) Any reference in this subchapter or any other  
6 provision of law to the workforce plan shall be considered  
7 to include any modification made in accordance with this  
8 subsection.

9 “(e) None of the workforce authorities made available  
10 under section 9803 may be exercised in a manner incon-  
11 sistent with the workforce plan.

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

17 “(1) the Committee on Governmental Affairs  
18 and the Committee on Appropriations of the Senate;  
19 and

20 “(2) the Committee on Government Reform and  
21 the Committee on Appropriations of the House of  
22 Representatives.

23 **“§9803. Workforce authorities**

24 “(a) The workforce authorities under this subchapter  
25 are the following:

1           “(1) The authority to pay recruitment, redesignig-  
2 nation, and relocation bonuses under section 9804.

3           “(2) The authority to pay retention bonuses  
4 under section 9805.

5           “(3) The authority to make term appointments  
6 and to take related personnel actions under section  
7 9806.

8           “(4) The authority to fix rates of basic pay for  
9 critical positions under section 9807.

10           “(5) The authority to extend intergovernmental  
11 personnel act assignments under section 9808.

12           “(b) No authority under this subchapter may be exer-  
13 cised with respect to any officer who is appointed by the  
14 President, by and with the advice and consent of the Sen-  
15 ate.

16           “(c) Unless specifically stated otherwise, all authori-  
17 ties provided under this subchapter are subject to section  
18 5307.

19 **“§ 9804. Recruitment, redesignation, and relocation**  
20 **bonuses**

21           “(a) Notwithstanding section 5753, the Adminis-  
22 trator may pay a bonus to an individual, in accordance  
23 with the workforce plan and subject to the limitations in  
24 this section, if—



1           “(1) the Administrator determines that the Ad-  
2           ministration would be likely, in the absence of a  
3           bonus, to encounter difficulty in filling a position;  
4           and

5           “(2) the individual—

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

8                   “(B) is currently employed by the Federal  
9                   Government and is newly appointed to another  
10                  position in the same geographic area; or

11                  “(C) is currently employed by the Federal  
12                  Government and is required to relocate to a dif-  
13                  ferent geographic area to accept a position with  
14                  the Administration.

15           “(b) If the position is described as addressing a crit-  
16           ical need in the workforce plan under section  
17           9802(b)(2)(A), the amount of a bonus may not exceed—

18                   “(1) 50 percent of the employee’s annual rate  
19                   of basic pay (including comparability payments  
20                   under sections 5304 and 5304a) as of the beginning  
21                   of the service period multiplied by the service period  
22                   specified under subsection (d)(1)(B)(i); or

23                   “(2) 100 percent of the employee’s annual rate  
24                   of basic pay (including comparability payments

1 under sections 5304 and 5304a) as of the beginning  
2 of the service period.

3 “(c) If the position is not described as addressing a  
4 critical need in the workforce plan under section  
5 9802(b)(2)(A), the amount of a bonus may not exceed—

6 “(1) 25 percent of the employee’s annual rate  
7 of basic pay (including comparability payments  
8 under sections 5304 and 5304a) as of the beginning  
9 of the service period multiplied by the service period  
10 specified under subsection (d)(1)(B)(i); or

11 “(2) 100 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.

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

18 “(B) At a minimum, the service agreement shall in-  
19 clude—

20 “(i) the required service period;

21 “(ii) the method of payment, including a pay-  
22 ment schedule, which may include a lump-sum pay-  
23 ment, installment payments, or a combination there-  
24 of;

1           “(iii) the amount of the bonus and the basis for  
2           calculating that amount; and

3           “(iv) the conditions under which the agreement  
4           may be terminated before the agreed-upon service  
5           period has been completed, and the effect of the ter-  
6           mination.

7           “(2) For purposes of determinations under sub-  
8           sections (b)(1) and (c)(1), the employee’s service period  
9           shall be expressed as the number equal to the full years  
10          and twelfth parts thereof, rounding the fractional part of  
11          a month to the nearest twelfth part of a year. The service  
12          period may not be less than 6 months and may not exceed  
13          4 years.

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

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

20          **“§9805. Retention bonuses**

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

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

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

7           “(b) If the position is described as addressing a crit-  
8           ical need in the workforce plan under section  
9           9802(b)(2)(A), the amount of a bonus may not exceed 50  
10          percent of the employee’s annual rate of basic pay (includ-  
11          ing comparability payments under sections 5304 and  
12          5304a).

13          “(c) If the position is not described as addressing a  
14          critical need in the workforce plan under section  
15          9802(b)(2)(A), the amount of a bonus may not exceed 25  
16          percent of the employee’s annual rate of basic pay (includ-  
17          ing comparability payments under sections 5304 and  
18          5304a).

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

22          “(B) At a minimum, the service agreement shall in-  
23          clude—

24                 “(i) the required service period;

1           “(ii) the method of payment, including a pay-  
2           ment schedule, which may include a lump-sum pay-  
3           ment, installment payments, or a combination there-  
4           of;

5           “(iii) the amount of the bonus and the basis for  
6           calculating the amount; and

7           “(iv) the conditions under which the agreement  
8           may be terminated before the agreed-upon service  
9           period has been completed, and the effect of the ter-  
10          mination.

11          “(2) The employee’s service period shall be expressed  
12          as the number equal to the full years and twelfth parts  
13          thereof, rounding the fractional part of a month to the  
14          nearest twelfth part of a year. The service period may not  
15          be less than 6 months and may not exceed 4 years.

16          “(3) Notwithstanding paragraph (1), a service agree-  
17          ment is not required if the Administration pays a bonus  
18          in biweekly installments and sets the installment payment  
19          at the full bonus percentage rate established for the em-  
20          ployee, with no portion of the bonus deferred. In this case,  
21          the Administration shall inform the employee in writing  
22          of any decision to change the retention bonus payments.  
23          The employee shall continue to accrue entitlement to the  
24          retention bonus through the end of the pay period in which  
25          such written notice is provided.

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

3       “(f) An employee is not entitled to a retention bonus  
4       under this section during a service period previously estab-  
5       lished for that employee under section 5753 or under sec-  
6       tion 9804.

7       **“§ 9806. Term appointments**

8       “(a) The Administrator may authorize term appoint-  
9       ments within the Administration under subchapter I of  
10       chapter 33, for a period of not less than 1 year and not  
11       more than 6 years.

12       “(b) Notwithstanding chapter 33 or any other provi-  
13       sion of law relating to the examination, certification, and  
14       appointment of individuals in the competitive service, the  
15       Administrator may convert an employee serving under a  
16       term appointment to a permanent appointment in the  
17       competitive service within the Administration without fur-  
18       ther competition if—

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

22               “(2) the announcement for the term appoint-  
23       ment from which the conversion is made stated that  
24       there was potential for subsequent conversion to a  
25       career-conditional or career appointment;

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

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

7           “(5) the position to which such employee is  
8           being converted under this section is in the same oc-  
9           cupational series, is in the same geographic location,  
10          and provides no greater promotion potential than  
11          the term position for which the competitive examina-  
12          tion was conducted.

13          “(c) Notwithstanding chapter 33 or any other provi-  
14          sion of law relating to the examination, certification, and  
15          appointment of individuals in the competitive service, the  
16          Administrator may convert an employee serving under a  
17          term appointment to a permanent appointment in the  
18          competitive service within the Administration through in-  
19          ternal competitive promotion procedures if the conditions  
20          under paragraphs (1) through (4) of subsection (b) are  
21          met.

22          “(d) An employee converted under this section be-  
23          comes a career-conditional employee, unless the employee  
24          has otherwise completed the service requirements for ca-  
25          reer tenure.

1       “(e) An employee converted to career or career-condi-  
2 tional employment under this section acquires competitive  
3 status upon conversion.

4 **“§ 9807. Pay authority for critical positions**

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

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

8               “(2) a position under the Executive Schedule  
9 under sections 5312 through 5317;

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

11       or

12              “(4) a senior-level position to which section  
13 5376(a)(1) applies.

14       “(b) Authority under this section—

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

17                      “(A) is described as addressing a critical  
18 need in the workforce plan under section  
19 9802(b)(2)(A); and

20                      “(B) requires expertise of an extremely  
21 high level in a scientific, technical, professional,  
22 or administrative field;

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



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

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

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

11          “(d)(1) The rate of basic pay fixed under this section  
12          may not be less than the rate of basic pay (including any  
13          comparability payments) which would otherwise be pay-  
14          able for the position involved if this section had never been  
15          enacted.

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

19          “(3) Notwithstanding any provision of section 5307,  
20          in the case of an employee who, during any calendar year,  
21          is receiving pay at a rate fixed under this section, no allow-  
22          ance, differential, bonus, award, or similar cash payment  
23          may be paid to such employee if, or to the extent that,  
24          when added to basic pay paid or payable to such employee  
25          (for service performed in such calendar year as an em-

1 ployee in the executive branch or as an employee outside  
2 the executive branch to whom chapter 51 applies), such  
3 payment would cause the total to exceed the per annum  
4 rate of salary which, as of the end of such calendar year,  
5 is payable under section 104 of title 3.

6 **“§ 9808. Assignments of intergovernmental personnel**

7 “For purposes of applying the third sentence of sec-  
8 tion 3372(a) (relating to the authority of the head of a  
9 Federal agency to extend the period of an employee’s as-  
10 signment to or from a State or local government, institu-  
11 tion of higher education, or other organization), the Ad-  
12 ministrator may, with the concurrence of the employee and  
13 the government or organization concerned, take any action  
14 which would be allowable if such sentence had been  
15 amended by striking ‘two’ and inserting ‘four’.

16 **“§ 9809. Enhanced demonstration project authority**

17 “When conducting a demonstration project at the Ad-  
18 ministration, section 4703(d)(1)(A) may be applied by  
19 substituting ‘such numbers of individuals as determined  
20 by the Administrator’ for ‘not more than 5,000 individ-  
21 uals’.

22 “SUBCHAPTER II—PERSONNEL PROVISIONS

23 **“§ 9831. Definitions**

24 “For purposes of this subchapter—

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

3           “(2) the term ‘Administrator’ means the Ad-  
4           ministrator of the National Aeronautics and Space  
5           Administration.

6   **“§ 9832. Administration and private sector exchange**  
7           **assignments**

8           “(a) For purposes of this section—

9           “(1) the term ‘private sector employee’ means  
10          an employee of a private sector entity; and

11          “(2) the term ‘private sector entity’ means an  
12          organization, company, corporation, or other busi-  
13          ness concern, or a foreign government or agency of  
14          a foreign government, that is not a State, local gov-  
15          ernment, Federal agency, or other organization as  
16          defined under section 3371 (1), (2), (3), and (4), re-  
17          spectively.

18          “(b)(1) On request from or with the concurrence of  
19          a private sector entity, and with the consent of the em-  
20          ployee concerned, the Administrator may arrange for the  
21          assignment of—

22                 “(A) an employee of the Administration serving  
23                 under a career or career-conditional appointment, a  
24                 career appointee in the Senior Executive Service, or  
25                 an individual under an appointment of equivalent

1 tenure in an excepted service position, but excluding  
2 employees in positions which have been excepted  
3 from the competitive service by reasons of their con-  
4 fidential, policy-determining, policymaking, or policy-  
5 advocating character, to a private sector entity; and

6 “(B) an employee of a private sector entity to  
7 the Administration,

8 for work of mutual concern to the Administration and the  
9 private sector entity that the Administrator determines  
10 will be beneficial to both.

11 “(2) The period of an assignment under this section  
12 may not exceed 2 years. However, the Administrator may  
13 extend the period of assignment for not more than 2 addi-  
14 tional years.

15 “(3) An employee of the Administration may be as-  
16 signed under this section only if the employee agrees, as  
17 a condition of accepting an assignment, to serve in the  
18 Administration upon the completion of the assignment for  
19 a period equal to the length of the assignment. The Ad-  
20 ministrator may waive the requirement under this para-  
21 graph, with the approval of the Office of Management and  
22 Budget, with respect to any employee if the Administrator  
23 determines it to be in the best interests of the United  
24 States to do so.

1       “(4) Each agreement required under paragraph (3)  
2 shall provide that if the employee fails to carry out the  
3 agreement (except in the case of a waiver made under  
4 paragraph (3)), the employee shall be liable to the United  
5 States for payment of all expenses (excluding salary) of  
6 the assignment. The amount due shall be treated as a debt  
7 due the United States.

8       “(c)(1) An Administration employee assigned to a  
9 private sector entity under this section is deemed, during  
10 the assignment, to be on detail to a work assignment (as  
11 a detailee to the entity).

12       “(2) An Administration employee assigned under this  
13 section on detail remains an employee of the Administra-  
14 tion. Chapter 171 of title 28 and any other Federal tort  
15 liability statute apply to the Administration employee so  
16 assigned, and all defenses available to the United States  
17 under these laws or applicable provisions of State law shall  
18 remain in effect. The supervision of the duties of an Ad-  
19 ministration employee assigned to the private sector entity  
20 through detail may be governed by agreement between the  
21 Administration and the private sector entity concerned.

22       “(3) The assignment of an Administration employee  
23 on detail to a private sector entity under this section may  
24 be made with or without reimbursement by the private sec-  
25 tor entity for the travel and transportation expenses to

1 or from the place of assignment, for the pay, or supple-  
2 mental pay, or a part thereof, of the employee, or for the  
3 contribution of the Administration to the employee's ben-  
4 efit systems during the assignment. Any reimbursements  
5 shall be credited to the appropriation of the Administra-  
6 tion used for paying the travel and transportation ex-  
7 penses, pay, or benefits, and not paid to the employee.

8       “(d)(1) An employee of a private sector entity who  
9 is assigned to the Administration under an arrangement  
10 under this section shall be deemed on detail to the Admin-  
11 istration.

12       “(2) During the period of assignment, a private sec-  
13 tor employee on detail to the Administration—

14               “(A) is not entitled to pay from the Administra-  
15 tion, except to the extent that the pay received from  
16 the private sector entity is less than the appropriate  
17 rate of pay which the duties would warrant under  
18 the pay provisions of this title or other applicable  
19 authority;

20               “(B) is deemed an employee of the Administra-  
21 tion for the purpose of chapter 73 of this title, the  
22 Ethics in Government Act of 1978, section 27 of the  
23 Office of Federal Procurement Policy Act, sections  
24 201, 203, 205, 207, 208, 209, 602, 603, 606, 607,  
25 610, 643, 654, 1905, and 1913 of title 18, sections

1 1343, 1344, and 1349(b) of title 31, chapter 171 of  
2 title 28, and any other Federal tort liability statute,  
3 and any other provision of Federal criminal law, un-  
4 less otherwise specifically exempted;

5 “(C) notwithstanding subparagraph (B), is also  
6 deemed to be an employee of his or her private sec-  
7 tor employer for purposes of section 208 of title 18;  
8 and

9 “(D) is subject to such regulations as the Ad-  
10 ministrator may prescribe.

11 “(3) The supervision of the duties of an employee as-  
12 signed under this subsection may be governed by agree-  
13 ment between the Administration and the private sector  
14 entity.

15 “(4) A detail of a private sector employee to the Ad-  
16 ministration may be made with or without reimbursement  
17 by the Administration for the pay, or a part thereof, of  
18 the employee during the period of assignment, or for the  
19 contribution of the private sector entity, or a part thereof,  
20 to employee benefit systems.

21 “(5)(A) A private sector employee on detail to the  
22 Administration under this section who suffers disability or  
23 dies as a result of personal injury sustained while in the  
24 performance of duties during the assignment shall be  
25 treated, for the purpose of subchapter I of chapter 81,

1 as an employee as defined under section 8101 who had  
2 sustained the injury in the performance of duties.

3 “(B) When an employee (or the employee’s depend-  
4 ents in case of death) entitled by reason of injury or death  
5 to benefits under subchapter I of chapter 81 is also enti-  
6 tled to benefits from the employee’s private sector em-  
7 ployer for the same injury or death, the employee (or the  
8 employee’s dependents in case of death) shall elect which  
9 benefits the employee will receive. The election shall be  
10 made within 1 year after the injury or death, or such fur-  
11 ther time as the Secretary of Labor may allow for reason-  
12 able cause shown. When made, the election is irrevocable.

13 “(C) Except as provided in subparagraphs (A) and  
14 (B), and notwithstanding any other law, the United  
15 States, any instrumentality of the United States, or an  
16 employee, agent, or assign of the United States shall not  
17 be liable to—

18 “(i) a private sector employee assigned to the  
19 Administration under this section;

20 “(ii) such employee’s legal representative,  
21 spouse, dependents, survivors, or next of kin; or

22 “(iii) any other person, including any third  
23 party as to whom such employee, or that employee’s  
24 legal representative, spouse, dependents, survivors,  
25 or next of kin, has a cause of action arising out of



1 an injury or death sustained in the performance of  
2 duty pursuant to an assignment under this section,  
3 otherwise entitled to recover damages from the  
4 United States, any instrumentality of the United  
5 States, or any employee, agency, or assign of the  
6 United States,

7 with respect to any injury or death suffered by a private  
8 sector employee sustained in the performance of duties  
9 pursuant to an assignment under this section.

10 “(e)(1) Appropriations of the Administration are  
11 available to pay, or reimburse, an Administration or pri-  
12 vate sector employee in accordance with—

13 “(A) subchapter I of chapter 57 for the ex-  
14 penses of—

15 “(i) travel, including a per diem allowance,  
16 to and from the assignment location;

17 “(ii) a per diem allowance at the assign-  
18 ment location during the period of the assign-  
19 ment; and

20 “(iii) travel, including a per diem allow-  
21 ance, while traveling on official business away  
22 from the employee’s designated post of duty  
23 during the assignment when the Administrator  
24 considers the travel to be in the interest of the  
25 United States;

1           “(B) section 5724 for the expenses of transpor-  
2           tation of the employee’s immediate family, household  
3           goods, and personal effects to and from the assign-  
4           ment location;

5           “(C) section 5724a(a) for the expenses of per  
6           diem allowances for the immediate family of the em-  
7           ployee to and from the assignment location;

8           “(D) section 5724a(e) for subsistence expenses  
9           of the employee and immediate family while occu-  
10          pying temporary quarters at the assignment location  
11          and on return to the employee’s former post of duty;

12          “(E) section 5724a(g) to be used by the em-  
13          ployee for miscellaneous expenses related to change  
14          of station where movement or storage of household  
15          goods is involved; and

16          “(F) section 5726(e) for the expenses of non-  
17          temporary storage of household goods and personal  
18          effects in connection with assignment at an isolated  
19          location.

20          “(2) Expenses specified in paragraph (1), other than  
21          those in paragraph (1)(A)(iii), may not be allowed in con-  
22          nection with the assignment of an Administration or pri-  
23          vate sector employee under this section, unless and until  
24          the employee agrees in writing to complete the entire pe-  
25          riod of his assignment or 1 year, whichever is shorter, un-

1 less separated or reassigned for reasons beyond his control  
2 that are acceptable to the Administrator. If the employee  
3 violates the agreement, the money spent by the United  
4 States for these expenses is recoverable from the employee  
5 as a debt due the United States. The Administrator may  
6 waive in whole or in part a right of recovery under this  
7 paragraph with respect to a private sector employee on  
8 assignment with the Administration or an Administration  
9 employee on assignment with a private sector entity.

10 “(3) Appropriations of the Administration are avail-  
11 able to pay expenses under section 5742 with respect to  
12 an Administration or private sector employee assigned  
13 under this authority.

14 “(f) A private sector entity may not charge the Fed-  
15 eral Government, as direct or indirect costs under a Fed-  
16 eral contract, the costs of pay or benefits paid by the enti-  
17 ty to an employee assigned to the Administration under  
18 this section for the period of the assignment.

19 **“§ 9833. Science and technology scholarship program**

20 “(a)(1) The Administrator may carry out a program  
21 of entering into contractual agreements with individuals  
22 described under paragraph (2) under which—

23 “(A) the Administrator agrees to provide to the  
24 individuals scholarships for pursuing, at accredited  
25 institutions of higher education, academic programs

1 appropriate for careers in professions needed by the  
2 Administration; and

3 “(B) the individuals agree to serve as employees  
4 of the Administration, for the period described under  
5 subsection (b), in positions needed by the Adminis-  
6 tration and for which the individuals are qualified.

7 “(2) The individuals referred to under paragraph (1)  
8 are individuals who—

9 “(A) are enrolled or accepted for enrollment as  
10 full-time students at accredited institutions of higher  
11 education in an academic field or discipline pre-  
12 scribed by the Administration;

13 “(B) are United States citizens; and

14 “(C) at the time of the initial scholarship  
15 award, are not Federal employees as defined under  
16 section 2105.

17 “(b)(1) For purposes of subsection (a)(1)(B), the pe-  
18 riod of service for which an individual is obligated to serve  
19 as an employee of the Administration is, subject to sub-  
20 paragraph (A) of paragraph (2), 12 months for each aca-  
21 demic year for which the scholarship under such sub-  
22 section is provided.

23 “(2)(A) Subject to subparagraph (B), the Adminis-  
24 trator may provide a scholarship under this section if the  
25 individual applying for the scholarship agrees that, not

1 later than 60 days after obtaining the educational degree  
2 involved, the individual will begin serving full-time as an  
3 employee in satisfaction of the period of service that the  
4 individual is obligated to provide.

5 “(B) The Administrator may defer the obligation of  
6 an individual to provide a period of service under this sub-  
7 section, if the Administrator determines that such a defer-  
8 ral is appropriate.

9 “(c)(1) The Administrator may provide a scholarship  
10 under subsection (a) for an academic year if—

11 “(A) the individual applying for the scholarship  
12 has submitted to the Administrator a proposed aca-  
13 demic program leading to a degree in an academic  
14 field or discipline approved by the Administration; or

15 “(B) the individual agrees that the program will  
16 not be altered without the approval of the Adminis-  
17 trator.

18 “(2) The Administrator may provide a scholarship  
19 under this section for an academic year if the individual  
20 applying for the scholarship agrees to maintain a high  
21 level of academic standing as defined by regulation.

22 “(3) The dollar amount of a scholarship for an aca-  
23 demic year shall not exceed—

24 “(A) the limits established by regulation under  
25 paragraph (4); or

1           “(B) the total costs incurred in attending the  
2 institution involved.

3           “(4) A scholarship may be expended for tuition, fees,  
4 and other authorized expenses as established by regula-  
5 tion.

6           “(5) The Administrator may enter into a contractual  
7 agreement with an institution of higher education under  
8 which the amounts provided in the scholarship for tuition,  
9 fees, and other authorized expenses are paid directly to  
10 the institution with respect to which a scholarship is pro-  
11 vided.

12           “(6) An individual may not receive a scholarship for  
13 longer than 4 academic years, unless an extension is  
14 granted by the Administrator.

15           “(d)(1)(A) Any scholarship recipient who fails to  
16 maintain a high level of academic standing, who is dis-  
17 missed from an educational institution for disciplinary  
18 reasons, or who voluntarily terminates academic training  
19 before graduation from the educational program for which  
20 the scholarship was awarded, shall—

21           “(i) be in breach of the contractual agreement;  
22 and

23           “(ii) in lieu of any service obligation arising  
24 under such agreement, be liable to the United States  
25 for repayment of all scholarship funds paid to that

1 recipient and to the educational institution on their  
2 behalf under the agreement within 1 year after the  
3 date of default.

4 “(B) The repayment period may be extended by the  
5 Administrator when determined to be necessary, as estab-  
6 lished by regulation. A penalty for failure to complete the  
7 academic program for which the scholarship was awarded  
8 may be assessed at the discretion of the Administrator,  
9 in addition to the repayment with interest as provided  
10 under paragraph (3).

11 “(2)(A) A scholarship recipient who, for any reason,  
12 fails to begin or complete that recipient’s service obligation  
13 after completion of academic training, or fails to comply  
14 with the terms and conditions of deferment established by  
15 the Administrator, shall be in breach of the contractual  
16 agreement.

17 “(B)(i) In this subparagraph—

18 “(I) the term ‘A’ means the amount the United  
19 States is entitled to recover;

20 “(II) the term ‘F’ means the sum of the  
21 amounts paid to or on behalf of the participant;

22 “(III) the term ‘t’ means the total number of  
23 months of the period of obligated service the partici-  
24 pant is required to serve; and

1           “(IV) the term ‘s’ means the number of months  
2 of the period of obligated service served by the par-  
3 ticipant.

4           “(ii) When a recipient breaches the agreement as pro-  
5 vided under subparagraph (A), the United States shall be  
6 entitled to recover damages equal to 3 times the scholar-  
7 ship award, in accordance with the following formula:

8                                   
$$“A=(3F)[(t-s)/t]$$

9           “(C) The damages that the United States is entitled  
10 to recover shall be paid within 1 year after the date of  
11 default.

12           “(3) Beginning 90 days after default, interest shall  
13 accrue on the payments required to be made under this  
14 subsection, at a rate to be determined by regulation estab-  
15 lished by the Administrator.

16           “(e)(1) Any obligation of an individual incurred  
17 under this section for service or payment of damages may  
18 be canceled upon the death of the individual.

19           “(2) The Administrator shall by regulation provide  
20 for the partial or total waiver or suspension of any obliga-  
21 tion of service or payment incurred by an individual under  
22 this section if—

23                   “(A) the compliance by the individual is impos-  
24 sible or would involve extreme hardship to the indi-  
25 vidual; or



1           “(B) enforcement of such obligation with re-  
2           spect to any individual would be contrary to the best  
3           interests of the Government.

4           “(f) The Administrator may provide a scholarship  
5           under this section if an application for the scholarship is  
6           submitted to the Administrator and the application is in  
7           such form, is made in such manner, and contains such  
8           agreements, assurance, and information as the Adminis-  
9           trator determines to be necessary to carry out this section.

10          “(g)(1) There are authorized to be appropriated to  
11          the Administration to carry out this section \$10,000,000  
12          for fiscal year 2004 and \$10,000,000 for each succeeding  
13          fiscal year.

14          “(2) Amounts appropriated for a fiscal year for schol-  
15          arships under this section shall remain available for 2 fis-  
16          cal years.

17          **“§9834. Distinguished scholar appointment authority**

18          “(a) In this section—

19                  “(1) the term ‘professional position’ means a  
20                  position that is classified to an occupational series  
21                  identified by the Office of Personnel Management as  
22                  a position that—

23                          “(A) requires education and training in the  
24                          principles, concepts, and theories of the occupa-  
25                          tion that typically can be gained only through

1 completion of a specified curriculum at a recog-  
2 nized college or university; and

3 “(B) is covered by the Group Coverage  
4 Qualification Standard for Professional and Sci-  
5 entific Positions; and

6 “(2) the term ‘research position’ means a posi-  
7 tion in a professional series that primarily involves  
8 scientific inquiry or investigation, or research-type  
9 exploratory development of a creative or scientific  
10 nature, where the knowledge required to perform the  
11 work successfully is acquired typically and primarily  
12 through graduate study.

13 “(b) The Administration may appoint, without regard  
14 to the provisions of sections 3304(b) and 3309 through  
15 3318, candidates directly to General Schedule professional  
16 positions in the Administration for which public notice has  
17 been given, if—

18 “(1) with respect to a position at the GS-7  
19 level, the individual—

20 “(A) received, from an accredited institu-  
21 tion authorized to grant baccalaureate degrees,  
22 a baccalaureate degree in a field of study for  
23 which possession of that degree in conjunction  
24 with academic achievements meets the qualifica-  
25 tion standards as prescribed by the Office of

1 Personnel Management for the position to  
2 which the individual is being appointed; and

3 “(B) achieved a cumulative grade point av-  
4 erage of 3.0 or higher on a 4.0 scale and a  
5 grade point average of 3.5 or higher for courses  
6 in the field of study required to qualify for the  
7 position;

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

10 “(A) received, from an accredited institu-  
11 tion authorized to grant graduate degrees, a  
12 graduate degree in a field of study for which  
13 possession of that degree meets the qualifica-  
14 tion standards at this grade level as prescribed  
15 by the Office of Personnel Management for the  
16 position to which the individual is being ap-  
17 pointed; and

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

22 “(3) with respect to a position at the GS–11  
23 level, the individual—

24 “(A) received, from an accredited institu-  
25 tion authorized to grant graduate degrees, a

1 graduate degree in a field of study for which  
2 possession of that degree meets the qualifica-  
3 tion standards at this grade level as prescribed  
4 by the Office of Personnel Management for the  
5 position to which the individual is being ap-  
6 pointed; and

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

11 “(4) with respect to a research position at the  
12 GS-12 level, the individual—

13 “(A) received, from an accredited institu-  
14 tion authorized to grant graduate degrees, a  
15 graduate degree in a field of study for which  
16 possession of that degree meets the qualifica-  
17 tion standards at this grade level as prescribed  
18 by the Office of Personnel Management for the  
19 position to which the individual is being ap-  
20 pointed; 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.

1 “(c) Veterans’ preference procedures shall apply  
2 when selecting candidates under this section. Preference  
3 eligibles who meet the criteria for distinguished scholar  
4 appointments shall be considered ahead of nonpreference  
5 eligibles.

6 “(d) An appointment made under this authority shall  
7 be a career-conditional appointment in the competitive  
8 civil service.

9 **“§ 9835. Travel and transportation expenses of cer-**  
10 **tain new appointees**

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

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

15 “(A) a career or career-conditional ap-  
16 pointment;

17 “(B) a term appointment;

18 “(C) an excepted service appointment that  
19 provides for noncompetitive conversion to a ca-  
20 reer or career-conditional appointment;

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

23 “(E) an appointment made under section  
24 203(c)(2)(A) of the National Aeronautics and  
25 Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

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

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

5           “(2) a student trainee who, upon completion of  
6           academic work, is converted to an appointment in  
7           the Administration that is identified in paragraph  
8           (1) in accordance with an appropriate authority.

9           “(b) The Administrator may pay the travel, transpor-  
10          tation, and relocation expenses of a new appointee to the  
11          same extent, in the same manner, and subject to the same  
12          conditions as the payment of such expenses under sections  
13          5724, 5724a, 5724b, and 5724c to an employee trans-  
14          ferred in the interests of the United States Government.

15       **“§ 9836. Annual leave enhancements**

16          “(a)(1) In this subsection—

17               “(A) the term ‘newly appointed employee’  
18               means an individual who is first appointed—

19                       “(i) regardless of tenure, as an employee of  
20                       the Federal Government; or

21                       “(ii) as an employee of the Federal Gov-  
22                       ernment following a break in service of at least  
23                       90 days after that individual’s last period of  
24                       Federal employment, other than—

1           “(I) employment under the Student  
2           Educational Employment Program admin-  
3           istered by the Office of Personnel Manage-  
4           ment;

5           “(II) employment as a law clerk train-  
6           ee;

7           “(III) employment under a short-term  
8           temporary appointing authority while a  
9           student during periods of vacation from  
10          the educational institution at which the  
11          student is enrolled;

12          “(IV) employment under a provisional  
13          appointment if the new appointment is per-  
14          manent and immediately follows the provi-  
15          sional appointment; or

16          “(V) employment under a temporary  
17          appointment that is neither full-time nor  
18          the principal employment of the individual;

19          “(B) the term ‘period of qualified non-Federal  
20          service’ means any period of service performed by an  
21          individual that—

22                  “(i) was performed in a position the duties  
23                  of which were directly related to the duties of  
24                  the position in the Administration to which that

1 individual will fill as a newly appointed em-  
2 ployee; and

3 “(ii) except for this section would not oth-  
4 erwise be service performed by an employee for  
5 purposes of section 6303; and

6 “(C) the term ‘directly related to the duties of  
7 the position’ means duties and responsibilities in the  
8 same line of work which require similar qualifica-  
9 tions.

10 “(2)(A) For purposes of section 6303, the Adminis-  
11 trator may deem a period of qualified non-Federal service  
12 performed by a newly appointed employee to be a period  
13 of service of equal length performed as an employee.

14 “(B) A period deemed by the Administrator under  
15 subparagraph (A) shall continue to apply to the employee  
16 during—

17 “(i) the period of Federal service in which the  
18 deeming is made; and

19 “(ii) any subsequent period of Federal service.

20 “(3)(A) Notwithstanding section 6303(a), the annual  
21 leave accrual rate for an employee of the Administration  
22 in a position paid under section 5376 or 5383, or for an  
23 employee in an equivalent category whose rate of basic pay  
24 is greater than the rate payable at GS-15, step 10, shall  
25 be 1 day for each full biweekly pay period.



1 “(B) The accrual rate established under this para-  
2 graph shall continue to apply to the employee during—

3 “(i) the period of Federal service in which such  
4 accrual rate first applies; and

5 “(ii) any subsequent period of Federal service.

6 **“§ 9837. Limited appointments to Senior Executive**

7 **Service positions**

8 “(a) In this section—

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

12 “(A) a career appointee; or

13 “(B) a limited emergency appointee or a  
14 limited term appointee—

15 “(i) who, immediately before entering  
16 the career reserved position, was serving  
17 under a career or career-conditional ap-  
18 pointment outside the Senior Executive  
19 Service; or

20 “(ii) whose limited emergency or lim-  
21 ited term appointment is approved in ad-  
22 vance by the Office of Personnel Manage-  
23 ment;

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

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

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

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

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

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

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

21           “(2) in rare circumstances, the Administrator  
22           may authorize an extension of a limited appointment  
23           under—

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

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

3           “(d) A limited term appointee who has been ap-  
4 pointed in the Administration from a career or career-con-  
5 ditional appointment outside the Senior Executive Service  
6 shall have reemployment rights in the agency from which  
7 appointed, or in another agency, under requirements and  
8 conditions established by the Office of Personnel Manage-  
9 ment. The Office shall have the authority to direct such  
10 placement in any agency.

11           “(e) Notwithstanding section 3394(b) and section  
12 3395—

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

18                   “(2) a limited term appointee serving under a  
19 term prescribed under this section may be reas-  
20 signed to another continuing Senior Executive Serv-  
21 ice position in the Administration, except that the  
22 appointee may not serve in 1 or more positions in  
23 the Administration under such appointment in ex-  
24 cess of 1 year, except that in rare circumstances, the

1 Administrator may approve an extension up to an  
2 additional 1 year.

3 “(f) A limited term appointee may not serve more  
4 than 7 consecutive years under any combination of limited  
5 appointments.

6 “(g) Notwithstanding section 5384, the Adminis-  
7 trator may authorize performance awards to limited term  
8 appointees in the Administration in the same amounts and  
9 in the same manner as career appointees.

10 **“§ 9838. Superior qualifications pay**

11 “(a) In this section the term ‘employee’ means an em-  
12 ployee as defined under section 2105 who is employed by  
13 the Administration.

14 “(b) Notwithstanding section 5334, the Adminis-  
15 trator may set the pay of an employee paid under the Gen-  
16 eral Schedule at any step within the pay range for the  
17 grade of the position, based on the superior qualifications  
18 of the employee, or the special need of the Administration.

19 “(c) If an exercise of the authority under this section  
20 relates to a current employee selected for another position  
21 within the Administration, a determination shall be made  
22 that the employee’s contribution in the new position will  
23 exceed that in the former position, before setting pay  
24 under this section.

1       “(d) Pay as set under this section is basic pay for  
2 such purposes as pay set under section 5334.

3       “(e) If the employee serves for at least 1 year in the  
4 position for which the pay determination under this sec-  
5 tion was made, or a successor position, the pay earned  
6 under such position may be used in succeeding actions to  
7 set pay under chapter 53.

8       “(f) The Administrator may waive the restrictions in  
9 subsection (e), based on criteria established in the plan  
10 required under subsection (g).

11       “(g) Before setting any employee’s pay under this  
12 section, the Administrator shall submit a plan to the Of-  
13 fice of Personnel Management, that includes—

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

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

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

20               “(4) the relationship between the exercise of au-  
21 thority under this section and the use of other pay  
22 incentives; and

23               “(5) a process to evaluate the effectiveness of  
24 this section.”.

25       (b) TECHNICAL AND CONFORMING AMENDMENT.—

1           (1) TABLE OF CHAPTERS.—The table of chap-  
2           ters for part III of title 5, United States Code, is  
3           amended by adding at the end the following:

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

4           (2) COMPENSATION FOR CERTAIN EXCEPTED  
5           PERSONNEL.—

6                   (A) IN GENERAL.—Subparagraph (A) of  
7                   section 203(c)(2) of the National Aeronautics  
8                   and Space Act of 1958 (42 U.S.C.  
9                   2473(c)(2)(A)) is amended by striking “the  
10                  highest rate of grade 18 of the General Sched-  
11                  ule of the Classification Act of 1949, as amend-  
12                  ed,” and inserting “the rate of basic pay pay-  
13                  able for level III of the Executive Schedule,”.

14                   (B) EFFECTIVE DATE.—Notwithstanding  
15                  section 313, the amendment made by this para-  
16                  graph shall take effect on the first day of the  
17                  first pay period beginning on or after the effec-  
18                  tive date of this Act.

19           (3) COMPENSATION CLARIFICATION.—Section  
20           209 of title 18, United States Code, as amended by  
21           section 209(g)(2) of the E-Government Act of 2002  
22           (Public Law 107–347; 116 Stat. 2932), is amended  
23           by adding at the end the following:

1 “(h)(1) In this subsection, the term ‘private sector  
2 entity’ has the meaning given under section 9832(a) of  
3 title 5.

4 “(2) This section does not prohibit an employee of  
5 a private sector entity, while assigned to the National Aer-  
6 onautics and Space Administration under section 9832 of  
7 title 5, from continuing to receive pay and benefits from  
8 that entity in accordance with section 9832 of that title.”.

9 (4) OTHER AMENDMENTS.—Section 125(c)(1)  
10 of Public Law 100–238 (5 U.S.C. 8432 note), as  
11 amended by section 209(g)(3) of the E-Government  
12 Act of 2002 (Public Law 107–347; 116 Stat. 2932),  
13 is amended—

14 (A) in subparagraph (C), by striking “or”  
15 at the end;

16 (B) in subparagraph (D), by striking  
17 “and” at the end and inserting “or”; and

18 (C) by adding at the end the following:

19 “(E) an individual assigned from the Na-  
20 tional Aeronautics and Space Administration to  
21 a private sector organization under section  
22 9832 of title 5, United States Code; and”.

23 **SEC. 312. EFFECTIVE DATE.**

24 This subtitle shall take effect 180 days after the date  
25 of enactment of this Act.

1           **TITLE IV—HUMAN CAPITAL**  
2                   **PERFORMANCE FUND**

3   **SEC. 401. HUMAN CAPITAL PERFORMANCE FUND.**

4           (a) Subpart D of part III of title 5, United States  
5 Code, is amended by inserting after chapter 53 the fol-  
6 lowing:

**“CHAPTER 54—HUMAN CAPITAL PERFORMANCE FUND**

          “Sec.

          “5401. Purpose.

          “5402. Definitions.

          “5403. Human Capital Performance Fund.

          “5404. Human capital performance payments.

          “5405. Regulations.

          “5406. Agency plan.

          “5407. Nature of payment.

          “5408. Appropriations.

7   **“§ 5401. Purpose**

8           “‘The purpose of this chapter is to promote, through  
9 the creation of a Human Capital Performance Fund,  
10 greater performance in the Federal Government. Monies  
11 from the Fund will be used to reward agencies’ highest  
12 performing and most valuable employees. This Fund will  
13 offer Federal managers a new tool to recognize employee  
14 performance that is critical to the achievement of agency  
15 missions.

16   **“§ 5402. Definitions**

17           “‘For the purpose of this chapter—

18                   “(1) ‘agency’ means an Executive agency under  
19                   section 105, but does not include the General Ac-  
20                   counting Office;



1 “(2) ‘employee’ includes—

2 “(A) an individual paid under a statutory  
3 pay system defined in section 5302(1);

4 “(B) a prevailing rate employee, as defined  
5 in section 5342(a)(2); and

6 “(C) a category of employees included by  
7 the Office of Personnel Management following  
8 the review of an agency plan under section  
9 5403(b)(1);

10 but does not include—

11 “(i) an individual paid at an annual rate of  
12 basic pay for a level of the Executive Schedule,  
13 under subchapter II of chapter 53, or at a rate  
14 provided for one of those levels under another  
15 provision of law;

16 “(ii) a member of the Senior Executive  
17 Service paid under subchapter VIII of chapter  
18 53, or an equivalent system;

19 “(iii) an administrative law judge paid  
20 under section 5372;

21 “(iv) a contract appeals board member  
22 paid under section 5372a;

23 “(v) an administrative appeals judge paid  
24 under section 5372b; and

1           “(vi) an individual in a position which is  
2           excepted from the competitive service because of  
3           its confidential, policy-determining, policy-mak-  
4           ing, or policy-advocating character; and

5           “(3) ‘Office’ means the Office of Personnel  
6           Management.

7           **“§ 5403. Human Capital Performance Fund**

8           “(a) There is hereby established the Human Capital  
9           Performance Fund, to be administered by the Office for  
10          the purpose of this chapter.

11          “(b)(1)(A) An agency shall submit a plan as de-  
12          scribed in section 5406 to be eligible for consideration by  
13          the Office for an allocation under this section. An alloca-  
14          tion shall be made only upon approval by the Office of  
15          an agency’s plan.

16          “(B)(i) After the reduction for training required  
17          under section 5408, ninety percent of the remaining  
18          amount appropriated to the Fund may be allocated by the  
19          Office to the agencies. Of the amount to be allocated, an  
20          agency’s pro rata distribution may not exceed its pro rata  
21          share of Executive branch payroll.

22          “(ii) If the Office does not allocate an agency’s full  
23          pro rata share, the undistributed amount remaining from  
24          that share will become available for distribution to other  
25          agencies, as provided in subparagraph (C).

1 “(C)(i) After the reduction for training under section  
2 5408, ten percent of the remaining amount appropriated  
3 to the Fund, as well as the amount of the pro rata share  
4 not distributed because of an agency’s failure to submit  
5 a satisfactory plan, shall be allocated among agencies with  
6 exceptionally high-quality plans.

7 “(ii) An agency with an exceptionally high-quality  
8 plan is eligible to receive an additional distribution in addi-  
9 tion to its full pro rata distribution.

10 “(2) Each agency is required to provide to the Office  
11 such payroll information as the Office specifies necessary  
12 to determine the Executive branch payroll.

13 **“§ 5404. Human capital performance payments**

14 “(a)(1) Notwithstanding any other provision of law,  
15 the Office may authorize an agency to provide human cap-  
16 ital performance payments to individual employees based  
17 on exceptional performance contributing to the achieve-  
18 ment of the agency mission.

19 “(2) The number of employees in an agency receiving  
20 payments from the Fund, in any year, shall not be more  
21 than the number equal to 15 percent of the agency’s aver-  
22 age total civilian full- and part-time permanent employ-  
23 ment for the previous fiscal year.

24 “(b)(1) A human capital performance payment pro-  
25 vided to an individual employee from the Fund, in any

1 year, shall not exceed 10 percent of the employee's rate  
2 of basic pay.

3       “(2) The aggregate of an employee's rate of basic  
4 pay, adjusted by any locality-based comparability pay-  
5 ments, and human capital performance pay, as defined by  
6 regulation, may not exceed the rate of basic pay for Execu-  
7 tive Level IV in any year.

8       “(c) No monies from the Human Capital Perform-  
9 ance Fund may be used to pay for a new position, for  
10 other performance-related payments, or for recruitment or  
11 retention incentives paid under sections 5753 and 5754.

12       “(d)(1) An agency may finance initial human capital  
13 performance payments using monies from the Human  
14 Capital Performance Fund, as available.

15       “(2) In subsequent years, continuation of previously  
16 awarded human capital performance payments shall be fi-  
17 nanced from other agency funds available for salaries and  
18 expenses.

19 **“§ 5405. Regulations**

20       “The Office shall issue such regulations as it deter-  
21 mines to be necessary for the administration of this chap-  
22 ter, including the administration of the Fund. The Office's  
23 regulations shall include criteria governing—

24               “(1) an agency plan under section 5406;

1           “(2) the allocation of monies from the Fund to  
2 agencies;

3           “(3) the nature, extent, duration, and adjust-  
4 ment of, and approval processes for, payments to in-  
5 dividual employees under this chapter;

6           “(4) the relationship to this chapter of agency  
7 performance management systems;

8           “(5) training of supervisors, managers, and  
9 other individuals involved in the process of making  
10 performance distinctions; and

11           “(6) the circumstances under which funds may  
12 be allocated by the Office to an agency in amounts  
13 below or in excess of the agency’s pro rata share.

14 **“§ 5406. Agency plan**

15           “To be eligible for consideration by the Office for an  
16 allocation under this section, an agency shall—

17           “(1) submit a plan, subject to review and ap-  
18 proval by the Office;

19           “(2) demonstrate that its performance manage-  
20 ment system supports agency strategic performance  
21 goals and objectives, and is used to make meaningful  
22 distinctions based on relative performance;

23           “(3) provide sufficient training to supervisors,  
24 managers, and other individuals involved in the proc-  
25 ess of making performance distinctions;

1           “(4) upon approval, receive an allocation of  
2 funding from the Office;

3           “(5) make payments to individual employees in  
4 accordance with the agency’s approved plan; and

5           “(6) provide such information to the Office re-  
6 garding payments made and use of funds received  
7 under this section as the Office may specify.

8 **“§ 5407. Nature of payment**

9           “Any payment to an employee under this section shall  
10 be part of the employee’s basic pay for the purposes of  
11 subchapter III of chapter 83, and chapters 84 and 87,  
12 and for such other purposes (other than chapter 75) as  
13 the Office shall determine by regulation.

14 **“§ 5408. Appropriations**

15           “There is authorized to be appropriated \$500 million  
16 for fiscal year 2004, and, for each subsequent fiscal year,  
17 such sums as may be necessary to carry out the provisions  
18 of this chapter. In the first year of implementation, up  
19 to 10 percent of the amount appropriated to the Fund  
20 shall be available to participating agencies to train super-  
21 visors, managers, and other individuals involved in the ap-  
22 praisal process on using performance management sys-  
23 tems to make meaningful distinctions in employee per-  
24 formance and on the use of the Fund.”.

1           (b) The table of chapters for part III of title 5,  
2 United States Code, is amended by inserting after the  
3 item relating to chapter 53 the following:

**“54. Human Capital Performance Fund ..... 5401”.**

○