

Public Law 108–411
108th Congress

An Act

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

Oct. 30, 2004

[S. 129]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) **TABLE OF CONTENTS.**—The table of contents of 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.

**TITLE I—REFORMS RELATING TO FED-
ERAL HUMAN CAPITAL MANAGEMENT**

SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION BONUSES.

(a) **BONUSES.**—

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

“§ 5753. Recruitment and relocation bonuses

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

“(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

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

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

Federal
Workforce
Flexibility Act of
2004.
5 USC 101 note.

“(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

“(B) a position in the Senior Executive Service as a non-career appointee (as such term is defined under section 3132(a)); or

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

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

“(b) The Office of Personnel Management may authorize the head of an agency to pay a bonus under this section to an individual only if—

“(1) the position to which such individual is appointed (as described in paragraph (2)(A)) or to which such individual moves or must relocate (as described in paragraph (2)(B)) is likely to be difficult to fill in the absence of such a bonus; and

“(2) the individual—

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

“(B)(i) is currently employed by the Federal Government; and

“(ii)(I) moves to a new position in the same geographic area under circumstances described in regulations of the Office; or

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

Contracts.

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

“(2)(A) The agreement shall include—

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

“(ii) the amount of the bonus;

“(iii) the method of payment; and

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

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

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

“(ii) the effect of the termination.

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

“(d)(1) Except as provided in subsection (e), a bonus under this section shall not exceed 25 percent of the annual rate of

basic pay of the employee at the beginning of the service period multiplied by the number of years (including a fractional part of a year, as determined under regulations of the Office) in the required service period of the employee involved.

“(2) A bonus under this section may be paid as an initial lump sum, in installments, as a final lump sum upon the completion of the full period of service required by the agreement, or in a combination of these forms of payment.

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

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

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

“(1) be equal to the maximum that would be determined if subsection (d)(1) were applied by substituting ‘50’ for ‘25’; but

“(2) in no event exceed 100 percent of the annual rate of basic pay of the employee at the beginning of the service period.

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

“(f) The Office shall require that an agency establish a plan for the payment of recruitment bonuses before paying any such bonuses, and a plan for the payment of relocation bonuses before paying any such bonuses, subject to regulations prescribed by the Office.

“(g) The Office may prescribe regulations to carry out this section, including regulations relating to the repayment of a bonus under this section in appropriate circumstances when the agreed-upon service period has not been completed.

“§ 5754. Retention bonuses

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

“(A) employees covered by the General Schedule pay system established under subchapter III of chapter 53; and

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

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

“(A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate;

“(B) a position in the Senior Executive Service as a non-career appointee (as such term is defined under section 3132(a)); or

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

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

“(b) The Office of Personnel Management may authorize the head of an agency to pay a retention bonus to an employee if—

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

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

“(A) the Federal service; or

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

“(c) The Office may authorize the head of an agency to pay retention bonuses to a group of employees in 1 or more categories of positions in 1 or more geographic areas, subject to the requirements of subsection (b)(1) and regulations prescribed by the Office, if there is a high risk that a significant portion of employees in the group would be likely to leave in the absence of retention bonuses.

Contracts.

“(d)(1) Payment of a retention bonus is contingent upon the employee entering into a written service agreement with the agency to complete a period of employment with the agency.

“(2)(A) The agreement shall include—

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

“(ii) the amount of the bonus;

“(iii) the method of payment; and

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

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

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

“(ii) the effect of the termination.

“(3)(A) Notwithstanding paragraph (1), a written service agreement is not required if the agency pays a retention bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred.

Notices.

“(B) If an agency pays a retention bonus in accordance with subparagraph (A) and makes a determination to terminate the payments, the agency shall provide written notice to the employee of that determination. Except as provided in regulations of the Office, the employee shall continue to be paid the retention bonus through the end of the pay period in which such written notice is provided.

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

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

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

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

“(2)(A) A retention bonus may be paid to an employee in installments after completion of specified periods of service or in a single

lump sum at the end of the full period of service required by the agreement.

“(B) An installment payment is derived by multiplying the amount of basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate established for the employee.

“(C) If the installment payment percentage established for the employee is less than the bonus percentage rate established for the employee, the accrued but unpaid portion of the bonus is payable as part of the final installment payment to the employee after completion of the full service period under the terms of the service agreement.

“(D) For purposes of this paragraph, the bonus percentage rate established for an employee means the bonus percentage rate established for such employee in accordance with paragraph (1) or subsection (f), as the case may be.

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

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

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

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

(2) CLERICAL AMENDMENT.—The table of sections for chapter 57 of title 5, United States Code, is amended by striking the item relating to section 5754 and inserting the following: “5754. Retention bonuses.”.

(3) SENSE OF CONGRESS.—It is the sense of the Congress that the Director of the Office of Personnel Management—

(A) should, each time a bonus is paid under the amendment made by paragraph (1) to recruit or relocate a Federal employee from one Government agency to another within the same geographic area or to retain a Federal employee who might otherwise leave one Government agency for another within the same geographic area, be notified of that payment within 60 days after the date on which such bonus is paid; and

(B) should monitor the payment of such bonuses (in the circumstances described in subparagraph (A)) to ensure that they are an effective use of the Federal Government’s funds and have not adversely affected the ability of those Government agencies that lost employees to other Government agencies (in such circumstances) to carry out their mission.

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

(c) REPORTS.—

(1) RECRUITMENT AND RELOCATION BONUSES.—

(A) IN GENERAL.—The Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform

of the House of Representatives annually, for each of the first 5 years during which section 5753 of title 5, United States Code (as amended by subsection (a)(1)) is in effect, a report on the operation of such section.

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency and each type of bonus under such section—

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

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

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

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

(2) RETENTION BONUSES.—

(A) IN GENERAL.—The Office of Personnel Management shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives annually, for each of the first 5 years during which section 5754 of title 5, United States Code (as amended by subsection (a)(1)) is in effect, a report on the operation of such section.

(B) CONTENTS.—Each report submitted under this paragraph shall include, with respect to the period covered by such report, a description of how the authority to pay bonuses under the section of title 5, United States Code, referred to in subparagraph (A) was used by the respective agencies, including, with respect to each such agency—

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

(I) to individuals holding positions within each pay grade, pay level, or other pay classification; and

(II) if applicable, to prevent individuals from moving between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and

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

5 USC 5753 note.

(d) EFFECTIVE DATE AND APPLICATION.—

(1) EFFECTIVE DATE.—Except as provided under paragraphs (2) and (3), this section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) APPLICATION TO AGREEMENTS.—A recruitment or relocation bonus service agreement that was authorized under section 5753 of title 5, United States Code, before the effective date under paragraph (1) shall continue, until its expiration, to

be subject to such section as in effect on the day before such effective date.

(3) APPLICATION TO ALLOWANCES.—Payment of a retention allowance that was authorized under section 5754 of title 5, United States Code, before the effective date under paragraph (1) shall continue, subject to such section as in effect on the day before such effective date, until the retention allowance is reauthorized or terminated (but no longer than 1 year after such effective date).

SEC. 102. STREAMLINED CRITICAL PAY AUTHORITY.

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

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

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

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

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

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

SEC. 201. AGENCY TRAINING.

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

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

“(1) evaluate each program or plan established, operated, or maintained under subsection (a) with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and

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

(b) SPECIFIC TRAINING PROGRAMS.—

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

“§ 4121. Specific training programs

“In consultation with the Office of Personnel Management, the head of each agency shall establish—

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

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

“(A) relating to employees with unacceptable performance;

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

“(C) conducting employee performance appraisals.”.

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

“4121. Specific training programs.”.

SEC. 202. ANNUAL LEAVE ENHANCEMENTS.

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

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

Deadline.
Regulations.

“(e)(1) Not later than 180 days after the date of the enactment of this subsection, the Office of Personnel Management shall prescribe regulations under which, for purposes of determining years of service under subsection (a), credit shall, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes, if—

“(A) such service—

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

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

“(B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.

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

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

“(B) shall not thereafter cease to be so creditable, unless the employee fails to complete a full year of continuous service with the agency.

“(3) An employee shall not be eligible for the application of paragraph (1) on the basis of any appointment if, within 90 days before the effective date of such appointment, such employee has held any position in the civil service.”.

(2) CONFORMING AMENDMENT.—The second sentence of section 6303(a) of title 5, United States Code, is amended by striking the period and inserting “, and for all service which is creditable by virtue of subsection (e).”.

(b) OTHER ANNUAL LEAVE ENHANCEMENTS.—Section 6303 of title 5, United States Code, is amended by adding after subsection (e) (as added by subsection (a)) the following:

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

“(1) section 5376 or 5383; or

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

5 USC 6303 note.

(c) APPLICABILITY.—None of the amendments made by subsection (a) shall apply in the case of any employee holding a position pursuant to an appointment made before the effective date of the regulations implementing such amendments.

SEC. 203. COMPENSATORY TIME OFF FOR TRAVEL.

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

“§ 5550b. Compensatory time off for travel

“(a) Notwithstanding section 5542(b)(2), each hour spent by an employee in travel status away from the official duty station of the employee, that is not otherwise compensable, shall be treated as an hour of work or employment for purposes of calculating compensatory time off.

“(b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time under subsection (a), shall not be entitled to payment for any such hours that are unused as compensatory time.”.

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

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

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

5 USC 5550b
note.

- (1) the effective date of any regulations prescribed to carry out such amendments; or
- (2) the 90th day after the date of the enactment of this Act.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

SEC. 301. CORRECTIONS RELATING TO PAY ADMINISTRATION.

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

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

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

(2) in section 5305—

(A) by striking subsection (a) and inserting the following:

“(a)(1) Whenever the Office of Personnel Management finds that the Government’s recruitment or retention efforts with respect to 1 or more occupations in 1 or more areas or locations are, or are likely to become, significantly handicapped due to any of the circumstances described in subsection (b), the Office may establish for the areas or locations involved, with respect to individuals in positions paid under any of the pay systems referred to in subsection (c), higher minimum rates of pay for 1 or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment under section 5304 or similar provision of law) for the grade or level by

more than 30 percent, and no rate may be established under this section in excess of the rate of basic pay payable for level IV of the Executive Schedule. In the case of individuals not subject to the provisions of this title governing appointment in the competitive service, the President may designate another agency to authorize special rates under this section.

Notification. “(2) The head of an agency may determine that a category of employees of the agency will not be covered by a special rate authorization established under this section. The head of an agency shall provide written notice to the Office of Personnel Management (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates authorized under this section. If the head of an agency removes a category of employees from coverage under a special rate authorization after that authorization takes effect, the loss of coverage will take effect on the first day of the first pay period after the date of the notice.”;

Effective date.

(B) in subsection (b), by striking paragraph (4) and inserting the following:

“(4) any other circumstances which the Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate.”;

(C) in subsection (d)—

(i) by striking “President” and inserting “Office of Personnel Management”; and

(ii) by striking “or by such agency as he may designate” and inserting “(or by such other agency as the President may designate under the last sentence of subsection (a)(1))”;

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

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

“(f) When a schedule of special rates established under this section is adjusted under subsection (d), a covered employee’s special rate will be adjusted in accordance with conversion rules prescribed by the Office of Personnel Management (or by such other agency as the President may under the last sentence of subsection (a)(1) designate).”;

(F) in subsection (g)(1)—

(i) by striking “basic pay” and inserting “pay”; and

(ii) by striking “President (or his designated agency)” and inserting “Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate)”;

(G) by striking subsection (h) and inserting the following:

“(h) An employee shall not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. For purposes of this subsection, the term ‘basic pay’ includes any applicable locality-based comparability payment under section 5304 or similar provision of law.”; and

(H) by adding at the end the following:

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

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

“(2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.

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

(3) in section 5334—

(A) in subsection (b), by adding at the end the following: “If an employee’s rate after promotion or transfer is greater than the maximum rate of basic pay for the employee’s grade, that rate shall be treated as a retained rate under section 5363. The Office of Personnel Management shall prescribe by regulation the circumstances under which and the extent to which special rates under section 5305 (or similar provision of law) or locality-adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in applying this subsection.”; and

Regulations.

(B) by adding at the end the following:

“(g) In the case of an employee who—

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

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

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

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

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

(4) in section 5361—

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

“(4) ‘rate of basic pay’ means—

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

“(i) any applicable locality-based comparability payment under section 5304 or similar provision of law;

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

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

“(B) in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343;”;

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

(C) in paragraph (7), by striking the period and inserting “; and”; and

(D) by adding at the end the following:

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

(5) in section 5363—

(A) in subsection (a), by striking the matter following paragraph (4) and inserting the following:

“is entitled to a rate of basic pay in accordance with regulations prescribed by the Office of Personnel Management in conformity with the provisions of this section.”; and

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

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

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

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

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

“(ii) 150 percent of the maximum rate of basic pay payable for the grade of the employee’s position immediately after the occurrence of the event involved,

as adjusted by subparagraph (B).

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

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

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

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

“(B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the preceding provisions of this section, this section shall be applied—

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

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

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

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

“(d) A retained rate shall be considered part of basic pay for purposes of this subchapter and for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55, section 5941, and for such other purposes as may be expressly provided for by law or as the Office of Personnel Management may by regulation prescribe. The Office shall, for any purpose other than any of the purposes referred to in the preceding sentence, prescribe by regulation what constitutes basic pay for employees receiving a retained rate.

Regulations.

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

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

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

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

(6) in section 5365(b), by inserting after “provisions of this subchapter” the following: “(subject to any conditions or limitations the Office may establish)”.

(b) SPECIAL RATES FOR LAW ENFORCEMENT OFFICERS.—Section 403(c) of the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5305 note) is amended by striking all after “provision of law” and inserting “and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).”.

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

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

(2) by striking subparagraph (B).

(d) EFFECTIVE DATE; CONVERSION RULES.—

5 USC 5363 note.

(1) **EFFECTIVE DATE.**—This section shall take effect on the first day of the first applicable pay period beginning on or after the 180th day after the date of the enactment of this Act.

(2) **CONVERSION RULES.**—

(A) **INDIVIDUALS RECEIVING A RETAINED RATE OR A RATE GREATER THAN THE MAXIMUM RATE FOR THE GRADE.**—Subject to any regulations the Office of Personnel Management may prescribe, an employee under a covered pay schedule who, on the day before the effective date of this section, is receiving a retained rate under section 5363 of title 5, United States Code, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee’s position shall have that rate converted as of the effective date of this section, and the employee shall be considered to be receiving a retained rate under section 5363 of such title (as amended by this section). The newly applicable retained rate shall equal the formerly applicable retained rate as adjusted to include any applicable locality-based payment under section 5304 of title 5, United States Code, or similar provision of law.

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

SEC. 302. TECHNICAL CORRECTIONS.

(a)(1) Section 5304 of title 5, United States Code, as amended by section 1125 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136), is amended—

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

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

Effective date.
5 USC 5304 note.

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

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

“Administrator of the Office of Electronic Government.”.

Approved October 30, 2004.

LEGISLATIVE HISTORY—S. 129:

HOUSE REPORTS: No. 108-733 (Comm. on Government Reform).

SENATE REPORTS: No. 108-223 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 150 (2004):

Apr. 8, considered and passed Senate.

Oct. 6, considered and passed House, amended.

Oct. 11, Senate concurred in House amendment.