

GENERAL SERVICES ADMINISTRATION MODERNIZATION
ACT

MAY 23, 2005.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2066]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 2066) to amend title 40, United States Code, to establish a Federal Acquisition Service, to replace the General Supply Fund and the Information Technology Fund with an Acquisition Services Fund, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “General Services Administration Modernization Act”.

SEC. 2. FEDERAL ACQUISITION SERVICE.**(a) ESTABLISHMENT.—**

(1) **IN GENERAL.**—Section 303 of title 40, United States Code, is amended to read as follows:

“§ 303. Federal Acquisition Service

“(a) **ESTABLISHMENT.**—There is established in the General Services Administration a Federal Acquisition Service. The Administrator of General Services shall appoint a Commissioner of the Federal Acquisition Service, who shall be the head of the Federal Acquisition Service.

“(b) **FUNCTIONS.**—Subject to the direction and control of the Administrator of General Services, the Commissioner of the Federal Acquisition Service shall be responsible for carrying out functions related to the uses for which the Acquisition Services Fund is authorized under section 321 of this title, including any functions that were carried out by the entities known as the Federal Supply Service and the Federal Technology Service and such other related functions as the Administrator considers appropriate.

“(c) **REGIONAL EXECUTIVES.**—The Administrator may appoint up to five Regional Executives in the Federal Acquisition Service, to carry out such functions within the Federal Acquisition Service as the Administrator considers appropriate.”.

(2) **CLERICAL AMENDMENT.**—The item relating to section 303 at the beginning of chapter 3 of such title is amended to read as follows:

“303. Federal Acquisition Service.”.

(b) **EXECUTIVE SCHEDULE COMPENSATION.**—Section 5316 of title 5, United States Code, is amended by striking “Commissioner, Federal Supply Service, General Services Administration.” and inserting the following:

“Commissioner, Federal Acquisition Service, General Services Administration.”.

(c) **REFERENCES.**—Any reference in any other Federal law, Executive order, rule, regulation, reorganization plan, or delegation of authority, or in any document—

(1) to the Federal Supply Service is deemed to refer to the Federal Acquisition Service;

(2) to the GSA Federal Technology Service is deemed to refer to the Federal Acquisition Service;

(3) to the Commissioner of the Federal Supply Service is deemed to refer to the Commissioner of the Federal Acquisition Service; and

(4) to the Commissioner of the GSA Federal Technology Service is deemed to refer to the Commissioner of the Federal Acquisition Service.

SEC. 3. ACQUISITION SERVICES FUND.

(a) **ABOLISHMENT OF GENERAL SUPPLY FUND AND INFORMATION TECHNOLOGY FUND.**—The General Supply Fund and the Information Technology Fund in the Treasury are hereby abolished.

(b) **TRANSFERS.**—Capital assets and balances remaining in the General Supply Fund and the Information Technology Fund as in existence immediately before this section takes effect shall be transferred to the Acquisition Services Fund and shall be merged with and be available for the purposes of the Acquisition Services Fund under section 321 of title 40, United States Code (as amended by this Act).

(c) **ASSUMPTION OF OBLIGATIONS.**—Any liabilities, commitments, and obligations of the General Supply Fund and the Information Technology Fund as in existence immediately before this section takes effect shall be assumed by the Acquisition Services Fund.

(d) **EXISTENCE AND COMPOSITION OF ACQUISITION SERVICES FUND.**—Subsections (a) and (b) of section 321 of title 40, United States Code, are amended to read as follows:

“(a) **EXISTENCE.**—The Acquisition Services Fund is a special fund in the Treasury.

“(b) **COMPOSITION.**—

“(1) **IN GENERAL.**—The Fund is composed of amounts authorized to be transferred to the Fund or otherwise made available to the Fund.

“(2) **OTHER CREDITS.**—The Fund shall be credited with all reimbursements, advances, and refunds or recoveries relating to personal property or services procured through the Fund, including—

“(A) the net proceeds of disposal of surplus personal property; and

“(B) receipts from carriers and others for loss of, or damage to, personal property; and

“(C) receipts from agencies charged fees pursuant to rates established by the Administrator.

“(3) COST AND CAPITAL REQUIREMENTS.—The Administrator shall determine the cost and capital requirements of the Fund for each fiscal year and shall develop a plan concerning such requirements in consultation with the Chief Financial Officer of the General Services Administration. Any change to the cost and capital requirements of the Fund for a fiscal year shall be approved by the Administrator. The Administrator shall establish rates to be charged agencies provided, or to be provided, supply of personal property and non-personal services through the Fund, in accordance with the plan.

“(4) DEPOSIT OF FEES.—Fees collected by the Administrator under section 313 of this title may be deposited in the Fund to be used for the purposes of the Fund.”.

(e) USES OF FUND.—Section 321(c) of such title is amended in paragraph (1)(A)—

- (1) by striking “and” at the end of clause (i);
- (2) by inserting “and” after the semicolon at the end of clause (ii); and
- (3) by inserting after clause (ii) the following new clause:
 - “(iii) personal services related to the provision of information technology (as defined in section 11101(6) of this title);”.

(f) PAYMENT FOR PROPERTY AND SERVICES.—Section 321(d)(2)(A) of such title is amended—

- (1) by striking “and” at the end of clause (iv);
- (2) by redesignating clause (v) as clause (vi); and
- (3) by inserting after clause (iv) the following new clause:
 - “(v) the cost of personal services employed directly in providing information technology (as defined in section 11101(6) of this title); and”.

(g) TRANSFER OF UNCOMMITTED BALANCES.—Subsection (f) of section 321 of such title is amended to read as follows:

“(f) TRANSFER OF UNCOMMITTED BALANCES.—Following the close of each fiscal year, after making provision for a sufficient level of inventory of personal property to meet the needs of Federal agencies, the replacement cost of motor vehicles, and other anticipated operating needs reflected in the cost and capital plan developed under subsection (b), the uncommitted balance of any funds remaining in the Fund shall be transferred to the general fund of the Treasury as miscellaneous receipts.”.

(h) CONFORMING AND CLERICAL AMENDMENTS.—

- (1) Section 322 of such title is repealed.
- (2) The heading for section 321 of such title is amended to read as follows:

“§ 321. Acquisition Services Fund”.

(3) The table of sections for chapter 3 of such title is amended by striking the items relating to sections 321 and 322 and inserting the following:

“321. Acquisition Services Fund.”.

(4) Section 573 of such title is amended by striking “General Supply Fund” both places it appears and inserting “Acquisition Services Fund”.

(5) Section 604(b) of such title is amended—

- (A) in the heading, by striking “GENERAL SUPPLY FUND” and inserting “ACQUISITION SERVICES FUND”; and
- (B) in the text, by striking “General Supply Fund” and inserting “Acquisition Services Fund”.

(6) Section 605 of such title is amended—

- (A) in subsection (a)—
 - (i) in the heading, by striking “GENERAL SUPPLY FUND” and inserting “ACQUISITION SERVICES FUND”; and
 - (ii) in the text, by striking “General Supply Fund” and inserting “Acquisition Services Fund”; and
- (B) in subsection (b)(2)—
 - (i) by striking “321(f)(1)” and inserting “321(f)”; and
 - (ii) by striking “General Supply Fund” and inserting “Acquisition Services Fund”.

SEC. 4. PROVISIONS RELATING TO ACQUISITION PERSONNEL.

Section 37 of the Office of Federal Procurement Policy Act (41 U.S.C. 433) is amended by adding at the end the following new subsections:

“(i) PROVISIONS RELATING TO REEMPLOYMENT.—

“(1) POLICIES AND PROCEDURES.—The head of each executive agency, after consultation with the Administrator and the Director of the Office of Personnel Management, shall establish policies and procedures under which the agency head may reemploy in an acquisition-related position (as described in subsection (g)(1)(A)) an individual receiving an annuity from the Civil Service Retirement

and Disability Fund, on the basis of such individual's service, without discontinuing such annuity. The head of each executive agency shall keep the Administrator informed of the agency's use of this authority.

"(2) SERVICE NOT SUBJECT TO CSRS OR FERS.—An individual so reemployed shall not be considered an employee for the purposes of chapter 83 or 84 of title 5, United States Code.

"(3) CRITERIA FOR EXERCISE OF AUTHORITY.—Policies and procedures established pursuant to this subsection shall authorize the head of the executive agency, on a case-by-case basis, to continue an annuity if—

"(A) the unusually high or unique qualifications of an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of such individual's service, or

"(B) a special need of the agency for the services of an employee, makes the reemployment of an individual essential.

"(4) REPORTING REQUIREMENT.—The Administrator shall submit annually to the Committee on Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the use of the authority under this subsection, including the number of employees reemployed under authority of this subsection.

"(5) SUNSET PROVISION.—The authority under this subsection shall expire on December 31, 2011.

"(j) RETENTION BONUSES.—

"(1) IN GENERAL.—The head of each executive agency, after consultation with the Administrator, shall establish policies and procedures under which the agency head may pay retention bonuses to employees holding acquisition-related positions (as described in subsection (g)(1)(A)) within such agency, except that the authority to pay a bonus under this subsection shall be available only if—

"(A) the unusually high or unique qualifications of an employee or a special need of the agency for the services of an employee makes the retention of such employee essential; and

"(B) the agency determines that, in the absence of such a bonus, it is likely that the employee would leave—

"(i) the Federal service; or

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

"(2) SERVICE AGREEMENTS.—(A) Payment of a bonus under this subsection shall be contingent upon the employee entering into a written agreement with the agency to complete a period of service with the agency in return for the bonus.

"(B)(i) The agreement shall include—

"(I) the length of the period of service required;

"(II) the bonus amount;

"(III) the manner in which the bonus will be paid (as described in paragraph (3)(B)); and

"(IV) any other terms and conditions of the bonus, including the terms and conditions governing the termination of an agreement.

"(3) TERMS AND CONDITIONS.—A bonus under this subsection—

"(A) may not exceed 50 percent of the basic pay of the employee;

"(B) may be paid to an employee—

"(i) in installments after completion of specified periods of service;

"(ii) in a single lump sum at the end of the period of service required by the agreement; or

"(iii) in any other manner mutually agreed to by the agency and the employee;

"(C) is not part of the basic pay of the employee; and

"(D) may not be paid to an employee who holds a position—

"(i) appointment to which is by the President, by and with the advice and consent of the Senate;

"(ii) in the Senior Executive Service as a noncareer appointee (as such term is defined under section 3132(a) of title 5, United States Code); or

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

SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 60 days after the date of the enactment of this Act.

COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

H.R. 2066, the General Services Administration Modernization Act, was introduced by Chairmen Davis and Hunter and would authorize a much needed reorganization and streamlining of the General Services Administration (GSA), the federal agency charged with leveraging the federal government's buying power to purchase commercial goods and services for the federal government at the best value possible. This legislation was approved by the Committee on Government Reform by unanimous consent on May 5, 2005. This legislation has long been championed by Chairman Davis, has been the subject of multiple legislative and oversight hearings by the Committee on Government Reform, and was included in the President's budget proposal for fiscal year 2006.

BACKGROUND AND NEED FOR LEGISLATION

The General Services Administration, through the Federal Supply Service (FSS) and the Federal Technology Service (FTS), each year buys products and services from the private sector worth well over \$30 billion and resells them to federal agencies using the General Supply Fund and the Information Technology Fund. Under FSS, federal agencies, and in some cases State and local governments, can deal directly with private sector vendors who make their products available on the FSS Schedule, which is managed by GSA. Under FTS, GSA plays a more active role by acting as a "third party advisor" for the federal agency in acquiring telecommunication and information technology goods and services. Fees collected from customer agencies are the main source of funds for both programs.

This bifurcated system may have made sense when it was created two decades ago when information technology investments were a relatively new phenomenon, but technologies such as laptop computers, cell phones, and e-mail are now as ubiquitous with office supplies as are desks and phones. The technology market has evolved from the acquisition of stand-alone hardware or services to solutions that are a mix of products and services. There is no longer a need for separate services for technology and other products and services. Two separate buying organizations operating out of two different funds has become a barrier to coordinated acquisition of management services, and the technology needed to support a total solution.

The process of establishing GSA as a modern supplier of products received a boost in 1996 when Congress passed the Clinger Cohen Act. That legislation, among other reforms, eliminated GSA's outdated centralized acquisition authority over information technology and authorized a number of significant management innovations for information technology, including the use of government-wide acquisition contracts. These government-wide contracts became a significant part of FTS's business base. GSA's business grew rapidly after 1996, yet its organizational structure remained static. This unrestrained growth without corresponding structural realignment resulted in overlapping and redundant functions in both FTS and FSS causing inefficiencies within GSA and confusion for customer agencies.

In 2002, GSA instituted the process of establishing itself as a more modern organization in response to a report by Accenture on FTS/FSS organizational issues requested by Chairman Davis. In response to the report, GSA took several actions, including transferring contract development and management activities from FTS to FSS as well as combining market research and marketing functions in FSS. GSA is currently in the process of reorganizing FSS and FTS into a single, more efficient and effective acquisition entity. The plan is to have the new organization supported by a unified Acquisition Services Fund created by H.R. 2066's merger of GSA's General Supply and Information Technology Funds. The merger of the funds was proposed by the Administration in this year's budget submission.

While the initial realignment activities were underway, the GSA Inspector General in 2003 issued a disturbing report concerning mismanagement of several FTS contracts in GSA's Bremerton, Washington office in GSA's Northwest Region and another in late 2004 showing similar problems in the remaining ten GSA Regions. In response, GSA established its "Get it Right" initiative aimed at ensuring accurate and transparent use of GSA government-wide contracting vehicles.

H.R. 2066 would assist GSA in remedying its management challenges and responding to the evolving technology market. Critical to the permanent resolution of GSA management challenges is ensuring that the structural reforms are memorialized in GSA's organic legislation so that the remedies developed will endure. H.R. 2066 would provide an overall structure within which to consolidate FSS and FTS into a single entity operating out of a unified fund, providing federal agencies with a one-stop shop to acquire all of their commercial goods and services. The legislation is a culmination of years of effort by this Committee and the Subcommittee on Technology and Procurement Policy to modernize the GSA and to bring it in line with the commercial market it must capture for its federal agency customers. This legislation will provide GSA the structure it requires to reflect the best of the commercial marketplace.

Specifically, the legislation would amend the Federal Property and Administrative Services Act of 1949 to create a new "Federal Acquisition Service," combining the existing FSS (which currently purchases commercial goods and services for the federal government), and FTS (which currently supplies information technology to federal agencies). The new Federal Acquisition Service would be headed by a high-level Commissioner appointed by the GSA Administrator.

H.R. 2066 would authorize the Federal Acquisition Service to be supported by a newly created "Acquisition Services Fund," consisting of the assets of the old Information Technology and Supply Funds. The merged Acquisition Services Fund and Federal Acquisition Service created by this legislation would eliminate the artificial and outdated barriers that have prohibited GSA from offering acquisition services to customer agencies that combine information technology and other goods and services. The bill would allow GSA for the first time to offer customer agencies goods, services, and information technology together in a single acquisition. It would bring GSA in line with the current commercial market that has

evolved from stand-alone hardware or services to solutions that are a mix of products, services and technology.

H.R. 2066 would also authorize the GSA Administrator to appoint up to five “Regional Executives” for the Federal Acquisition Service to facilitate closer oversight and more management control over acquisition-related activities. Recently, the existing GSA regions were the subject of Inspector General reports that revealed evidence of acquisition mismanagement. Audit of Federal Technology Service’s Client Support Centers, Report No. A020144/T/5/Z04002, January 8, 2004; Compendium of Audits of the Federal Technology Service Regional Client Support Centers, December 14, 2004.

H.R. 2066 would establish authority for retention bonuses and reemployment relief aimed at maintaining the strength and experience of the federal government’s civilian acquisition workforce. Specifically, H.R. 2066 would provide that an individual receiving a civil service annuity who becomes reemployed in an acquisition-related position would not necessarily have his or her annuity discontinued.

H.R. 2066 would help the Administrator in his efforts to address GSA’s management challenges and would provide the structure to allow GSA to meet the demands of the modern government market. H.R. 2066 would remove the old structures that inhibit efficient Federal purchases of solutions that are a mix of products, services and technology. The Federal marketplace should reflect the best of the commercial marketplace: both in the products and services we buy and the way we buy them.

HEARINGS

H.R. 2066 would update GSA’s structure to enable it to access the modern commercial marketplace for its customer federal agencies. The legislation would also provide the structure GSA needs to provide better, more effective oversight and control of its acquisition-related activities performed in the GSA regions.

H.R. 2066 is the product of an intensive hearing and oversight process that has spanned three Congresses. The provisions in the current legislation are rooted in the findings of multiple hearings held by the Subcommittee on Technology and Procurement Policy, the Committee on Government Reform, as well as in the recommendations of the President contained in this year’s Budget Submission and the findings of the GSA Inspector General.

On April 11, 2002, the Subcommittee on Technology and Procurement Policy held a hearing, Making Sense of Procurement’s Alphabet Soup: How Purchasing Agencies Choose Between FSS and FTS, as part of its continuing oversight of the government’s procurement and information technology management activities. Concerned about the overlapping and possibly redundant nature of the FSS/FTS structure, the Subcommittee reviewed the impact of the existing structure on GSA’s customer agencies and the vendor community. This hearing was based on the report conducted by Accenture on the existing organizational structure of the Federal Technology Service and the Federal Supply Service and how to maximize the efficiency and effectiveness of the two services.

The Subcommittee heard testimony from David Cooper, General Accounting Office (GAO)—now the Government Accountability Of-

fic—Director, Acquisition and Sourcing Management; Stephen Perry, GSA Administrator; Claudia Knott, Executive Director, Logistics Policy and Acquisition Management, Defense Logistics Agency; Edward Allen, Executive Director, Coalition for Government Procurement (CGP); and Dwight Hutchins, Partner, USA Federal Government Strategy Practice, Accenture.

Chairman Davis explained that the aim of the hearing was to determine whether FSS and FTS ensure that American taxpayers receive fair value for their hard-earned dollars when the government acquires products or services. Government witnesses, Mr. Cooper and Administrator Perry, raised concerns about the existing overlap between the two services, as both provide access to similar products and services. The witnesses noted that eight of the top ten IT product and service providers hold contracts with both FSS and FTS. Mr. Cooper suggested that GSA should develop better performance measures. Administrator Perry said GSA is instituting a rigorous management review to improve performance and provide best value to its customers and for the government. Administrator Perry noted that GSA had recently contracted with Accenture to assist in the review, provide recommendations, and alternate solutions for improving GSA performance. Mr. Hutchins's testimony was limited to the approach and methodology Accenture will use for the study.

Ms. Knott said DLA spends more than \$300 million annually on Schedule contracts but relies on the Defense Information Systems Agency (DISA) to acquire telecommunications services. DISA in turn spends \$14–15 million a year utilizing FTS contracts. Mr. Allen said that CGP member companies work closely with both FSS and FTS. Mr. Allen expressed concern that GSA's substantial growth has resulted in overlap between the two services. He noted that virtually every technology solution available under FTS contracts can be found through the Schedules. FTS buyers are the largest users of Schedule contracts, and duplicative contracts within FTS exist. There are multiple contract vehicles in FTS with similar offerings. This overlap takes valuable time away from customer service and inevitably increases acquisition costs. Mr. Allen stated that eliminating this overlap is key to GSA's future success.

The hearing established that despite existing challenges, GSA was making progress in addressing the structural and management issues surrounding FTS and FSS. Based on information gleaned from this hearing, the Subcommittee enlisted the help of GAO in following the progress of GSA's implementation of the recommendations of the Accenture study and vowed to continue its oversight of these aspects of GSA's activities.

On October 2, 2003, the Committee on Government Reform held another hearing on structural issues faced by GSA titled *Entrepreneurial Government Run Amok? A Review of FTS/FSS Organizational and Management Challenges*. This hearing explored efforts to restructure the organization of FSS and FTS, the impact of GSA Inspector General investigations of FTS contract mismanagement, and GSA's plans for a new government-wide telecommunications program. The hearing built on the information on GSA structural and management challenges developed in the previous Subcommittee hearing and supplemented by GAO work performed for the Committee.

At the hearing, GSA Administrator Stephen Perry and the GAO Director of Acquisition and Sourcing Management William Woods testified along with private sector witnesses, Larry Allen, Executive Vice President of the Coalition for Government Procurement and Donald Scott Senior Vice President of EDS, Inc. on behalf of the International Technology Association of America (ITAA). Testimony focused on GSA's actions to implement its performance improvement project and the importance of enhancing GSA's ability to help agencies strategically purchase products and services.

Administrator Perry discussed GSA's FTS and FSS performance improvement project, recent reports about mismanagement of FTS operations and its Information Technology Fund, and the strategy for GSA's recently proposed government-wide voice and data telecommunications program, Networx. He explained that GSA had begun to consolidate independent functions into one structure to meet customer and agency needs and to reduce duplication. Administrator Perry addressed the contracting mismanagement in GSA Regions found by the GSA Inspector General. Many of the problems centered on the use of the Information Technology Fund for non-technology items. Mr. Woods said that, while GSA actions should help reduce certain inefficiencies in its structure, GAO believed that GSA needs to take a more active role in helping federal agencies reduce the overall cost of their FSS and FTS purchases.

Private sector witnesses from CGP and ITAA reiterated the need for GSA to eliminate duplicative contracts that result in higher overhead burdens for contractors and confusion among GSA customers. They shared the view that GSA's focus should be on efficiency and effectiveness and the redundancies between the FSS and FTS should be eliminated. At the conclusion of this hearing, the Chairman reiterated his intention to continue the Committee's oversight activities.

On March 16, 2005, the Committee held yet another hearing on GSA structural issues: Service Oriented Streamlining: Rethinking the Way GSA Does Business. The hearing was held to explore removing the artificial barrier, created by two separate buying organizations operating out of different funds, to coordinated acquisition of goods, services and technology. The hearing addressed legislative and administrative options to consolidate FSS and FTS into a single entity operating out of a unified fund, in order to provide federal agencies with a one-stop shop to acquire commercial goods, services and technology. This final hearing built on evidence developed in the prior hearings as well as recent revelations of contract management challenges in FTS exposed by the GSA Inspector General reports on weaknesses in GSA's management controls over its regional offices.

Witnesses at this hearing included: Stephen Perry, GSA Administrator; Deidre Lee, Procurement Executive, Department of Defense, GSA's largest customer; Eugene Waszily, GSA Assistant Inspector General for Auditing; Thomas Hewitt, President, Global Government Inc. on behalf of ITAA; Vic Avetissian, Corporate Director (Government Acquisition Initiative) Northrop Grumman Corporation on behalf of the Contract Services Association of America; Mike Davison, Director & General Manager, Canon Government Marketing Division on behalf of the Coalition for Government Procurement; Elaine Dauphin, Vice President, GSA and GWAC Pro-

grams, Computer Sciences Corporation on behalf of the Professional Services Council; Richard Brown, National President, National Federation of Federal Employees. In addition, a statement was provided by Steven Kelman, Harvard's Kennedy School of Government, who was invited to appear but was unable to attend due to teaching obligations.

Administrator Perry said that the initiative to reorganize and consolidate FSS and FTS is designed to strengthen GSA's capability to meet increasing agency requirements for excellence in acquisition of technology, telecommunications, and other products and services, so that agencies can continue to rely on GSA to meet their requirements and avoid the need to duplicate acquisition activities within their agencies. He said that GSA teams are scheduled to complete detailed reorganization/consolidation implementation plans by July enabling implementation to begin in the near future.

Ms. Lee testified that in fiscal year 2004, FTS awarded contracts and task orders valued at over \$6 billion for telecommunications, professional services and technology for DOD, and that DOD spent \$7 billion through the FSS Schedules. Mr. Waszily supported the merging of the Federal Technology Fund with the General Supply Fund as an improvement in financial management.

The private sector witnesses agreed that GSA should determine the needs of customer agencies, conduct a performance-based review, and develop a business model to support them. ITAA believes that GSA restructuring should focus on establishing direct lines of authority and responsibility to complement a business model that assigns accountability for its execution and success.

Information gathered at this and the previous hearings was used to formulate H.R. 2066.

SECTION-BY-SECTION

Section 1—Short title

This section would provide that the Act be cited as the "General Services Administration Modernization Act."

Section 2—Federal Acquisition Service

This section would amend 40 U.S.C. 303 to provide for a new Federal Acquisition Service to be headed by a high-level Commissioner appointed by the Administrator of General Services (Administrator). The Commissioner of the Federal Acquisition Service would be responsible for heading the new Federal Acquisition Service which will carry out functions related to the newly, merged Acquisition Services fund created by section 3 of this Act including any functions carried out by the current Federal Supply and Federal Technology Services.

GSA purchases commercial products and services, including information technology from the private sector and resells them through various contract vehicles to customer government agencies. The Federal Supply Service, operating out of the current General Supply Fund, resells commercial goods and services while the Federal Technology Service, operating out of the current Information Technology Fund, specializes in technology goods and services. This section would provide in statute a broad structural outline for the

new service, which will allow the General Services Administration to offer to customer agencies for the first time, goods and services and information technology together in a single acquisition. The Federal Acquisition Service will operate out of a merged Acquisition Services Fund created by section 3 to replace the General Supply and Information Technology Funds.

This section would also authorize the Administrator to appoint up to five "Regional Executives" for the Federal Acquisition Service. The Regional Executives would perform such Federal Acquisition Service related functions that the Administrator considers appropriate. This section would establish a statutory Executive to facilitate closer oversight and more management control over acquisition-related activities that are conducted in GSA's Regional Offices throughout the country. Recently, the GSA regions were the subject of Inspector General reports that revealed evidence of serious acquisition mismanagement. These activities are in need of careful management control and oversight.

This section also would amend 5 U.S.C. 5316 to substitute the new Commissioner of the Federal Acquisition Service for the current Commissioner of the Federal Supply Service for purposes of compensation and make other necessary technical changes.

Section 3—Acquisition Services Fund

This section would repeal 40 U.S.C. 322 that established the General Services Administration's Information Technology Fund and amend 40 U.S.C. 321 that established the General Supply Fund to create a new Acquisition Services Fund consisting of the assets of the old Information Technology and Supply funds. GSA purchases commercial products and services from the private sector and resells them through various contract vehicles to customer government agencies. GSA currently uses the Supply Fund for commercial goods and services and the Information Technology Fund for technology goods and services.

This new Acquisition Services Fund would support the unified activities of the Federal Acquisition Service created in Section 2 of this Act. The new merged fund would have the combined attributes of the old Supply and Information Technology funds but would eliminate the artificial and outdated barriers that prohibited GSA from offering acquisition services to customer agencies that combined information technology and other goods and services. Though there are changes to some of the specific wording for purposes of updating, it is the belief of the Committee that the use of the new fund for "the provision of information technology" would include all the existing uses of the Information Technology Fund, including efficiently managing, coordinating, operating and using information technology resources. The Committee also notes that GSA currently has the authority to enter into multi-year contracts under 41 U.S.C. 254c.

This section would provide for various amendments to 40 U.S.C. 322 establishing the existence and composition of the new fund. It would provide that the Administrator determine the cost and capital requirements of the fund each fiscal year and, in consultation with the Chief Financial Officer, develop a plan concerning these requirements. The Administrator would establish rates to be charged agencies for services provided through the fund. Among

other things, this section would also provide that, at the close of each fiscal year, after provisions for a sufficient inventory of personal property to meet agencies' needs, the replacement cost of motor vehicles, and other anticipated operating needs reflected in the Administrator's requirements plan, the uncommitted balance of any funds remaining in the fund are to be transferred to the Treasury's general fund as miscellaneous receipts.

Section 4—Provisions relating to acquisition personnel

This section would amend section 37 of the Office of Federal Procurement Policy Act (41 U.S.C. 433) to establish retention bonuses and reemployment relief aimed at maintaining the strength and experience of our civilian acquisition workforce. Specifically, the section would provide that the head of an executive agency, after consultation with the Administrator for Federal Procurement Policy (Administrator) and the Director of the Office of Personnel Management, establish policies and procedures under which an individual receiving a Civil Service Annuity who becomes reemployed in an acquisition-related position could under certain conditions not have his/her annuity discontinued. An employee would qualify for such reemployment treatment on a case-by-case basis if the employee's high or unique qualifications or the special needs of the agency make the reemployment of the individual essential. The Administrator would report annually to the Committee on Government Reform and the Committee on Homeland Security and Governmental Affairs on the use of the authority. The authority would sunset on December 31, 2011.

This section would also provide that the head of each executive agency, after consultation with the Administrator, shall establish policies and procedures to pay retention bonuses to employees in acquisition related positions if it is essential to retain an employee with unusually high or unique qualifications or the special needs of the agency for an employee's services make it essential to retain the employee. The agency must also determine that, but for the bonus, the employee would leave federal service or, under certain conditions, leave for a different position in the federal service.

The payment of retention bonuses would be contingent upon the employee executing a written service agreement, including the length of service required, amount of bonus, method of payment and other terms including termination. Under this section, retention bonuses would not exceed 50 percent of the employee's pay, may be paid in a lump sum or installments, are not to be a part of an employee's basic pay and may not be paid to individuals appointed by the President with Senate confirmation, in the Senior Executive Service as a non-career appointee, or a position that is excepted from the competitive service.

Section 5—Effective date

This section would provide that the Act and amendments made by it would take effect 60 days after enactment.

EXPLANATION OF AMENDMENTS

The amendment in the nature of the substitute, as amended, is explained in the descriptive portions of this report.

COMMITTEE CONSIDERATION

On May 5, 2005, the Committee met in open session and ordered reported favorably the bill, H.R. 2066, as amended, by voice vote, a quorum being present. During Committee consideration an amendment was offered by Rep. Maloney to eliminate the requirement that the Commissioner of the new Federal Acquisition Service be a non-career employee. The amendment was adopted by unanimous consent.

ROLLCALL VOTES

No rollcall votes were held.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill reorganizes and streamlines the General Services Administration, the federal agency charged with leveraging the federal government's buying power to purchase commercial goods and services for the federal government at the best value possible. As such this bill does not relate to employment or access to public services and accommodations.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

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

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

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

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 2066. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

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

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement whether the provisions of the reported include unfunded mandates. In compli-

ance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2066. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2066 from the Director of the Congressional Budget Office:

MAY 19, 2005.

Hon. TOM DAVIS,
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2066, the General Services Administration Modernization Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS HOLTZ-EAKIN.

Enclosure.

H.R. 2066—General Services Administration Modernization Act

H.R. 2066 would amend federal law to establish a Federal Acquisition Service by combining the assets and services of the Federal Supply Service and the Federal Technology Service. The Federal Supply Service purchases goods and services for the federal government, and the Federal Technology Service provides information technology to federal agencies. In addition, the legislation would authorize retention bonuses and re-employment incentives for certain civilian federal employees.

Because the legislation would restructure the agencies that procure goods and services for federal agencies and would not provide any new authorities for federal procurement or civilian acquisition personnel, CBO estimates that implementing H.R. 2066 would have no significant effect on the budget and would not affect direct spending or revenues.

H.R. 2066 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

TITLE 40, UNITED STATES CODE

* * * * *

SUBTITLE I—FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES

* * * * *

CHAPTER 3—ORGANIZATION OF GENERAL SERVICES ADMINISTRATION

* * * * *

SUBCHAPTER I—GENERAL

Sec.

- 301. Establishment.
- 302. Administrator and Deputy Administrator.
- [303. Functions.]**
- 303. *Federal Acquisition Service.*

* * * * *

SUBCHAPTER III—FUNDS

- [321. General Supply Fund.**
- [322. Information Technology Fund.]**
- 321. *Acquisition Services Fund.*

* * * * *

SUBCHAPTER I—GENERAL

* * * * *

[§ 303. Functions

[(a) BUREAU OF FEDERAL SUPPLY.—

[(1) TRANSFER OF FUNCTIONS.—Subject to paragraph (2), the functions of the Administrator of General Services include functions related to the Bureau of Federal Supply in the Department of the Treasury that, immediately before July 1, 1949, were functions of—

- [(A) the Bureau;**
- [(B) the Director of the Bureau;**
- [(C) the personnel of the Bureau; or**
- [(D) the Secretary of the Treasury.**

[(2) FUNCTIONS NOT TRANSFERRED.—The functions of the Administrator of General Services do not include functions retained in the Department of the Treasury under section 102(c)

of the Federal Property and Administrative Services Act of 1949 (ch. 288, 63 Stat. 380).

[(b) FEDERAL WORKS AGENCY AND COMMISSIONER OF PUBLIC BUILDINGS.—The functions of the Administrator of General Services include functions related to the Federal Works Agency and functions related to the Commissioner of Public Buildings that, immediately before July 1, 1949, were functions of—

- [(1) the Federal Works Agency;
- [(2) the Federal Works Administrator; or
- [(3) the Commissioner of Public Buildings.]

§ 303. Federal Acquisition Service

(a) *ESTABLISHMENT.*—*There is established in the General Services Administration a Federal Acquisition Service. The Administrator of General Services shall appoint a Commissioner of the Federal Acquisition Service, who shall be the head of the Federal Acquisition Service.*

(b) *FUNCTIONS.*—*Subject to the direction and control of the Administrator of General Services, the Commissioner of the Federal Acquisition Service shall be responsible for carrying out functions related to the uses for which the Acquisition Services Fund is authorized under section 321 of this title, including any functions that were carried out by the entities known as the Federal Supply Service and the Federal Technology Service and such other related functions as the Administrator considers appropriate.*

(c) *REGIONAL EXECUTIVES.*—*The Administrator may appoint up to five Regional Executives in the Federal Acquisition Service, to carry out such functions within the Federal Acquisition Service as the Administrator considers appropriate.*

* * * * *

SUBCHAPTER III—FUNDS

§ 321. General Supply Fund

[(a) *EXISTENCE.*—The General Supply Fund is a special fund in the Treasury.

[(b) *COMPOSITION.*—

[(1) *IN GENERAL.*—The Fund is composed of amounts appropriated to the Fund and the value, as determined by the Administrator of General Services, of personal property transferred from executive agencies to the Administrator under section 501(d) of this title to the extent that payment is not made or credit allowed for the property.

[(2) *OTHER CREDITS.*—

[(A) *IN GENERAL.*—The Fund shall be credited with all reimbursements, advances, and refunds or recoveries relating to personal property or services procured through the Fund, including—

[(i) the net proceeds of disposal of surplus personal property; and

[(ii) receipts from carriers and others for loss of, or damage to, personal property.

[(B) *REAPPROPRIATION.*—Amounts credited under this paragraph are reappropriated for the purposes of the Fund.

【(3) DEPOSIT OF FEES.—Fees collected by the Administrator under section 313 of this title may be deposited in the Fund to be used for the purposes of the Fund.】

§ 321. Acquisition Services Fund

(a) EXISTENCE.—*The Acquisition Services Fund is a special fund in the Treasury.*

(b) COMPOSITION.—

(1) IN GENERAL.—*The Fund is composed of amounts authorized to be transferred to the Fund or otherwise made available to the Fund.*

(2) OTHER CREDITS.—*The Fund shall be credited with all reimbursements, advances, and refunds or recoveries relating to personal property or services procured through the Fund, including—*

(A) *the net proceeds of disposal of surplus personal property; and*

(B) *receipts from carriers and others for loss of, or damage to, personal property; and*

(C) *receipts from agencies charged fees pursuant to rates established by the Administrator.*

(3) COST AND CAPITAL REQUIREMENTS.—*The Administrator shall determine the cost and capital requirements of the Fund for each fiscal year and shall develop a plan concerning such requirements in consultation with the Chief Financial Officer of the General Services Administration. Any change to the cost and capital requirements of the Fund for a fiscal year shall be approved by the Administrator. The Administrator shall establish rates to be charged agencies provided, or to be provided, supply of personal property and non-personal services through the Fund, in accordance with the plan.*

(4) DEPOSIT OF FEES.—*Fees collected by the Administrator under section 313 of this title may be deposited in the Fund to be used for the purposes of the Fund.*

(c) USES.—

(1) IN GENERAL.—*The Fund is available for use by or under the direction and control of the Administrator for—*

(A) *procuring, for the use of federal agencies in the proper discharge of their responsibilities—*

(i) *personal property (including the purchase from or through the Public Printer, for warehouse issue, of standard forms, blankbook work, standard specifications, and other printed material in common use by federal agencies and not available through the Superintendent of Documents); [and]*

(ii) *nonpersonal services; and*

(iii) *personal services related to the provision of information technology (as defined in section 11101(6) of this title);*

* * * * *

(d) PAYMENT FOR PROPERTY AND SERVICES.—

(1) * * *

(2) PRICES FIXED BY ADMINISTRATOR.—*The Administrator shall fix prices at levels sufficient to recover—*

(A) *so far as practicable—*

(i) * * *

* * * * *

(iv) the cost of personal services employed directly in the repair, rehabilitation, and conversion of personal property; **[and]**

(v) *the cost of personal services employed directly in providing information technology (as defined in section 11101(6) of this title); and*

[(v)] (vi) the cost of amortization and repair of equipment used for lease or rent to executive agencies; and

(B) properly allocable costs payable by the Fund under subsection (c)(1)(C).

* * * * *

[(f) TREATMENT OF SURPLUS.—

[(1) SURPLUS DEPOSITED IN TREASURY.—As of September 30 of each year, any surplus in the Fund above the amounts transferred or appropriated to establish and maintain the Fund (all assets, liabilities, and prior losses considered) shall be deposited in the Treasury as miscellaneous receipts.

[(2) SURPLUS RETAINED.—From any surplus generated by operation of the Fund, the Administrator may retain amounts necessary to maintain a sufficient level of inventory of personal property to meet the needs of the federal agencies.]

(f) TRANSFER OF UNCOMMITTED BALANCES.—Following the close of each fiscal year, after making provision for a sufficient level of inventory of personal property to meet the needs of Federal agencies, the replacement cost of motor vehicles, and other anticipated operating needs reflected in the cost and capital plan developed under subsection (b), the uncommitted balance of any funds remaining in the Fund shall be transferred to the general fund of the Treasury as miscellaneous receipts.

* * * * *

[(§ 322. Information Technology Fund

[(a) EXISTENCE.—There is an Information Technology Fund in the Treasury.

[(b) COST AND CAPITAL REQUIREMENTS.—

[(1) IN GENERAL.—The Administrator of General Services shall determine the cost and capital requirements of the Fund for each fiscal year. The cost and capital requirements may include amounts—

[(A) needed to purchase (if the Administrator has determined that purchase is the least costly alternative) information processing and transmission equipment, software, systems, and operating facilities necessary to provide services;

[(B) resulting from operations of the Fund, including the net proceeds from the disposal of excess or surplus personal property and receipts from carriers and others for loss or damage to property; and

[(C) that are appropriated, authorized to be transferred, or otherwise made available to the Fund.

[(2) SUBMITTING PLANS TO OFFICE OF MANAGEMENT AND BUDGET.—The Administrator shall submit plans concerning the cost and capital requirements determined under this section, and other information as may be requested, for review and approval by the Director of the Office of Management and Budget. Plans submitted under this section fulfill the requirements of sections 1512 and 1513 of title 31.

[(3) ADJUSTMENTS.—Any change to the cost and capital requirements of the Fund for a fiscal year shall be made in the same manner as the initial fiscal year determination.

[(c) USE.—

[(1) IN GENERAL.—The Fund is available for expenses, including personal services and other costs, and for procurement (by lease, purchase, transfer, or otherwise) to efficiently provide information technology resources to federal agencies and to efficiently manage, coordinate, operate, and use those resources.

[(2) SPECIFICALLY INCLUDED ITEMS.—Information technology resources provided under this section include information processing and transmission equipment, software, systems, operating facilities, supplies, and related services including maintenance and repair.

[(3) CANCELLATION COSTS.—Any cancellation costs incurred for a contract entered into under subsection (e) shall be paid from money currently available in the Fund.

[(4) NO FISCAL YEAR LIMITATION.—The Fund is available without fiscal year limitation.

[(d) CHARGES TO AGENCIES.—If the Director approves plans submitted by the Administrator under subsection (b), the Administrator shall establish rates, consistent with the approval, to be charged to agencies for information technology resources provided through the Fund.

[(e) CONTRACT AUTHORITY.—

[(1) IN GENERAL.—In operating the Fund, the Administrator may enter into multiyear contracts, not longer than 5 years, to provide information technology hardware, software, or services if—

[(A) amounts are available and adequate to pay the costs of the contract for the first fiscal year and any costs of cancellation or termination;

[(B) the contract is awarded on a fully competitive basis; and

[(C) the Administrator determines that—

[(i) the need for the information technology hardware, software, or services being provided will continue over the period of the contract;

[(ii) the use of the multiyear contract will yield substantial cost savings when compared with other methods of providing the necessary resources; and

[(iii) the method of contracting will not exclude small business participation.

[(2) EFFECT ON OTHER LAW.—This subsection does not limit the authority of the Administrator to procure equipment and services under sections 501–505 of this title.

[(f) TRANSFER OF UNCOMMITTED BALANCE.—After the close of each fiscal year, any uncommitted balance remaining in the Fund, after making provision for anticipated operating needs as determined by the Office of Management and Budget, shall be transferred to the Treasury as miscellaneous receipts.

[(g) ANNUAL REPORT.—The Administrator shall report annually to the Director on the operation of the Fund. The report must address the inventory, use, and acquisition of information processing equipment and identify any proposed increases to the capital of the Fund.]

* * * * *

CHAPTER 5—PROPERTY MANAGEMENT

* * * * *

SUBCHAPTER IV—PROCEEDS FROM SALE OR TRANSFER

* * * * *

§ 573. Personal property

The Administrator of General Services may retain from the proceeds of sales of personal property the Administrator conducts amounts necessary to recover, to the extent practicable, costs the Administrator (or the Administrator’s agent) incurs in conducting the sales. The Administrator shall deposit amounts retained into the [General Supply Fund] *Acquisition Services Fund* established under section 321(a) of this title. From the amounts deposited, the Administrator may pay direct costs and reasonably related indirect costs incurred in conducting sales of personal property. At least once each year, amounts retained that are not needed to pay the direct and indirect costs shall be transferred from the [General Supply Fund] *Acquisition Services Fund* to the general fund or another appropriate account in the Treasury.

* * * * *

SUBCHAPTER VI—MOTOR VEHICLE POOLS AND TRANSPORTATION SYSTEMS

* * * * *

§ 604. Treatment of assets taken over to establish motor vehicle pools and transportation systems

(a) * * *

(b) ADDITION TO [GENERAL SUPPLY FUND] *ACQUISITION SERVICES FUND*.—If the Administrator takes over motor vehicles or related equipment or supplies under section 602 of this title but reimbursement is not required under subsection (a), the value of the property taken over, as determined by the Administrator, may be added to the capital of the [General Supply Fund] *Acquisition Services Fund*. If the Administrator subsequently returns property of a similar kind under section 610 of this title, the value of the property may be deducted from the Fund.

§ 605. Payment of costs

(a) USE OF **【GENERAL SUPPLY FUND】 ACQUISITION SERVICES FUND TO COVER COSTS.**—The **【General Supply Fund】 Acquisition Services Fund** provided for in section 321 of this title is available for use by or under the direction and control of the Administrator of General Services to pay the costs of carrying out section 602 of this title, including the cost of purchasing or renting motor vehicles and related equipment and supplies.

(b) SETTING PRICES TO RECOVER COSTS.—

(1) * * *

(2) INCREMENT FOR REPLACEMENT COST.—In the Administrator's discretion, prices may include an increment for the estimated replacement cost of motor vehicles and related equipment and supplies. Notwithstanding section **【321(f)(1)】 321(f)** of this title, the increment may be retained as a part of the capital of the **【General Supply Fund】 Acquisition Services Fund** but is available only to replace motor vehicles and related equipment and supplies.

* * * * *

SECTION 5316 OF TITLE 5, UNITED STATES CODE

§ 5316. Positions at level V

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

Administrator, Bonneville Power Administration, Department of the Interior.

* * * * *

【Commissioner, Federal Supply Service, General Services Administration.】

Commissioner, Federal Acquisition Service, General Services Administration.

* * * * *

SECTION 37 OF THE OFFICE OF FEDERAL PROCUREMENT POLICY ACT

SEC. 37. ACQUISITION WORKFORCE.

(a) * * *

* * * * *

(i) **PROVISIONS RELATING TO REEMPLOYMENT.**—

(1) **POLICIES AND PROCEDURES.**—*The head of each executive agency, after consultation with the Administrator and the Director of the Office of Personnel Management, shall establish policies and procedures under which the agency head may reemploy in an acquisition-related position (as described in subsection (g)(1)(A)) an individual receiving an annuity from the Civil Service Retirement and Disability Fund, on the basis of such individual's service, without discontinuing such annuity.*

The head of each executive agency shall keep the Administrator informed of the agency's use of this authority.

(2) *SERVICE NOT SUBJECT TO CSRS OR FERS.—An individual so reemployed shall not be considered an employee for the purposes of chapter 83 or 84 of title 5, United States Code.*

(3) *CRITERIA FOR EXERCISE OF AUTHORITY.—Policies and procedures established pursuant to this subsection shall authorize the head of the executive agency, on a case-by-case basis, to continue an annuity if—*

(A) the unusually high or unique qualifications of an individual receiving an annuity from the Civil Service Retirement and Disability Fund on the basis of such individual's service, or

(B) a special need of the agency for the services of an employee, makes the reemployment of an individual essential.

(4) *REPORTING REQUIREMENT.—The Administrator shall submit annually to the Committee on Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the use of the authority under this subsection, including the number of employees reemployed under authority of this subsection.*

(5) *SUNSET PROVISION.—The authority under this subsection shall expire on December 31, 2011.*

(j) *RETENTION BONUSES.—*

(1) *IN GENERAL.—The head of each executive agency, after consultation with the Administrator, shall establish policies and procedures under which the agency head may pay retention bonuses to employees holding acquisition-related positions (as described in subsection (g)(1)(A)) within such agency, except that the authority to pay a bonus under this subsection shall be available only if—*

(A) the unusually high or unique qualifications of an employee or a special need of the agency for the services of an employee makes the retention of such employee essential; and

(B) the agency determines that, in the absence of such a bonus, it is likely that the employee would leave—

(i) the Federal service; or

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

(2) *SERVICE AGREEMENTS.—(A) Payment of a bonus under this subsection shall be contingent upon the employee entering into a written agreement with the agency to complete a period of service with the agency in return for the bonus.*

(B)(i) The agreement shall include—

(I) the length of the period of service required;

(II) the bonus amount;

(III) the manner in which the bonus will be paid (as described in paragraph (3)(B)); and

(IV) any other terms and conditions of the bonus, including the terms and conditions governing the termination of an agreement.

(3) *TERMS AND CONDITIONS.—A bonus under this subsection—*

(A) may not exceed 50 percent of the basic pay of the employee;

(B) may be paid to an employee—

(i) in installments after completion of specified periods of service;

(ii) in a single lump sum at the end of the period of service required by the agreement; or

(iii) in any other manner mutually agreed to by the agency and the employee;

(C) is not part of the basic pay of the employee; and

(D) may not be paid to an employee who holds a position—

(i) appointment to which is by the President, by and with the advice and consent of the Senate;

(ii) in the Senior Executive Service as a noncareer appointee (as such term is defined under section 3132(a) of title 5, United States Code); or

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