

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO S. 129
OFFERED BY MRS. JO ANN DAVIS OF VIRGINIA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

4 (b) TABLE OF CONTENTS.—The table of contents of
5 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

Subtitle A—General Provisions

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

Subtitle B—Provisions Relating to Retirement

Sec. 211. Civil Service Retirement System computation for part-time service.
Sec. 212. Retirement service credit for cadet or midshipman service.

TITLE III—PROVISIONS RELATING TO PAY ADMINISTRATION

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



1 **TITLE I—REFORMS RELATING**
2 **TO FEDERAL HUMAN CAP-**
3 **ITAL MANAGEMENT**

4 **SEC. 101. RECRUITMENT, RELOCATION, AND RETENTION**
5 **BONUSES.**

6 (a) BONUSES.—

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

10 **“§ 5753. Recruitment and relocation bonuses**

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

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

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

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

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

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



1 “(C) a position which has been excepted from
2 the competitive service by reason of its confidential,
3 policy-determining, policy-making, or policy-advo-
4 cating character.

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

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

12 “(1) the position to which such individual is ap-
13 pointed (as described in paragraph (2)(A)) or to
14 which such individual moves or must relocate (as de-
15 scribed in paragraph (2)(B)) is likely to be difficult
16 to fill in the absence of such a bonus; and

17 “(2) the individual—

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

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

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



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

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

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

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

13 “(ii) the amount of the bonus;

14 “(iii) the method of payment; and

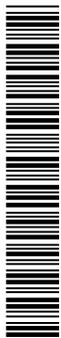
15 “(iv) other terms and conditions under which
16 the bonus is payable, subject to the requirements of
17 this section and regulations of the Office.

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

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

23 “(ii) the effect of the termination.

24 “(C) The required service period shall commence
25 upon the commencement of service with the agency or



1 movement to a new position or geographic area, as appli-
2 cable, unless the service agreement provides for a later
3 commencement date in circumstances and to the extent
4 allowable under regulations of the Office, such as when
5 there is an initial period of formal basic training.

6 “(d)(1) Except as provided in subsection (e), a bonus
7 under this section shall not exceed 25 percent of the an-
8 nual rate of basic pay of the employee at the beginning
9 of the service period multiplied by the number of years
10 (including a fractional part of a year, as determined under
11 regulations of the Office) in the required service period
12 of the employee involved.

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

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

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

23 “(e) The Office may authorize the head of an agency
24 to waive the limitation under subsection (d)(1) based on
25 a critical agency need, subject to regulations prescribed



1 by the Office. Under such a waiver, the maximum bonus
2 allowable shall—

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

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

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

11 “(f) The Office shall require that an agency establish
12 a plan for the payment of recruitment bonuses before pay-
13 ing any such bonuses, and a plan for the payment of relo-
14 cation bonuses before paying any such bonuses, subject
15 to regulations prescribed by the Office.

16 “(g) The Office may prescribe regulations to carry
17 out this section, including regulations relating to the re-
18 payment of a bonus under this section in appropriate cir-
19 cumstances when the agreed-upon service period has not
20 been completed.

21 **“§ 5754. Retention bonuses**

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

23 “(A) employees covered by the General Sched-
24 ule pay system established under subchapter III of
25 chapter 53; and



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

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

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

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

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

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

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

23 “(1) the unusually high or unique qualifications
24 of the employee or a special need of the agency for



1 the employee's services makes it essential to retain
2 the employee; and

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

6 "(A) the Federal service; or

7 "(B) for a different position in the Federal
8 service under conditions described in regula-
9 tions of the Office.

10 "(c) The Office may authorize the head of an agency
11 to pay retention bonuses to a group of employees in 1 or
12 more categories of positions in 1 or more geographic areas,
13 subject to the requirements of subsection (b)(1) and regu-
14 lations prescribed by the Office, if there is a high risk that
15 a significant portion of employees in the group would be
16 likely to leave in the absence of retention bonuses.

17 "(d)(1) Payment of a retention bonus is contingent
18 upon the employee entering into a written service agree-
19 ment with the agency to complete a period of employment
20 with the agency.

21 "(2)(A) The agreement shall include—

22 "(i) the length of the required service period;

23 "(ii) the amount of the bonus;

24 "(iii) the method of payment; and



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

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

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

9 “(ii) the effect of the termination.

10 “(3)(A) Notwithstanding paragraph (1), a written
11 service agreement is not required if the agency pays a re-
12 tention bonus in biweekly installments and sets the install-
13 ment payment at the full bonus percentage rate estab-
14 lished for the employee with no portion of the bonus de-
15 ferred.

16 “(B) If an agency pays a retention bonus in accord-
17 ance with subparagraph (A) and makes a determination
18 to terminate the payments, the agency shall provide writ-
19 ten notice to the employee of that determination. Except
20 as provided in regulations of the Office, the employee shall
21 continue to be paid the retention bonus through the end
22 of the pay period in which such written notice is provided.

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



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

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

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

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

13 “(B) An installment payment is derived by multi-
14 plying the amount of basic pay earned in the installment
15 period by a percentage not to exceed the bonus percentage
16 rate established for the employee.

17 “(C) If the installment payment percentage estab-
18 lished for the employee is less than the bonus percentage
19 rate established for the employee, the accrued but unpaid
20 portion of the bonus is payable as part of the final install-
21 ment payment to the employee after completion of the full
22 service period under the terms of the service agreement.

23 “(D) For purposes of this paragraph, the bonus per-
24 centage rate established for an employee means the bonus
25 percentage rate established for such employee in accord-



1 ance with paragraph (1) or subsection (f), as the case may
2 be.

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

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

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

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

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions for chapter 57 of title 5, United States Code,
19 is amended by striking the item relating to section
20 5754 and inserting the following:

“5754. Retention bonuses.”.

21 (3) SENSE OF CONGRESS.—It is the sense of
22 the Congress that the Director of the Office of Per-
23 sonnel Management—

24 (A) should, each time a bonus is paid
25 under the amendment made by paragraph (1)



1 to recruit or relocate a Federal employee from
2 one Government agency to another within the
3 same geographic area or to retain a Federal
4 employee who might otherwise leave one Gov-
5 ernment agency for another within the same ge-
6 ographic area, be notified of that payment with-
7 in 60 days after the date on which such bonus
8 is paid; and

9 (B) should monitor the payment of such
10 bonuses (in the circumstances described in sub-
11 paragraph (A)) to ensure that they are an ef-
12 fective use of the Federal Government's funds
13 and have not adversely affected the ability of
14 those Government agencies that lost employees
15 to other Government agencies (in such cir-
16 cumstances) to carry out their mission.

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

20 (c) REPORTS.—

21 (1) RECRUITMENT AND RELOCATION BO-
22 NUSES.—

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



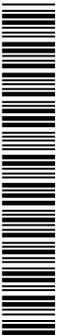
1 Committee on Government Reform of the
2 House of Representatives annually, for each of
3 the first 5 years during which section 5753 of
4 title 5, United States Code (as amended by sub-
5 section (a)(1)) is in effect, a report on the oper-
6 ation of such section.

7 (B) CONTENTS.—Each report submitted
8 under this paragraph shall include, with respect
9 to the period covered by such report, a descrip-
10 tion of how the authority to pay bonuses under
11 the section of title 5, United States Code, re-
12 ferred to in subparagraph (A) was used by the
13 respective agencies, including, with respect to
14 each such agency and each type of bonus under
15 such section—

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

18 (I) to individuals holding posi-
19 tions within each pay grade, pay level,
20 or other pay classification; and

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



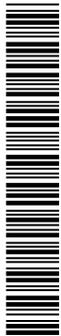
1 (ii) a determination of the extent to
2 which such bonuses furthered the purposes
3 of such section.

4 (2) RETENTION BONUSES.—

5 (A) IN GENERAL.—The Office of Personnel
6 Management shall submit to the Committee on
7 Governmental Affairs of the Senate and the
8 Committee on Government Reform of the
9 House of Representatives annually, for each of
10 the first 5 years during which section 5754 of
11 title 5, United States Code (as amended by sub-
12 section (a)(1)) is in effect, a report on the oper-
13 ation of such section.

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

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

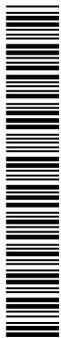


1 (I) to individuals holding posi-
 2 tions within each pay grade, pay level,
 3 or other pay classification; and
 4 (II) if applicable, to prevent indi-
 5 viduals from moving between positions
 6 that were in different agencies but the
 7 same geographic area (including the
 8 names of the agencies involved); and
 9 (ii) a determination of the extent to
 10 which such bonuses furthered the purposes
 11 of such section.

12 (d) EFFECTIVE DATE AND APPLICATION.—

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

18 (2) APPLICATION TO AGREEMENTS.—A recruit-
 19 ment or relocation bonus service agreement that was
 20 authorized under section 5753 of title 5, United
 21 States Code, before the effective date under para-
 22 graph (1) shall continue, until its expiration, to be
 23 subject to such section as in effect on the day before
 24 such effective date.



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

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

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

12 (1) by striking “Office of Personnel Manage-
13 ment” each place it appears and inserting “Office of
14 Management and Budget”;

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

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

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



1 **TITLE II—REFORMS RELATING**
 2 **TO FEDERAL EMPLOYEE CA-**
 3 **REER DEVELOPMENT AND**
 4 **BENEFITS**

5 **Subtitle A—General Provisions**

6 **SEC. 201. AGENCY TRAINING.**

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

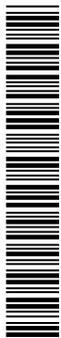
11 “(c) The head of each agency shall, on a regular
 12 basis—

13 “(1) evaluate each program or plan established,
 14 operated, or maintained under subsection (a) with
 15 respect to accomplishing specific performance plans
 16 and strategic goals in performing the agency mis-
 17 sion; and

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

20 (b) SPECIFIC TRAINING PROGRAMS.—

21 (1) IN GENERAL.—Chapter 41 of title 5, United
 22 States Code, is amended by adding after section
 23 4120 the following:



1 **“§ 4121. Specific training programs**

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

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

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

10 “(A) relating to employees with unaccept-
11 able performance;

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

14 “(C) conducting employee performance ap-
15 praisals.”.

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

“4121. Specific training programs.”.

19 **SEC. 202. ANNUAL LEAVE ENHANCEMENTS.**

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

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



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

8 “(A) such service—

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

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

15 “(B) in the judgment of the head of the ap-
 16 pointing agency, the application of this subsection is
 17 necessary in order to achieve an important agency
 18 mission or performance goal.

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

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

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



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

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

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

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

20 “(1) section 5376 or 5383; or

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

24 (c) APPLICABILITY.—None of the amendments made
25 by subsection (a) shall apply in the case of any employee



1 holding a position pursuant to an appointment made be-
2 fore the effective date of the regulations implementing
3 such amendments.

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

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

8 **“§ 5550b. Compensatory time off for travel**

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

15 “(b) An employee who has any hours treated as hours
16 of work or employment for purposes of calculating com-
17 pensatory time under subsection (a), shall not be entitled
18 to payment for any such hours that are unused as compen-
19 satory time.

20 “(c) Not later than 30 days after the date of enact-
21 ment of this section, the Office of Personnel Management
22 shall prescribe regulations to implement this section.”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 The table of sections for chapter 55 of title 5, United



1 States Code, is amended by inserting after the item relat-
2 ing to section 5550a the following:

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

3 **Subtitle B—Provisions Relating to**
4 **Retirement**

5 **SEC. 211. CIVIL SERVICE RETIREMENT SYSTEM COMPUTA-**
6 **TION FOR PART-TIME SERVICE.**

7 Section 8339(p) of title 5, United States Code, is
8 amended by adding at the end the following:

9 “(3)(A) In the administration of paragraph (1)—

10 “(i) subparagraph (A) of such paragraph shall
11 apply with respect to service performed before, on,
12 or after April 7, 1986; and

13 “(ii) subparagraph (B) of such paragraph shall
14 apply with respect to that portion of any annuity
15 which is attributable to service performed on or after
16 April 7, 1986.

17 “(B) This paragraph shall be effective with respect
18 to any annuity entitlement to which is based on a separa-
19 tion from service occurring on or after the date of the en-
20 actment of this paragraph.”.

21 **SEC. 212. RETIREMENT SERVICE CREDIT FOR CADET OR**
22 **MIDSHIPMAN SERVICE.**

23 (a) CIVIL SERVICE RETIREMENT SYSTEM.—Section
24 8331(13) of title 5, United States Code, is amended by
25 striking “or” at the end of subparagraph (B), by adding



1 “or” at the end of subparagraph (C), and by inserting
2 after subparagraph (C) the following:

3 “(D) as a cadet at the United States Mili-
4 tary Academy, the United States Air Force
5 Academy, or the United States Coast Guard
6 Academy, or as a midshipman at the United
7 States Naval Academy;”.

8 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—
9 Section 8401(31) of title 5, United States Code, is amend-
10 ed by striking “or” at the end of subparagraph (B), by
11 adding “or” at the end of subparagraph (C), and by in-
12 serting after subparagraph (C) the following:

13 “(D) as a cadet at the United States Mili-
14 tary Academy, the United States Air Force
15 Academy, or the United States Coast Guard
16 Academy, or as a midshipman at the United
17 States Naval Academy;”.

18 (c) APPLICABILITY.—The amendments made by this
19 section shall apply with respect to—

20 (1) any annuity entitlement to which is based
21 on a separation from service occurring before, on, or
22 after the date of the enactment of this Act; and

23 (2) any period of service, described in the
24 amendment made by subsection (a) or (b), which oc-



1 curs before, on, or after the date of the enactment
2 of this Act.

3 **TITLE III—PROVISIONS RELAT-**
4 **ING TO PAY ADMINISTRATION**

5 **SEC. 301. CORRECTIONS RELATING TO PAY ADMINISTRA-**
6 **TION.**

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

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

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

17 (2) in section 5305—

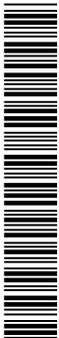
18 (A) by striking subsection (a) and insert-
19 ing the following:

20 “(a)(1) Whenever the Office of Personnel Manage-
21 ment finds that the Government’s recruitment or retention
22 efforts with respect to 1 or more occupations in 1 or more
23 areas or locations are, or are likely to become, significantly
24 handicapped due to any of the circumstances described in
25 subsection (b), the Office may establish for the areas or



1 locations involved, with respect to individuals in positions
2 paid under any of the pay systems referred to in sub-
3 section (c), higher minimum rates of pay for 1 or more
4 grades or levels, occupational groups, series, classes, or
5 subdivisions thereof, and may make corresponding in-
6 creases in all rates of the pay range for each such grade
7 or level. However, a minimum rate so established may not
8 exceed the maximum rate of basic pay (excluding any lo-
9 cality-based comparability payment under section 5304 or
10 similar provision of law) for the grade or level by more
11 than 30 percent, and no rate may be established under
12 this section in excess of the rate of basic pay payable for
13 level IV of the Executive Schedule. In the case of individ-
14 uals not subject to the provisions of this title governing
15 appointment in the competitive service, the President may
16 designate another agency to authorize special rates under
17 this section.

18 “(2) The head of an agency may determine that a
19 category of employees of the agency will not be covered
20 by a special rate authorization established under this sec-
21 tion. The head of an agency shall provide written notice
22 to the Office of Personnel Management (or other agency
23 designated by the President to authorize special rates
24 under the last sentence of paragraph (1)) which identifies
25 the specific category or categories of employees that will



1 not be covered by special rates authorized under this sec-
2 tion. If the head of an agency removes a category of em-
3 ployees from coverage under a special rate authorization
4 after that authorization takes effect, the loss of coverage
5 will take effect on the first day of the first pay period
6 after the date of the notice.”;

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

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

13 (C) in subsection (d)—

14 (i) by striking “President” and insert-
15 ing “Office of Personnel Management”;
16 and

17 (ii) by striking “or by such agency as
18 he may designate” and inserting “(or by
19 such other agency as the President may
20 designate under the last sentence of sub-
21 section (a)(1))”;

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

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



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

8 (F) in subsection (g)(1)—

9 (i) by striking “basic pay” and insert-
10 ing “pay”; and

11 (ii) by striking “President (or his des-
12 ignated agency)” and inserting “Office of
13 Personnel Management (or such other
14 agency as the President may under the last
15 sentence of subsection (a)(1) designate)”;

16 (G) by striking subsection (h) and insert-
17 ing the following:

18 “(h) An employee shall not for any purpose be consid-
19 ered to be entitled to a rate of pay established under this
20 section with respect to any period for which such employee
21 is entitled to a higher rate of basic pay under any other
22 provision of law. For purposes of this subsection, the term
23 ‘basic pay’ includes any applicable locality-based com-
24 parability payment under section 5304 or similar provision
25 of law.”; and



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

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

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

15 “(2) Then, if (in addition to the change in pay
16 schedule) the move also involves any personnel ac-
17 tion or other change requiring a rate adjustment
18 under any other provision of law, rule, or regulation,
19 apply the applicable rate adjustment provisions,
20 treating the rate determined under paragraph (1) as
21 if it were the rate last received by the employee be-
22 fore the rate adjustment.

23 “(j) A rate determined under a schedule of special
24 rates established under this section shall be considered to
25 be part of basic pay for purposes of subchapter III of



1 chapter 83, chapter 84, chapter 87, subchapter V of chap-
2 ter 55, and section 5941, and for such other purposes as
3 may be expressly provided for by law or as the Office of
4 Personnel Management may by regulation prescribe.”;

5 (3) in section 5334—

6 (A) in subsection (b), by adding at the end
7 the following:

8 “If an employee’s rate after promotion or transfer is
9 greater than the maximum rate of basic pay for the em-
10 ployee’s grade, that rate shall be treated as a retained rate
11 under section 5363. The Office of Personnel Management
12 shall prescribe by regulation the circumstances under
13 which and the extent to which special rates under section
14 5305 (or similar provision of law) or locality-adjusted
15 rates under section 5304 (or similar provision of law) are
16 considered to be basic pay in applying this subsection.”;
17 and

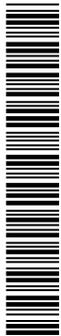
18 (B) by adding at the end the following:

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

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

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

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



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

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

11 (4) in section 5361—

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

14 “(4) ‘rate of basic pay’ means—

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

19 “(i) any applicable locality-based com-
20 parability payment under section 5304 or
21 similar provision of law;

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



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

6 “(B) in the case of a prevailing rate em-
7 ployee, the scheduled rate of pay determined
8 under section 5343;”;

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

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

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

14 “(8) ‘retained rate’ means the rate of basic pay
15 to which an employee is entitled under section
16 5363(b)(2).”;

17 (5) in section 5363—

18 (A) in subsection (a), by striking the mat-
19 ter following paragraph (4) and inserting the
20 following:

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

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



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

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

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

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

20 “(ii) 150 percent of the maximum rate of basic
21 pay payable for the grade of the employee’s position
22 immediately after the occurrence of the event in-
23 volved,

24 as adjusted by subparagraph (B).



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

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

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

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

14 “(B) in conjunction with such move, becomes
15 subject to both a different pay schedule and (dis-
16 regarding this subsection) the preceding provisions
17 of this section,

18 this section shall be applied—

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

24 “(ii) then, by applying the provisions of this
25 section that would apply (if any), treating the rate



1 determined under clause (i) as if it were the rate
2 last received by the employee before the application
3 of this section.

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

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

13 “(d) A retained rate shall be considered part of basic
14 pay for purposes of this subchapter and for purposes of
15 subchapter III of chapter 83, chapters 84 and 87, sub-
16 chapter V of chapter 55, section 5941, and for such other
17 purposes as may be expressly provided for by law or as
18 the Office of Personnel Management may by regulation
19 prescribe. The Office shall, for any purpose other than any
20 of the purposes referred to in the preceding sentence, pre-
21 scribe by regulation what constitutes basic pay for employ-
22 ees receiving a retained rate.

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



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

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

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

12 (6) in section 5365(b), by inserting after “pro-
13 visions of this subchapter” the following: “(subject
14 to any conditions or limitations the Office may es-
15 tablish)”.

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

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



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

3 (2) by striking subparagraph (B).

4 (d) EFFECTIVE DATE; CONVERSION RULES.—

5 (1) EFFECTIVE DATE.—This section shall take
6 effect on the first day of the first applicable pay pe-
7 riod beginning on or after the 180th day after the
8 date of the enactment of this Act.

9 (2) CONVERSION RULES.—

10 (A) INDIVIDUALS RECEIVING A RETAINED
11 RATE OR A RATE GREATER THAN THE MAX-
12 IMUM RATE FOR THE GRADE.—Subject to any
13 regulations the Office of Personnel Manage-
14 ment may prescribe, an employee under a cov-
15 ered pay schedule who, on the day before the
16 effective date of this section, is receiving a re-
17 tained rate under section 5363 of title 5,
18 United States Code, or is receiving under simi-
19 lar authority a rate of basic pay that is greater
20 than the maximum rate of basic pay payable for
21 the grade of the employee’s position shall have
22 that rate converted as of the effective date of
23 this section, and the employee shall be consid-
24 ered to be receiving a retained rate under sec-
25 tion 5363 of such title (as amended by this sec-



1 tion). The newly applicable retained rate shall
2 equal the formerly applicable retained rate as
3 adjusted to include any applicable locality-based
4 payment under section 5304 of title 5, United
5 States Code, or similar provision of law.

6 (B) DEFINITION.—For purposes of this
7 paragraph, the term “covered pay schedule”
8 has the meaning given such term by section
9 5361 of title 5, United States Code.

10 **SEC. 302. TECHNICAL CORRECTIONS.**

11 (a)(1) Section 5304 of title 5, United States Code,
12 as amended by section 1125 of the National Defense Au-
13 thorization Act for Fiscal Year 2004 (Public Law 108-
14 136), is amended—

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

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

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

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



1 “Administrator of the Office of Electronic Gov-
2 ernment.”.

