

108TH CONGRESS  
2D SESSION

# S. 129

---

## AN ACT

To provide for reform relating to Federal employment, and  
for other purposes.

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

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

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

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

Sec. 1. Short title; table of contents.

TITLE I—REFORMS RELATING TO FEDERAL HUMAN CAPITAL  
 MANAGEMENT

Sec. 101. Recruitment, relocation, and retention bonuses.  
 Sec. 102. Streamlined critical pay authority.

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

Sec. 201. Agency training.  
 Sec. 202. Annual leave enhancements.  
 Sec. 203. Compensatory time off for travel.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

Sec. 301. Corrections relating to pay administration.  
 Sec. 302. Technical corrections.

3 **TITLE I—REFORMS RELATING**  
 4 **TO FEDERAL HUMAN CAP-**  
 5 **ITAL MANAGEMENT**

6 **SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION**  
 7 **BONUSES.**

8 (a) BONUSES.—

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

12 **“§ 5753. Recruitment and relocation bonuses**

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

14 **“(A) employees covered by the General Sched-**  
 15 **ule pay system established under subchapter III of**  
 16 **chapter 53; and**

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

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

6           “(A) a position to which an individual is ap-  
7           pointed by the President, by and with the advice and  
8           consent of the Senate;

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

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

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

20          “(b) The Office of Personnel Management may au-  
21          thorize the head of an agency to pay a bonus under this  
22          section to an individual only if—

23                 “(1) the position to which such individual is ap-  
24                 pointed (as described in paragraph (2)(A)) or to  
25                 which such individual moves or must relocate (as de-

1 scribed in paragraph (2)(B)) is likely to be difficult  
2 to fill in the absence of such a bonus; and

3 “(2) the individual—

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

6 “(B)(i) is currently employed by the Fed-  
7 eral Government; and

8 “(ii)(I) moves to a new position in the  
9 same geographic area under circumstances de-  
10 scribed in regulations of the Office; or

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

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

19 “(2)(A) The agreement shall include—

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

23 “(ii) the amount of the bonus;

24 “(iii) the method of payment; and

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

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

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

9           “(ii) the effect of the termination.

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

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

24          “(2) A bonus under this section may be paid as an  
25 initial lump sum, in installments, as a final lump sum

1 upon the completion of the full period of service required  
2 by the agreement, or in a combination of these forms of  
3 payment.

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

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

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

14 “(1) be equal to the maximum that would be  
15 determined if subsection (d)(1) were applied by sub-  
16 stituting ‘50’ for ‘25’; but

17 “(2) in no event exceed 100 percent of the an-  
18 nual rate of basic pay of the employee at the begin-  
19 ning of the service period.

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

22 “(f) The Office shall require that an agency establish  
23 a plan for the payment of recruitment bonuses before pay-  
24 ing any such bonuses, and a plan for the payment of relo-

1 cation bonuses before paying any such bonuses, subject  
2 to regulations prescribed by the Office.

3 “(g) The Office may prescribe regulations to carry  
4 out this section, including regulations relating to the re-  
5 payment of a bonus under this section in appropriate cir-  
6 cumstances when the agreed-upon service period has not  
7 been completed.

8 **“§ 5754. Retention bonuses**

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

10 “(A) employees covered by the General Sched-  
11 ule pay system established under subchapter III of  
12 chapter 53; and

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

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

18 “(A) a position to which an individual is ap-  
19 pointed by the President, by and with the advice and  
20 consent of the Senate;

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

24 “(C) a position which has been excepted from  
25 the competitive service by reason of its confidential,

1 policy-determining, policy-making, or policy-advocating character.

2  
3 “(3) In this section, the term ‘employee’ has the  
4 meaning given that term in section 2105, except that such  
5 term also includes an employee described in subsection (c)  
6 of that section.

7 “(b) The Office of Personnel Management may au-  
8 thorize the head of an agency to pay a retention bonus  
9 to an employee if—

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

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

17 “(A) the Federal service; or

18 “(B) for a different position in the Federal  
19 service under conditions described in regula-  
20 tions of the Office.

21 “(c) The Office may authorize the head of an agency  
22 to pay retention bonuses to a group of employees in 1 or  
23 more categories of positions in 1 or more geographic areas,  
24 subject to the requirements of subsection (b)(1) and regu-  
25 lations prescribed by the Office, if there is a high risk that



1 a significant portion of employees in the group would be  
2 likely to leave in the absence of retention bonuses.

3 “(d)(1) Payment of a retention bonus is contingent  
4 upon the employee entering into a written service agree-  
5 ment with the agency to complete a period of employment  
6 with the agency.

7 “(2)(A) The agreement shall include—

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

9 “(ii) the amount of the bonus;

10 “(iii) the method of payment; and

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

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

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

19 “(ii) the effect of the termination.

20 “(3)(A) Notwithstanding paragraph (1), a written  
21 service agreement is not required if the agency pays a re-  
22 tention bonus in biweekly installments and sets the install-  
23 ment payment at the full bonus percentage rate estab-  
24 lished for the employee with no portion of the bonus de-  
25 ferred.

1       “(B) If an agency pays a retention bonus in accord-  
2       ance with subparagraph (A) and makes a determination  
3       to terminate the payments, the agency shall provide writ-  
4       ten notice to the employee of that determination. Except  
5       as provided in regulations of the Office, the employee shall  
6       continue to be paid the retention bonus through the end  
7       of the pay period in which such written notice is provided.

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

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

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

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

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

23      “(B) An installment payment is derived by multi-  
24      plying the amount of basic pay earned in the installment

1 period by a percentage not to exceed the bonus percentage  
2 rate established for the employee.

3 “(C) If the installment payment percentage estab-  
4 lished for the employee is less than the bonus percentage  
5 rate established for the employee, the accrued but unpaid  
6 portion of the bonus is payable as part of the final install-  
7 ment payment to the employee after completion of the full  
8 service period under the terms of the service agreement.

9 “(D) For purposes of this paragraph, the bonus per-  
10 centage rate established for an employee means the bonus  
11 percentage rate established for such employee in accord-  
12 ance with paragraph (1) or subsection (f), as the case may  
13 be.

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

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

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

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

3 (2) CLERICAL AMENDMENT.—The table of sec-  
4 tions for chapter 57 of title 5, United States Code,  
5 is amended by striking the item relating to section  
6 5754 and inserting the following:

“5754. Retention bonuses.”.

7 (3) SENSE OF CONGRESS.—It is the sense of  
8 the Congress that the Director of the Office of Per-  
9 sonnel Management—

10 (A) should, each time a bonus is paid  
11 under the amendment made by paragraph (1)  
12 to recruit or relocate a Federal employee from  
13 one Government agency to another within the  
14 same geographic area or to retain a Federal  
15 employee who might otherwise leave one Gov-  
16 ernment agency for another within the same ge-  
17 ographic area, be notified of that payment with-  
18 in 60 days after the date on which such bonus  
19 is paid; and

20 (B) should monitor the payment of such  
21 bonuses (in the circumstances described in sub-  
22 paragraph (A)) to ensure that they are an ef-  
23 fective use of the Federal Government’s funds  
24 and have not adversely affected the ability of  
25 those Government agencies that lost employees

1 to other Government agencies (in such cir-  
2 cumstances) to carry out their mission.

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

6 (c) REPORTS.—

7 (1) RECRUITMENT AND RELOCATION BO-  
8 NUSES.—

9 (A) IN GENERAL.—The Office of Personnel  
10 Management shall submit to the Committee on  
11 Governmental Affairs of the Senate and the  
12 Committee on Government Reform of the  
13 House of Representatives annually, for each of  
14 the first 5 years during which section 5753 of  
15 title 5, United States Code (as amended by sub-  
16 section (a)(1)) is in effect, a report on the oper-  
17 ation of such section.

18 (B) CONTENTS.—Each report submitted  
19 under this paragraph shall include, with respect  
20 to the period covered by such report, a descrip-  
21 tion of how the authority to pay bonuses under  
22 the section of title 5, United States Code, re-  
23 ferred to in subparagraph (A) was used by the  
24 respective agencies, including, with respect to

1 each such agency and each type of bonus under  
2 such section—

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

5 (I) to individuals holding posi-  
6 tions within each pay grade, pay level,  
7 or other pay classification; and

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

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

16 (2) RETENTION BONUSES.—

17 (A) IN GENERAL.—The Office of Personnel  
18 Management shall submit to the Committee on  
19 Governmental Affairs of the Senate and the  
20 Committee on Government Reform of the  
21 House of Representatives annually, for each of  
22 the first 5 years during which section 5754 of  
23 title 5, United States Code (as amended by sub-  
24 section (a)(1)) is in effect, a report on the oper-  
25 ation of such section.

1 (B) CONTENTS.—Each report submitted  
2 under this paragraph shall include, with respect  
3 to the period covered by such report, a descrip-  
4 tion of how the authority to pay bonuses under  
5 the section of title 5, United States Code, re-  
6 ferred to in subparagraph (A) was used by the  
7 respective agencies, including, with respect to  
8 each such agency—

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

11 (I) to individuals holding posi-  
12 tions within each pay grade, pay level,  
13 or other pay classification; and

14 (II) if applicable, to prevent indi-  
15 viduals from moving between positions  
16 that were in different agencies but the  
17 same geographic area (including the  
18 names of the agencies involved); and

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

22 (d) EFFECTIVE DATE AND APPLICATION.—

23 (1) EFFECTIVE DATE.—Except as provided  
24 under paragraphs (2) and (3), this section shall take  
25 effect on the first day of the first applicable pay pe-

1       riod beginning on or after the 180th day after the  
2       date of the enactment of this Act.

3               (2) APPLICATION TO AGREEMENTS.—A recruit-  
4       ment or relocation bonus service agreement that was  
5       authorized under section 5753 of title 5, United  
6       States Code, before the effective date under para-  
7       graph (1) shall continue, until its expiration, to be  
8       subject to such section as in effect on the day before  
9       such effective date.

10              (3) APPLICATION TO ALLOWANCES.—Payment  
11       of a retention allowance that was authorized under  
12       section 5754 of title 5, United States Code, before  
13       the effective date under paragraph (1) shall con-  
14       tinue, subject to such section as in effect on the day  
15       before such effective date, until the retention allow-  
16       ance is reauthorized or terminated (but no longer  
17       than 1 year after such effective date).

18 **SEC. 102. STREAMLINED CRITICAL PAY AUTHORITY.**

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

21              (1) by striking “Office of Personnel Manage-  
22       ment” each place it appears and inserting “Office of  
23       Management and Budget”;



1           (2) by striking “Office of Management and  
2           Budget” each place it appears and inserting “Office  
3           of Personnel Management”;

4           (3) in subsection (g), by striking “prescribing  
5           regulations under this section or”; and

6           (4) in subsection (h), by striking “Committee  
7           on Post Office and Civil Service” and inserting  
8           “Committee on Government Reform”.

9           **TITLE II—REFORMS RELATING**  
10           **TO FEDERAL EMPLOYEE CA-**  
11           **REER DEVELOPMENT AND**  
12           **BENEFITS**

13           **SEC. 201. AGENCY TRAINING.**

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

18           “(c) The head of each agency shall, on a regular  
19           basis—

20                   “(1) evaluate each program or plan established,  
21                   operated, or maintained under subsection (a) with  
22                   respect to accomplishing specific performance plans  
23                   and strategic goals in performing the agency mis-  
24                   sion; and

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

3           (b) SPECIFIC TRAINING PROGRAMS.—

4           (1) IN GENERAL.—Chapter 41 of title 5, United  
5 States Code, is amended by adding after section  
6 4120 the following:

7 **“§ 4121. Specific training programs**

8           “In consultation with the Office of Personnel Man-  
9 agement, the head of each agency shall establish—

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

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

16           “(A) relating to employees with unaccept-  
17 able performance;

18           “(B) mentoring employees and improving  
19 employee performance and productivity; and

20           “(C) conducting employee performance ap-  
21 praisals.”.

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

“4121. Specific training programs.”.

1 **SEC. 202. ANNUAL LEAVE ENHANCEMENTS.**

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

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

8 “(e)(1) Not later than 180 days after the date of the  
9 enactment of this subsection, the Office of Personnel Man-  
10 agement shall prescribe regulations under which, for pur-  
11 poses of determining years of service under subsection (a),  
12 credit shall, in the case of a newly appointed employee,  
13 be given for any prior service of such employee that would  
14 not otherwise be creditable for such purposes, if—

15 “(A) such service—

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

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

22 “(B) in the judgment of the head of the ap-  
23 pointing agency, the application of this subsection is  
24 necessary in order to achieve an important agency  
25 mission or performance goal.

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

1           “(A) shall be creditable, for the purposes de-  
2           scribed in paragraph (1), as of the effective date of  
3           the employee’s appointment; and

4           “(B) shall not thereafter cease to be so cred-  
5           itable, unless the employee fails to complete a full  
6           year of continuous service with the agency.

7           “(3) An employee shall not be eligible for the applica-  
8           tion of paragraph (1) on the basis of any appointment if,  
9           within 90 days before the effective date of such appoint-  
10          ment, such employee has held any position in the civil  
11          service.”.

12           (2) CONFORMING AMENDMENT.—The second  
13          sentence of section 6303(a) of title 5, United States  
14          Code, is amended by striking the period and insert-  
15          ing “, and for all service which is creditable by vir-  
16          tue of subsection (e).”.

17           (b) OTHER ANNUAL LEAVE ENHANCEMENTS.—Sec-  
18          tion 6303 of title 5, United States Code, is amended by  
19          adding after subsection (e) (as added by subsection (a))  
20          the following:

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

1 “(1) section 5376 or 5383; or

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

5 (c) APPLICABILITY.—None of the amendments made  
6 by subsection (a) shall apply in the case of any employee  
7 holding a position pursuant to an appointment made be-  
8 fore the effective date of the regulations implementing  
9 such amendments.

10 **SEC. 203. COMPENSATORY TIME OFF FOR TRAVEL.**

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

14 **“§ 5550b. Compensatory time off for travel**

15 “(a) Notwithstanding section 5542(b)(2), each hour  
16 spent by an employee in travel status away from the offi-  
17 cial duty station of the employee, that is not otherwise  
18 compensable, shall be treated as an hour of work or em-  
19 ployment for purposes of calculating compensatory time  
20 off.

21 “(b) An employee who has any hours treated as hours  
22 of work or employment for purposes of calculating com-  
23 pensatory time under subsection (a), shall not be entitled  
24 to payment for any such hours that are unused as compen-  
25 satory time.”.

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

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

5 (c) EFFECTIVE DATE.—The amendments made by  
 6 this section shall take effect on the earlier of—

7 (1) the effective date of any regulations pre-  
 8 scribed to carry out such amendments; or

9 (2) the 90th day after the date of the enact-  
 10 ment of this Act.

## 11 **TITLE III—PROVISIONS RELAT-** 12 **ING TO PAY ADMINISTRATION**

### 13 **SEC. 301. CORRECTIONS RELATING TO PAY ADMINISTRA-** 14 **TION.**

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

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

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

25 (2) in section 5305—

1 (A) by striking subsection (a) and insert-  
2 ing the following:

3 “(a)(1) Whenever the Office of Personnel Manage-  
4 ment finds that the Government’s recruitment or retention  
5 efforts with respect to 1 or more occupations in 1 or more  
6 areas or locations are, or are likely to become, significantly  
7 handicapped due to any of the circumstances described in  
8 subsection (b), the Office may establish for the areas or  
9 locations involved, with respect to individuals in positions  
10 paid under any of the pay systems referred to in sub-  
11 section (c), higher minimum rates of pay for 1 or more  
12 grades or levels, occupational groups, series, classes, or  
13 subdivisions thereof, and may make corresponding in-  
14 creases in all rates of the pay range for each such grade  
15 or level. However, a minimum rate so established may not  
16 exceed the maximum rate of basic pay (excluding any lo-  
17 cality-based comparability payment under section 5304 or  
18 similar provision of law) for the grade or level by more  
19 than 30 percent, and no rate may be established under  
20 this section in excess of the rate of basic pay payable for  
21 level IV of the Executive Schedule. In the case of individ-  
22 uals not subject to the provisions of this title governing  
23 appointment in the competitive service, the President may  
24 designate another agency to authorize special rates under  
25 this section.

1       “(2) The head of an agency may determine that a  
2 category of employees of the agency will not be covered  
3 by a special rate authorization established under this sec-  
4 tion. The head of an agency shall provide written notice  
5 to the Office of Personnel Management (or other agency  
6 designated by the President to authorize special rates  
7 under the last sentence of paragraph (1)) which identifies  
8 the specific category or categories of employees that will  
9 not be covered by special rates authorized under this sec-  
10 tion. If the head of an agency removes a category of em-  
11 ployees from coverage under a special rate authorization  
12 after that authorization takes effect, the loss of coverage  
13 will take effect on the first day of the first pay period  
14 after the date of the notice.”;

15               (B) in subsection (b), by striking para-  
16 graph (4) and inserting the following:

17               “(4) any other circumstances which the Office  
18 of Personnel Management (or such other agency as  
19 the President may under the last sentence of sub-  
20 section (a)(1) designate) considers appropriate.”;

21               (C) in subsection (d)—

22                       (i) by striking “President” and insert-  
23 ing “Office of Personnel Management”;  
24 and



1                   (ii) by striking “or by such agency as  
2                   he may designate” and inserting “(or by  
3                   such other agency as the President may  
4                   designate under the last sentence of sub-  
5                   section (a)(1))”;

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

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

10                  “(f) When a schedule of special rates established  
11                  under this section is adjusted under subsection (d), a cov-  
12                  ered employee’s special rate will be adjusted in accordance  
13                  with conversion rules prescribed by the Office of Personnel  
14                  Management (or by such other agency as the President  
15                  may under the last sentence of subsection (a)(1) des-  
16                  ignate).”;

17                   (F) in subsection (g)(1)—

18                   (i) by striking “basic pay” and insert-  
19                   ing “pay”; and

20                   (ii) by striking “President (or his des-  
21                   ignated agency)” and inserting “Office of  
22                   Personnel Management (or such other  
23                   agency as the President may under the last  
24                   sentence of subsection (a)(1) designate)”;

1 (G) by striking subsection (h) and insert-  
2 ing the following:

3 “(h) An employee shall not for any purpose be consid-  
4 ered to be entitled to a rate of pay established under this  
5 section with respect to any period for which such employee  
6 is entitled to a higher rate of basic pay under any other  
7 provision of law. For purposes of this subsection, the term  
8 ‘basic pay’ includes any applicable locality-based com-  
9 parability payment under section 5304 or similar provision  
10 of law.”; and

11 (H) by adding at the end the following:

12 “(i) If an employee who is receiving a rate of pay  
13 under this section becomes subject, by virtue of moving  
14 to a new official duty station, to a different pay schedule,  
15 such employee’s new rate of pay shall be initially estab-  
16 lished under conversion rules prescribed by the Office of  
17 Personnel Management (or such other agency as the  
18 President may under the last sentence of subsection (a)(1)  
19 designate) in conformance with the following:

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

1           “(2) Then, if (in addition to the change in pay  
2           schedule) the move also involves any personnel ac-  
3           tion or other change requiring a rate adjustment  
4           under any other provision of law, rule, or regulation,  
5           apply the applicable rate adjustment provisions,  
6           treating the rate determined under paragraph (1) as  
7           if it were the rate last received by the employee be-  
8           fore the rate adjustment.

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

16                 (3) in section 5334—

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

19          “If an employee’s rate after promotion or transfer is  
20          greater than the maximum rate of basic pay for the em-  
21          ployee’s grade, that rate shall be treated as a retained rate  
22          under section 5363. The Office of Personnel Management  
23          shall prescribe by regulation the circumstances under  
24          which and the extent to which special rates under section  
25          5305 (or similar provision of law) or locality-adjusted

1 rates under section 5304 (or similar provision of law) are  
2 considered to be basic pay in applying this subsection.”;  
3 and

4 (B) by adding at the end the following:

5 “(g) In the case of an employee who—

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

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

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

12 “(A) first, by determining the rate of pay to  
13 which such employee would be entitled at the new  
14 official duty station based on such employee’s posi-  
15 tion, grade, and step (or relative position in the rate  
16 range) before the move, and

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

22 (4) in section 5361—

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

25 “(4) ‘rate of basic pay’ means—

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

5           “(i) any applicable locality-based com-  
6 parability payment under section 5304 or  
7 similar provision of law;

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

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

16           “(B) in the case of a prevailing rate em-  
17 ployee, the scheduled rate of pay determined  
18 under section 5343;”;

19           (B) in paragraph (6), by striking “and” at  
20 the end;

21           (C) in paragraph (7), by striking the pe-  
22 riod and inserting“; and”; and

23           (D) by adding at the end the following:

1           “(8) ‘retained rate’ means the rate of basic pay  
2           to which an employee is entitled under section  
3           5363(b)(2).”;

4           (5) in section 5363—

5           (A) in subsection (a), by striking the mat-  
6           ter following paragraph (4) and inserting the  
7           following:

8           “is entitled to a rate of basic pay in accordance with regu-  
9           lations prescribed by the Office of Personnel Management  
10          in conformity with the provisions of this section.”; and

11          (B) by striking subsections (b) and (c) and  
12          inserting the following:

13          “(b)(1)(A) If, as a result of any event described in  
14          subsection (a), the employee’s former rate of basic pay is  
15          less than or equal to the maximum rate of basic pay pay-  
16          able for the grade of the employee’s position immediately  
17          after the occurrence of the event involved, the employee  
18          is entitled to basic pay at the lowest rate of basic pay pay-  
19          able for such grade that equals or exceeds such former  
20          rate of basic pay.

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

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

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

8                   “(ii) 150 percent of the maximum rate of basic  
9 pay payable for the grade of the employee’s position  
10 immediately after the occurrence of the event in-  
11 volved,

12 as adjusted by subparagraph (B).

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

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

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

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

1           “(B) in conjunction with such move, becomes  
2           subject to both a different pay schedule and (dis-  
3           regarding this subsection) the preceding provisions  
4           of this section,

5 this section shall be applied—

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

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

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

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



1       “(d) A retained rate shall be considered part of basic  
2 pay for purposes of this subchapter and for purposes of  
3 subchapter III of chapter 83, chapters 84 and 87, sub-  
4 chapter V of chapter 55, section 5941, and for such other  
5 purposes as may be expressly provided for by law or as  
6 the Office of Personnel Management may by regulation  
7 prescribe. The Office shall, for any purpose other than any  
8 of the purposes referred to in the preceding sentence, pre-  
9 scribe by regulation what constitutes basic pay for employ-  
10 ees receiving a retained rate.

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

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

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

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

24               (6) in section 5365(b), by inserting after “pro-  
25 visions of this subchapter” the following: “(subject

1 to any conditions or limitations the Office may es-  
 2 tablish)”).

3 (b) SPECIAL RATES FOR LAW ENFORCEMENT OFFI-  
 4 CERS.—Section 403(c) of the Federal Employees Pay  
 5 Comparability Act of 1990 (5 U.S.C. 5305 note) is amend-  
 6 ed by striking all after “provision of law)” and inserting  
 7 “and shall be basic pay for all purposes. The rates shall  
 8 be adjusted at the time of adjustments in the General  
 9 Schedule to maintain the step linkage set forth in sub-  
 10 section (b)(2).”.

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

13 (1) by striking “(2)(A)” and inserting “(2)”;

14 and

15 (2) by striking subparagraph (B).

16 (d) EFFECTIVE DATE; CONVERSION RULES.—

17 (1) EFFECTIVE DATE.—This section shall take  
 18 effect on the first day of the first applicable pay pe-  
 19 riod beginning on or after the 180th day after the  
 20 date of the enactment of this Act.

21 (2) CONVERSION RULES.—

22 (A) INDIVIDUALS RECEIVING A RETAINED  
 23 RATE OR A RATE GREATER THAN THE MAX-  
 24 IMUM RATE FOR THE GRADE.—Subject to any  
 25 regulations the Office of Personnel Manage-

1           ment may prescribe, an employee under a cov-  
2           ered pay schedule who, on the day before the  
3           effective date of this section, is receiving a re-  
4           tained rate under section 5363 of title 5,  
5           United States Code, or is receiving under simi-  
6           lar authority a rate of basic pay that is greater  
7           than the maximum rate of basic pay payable for  
8           the grade of the employee’s position shall have  
9           that rate converted as of the effective date of  
10          this section, and the employee shall be consid-  
11          ered to be receiving a retained rate under sec-  
12          tion 5363 of such title (as amended by this sec-  
13          tion). The newly applicable retained rate shall  
14          equal the formerly applicable retained rate as  
15          adjusted to include any applicable locality-based  
16          payment under section 5304 of title 5, United  
17          States Code, or similar provision of law.

18                   (B) DEFINITION.—For purposes of this  
19                   paragraph, the term “covered pay schedule”  
20                   has the meaning given such term by section  
21                   5361 of title 5, United States Code.

22 **SEC. 302. TECHNICAL CORRECTIONS.**

23           (a)(1) Section 5304 of title 5, United States Code,  
24           as amended by section 1125 of the National Defense Au-

1 thORIZATION Act for Fiscal Year 2004 (Public Law 108–  
2 136), is amended—

3 (A) in subsection (g)(2)(A), by striking “(A)–  
4 (D)” and inserting “(A)–(C)”; and

5 (B) in subsection (h)(2)(B)(i), by striking “or  
6 (vii)” and inserting “or (vi)”.

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

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

13 “Administrator of the Office of Electronic Gov-  
14 ernment.”.

Passed the Senate October 11, 2004.

Attest:

*Secretary.*

108<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 129**

---

**AN ACT**

To provide for reform relating to Federal  
employment, and for other purposes.