

1 **TITLE XI—CIVILIAN PERSONNEL**
2 **MATTERS**

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3 **Subtitle A—Department of Defense**
4 **National Security Personnel System**

5 **SEC. 1101. DEPARTMENT OF DEFENSE NATIONAL SECURITY PERSONNEL SYSTEM.**
6

7 (a) IN GENERAL.—(1) Subpart I of part III of title 5,
8 United States Code, is amended by adding at the end the fol-
9 lowing new chapter:

10 **“CHAPTER 99—DEPARTMENT OF DEFENSE**
11 **NATIONAL SECURITY PERSONNEL SYSTEM**

“Sec.

“9901. Definitions.

“9902. Establishment of human resources management system.



“9903. Attracting highly qualified experts.

“9904. Special pay and benefits for certain employees outside the United States.

1 **“§ 9901. Definitions**

2 “For purposes of this chapter—

3 “(1) the term ‘Director’ means the Director of the Of-
4 fice of Personnel Management; and

5 “(2) the term ‘Secretary’ means the Secretary of De-
6 fense.

7 **“§ 9902. Establishment of human resources man-
8 agement system**

9 “(a) IN GENERAL.—Notwithstanding any other provision
10 of this part, the Secretary may, in regulations prescribed joint-
11 ly with the Director, establish, and from time to time adjust,
12 a human resources management system for some or all of the
13 organizational or functional units of the Department of De-
14 fense. The human resources management system established
15 under authority of this section shall be referred to as the ‘Na-
16 tional Security Personnel System’.

17 “(b) SYSTEM REQUIREMENTS.—Any system established
18 under subsection (a) shall—

19 “(1) be flexible;

20 “(2) be contemporary;

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

22 “(A) the public employment principles of merit
23 and fitness set forth in section 2301, including the
24 principles of hiring based on merit, fair treatment with-
25 out regard to political affiliation or other nonmerit con-
26 siderations, equal pay for equal work, and protection of
27 employees against reprisal for whistleblowing;

28 “(B) any provision of section 2302, relating to
29 prohibited personnel practices;

30 “(C)(i) any provision of law referred to in section
31 2302(b)(1), (8), and (9); or

32 “(ii) any provision of law implementing any provi-
33 sion of law referred to in section 2302(b)(1), (8), and
34 (9) by—



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1 “(I) providing for equal employment oppor-
2 tunity through affirmative action; or

3 “(II) providing any right or remedy available
4 to any employee or applicant for employment in the
5 public service;

6 “(D) any other provision of this part (as described
7 in subsection (d)); or

8 “(E) any rule or regulation prescribed under any
9 provision of law referred to in this paragraph;

10 “(4) ensure that employees may organize, bargain col-
11 lectively as provided for in this chapter, and participate
12 through labor organizations of their own choosing in deci-
13 sions which affect them, subject to the provisions of this
14 chapter and any exclusion from coverage or limitation on
15 negotiability established pursuant to law;

16 “(5) not be limited by any specific law or authority
17 under this title, or by any rule or regulation prescribed
18 under this title, that is waived in regulations prescribed
19 under this chapter, subject to paragraph (3); and

20 “(6) include a performance management system that
21 incorporates the following elements:

22 “(A) adherence to merit principles set forth in sec-
23 tion 2301;

24 “(B) a fair, credible, and transparent employee
25 performance appraisal system;

26 “(C) a link between the performance management
27 system and the agency’s strategic plan;

28 “(D) a means for ensuring employee involvement
29 in the design and implementation of the system;

30 “(E) adequate training and retraining for super-
31 visors, managers, and employees in the implementation
32 and operation of the performance management system;

33 “(F) a process for ensuring ongoing performance
34 feedback and dialogue between supervisors, managers,
35 and employees throughout the appraisal period, and
36 setting timetables for review;



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1 “(G) effective safeguards to ensure that the man-
2 agement of the system is fair and equitable and based
3 on employee performance;

4 “(H) a means for ensuring that adequate agency
5 resources are allocated for the design, implementation,
6 and administration of the performance management
7 system; and

8 “(I) a pay-for-performance evaluation system to
9 better link individual pay to performance, and provide
10 an equitable method for appraising and compensating
11 employees.

12 “(c) PERSONNEL MANAGEMENT AT DEFENSE LABORA-
13 TORIES.—(1) The National Security Personnel System shall
14 not apply with respect to a laboratory under paragraph (2) be-
15 fore October 1, 2008, and shall apply on or after October 1,
16 2008, only to the extent that the Secretary determines that the
17 flexibilities provided by the National Security Personnel System
18 are greater than the flexibilities provided to those laboratories
19 pursuant to section 342 of the National Defense Authorization
20 Act for Fiscal Year 1995 (Public Law 103-337; 108 Stat.
21 2721) and section 1101 of the Strom Thurmond National De-
22 fense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104
23 note), respectively.

24 “(2) The laboratories to which this subsection applies
25 are—

26 “(A) the Aviation and Missile Research Development
27 and Engineering Center;

28 “(B) the Army Research Laboratory;

29 “(C) the Medical Research and Materiel Command;

30 “(D) the Engineer Research and Development Com-
31 mand;

32 “(E) the Communications-Electronics Command;

33 “(F) the Soldier and Biological Chemical Command;

34 “(G) the Naval Sea Systems Command Centers;

35 “(H) the Naval Research Laboratory;

36 “(I) the Office of Naval Research; and

37 “(J) the Air Force Research Laboratory.



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1 “(d) OTHER NONWAIVABLE PROVISIONS.—The other pro-
2 visions of this part referred to in subsection (b)(3)(D) are (to
3 the extent not otherwise specified in this title)—

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

5 “(2) chapters 41, 45, 47, 55 (except subchapter V
6 thereof, apart from section 5545b), 57, 59, 71, 72, 73, and
7 79, and this chapter.

8 “(e) LIMITATIONS RELATING TO PAY.—(1) Nothing in
9 this section shall constitute authority to modify the pay of any
10 employee who serves in an Executive Schedule position under
11 subchapter II of chapter 53.

12 “(2) Except as provided for in paragraph (1), the total
13 amount in a calendar year of allowances, differentials, bonuses,
14 awards, or other similar cash payments paid under this title to
15 any employee who is paid under section 5376 or 5383 or under
16 title 10 or under other comparable pay authority established
17 for payment of Department of Defense senior executive or
18 equivalent employees may not exceed the total annual com-
19 pensation payable to the Vice President under section 104 of
20 title 3.

21 “(3) To the maximum extent practicable, the rates of com-
22 pensation for civilian employees at the Department of Defense
23 shall be adjusted at the same rate, and in the same proportion,
24 as are rates of compensation for members of the uniformed
25 services.

26 “(4) To the maximum extent practicable, for fiscal years
27 2004 through 2008, the overall amount allocated for compensa-
28 tion of the civilian employees of an organizational or functional
29 unit of the Department of Defense that is included in the Na-
30 tional Security Personnel System shall not be less than the
31 amount that would have been allocated for compensation of
32 such employees for such fiscal year if they had not been con-
33 verted to the National Security Personnel System, based on, at
34 a minimum—

35 “(A) the number and mix of employees in such organi-
36 zational or functional unit prior to the conversion of such
37 employees to the National Security Personnel System; and



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1 “(B) adjusted for normal step increases and rates of
2 promotion that would have been expected, had such em-
3 ployees remained in their previous pay schedule.

4 “(5) To the maximum extent practicable, the regulations
5 implementing the National Security Personnel System shall
6 provide a formula for calculating the overall amount to be allo-
7 cated for fiscal years after fiscal year 2008 for compensation
8 of the civilian employees of an organization or functional unit
9 of the Department of Defense that is included in the National
10 Security Personnel System. The formula shall ensure that in
11 the aggregate, employees are not disadvantaged in terms of the
12 overall amount of pay available as a result of conversion to the
13 National Security Personnel System, while providing flexibility
14 to accommodate changes in the function of the organization,
15 changes in the mix of employees performing those functions,
16 and other changed circumstances that might impact pay levels.

17 “(f) PROVISIONS TO ENSURE COLLABORATION WITH EM-
18 PLOYEE REPRESENTATIVES.—(1) In order to ensure that the
19 authority of this section is exercised in collaboration with, and
20 in a manner that ensures the participation of, employee rep-
21 resentatives in the planning, development, and implementation
22 of the National Security Personnel System, the Secretary and
23 the Director shall provide for the following:

24 “(A) The Secretary and the Director shall, with re-
25 spect to any proposed system—

26 “(i) provide to the employee representatives rep-
27 resenting any employees who might be affected a writ-
28 ten description of the proposed system or adjustment
29 (including the reasons why it is considered necessary);

30 “(ii) give such representatives at least 30 calendar
31 days (unless extraordinary circumstances require ear-
32 lier action) to review and make recommendations with
33 respect to the proposal; and

34 “(iii) give any recommendations received from
35 such representatives under clause (ii) full and fair con-
36 sideration in deciding whether or how to proceed with
37 the proposal.



1 “(B) Following receipt of recommendations, if any,
2 from such employee representatives with respect to a pro-
3 posal described in subparagraph (A), the Secretary and the
4 Director shall accept such modifications to the proposal in
5 response to the recommendations as they determine advis-
6 able and shall, with respect to any parts of the proposal as
7 to which they have not accepted the recommendations—

8 “(i) notify Congress of those parts of the proposal,
9 together with the recommendations of the employee
10 representatives;

11 “(ii) meet and confer for not less than 30 calendar
12 days with the employee representatives, in order to at-
13 tempt to reach agreement on whether or how to pro-
14 ceed with those parts of the proposal; and

15 “(iii) at the Secretary’s option, or if requested by
16 a majority of the employee representatives partici-
17 pating, use the services of the Federal Mediation and
18 Conciliation Service during such meet and confer pe-
19 riod to facilitate the process of attempting to reach
20 agreement.

21 “(C)(i) Any part of the proposal as to which the rep-
22 resentatives do not make a recommendation, or as to which
23 the recommendations are accepted by the Secretary and the
24 Director, may be implemented immediately.

25 “(ii) With respect to any parts of the proposal as to
26 which recommendations have been made but not accepted
27 by the Secretary and the Director, at any time after 30 cal-
28 endar days have elapsed since the initiation of the congres-
29 sional notification, consultation, and mediation procedures
30 set forth in subparagraph (B), if the Secretary, in his dis-
31 cretion, determines that further consultation and mediation
32 is unlikely to produce agreement, the Secretary may imple-
33 ment any or all of such parts (including any modifications
34 made in response to the recommendations as the Secretary
35 determines advisable), but only after 30 days have elapsed
36 after notifying Congress of the decision to implement the
37 part or parts involved (as so modified, if applicable).



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1 “(iii) The Secretary shall notify Congress promptly of
2 the implementation of any part of the proposal and shall
3 furnish with such notice an explanation of the proposal,
4 any changes made to the proposal as a result of rec-
5 ommendations from the employee representatives, and of
6 the reasons why implementation is appropriate under this
7 subparagraph.

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

10 “(i) develop a method for the employee representa-
11 tives to participate in any further planning or develop-
12 ment which might become necessary; and

13 “(ii) give the employee representatives adequate
14 access to information to make that participation pro-
15 ductive.

16 “(2) The Secretary may, at the Secretary’s discretion, en-
17 gage in any and all collaboration activities described in this
18 subsection at an organizational level above the level of exclusive
19 recognition.

20 “(3) In the case of any employees who are not within a
21 unit with respect to which a labor organization is accorded ex-
22 clusive recognition, the Secretary and the Director may develop
23 procedures for representation by any appropriate organization
24 which represents a substantial percentage of those employees
25 or, if none, in such other manner as may be appropriate, con-
26 sistent with the purposes of this subsection.

27 “(4) The procedures under this subsection are the exclu-
28 sive procedures for the participation of employee representa-
29 tives in the planning, development, implementation, or adjust-
30 ment of the National Security Personnel System.

31 “(g) PROVISIONS REGARDING NATIONAL LEVEL BAR-
32 GAINING.—(1) The National Security Personnel System imple-
33 mented or modified under this chapter may include employees
34 of the Department of Defense from any bargaining unit with
35 respect to which a labor organization has been accorded exclu-
36 sive recognition under chapter 71.



1 “(2) For any bargaining unit so included under paragraph
2 (1), the Secretary may bargain with a labor organization at an
3 organizational level above the level of exclusive recognition. The
4 decision to bargain at a level above the level of exclusive rec-
5 ognition shall not be subject to review or to statutory third-
6 party dispute resolution procedures outside the Department of
7 Defense. Any such bargaining shall—

8 “(A) be binding on all subordinate bargaining units of
9 the labor organization at the level of recognition and their
10 exclusive representatives, and the Department of Defense
11 and its subcomponents, without regard to levels of recogni-
12 tion;

13 “(B) supersede all other collective bargaining agree-
14 ments of the labor organization, including collective bar-
15 gaining agreements negotiated with an exclusive represent-
16 ative at the level of recognition, except as otherwise deter-
17 mined by the Secretary;

18 “(C) not be subject to further negotiations with the
19 labor organizations for any purpose, including bargaining
20 at the level of recognition, except as provided for by the
21 Secretary; and

22 “(D) be subject to review by an independent third
23 party only to the extent provided and pursuant to proce-
24 dures established under paragraph (6) of subsection (m).

25 “(3) The National Guard Bureau and the Army and Air
26 Force National Guard are excluded from coverage under this
27 subsection.

28 “(4) Any bargaining completed pursuant to this subsection
29 with a labor organization not otherwise having national con-
30 sultation rights with the Department of Defense or its sub-
31 components shall not create any obligation on the Department
32 of Defense or its subcomponents to confer national consultation
33 rights on such a labor organization.

34 “(h) PROVISIONS RELATING TO APPELLATE PROCE-
35 DURES.—(1) The Secretary—

36 “(A) may establish an appeals process that provides
37 employees of the Department of Defense organizational and



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1 functional units that are included in the National Security
2 Personnel System fair treatment in any appeals that they
3 bring in decisions relating to their employment; and

4 “(B) shall in prescribing regulations for any such ap-
5 peals process—

6 “(i) ensure that employees in the National Secu-
7 rity Personnel System are afforded the protections of
8 due process; and

9 “(ii) toward that end, be required to consult with
10 the Merit Systems Protection Board before issuing any
11 such regulations.

12 “(2) Regulations implementing the appeals process may
13 establish legal standards and procedures for personnel actions,
14 including standards for applicable relief, to be taken on the
15 basis of employee misconduct or performance that fails to meet
16 expectations. Such standards shall be consistent with the public
17 employment principles of merit and fitness set forth in section
18 2301.

19 “(3) Legal standards and precedents applied before the ef-
20 fective date of this section by the Merit Systems Protection
21 Board and the courts under chapters 43, 75, and 77 of this
22 title shall apply to employees of organizational and functional
23 units included in the National Security Personnel System, un-
24 less such standards and precedents are inconsistent with legal
25 standards established under this subsection.

26 “(4) An employee who—

27 “(A) is removed, suspended for more than 14 days,
28 furloughed for 30 days or less, reduced in pay, or reduced
29 in pay band (or comparable reduction) by a final decision
30 under the appeals process established under paragraph (1);

31 “(B) is not serving under probationary period as de-
32 fined under regulations established under paragraph (2);
33 and

34 “(C) would otherwise be eligible to appeal a perform-
35 ance-based or adverse action under chapter 43 or 75, as
36 applicable, to the Merit Systems Protection Board,



1 shall have the right to petition the full Merit Systems Protec-
2 tion Board for review of the record of that decision pursuant
3 to regulations established under paragraph (2). The Board may
4 dismiss any petition that, in the view of the Board, does not
5 raise substantial questions of fact or law. No personnel action
6 shall be stayed and no interim relief shall be granted during
7 the pendency of the Board's review unless specifically ordered
8 by the Board.

9 “(5) The Board may order such corrective action as the
10 Board considers appropriate only if the Board determines that
11 the decision was—

12 “(A) arbitrary, capricious, an abuse of discretion, or
13 otherwise not in accordance with law;

14 “(B) obtained without procedures required by law,
15 rule, or regulation having been followed; or

16 “(C) unsupported by substantial evidence.

17 “(6) An employee who is adversely affected by a final
18 order or decision of the Board may obtain judicial review of the
19 order or decision as provided in section 7703. The Secretary of
20 Defense, after notifying the Director, may obtain judicial re-
21 view of any final order or decision of the Board under the same
22 terms and conditions as provided an employee.

23 “(7) Nothing in this subsection shall be construed to au-
24 thorize the waiver of any provision of law, including an appeals
25 provision providing a right or remedy under section 2302(b)
26 (1), (8) or (9), that is not otherwise waivable under subsection
27 (a).

28 “(8) The right of an employee to petition the Merit Sys-
29 tems Protection Board of the Department's final decision on an
30 action covered by paragraph (4) of this subsection, and the
31 right of the Merit Systems Protection Board to review such ac-
32 tion or to order corrective action pursuant to paragraph (5), is
33 provisional for 7 years after the date of the enactment of this
34 chapter, and shall become permanent unless Congress acts to
35 revise such provisions.

36 “(i) PROVISIONS RELATED TO SEPARATION AND RETIRE-
37 MENT INCENTIVES.—(1) The Secretary may establish a pro-



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1 gram within the Department of Defense under which employees
2 may be eligible for early retirement, offered separation incen-
3 tive pay to separate from service voluntarily, or both. This au-
4 thority may be used to reduce the number of personnel em-
5 ployed by the Department of Defense or to restructure the
6 workforce to meet mission objectives without reducing the over-
7 all number of personnel. This authority is in addition to, and
8 notwithstanding, any other authorities established by law or
9 regulation for such programs.

10 “(2)(A) The Secretary may not authorize the payment of
11 voluntary separation incentive pay under paragraph (1) to more
12 than 25,000 employees in any fiscal year, except that employ-
13 ees who receive voluntary separation incentive pay as a result
14 of a closure or realignment of a military installation under the
15 Defense Base Closure and Realignment Act of 1990 (title
16 XXIX of Public Law 101-510; 10 U.S.C. 2687 note) shall not
17 be included in that number.

18 “(B) The Secretary shall prepare a report each fiscal year
19 setting forth the number of employees who received such pay
20 as a result of a closure or realignment of a military base as
21 described under subparagraph (A).

22 “(C) The Secretary shall submit the report under subpara-
23 graph (B) to the Committee on Armed Services and the Com-
24 mittee on Governmental Affairs of the Senate, and the Com-
25 mittee on Armed Services and the Committee on Government
26 Reform of the House of Representatives.

27 “(3) For purposes of this section, the term ‘employee’
28 means an employee of the Department of Defense, serving
29 under an appointment without time limitation, except that such
30 term does not include—

31 “(A) a reemployed annuitant under subchapter III of
32 chapter 83 or chapter 84, or another retirement system for
33 employees of the Federal Government;

34 “(B) an employee having a disability on the basis of
35 which such employee is or would be eligible for disability
36 retirement under any of the retirement systems referred to
37 in subparagraph (A); or



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1 “(C) for purposes of eligibility for separation incen-
2 tives under this section, an employee who is in receipt of
3 a decision notice of involuntary separation for misconduct
4 or unacceptable performance.

5 “(4) An employee who is at least 50 years of age and has
6 completed 20 years of service, or has at least 25 years of serv-
7 ice, may, pursuant to regulations promulgated under this sec-
8 tion, apply and be retired from the Department of Defense and
9 receive benefits in accordance with chapter 83 or 84 if the em-
10 ployee has been employed continuously within the Department
11 of Defense for more than 30 days before the date on which the
12 determination to conduct a reduction or restructuring within 1
13 or more Department of Defense components is approved.

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

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

19 “(ii) \$25,000.

20 “(B) Separation pay shall not be a basis for payment, and
21 shall not be included in the computation, of any other type of
22 Government benefit. Separation pay shall not be taken into ac-
23 count for the purpose of determining the amount of any sever-
24 ance pay to which an individual may be entitled under section
25 5595, based on any other separation.

26 “(C) Separation pay, if paid in installments, shall cease to
27 be paid upon the recipient’s acceptance of employment by the
28 Federal Government, or commencement of work under a per-
29 sonal services contract as described in paragraph (6).

30 “(6)(A) An employee who receives separation pay under
31 such program may not be reemployed by the Department of
32 Defense for a 12-month period beginning on the effective date
33 of the employee’s separation, unless this prohibition is waived
34 by the Secretary on a case-by-case basis.

35 “(B) An employee who receives separation pay under this
36 section on the basis of a separation occurring on or after the
37 date of the enactment of the Federal Workforce Restructuring



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1 Act of 1994 (Public Law 103-236; 108 Stat. 111) and accepts
2 employment with the Government of the United States, or who
3 commences work through a personal services contract with the
4 United States within 5 years after the date of the separation
5 on which payment of the separation pay is based, shall be re-
6 quired to repay the entire amount of the separation pay to the
7 Department of Defense. If the employment is with an Execu-
8 tive agency (as defined by section 105) other than the Depart-
9 ment of Defense, the Director may, at the request of the head
10 of that agency, waive the repayment if the individual involved
11 possesses unique abilities and is the only qualified applicant
12 available for the position. If the employment is within the De-
13 partment of Defense, the Secretary may waive the repayment
14 if the individual involved is the only qualified applicant avail-
15 able for the position. If the employment is with an entity in the
16 legislative branch, the head of the entity or the appointing offi-
17 cial may waive the repayment if the individual involved pos-
18 sesses unique abilities and is the only qualified applicant avail-
19 able for the position. If the employment is with the judicial
20 branch, the Director of the Administrative Office of the United
21 States Courts may waive the repayment if the individual in-
22 volved possesses unique abilities and is the only qualified appli-
23 cant available for the position.

24 “(7) Under this program, early retirement and separation
25 pay may be offered only pursuant to regulations established by
26 the Secretary, subject to such limitations or conditions as the
27 Secretary may require.

28 “(j) PROVISIONS RELATING TO REEMPLOYMENT.—If an
29 annuitant receiving an annuity from the Civil Service Retire-
30 ment and Disability Fund becomes employed in a position with-
31 in the Department of Defense, his annuity shall continue. An
32 annuitant so reemployed shall not be considered an employee
33 for purposes of chapter 83 or 84.

34 “(k) ADDITIONAL PROVISIONS RELATING TO PERSONNEL
35 MANAGEMENT.—(1) Notwithstanding subsection (d), the Sec-
36 retary of Defense, in establishing and implementing the Na-
37 tional Security Personnel System under subsection (a), shall



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1 not be limited by any provision of this title or any rule or regu-
2 lation prescribed under this title in establishing and imple-
3 menting regulations relating to—

4 “(A) the methods of establishing qualification require-
5 ments for, recruitment for, and appointments to positions;

6 “(B) the methods of assigning, reassigning, detailing,
7 transferring, or promoting employees; and

8 “(C) the methods of reducing overall agency staff and
9 grade levels, except that performance, veterans’ preference,
10 tenure of employment, length of service, and such other
11 factors as the Secretary considers necessary and appro-
12 priate shall be considered in decisions to realign or reorga-
13 nize the Department’s workforce.

14 “(2) In implementing this subsection, the Secretary shall
15 comply with the provisions of section 2302(b)(11), regarding
16 veterans’ preference requirements, as provided for in subsection
17 (b)(3).

18 “(1) PHASE-IN.—The Secretary may apply the National
19 Security Personnel System—

20 “(1) to an organizational or functional unit that in-
21 cludes up to 300,000 civilian employees of the Department
22 of Defense, without having to make a determination de-
23 scribed in paragraph (2); and

24 “(2) to an organizational or functional unit that in-
25 cludes more than 300,000 civilian employees of the Depart-
26 ment of Defense, if the Secretary determines in accordance
27 with subsection (a) that the Department has in place a per-
28 formance management system that meets the criteria speci-
29 fied in subsection (b).

30 “(m) LABOR MANAGEMENT RELATIONS IN THE DEPART-
31 MENT OF DEFENSE.—(1) Notwithstanding section 9902(d)(2),
32 the Secretary, together with the Director, may establish and
33 from time to time adjust a labor relations system for the De-
34 partment of Defense to address the unique role that the De-
35 partment’s civilian workforce plays in supporting the Depart-
36 ment’s national security mission.



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1 “(2) The system developed or adjusted under paragraph
2 (1) would allow for a collaborative issue-based approach to
3 labor management relations.

4 “(3) In order to ensure that the authority of this section
5 is exercised in collaboration with, and in a manner that ensures
6 the participation of, employee representatives in the develop-
7 ment and implementation of the labor management relations
8 system or adjustments to such system under this section, the
9 Secretary shall provide for the following:

10 “(A) The Secretary and the Director shall, with re-
11 spect to any proposed system or adjustment—

12 “(i) afford employee representatives and manage-
13 ment the opportunity to have meaningful discussions
14 concerning the development of the new system;

15 “(ii) give such representatives at least 30 calendar
16 days (unless extraordinary circumstances require ear-
17 lier action) to review the proposal for the system and
18 make recommendations with respect to it; and

19 “(iii) give any recommendations received from
20 such representatives under clause (ii) full and fair con-
21 sideration.

22 “(B) Following receipt of recommendations, if any,
23 from such employee representatives with respect to a pro-
24 posal described in subparagraph (A), the Secretary and the
25 Director shall accept such modifications to the proposal in
26 response to the recommendations as are determined advis-
27 able and shall, with respect to any parts of the proposal as
28 to which they have not accepted the recommendations—

29 “(i) meet and confer for not less than 30 calendar
30 days with the employee representatives, in order to at-
31 tempt to reach agreement on whether or how to pro-
32 ceed with those parts of the proposal; and

33 “(ii) at the Secretary’s option, or if requested by
34 a majority of the employee representatives partici-
35 pating, use the services of the Federal Mediation and
36 Conciliation Service during such meet and confer pe-



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1 riod to facilitate the process of attempting to reach
2 agreement.

3 “(C)(i) Any part of the proposal described in subpara-
4 graph (A) as to which employee representatives do not
5 make a recommendation, or as to which the recommenda-
6 tions are accepted under subparagraph (B), may be imple-
7 mented immediately.

8 “(ii) With respect to any parts of the proposal as to
9 which recommendations have been made but not accepted,
10 at any time after 30 calendar days have elapsed since the
11 consultation and mediation procedures set forth in subpara-
12 graph (B), if the Secretary, in his discretion, determines
13 that further consultation and mediation is unlikely to
14 produce agreement, the Secretary may implement any or all
15 of such parts (including any modifications made in re-
16 sponse to the recommendations as the Secretary determines
17 advisable), but only after 30 days have elapsed after noti-
18 fying Congress of the decision to implement the part or
19 parts involved (as so modified, if applicable).

20 “(D) The process for collaborating with employee rep-
21 resentatives provided for under this subsection shall begin
22 no later than 60 calendar days after the date of enactment
23 of this subsection.

24 “(4) The Secretary may engage in any and all collabora-
25 tion activities described in this subsection at an organizational
26 level above the level of exclusive recognition.

27 “(5) The system developed or adjusted under this sub-
28 section may incorporate the authority to bargain at a level
29 above the level of exclusion recognition provided for in sub-
30 section (g) of this section, but may not abrogate or modify the
31 authority provided for in that subsection. Notwithstanding this
32 subsection, the Secretary may, at his discretion, implement the
33 authority in subsection (g) immediately upon enactment of this
34 subsection.

35 “(6) The labor relations system developed or adjusted
36 under this subsection shall provide for independent third party
37 review of decisions, including defining what decisions are re-



1 viewable by the third party, what third party would conduct the
2 review, and the standard or standards for that review.

3 “(7) Nothing in this section, including the authority pro-
4 vided to waive, modify, or otherwise affect provisions of law not
5 listed in subsections (b) and (c) as nonwaivable, shall be con-
6 strued to expand the scope of bargaining under chapter 71 or
7 this subsection with respect to any provision of this title that
8 may be waived, modified, or otherwise affected under this sec-
9 tion.

10 “(8) The labor relations system developed or adjusted
11 under this subsection shall be binding on all bargaining units
12 within the Department of Defense, all employee representatives
13 of such units, and the Department of Defense and its sub-
14 components, and shall supersede all other collective bargaining
15 agreements for bargaining units in the Department of Defense,
16 including collective bargaining agreements negotiated with em-
17 ployee representatives at the level of recognition, except as oth-
18 erwise determined by the Secretary.

19 “(9) Unless it is extended or otherwise provided for in law,
20 the authority to establish, implement and adjust the labor rela-
21 tions system developed under this subsection shall expire six
22 years after the date of enactment of this subsection, at which
23 time the provisions of chapter 71 will apply.

24 **“§ 9903. Attracting highly qualified experts**

25 “(a) IN GENERAL.—The Secretary may carry out a pro-
26 gram using the authority provided in subsection (b) in order to
27 attract highly qualified experts in needed occupations, as deter-
28 mined by the Secretary.

29 “(b) AUTHORITY.—Under the program, the Secretary
30 may—

31 “(1) appoint personnel from outside the civil service
32 and uniformed services (as such terms are defined in sec-
33 tion 2101) to positions in the Department of Defense with-
34 out regard to any provision of this title governing the ap-
35 pointment of employees to positions in the Department of
36 Defense;



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1 “(2) prescribe the rates of basic pay for positions to
2 which employees are appointed under paragraph (1) at
3 rates not in excess of the maximum rate of basic pay au-
4 thorized for senior-level positions under section 5376, as in-
5 creased by locality-based comparability payments under
6 section 5304, notwithstanding any provision of this title
7 governing the rates of pay or classification of employees in
8 the executive branch; and

9 “(3) pay any employee appointed under paragraph (1)
10 payments in addition to basic pay within the limits applica-
11 ble to the employee under subsection (d).

12 “(c) LIMITATION ON TERM OF APPOINTMENT.—(1) Ex-
13 cept as provided in paragraph (2), the service of an employee
14 under an appointment made pursuant to this section may not
15 exceed 5 years.

16 “(2) The Secretary may, in the case of a particular em-
17 ployee, extend the period to which service is limited under para-
18 graph (1) by up to 1 additional year if the Secretary deter-
19 mines that such action is necessary to promote the Department
20 of Defense’s national security missions.

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

25 “(A) \$50,000 in fiscal year 2004, which may be ad-
26 justed annually thereafter by the Secretary, with a percent-
27 age increase equal to one-half of 1 percentage point less
28 than the percentage by which the Employment Cost Index,
29 published quarterly by the Bureau of Labor Statistics, for
30 the base quarter of the year before the preceding calendar
31 year exceeds the Employment Cost Index for the base quar-
32 ter of the second year before the preceding calendar year.

33 “(B) The amount equal to 50 percent of the employ-
34 ee’s annual rate of basic pay.

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



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1 “(2) An employee appointed under this section is not eligi-
2 ble for any bonus, monetary award, or other monetary incentive
3 for service except for payments authorized under this section.

4 “(3) Notwithstanding any other provision of this sub-
5 section or of section 5307, no additional payments may be paid
6 to an employee under this section in any calendar year if, or
7 to the extent that, the employee’s total annual compensation
8 will exceed the maximum amount of total annual compensation
9 payable at the salary set in accordance with section 104 of title
10 3.

11 “(e) LIMITATION ON NUMBER OF HIGHLY QUALIFIED EX-
12 PERTS.—The number of highly qualified experts appointed and
13 retained by the Secretary under subsection (b)(1) shall not ex-
14 ceed 2,500 at any time.

15 “(f) SAVINGS PROVISIONS.—In the event that the Sec-
16 retary terminates this program, in the case of an employee
17 who, on the day before the termination of the program, is serv-
18 ing in a position pursuant to an appointment under this
19 section—

20 “(1) the termination of the program does not termi-
21 nate the employee’s employment in that position before the
22 expiration of the lesser of—

23 “(A) the period for which the employee was ap-
24 pointed; or

25 “(B) the period to which the employee’s service is
26 limited under subsection (c), including any extension
27 made under this section before the termination of the
28 program; and

29 “(2) the rate of basic pay prescribed for the position
30 under this section may not be reduced as long as the em-
31 ployee continues to serve in the position without a break in
32 service.

33 **“§ 9904. Special pay and benefits for certain em-**
34 **ployees outside the United States**

35 “The Secretary may provide to certain civilian employees
36 of the Department of Defense assigned to activities outside the
37 United States as determined by the Secretary to be in support



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1 of Department of Defense activities abroad hazardous to life or
2 health or so specialized because of security requirements as to
3 be clearly distinguishable from normal Government
4 employment—

5 “(1) allowances and benefits—

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

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

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

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

“99. Department of Defense National Security Personnel System9901”.

22 (b) IMPACT ON DEPARTMENT OF DEFENSE CIVILIAN PER-
23 SONNEL.—(1) Any exercise of authority under chapter 99 of
24 such title (as added by subsection (a)), including under any
25 system established under such chapter, shall be in conformance
26 with the requirements of this subsection.

27 (2) No other provision of this Act or of any amendment
28 made by this Act may be construed or applied in a manner so
29 as to limit, supersede, or otherwise affect the provisions of this
30 section, except to the extent that it does so by specific reference
31 to this section.



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1 **Subtitle B—Department of Defense**
2 **Civilian Personnel Generally**

3 **SEC. 1111. PILOT PROGRAM FOR IMPROVED CIVILIAN**
4 **PERSONNEL MANAGEMENT.**

5 (a) PILOT PROGRAM.—The Secretary of Defense may
6 carry out a pilot program using an automated workforce man-
7 agement system to demonstrate improved efficiency in the per-
8 formance of civilian personnel management. The automated
9 workforce management system used for the pilot program shall
10 be capable of automating the following workforce management
11 functions:

- 12 (1) Job definition.
- 13 (2) Position management.
- 14 (3) Recruitment.
- 15 (4) Staffing.
- 16 (5) Performance management.

17 (b) AUTHORITIES UNDER PILOT PROGRAM.—Under the
18 pilot program, the Secretary of Defense shall provide the Sec-
19 retary of each military department with the authority for the
20 following:

- 21 (1) To use an automated workforce management sys-
22 tem for the civilian workforce of that military department
23 to assess the potential of such a system to do the following:
 - 24 (A) Substantially reduce hiring cycle times.
 - 25 (B) Lower labor costs.
 - 26 (C) Increase efficiency.
 - 27 (D) Improve performance management.
 - 28 (E) Provide better management reporting.
 - 29 (F) Enable that system to make operational new
30 personnel management flexibilities granted under the
31 civilian personnel transformation program.

- 32 (2) Identify at least one regional civilian personnel
33 center (or equivalent) in that military department for par-
34 ticipation in the pilot program.

35 (c) DURATION OF PILOT PROGRAM.—The Secretary of
36 Defense may carry out the pilot program under this section at



1 each selected regional civilian personnel center for a period of
2 two years beginning not later than March 1, 2004.

3 **SEC. 1112. CLARIFICATION AND REVISION OF AUTHOR-**
4 **ITY FOR DEMONSTRATION PROJECT RELAT-**
5 **ING TO CERTAIN ACQUISITION PERSONNEL**
6 **MANAGEMENT POLICIES AND PROCEDURES.**

7 Section 4308 of the National Defense Authorization Act
8 for Fiscal Year 1996 (10 U.S.C. 1701 note) is amended—

9 (1) in subsection (b), by striking paragraph (3) and
10 inserting the following:

11 “(3) CONDITIONS.—Paragraph (2) shall not apply
12 with respect to a demonstration project unless—

13 “(A) for each organization or team participating
14 in the demonstration project—

15 “(i) at least one-third of the workforce partici-
16 pating in the demonstration project consists of
17 members of the acquisition workforce; and

18 “(ii) at least two-thirds of the workforce par-
19 ticipating in the demonstration project consists of
20 members of the acquisition workforce and sup-
21 porting personnel assigned to work directly with
22 the acquisition workforce; and

23 “(B) the demonstration project commences before
24 October 1, 2007.”;

25 (2) in subsection (d), by striking “95,000” and insert-
26 ing “120,000”;

27 (3) by redesignating subsection (e) as subsection (f);
28 and

29 (4) by inserting after subsection (d) the following:

30 “(e) EFFECT OF REORGANIZATIONS.—The applicability of
31 paragraph (2) of subsection (b) to an organization or team
32 shall not terminate by reason that the organization or team,
33 after having satisfied the conditions in paragraph (3) of such
34 subsection when it began to participate in a demonstration
35 project under this section, ceases to meet one or both of the
36 conditions set forth in subparagraph (A) of such paragraph (3)



1 as a result of a reorganization, restructuring, realignment, con-
2 solidation, or other organizational change.”.

3 **SEC. 1113. MILITARY LEAVE FOR MOBILIZED FEDERAL**
4 **CIVILIAN EMPLOYEES.**

5 (a) IN GENERAL.—Subsection (b) of section 6323 of title
6 5, United States Code, is amended—

7 (1) in paragraph (2)—

8 (A) by redesignating subparagraphs (A) and (B)
9 as clauses (i) and (ii), respectively, and at the end of
10 clause (ii), as so redesignated, by inserting “or”; and
11 (B) by inserting “(A)” after “(2)”; and

12 (2) by inserting the following before the text beginning
13 with “is entitled”:

14 “(B) performs full-time military service as a result of
15 a call or order to active duty in support of a contingency
16 operation as defined in section 101(a)(13) of title 10;”.

17 (b) EFFECTIVE DATE.—The amendments made by sub-
18 section (a) shall apply to military service performed on or after
19 the date of the enactment of this Act.

20 **SEC. 1114. RESTORATION OF ANNUAL LEAVE FOR CER-**
21 **TAIN DEPARTMENT OF DEFENSE EMPLOY-**
22 **EES.**

23 (a) RESTORATION OF ANNUAL LEAVE.—During the period
24 October 1, 1992, through December 31, 1997, all employees
25 transferring from a closing or realigning Department of De-
26 fense installation or activity as defined under section
27 6304(d)(3) of title 5, United States Code, to another Depart-
28 ment of Defense installation or activity—

29 (1) may be deemed eligible by the Secretary of De-
30 fense for automatic restoration of forfeited annual leave
31 under section 6304(d)(3) of title 5, United States Code,
32 during the year of transfer; and

33 (2) may be deemed by the Secretary of Defense to
34 have used all forfeited annual leave properly restored under
35 section 6304(d)(3) of title 5, United States Code, within
36 the appropriate time limits, only if such restored annual
37 leave was used by the employee or paid to the employee in



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1 the form of a lump sum payment under section 5551(a) of
2 title 5, United States Code, by the last day of the 2001
3 leave year.

4 (b) PAYMENT OF RESTORED ANNUAL LEAVE.—(1) On or
5 after September 23, 1996, all employees transferring from a
6 closing or realigning Department of Defense installation or ac-
7 tivity as defined under section 6304(d)(3)(A) of title 5, United
8 States Code, to another Department of Defense installation or
9 activity who, upon transfer, were entitled to payment of a lump
10 sum payment under section 5551(c) of title 5, United States
11 Code, for forfeited annual leave properly restored under section
12 6304(d)(3) of title 5, United States Code—

13 (A) may be paid only for any such restored annual
14 leave currently remaining to their credit at the hourly rate
15 payable on the date of transfer with appropriate back pay
16 interest; and

17 (B) shall be deemed paid for all such restored annual
18 leave to which that employee was entitled to payment upon
19 transfer, but subsequently used or was otherwise paid for
20 upon separation.

21 (2) This subsection shall take effect on the date of the en-
22 actment of this Act.

23 **SEC. 1115. AUTHORITY TO EMPLOY CIVILIAN FACULTY**
24 **MEMBERS AT THE WESTERN HEMISPHERE**
25 **INSTITUTE FOR SECURITY COOPERATION.**

26 Section 1595(c) of title 10, United States Code, is amend-
27 ed by adding at the end the following new paragraph:

28 “(6) The Western Hemisphere Institute for Security
29 Cooperation.”.

30 **SEC. 1116. EXTENSION OF AUTHORITY FOR EXPERI-**
31 **MENTAL PERSONNEL PROGRAM FOR SCI-**
32 **ENTIFIC AND TECHNICAL PERSONNEL.**

33 (a) EXTENSION OF PROGRAM.—Subsection (e)(1) of sec-
34 tion 1101 of the Strom Thurmond National Defense Authoriza-
35 tion Act for Fiscal Year 1999 (Public Law 105-261; 112 Stat.
36 2139; 5 U.S.C. 3104 note) is amended by striking “October
37 16, 2005” and inserting “September 30, 2008”.



1 (b) COMMENSURATE EXTENSION OF REQUIREMENT FOR
2 ANNUAL REPORT.—Subsection (g) of such section is amended
3 by striking “2006” and inserting “2009”.

4 **Subtitle C—Other Federal Govern-**
5 **ment Civilian Personnel Matters**

6 **SEC. 1121. MODIFICATION OF THE OVERTIME PAY CAP.**

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

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

11 (2) by inserting “or the hourly rate of basic pay of the
12 employee” after “law)” the second place it appears.

13 **SEC. 1122. COMMON OCCUPATIONAL AND HEALTH**
14 **STANDARDS FOR DIFFERENTIAL PAYMENTS**
15 **AS A CONSEQUENCE OF EXPOSURE TO AS-**
16 **BESTOS.**

17 (a) PREVAILING RATE SYSTEMS.—Section 5343(c)(4) of
18 title 5, United States Code, is amended by inserting before the
19 semicolon at the end the following: “, and for any hardship or
20 hazard related to asbestos, such differentials shall be deter-
21 mined by applying occupational safety and health standards
22 consistent with the permissible exposure limit promulgated by
23 the Secretary of Labor under the Occupational Safety and
24 Health Act of 1970”.

25 (b) GENERAL SCHEDULE PAY RATES.—Section 5545(d)
26 of such title is amended by inserting before the period at the
27 end of the first sentence the following: “, and for any hardship
28 or hazard related to asbestos, such differentials shall be deter-
29 mined by applying occupational safety and health standards
30 consistent with the permissible exposure limit promulgated by
31 the Secretary of Labor under the Occupational Safety and
32 Health Act of 1970”.

33 (c) APPLICABILITY.—Subject to any vested constitutional
34 property rights, any administrative or judicial determination
35 after the date of enactment of this Act concerning backpay for
36 a differential established under sections 5343(c)(4) or 5545(d)
37 of such title shall be based on occupational safety and health



1 standards described in the amendments made by subsections
2 (a) and (b).

3 **SEC. 1123. INCREASE IN ANNUAL STUDENT LOAN RE-**
4 **PAYMENT AUTHORITY.**

5 (a) INCREASE.—Section 5379(b)(2)(A) of title 5, United
6 States Code, is amended by striking “\$6,000” and inserting
7 “\$10,000”.

8 (b) EFFECTIVE DATE.—The amendment made by sub-
9 section (a) shall take effect on January 1, 2004.

10 **SEC. 1124. AUTHORIZATION FOR CABINET SECRE-**
11 **TARIES, SECRETARIES OF MILITARY DE-**
12 **PARTMENTS, AND HEADS OF EXECUTIVE**
13 **AGENCIES TO BE PAID ON A BIWEEKLY**
14 **BASIS.**

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

17 (1) by redesignating subsection (c) as subsection (d);

18 (2) by striking the last sentence of both subsection (a)
19 and subsection (b); and

20 (3) by inserting after subsection (b) the following:

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

22 “(1) The term ‘employee’ means—

23 “(A) an employee in or under an Executive agen-
24 cy;

25 “(B) an employee in or under the Office of the Ar-
26 chitect of the Capitol, the Botanic Garden, and the Li-
27 brary of Congress, for whom a basic administrative
28 workweek is established under section 6101(a)(5) of
29 this title; and

30 “(C) an individual employed by the government of
31 the District of Columbia.

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

33 “(A) an employee on the Isthmus of Panama in
34 the service of the Panama Canal Commission; or

35 “(B) an employee or individual excluded from the
36 definition of employee in section 5541(2) of this title
37 other than an employee or individual excluded by



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1 clauses (ii), (iii), and (xiv) through (xvii) of such sec-
2 tion.

3 “(3) Notwithstanding paragraph (2), an individual
4 who otherwise would be excluded from the definition of em-
5 ployee shall be deemed to be an employee for purposes of
6 this section if the individual’s employing agency so elects,
7 under guidelines in regulations promulgated by the Office
8 of Personnel Management under subsection (d)(2).”.

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

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

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

13 “(2) The Office of Personnel Management shall provide
14 guidelines by regulation for exemptions to be made by the
15 heads of agencies under subsection (c)(3). Such guidelines shall
16 provide for such exemptions only under exceptional cir-
17 cumstances.”.

18 **SEC. 1125. SENIOR EXECUTIVE SERVICE AND PERFORM-**
19 **ANCE.**

20 (a) SENIOR EXECUTIVE PAY.—Chapter 53 of title 5,
21 United States Code, is amended—

22 (1) in section 5304—

23 (A) in subsection (g)(2)—

24 (i) in subparagraph (A) by striking “subpara-
25 graphs (A)–(E)” and inserting “subparagraphs
26 (A)–(D)”; and

27 (ii) in subparagraph (B) by striking “sub-
28 section (h)(1)(F)” and inserting “subsection
29 (h)(1)(D)”;

30 (B) in subsection (h)(1)—

31 (i) by striking subparagraphs (B) and (C);

32 (ii) by redesignating subparagraphs (D), (E),
33 and (F) as subparagraphs (B), (C), and (D), re-
34 spectively;

35 (iii) in clause (ii) by striking “or” at the end;

36 (iv) in clause (iii) by striking the period and
37 inserting a semicolon; and

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1 (v) by adding at the end the following new
2 clauses:

3 “(iv) a Senior Executive Service position under section
4 3132;

5 “(v) a position in the Federal Bureau of Investigation
6 and Drug Enforcement Administration Senior Executive
7 Service under section 3151; or

8 “(vi) a position in a system equivalent to the system
9 in clause (iv), as determined by the President’s Pay Agent
10 designated under subsection (d).”; and

11 (C) in subsection (h)(2)(B)—

12 (i) in clause (i)—

13 (I) by striking “subparagraphs (A)
14 through (E)” and inserting “subparagraphs
15 (A) through (C)”; and

16 (II) by striking “clause (i) or (ii)” and in-
17 serting “clause (i), (ii), (iii), (iv), (v), or (vii)”;
18 and

19 (ii) in clause (ii)—

20 (I) by striking “paragraph (1)(F)” and in-
21 serting “paragraph (1)(D)”; and

22 (II) by striking “clause (i) or (ii)” and in-
23 serting “clause (i), (ii), (iii), (iv), (v), or (vi)”;
24

(2) by amending section 5382 to read as follows:

25 **“§ 5382. Establishment of rates of pay for the Sen-
26 ior Executive Service**

27 “(a) Subject to regulations prescribed by the Office of Per-
28 sonnel Management, there shall be established a range of rates
29 of basic pay for the Senior Executive Service, and each senior
30 executive shall be paid at one of the rates within the range,
31 based on individual performance, contribution to the agency’s
32 performance, or both, as determined under a rigorous perform-
33 ance management system. The lowest rate of the range shall
34 not be less than the minimum rate of basic pay payable under
35 section 5376, and the highest rate, for any position under this
36 system or an equivalent system as determined by the Presi-
37 dent’s Pay Agent designated under section 5304(d), shall not



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1 exceed the rate for level III of the Executive Schedule. The
2 payment of the rates shall not be subject to the pay limitation
3 of section 5306(e) or 5373.

4 “(b) Notwithstanding the provisions of subsection (a), the
5 applicable maximum shall be level II of the Executive Schedule
6 for any agency that is certified under section 5307 as having
7 a performance appraisal system which, as designed and applied,
8 makes meaningful distinctions based on relative performance.

9 “(c) No employee may suffer a reduction in pay by reason
10 of transfer from an agency with an applicable maximum rate
11 of pay prescribed under subsection (b) to an agency with an
12 applicable maximum rate of pay prescribed under subsection
13 (a).”; and

14 (3) in section 5383—

15 (A) in subsection (a) by striking “which of the
16 rates established under section 5382 of this title” and
17 inserting “which of the rates within a range established
18 under section 5382”; and

19 (B) in subsection (c) by striking “for any pay ad-
20 justment under section 5382 of this title” and inserting
21 “as provided in regulations prescribed by the Office
22 under section 5385”.

23 (b) POST-EMPLOYMENT RESTRICTIONS.—(1) Clause (ii) of
24 section 207(c)(2)(A) of title 18, United States Code is amended
25 to read as follows:

26 “(ii) employed in a position which is not referred
27 to in clause (i) and for which that person is paid at a
28 rate of basic pay which is equal to or greater than 86.5
29 percent of the rate of basic pay for level II of the Exec-
30 utive Schedule, or, for a period of 2 years following the
31 enactment of the National Defense Authorization Act
32 for Fiscal Year 2004, a person who, on the day prior
33 to the enactment of that Act, was employed in a posi-
34 tion which is not referred to in clause (i) and for which
35 the rate of basic pay, exclusive of any locality-based
36 pay adjustment under section 5304 or section 5304a of
37 title 5, was equal to or greater than the rate of basic



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1 pay payable for level 5 of the Senior Executive Service
2 on the day prior to the enactment of that Act.”.

3 (2) Subchapter I of chapter 73 of title 5, United States
4 Code, is amended by inserting at the end the following new sec-
5 tion:

6 **“§ 7302. Post-employment notification**

7 “(a) Not later than the effective date of the amendments
8 made by section 1106 of the National Defense Authorization
9 Act for Fiscal Year 2004, or 180 days after the date of enact-
10 ment of that Act, whichever is later, the Office of Personnel
11 Management shall, in consultation with the Attorney General
12 and the Office of Government Ethics, promulgate regulations
13 requiring that each Executive branch agency notify any em-
14 ployee of that agency who is subject to the provisions of section
15 207(c)(1) of title 18, as a result of the amendment to section
16 207(c)(2)(A)(ii) of that title by that Act.

17 “(b) The regulations shall require that notice be given be-
18 fore, or as part of, the action that affects the employee’s cov-
19 erage under section 207(c)(1) of title 18, by virtue of the provi-
20 sions of section 207(c)(2)(A)(ii) of that title, and again when
21 employment or service in the covered position is terminated.”.

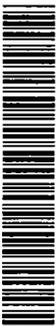
22 (3) The table of sections for chapter 73 of title 5, United
23 States Code, is amended by adding after the item relating to
24 section 7301 the following:

“7302. Post-employment notification.”.

25 (c) EFFECTIVE DATE AND APPLICABILITY.—(1) The
26 amendments made by this section shall take effect on the first
27 day of the first pay period beginning on or after the first Janu-
28 ary 1 following the date of enactment of this section.

29 (2) The amendments made by subsection (a) may not re-
30 sult in a reduction in the rate of basic pay for any senior exec-
31 utive during the first year after the effective date of those
32 amendments.

33 (3) For the purposes of paragraph (2), the rate of basic
34 pay for a senior executive shall be deemed to be the rate of
35 basic pay set for the senior executive under section 5383 of



1 title 5, United States Code, plus applicable locality pay paid to
2 that senior executive, as of the date of enactment of this Act.

3 (4) Until otherwise provided by law, or except as otherwise
4 provided by this section, any reference in a provision of law to
5 a rate of basic pay that is above the minimum payable and
6 below the maximum payable to a member of the Senior Execu-
7 tive Service shall be considered a reference to the rate of basic
8 pay payable for level IV of the Executive Schedule.

9 **SEC. 1126. DESIGN ELEMENTS OF PAY-FOR-PERFORM-**
10 **ANCE SYSTEMS IN DEMONSTRATION**
11 **PROJECTS.**

12 A pay-for-performance system may not be initiated under
13 chapter 47 of title 5, United States Code, after the date of en-
14 actment of this Act, unless it incorporates the following ele-
15 ments:

16 (1) Adherence to merit principles set forth in section
17 2301 of such title.

18 (2) A fair, credible, and transparent employee per-
19 formance appraisal system.

20 (3) A link between elements of the pay-for-perform-
21 ance system, the employee performance appraisal system,
22 and the agency's strategic plan.

23 (4) A means for ensuring employee involvement in the
24 design and implementation of the system.

25 (5) Adequate training and retraining for supervisors,
26 managers, and employees in the implementation and oper-
27 ation of the pay-for-performance system.

28 (6) A process for ensuring ongoing performance feed-
29 back and dialogue between supervisors, managers, and em-
30 ployees throughout the appraisal period, and setting time-
31 tables for review.

32 (7) Effective safeguards to ensure that the manage-
33 ment of the system is fair and equitable and based on em-
34 ployee performance.

35 (8) A means for ensuring that adequate agency re-
36 sources are allocated for the design, implementation, and
37 administration of the pay-for-performance system.



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1 **SEC. 1127. FEDERAL FLEXIBLE BENEFITS PLAN ADMIN-**
2 **ISTRATIVE COSTS.**

3 (a) IN GENERAL.—Notwithstanding any other provision of
4 law, an agency or other employing entity of the Government
5 which provides or plans to provide a flexible spending account
6 option for its employees shall not impose any fee with respect
7 to any of its employees in order to defray the administrative
8 costs associated therewith.

9 (b) OFFSET OF ADMINISTRATIVE COSTS.—Each such
10 agency or employing entity that offers a flexible spending ac-
11 count option under a program established or administered by
12 the Office of Personnel Management shall periodically forward
13 to such Office, or entity designated by such Office, the amount
14 necessary to offset the administrative costs of such program
15 which are attributable to such agency.

16 (c) REPORTS.—(1) The Office shall submit a report to the
17 Committee on Government Reform of the House of Representa-
18 tives and the Committee on Governmental Affairs of the Senate
19 no later than March 31, 2004, specifying the administrative
20 costs associated with the Governmentwide program (referred to
21 in subsection (b)) for fiscal year 2003, as well as the projected
22 administrative costs of such program for each of the 5 fiscal
23 years thereafter.

24 (2) At the end of each of the first 3 calendar years in
25 which an agency or other employing entity offers a flexible
26 spending account option under this section, such agency or en-
27 tity shall submit a report to the Office of Management and
28 Budget showing the amount of its employment tax savings in
29 such year which are attributable to such option, net of adminis-
30 trative fees paid under subsection (b).

31 **SEC. 1128. EMPLOYEE SURVEYS.**

32 (a) IN GENERAL.—Each agency shall conduct an annual
33 survey of its employees (including survey questions unique to
34 the agency and questions prescribed under subsection (b)) to
35 assess—

36 (1) leadership and management practices that con-
37 tribute to agency performance; and



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- 1 (2) employee satisfaction with—
2 (A) leadership policies and practices;
3 (B) work environment;
4 (C) rewards and recognition for professional ac-
5 complishment and personal contributions to achieving
6 organizational mission;
7 (D) opportunity for professional development and
8 growth; and
9 (E) opportunity to contribute to achieving organi-
10 zational mission.

11 (b) REGULATIONS.—The Office of Personnel Management
12 shall issue regulations prescribing survey questions that should
13 appear on all agency surveys under subsection (a) in order to
14 allow a comparison across agencies.

15 (c) AVAILABILITY OF RESULTS.—The results of the agen-
16 cy surveys under subsection (a) shall be made available to the
17 public and posted on the website of the agency involved, unless
18 the head of such agency determines that doing so would jeop-
19 ardize or negatively impact national security.

20 (d) AGENCY DEFINED.—For purposes of this section, the
21 term “agency” means an Executive agency (as defined by sec-
22 tion 105 of title 5, United States Code).

23 **SEC. 1129. HUMAN CAPITAL PERFORMANCE FUND.**

24 (a) IN GENERAL.—Subpart D of part III of title 5, United
25 States Code, is amended by inserting after chapter 53 the fol-
26 lowing:

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

“Sec.

“5401. Purpose.

“5402. Definitions.

“5403. Human Capital Performance Fund.

“5404. Human capital performance payments.

“5405. Regulations.

“5406. Agency plan.

“5407. Nature of payment.

“5408. Appropriations.



1 **“§ 5401. Purpose**

2 “The purpose of this chapter is to promote, through the
3 creation of a Human Capital Performance Fund, greater per-
4 formance in the Federal Government. Monies from the Fund
5 will be used to reward agencies’ highest performing and most
6 valuable employees. This Fund will offer Federal managers a
7 new tool to recognize employee performance that is critical to
8 the achievement of agency missions.

9 **“§ 5402. Definitions**

10 “For the purpose of this chapter—

11 “(1) ‘agency’ means an Executive agency under sec-
12 tion 105, but does not include the General Accounting Of-
13 fice;

14 “(2) ‘employee’ includes—

15 “(A) an individual paid under a statutory pay sys-
16 tem defined in section 5302(1);

17 “(B) a prevailing rate employee, as defined in sec-
18 tion 5342(a)(2); and

19 “(C) a category of employees included by the Of-
20 fice of Personnel Management following the review of
21 an agency plan under section 5403(b)(1);

22 but does not include—

23 “(i) an individual paid at an annual rate of basic
24 pay for a level of the Executive Schedule, under sub-
25 chapter II of chapter 53, or at a rate provided for one
26 of those levels under another provision of law;

27 “(ii) a member of the Senior Executive Service
28 paid under subchapter VIII of chapter 53, or an equiv-
29 alent system;

30 “(iii) an administrative law judge paid under sec-
31 tion 5372;

32 “(iv) a contract appeals board member paid under
33 section 5372a;

34 “(v) an administrative appeals judge paid under
35 section 5372b; and

36 “(vi) an individual in a position which is excepted
37 from the competitive service because of its confidential,



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1 policy-determining, policy-making, or policy-advocating
2 character; and

3 “(3) ‘Office’ means the Office of Personnel Manage-
4 ment.

5 **“§ 5403. Human Capital Performance Fund**

6 “(a) There is hereby established the Human Capital Per-
7 formance Fund, to be administered by the Office for the pur-
8 pose of this chapter.

9 “(b)(1)(A) An agency shall submit a plan as described in
10 section 5406 to be eligible for consideration by the Office for
11 an allocation under this section. An allocation shall be made
12 only upon approval by the Office of an agency’s plan.

13 “(B)(i) After the reduction for training required under
14 section 5408, ninety percent of the remaining amount appro-
15 priated to the Fund may be allocated by the Office to the agen-
16 cies. Of the amount to be allocated, an agency’s pro rata dis-
17 tribution may not exceed its pro rata share of Executive branch
18 payroll.

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

23 “(C)(i) After the reduction for training under section
24 5408, ten percent of the remaining amount appropriated to the
25 Fund, as well as the amount of the pro rata share not distrib-
26 uted because of an agency’s failure to submit a satisfactory
27 plan, shall be allocated among agencies with exceptionally high-
28 quality plans.

29 “(ii) An agency with an exceptionally high-quality plan is
30 eligible to receive an additional distribution in addition to its
31 full pro rata distribution.

32 “(2) Each agency is required to provide to the Office such
33 payroll information as the Office specifies necessary to deter-
34 mine the Executive branch payroll.

35 **“§ 5404. Human capital performance payments**

36 “(a)(1) Notwithstanding any other provision of law, the
37 Office may authorize an agency to provide human capital per-



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1 formance payments to individual employees based on excep-
2 tional performance contributing to the achievement of the agen-
3 cy mission.

4 “(2) The number of employees in an agency receiving pay-
5 ments from the Fund, in any year, shall not be more than the
6 number equal to 15 percent of the agency’s average total civil-
7 ian full- and part-time permanent employment for the previous
8 fiscal year.

9 “(b)(1) A human capital performance payment provided to
10 an individual employee from the Fund, in any year, shall not
11 exceed 10 percent of the employee’s rate of basic pay.

12 “(2) The aggregate of an employee’s rate of basic pay, ad-
13 justed by any locality-based comparability payments, and
14 human capital performance pay, as defined by regulation, may
15 not exceed the rate of basic pay for Executive Level IV in any
16 year.

17 “(3) Any human capital performance payment provided to
18 an employee from the Fund is in addition to any annual pay
19 adjustment (under section 5303 or any similar provision of
20 law) and any locality-based comparability payment that may
21 apply.

22 “(c) No monies from the Human Capital Performance
23 Fund may be used to pay for a new position, for other perform-
24 ance-related payments, or for recruitment or retention incen-
25 tives paid under sections 5753 and 5754.

26 “(d)(1) An agency may finance initial human capital per-
27 formance payments using monies from the Human Capital Per-
28 formance Fund, as available.

29 “(2) In subsequent years, continuation of previously
30 awarded human capital performance payments shall be fi-
31 nanced from other agency funds available for salaries and ex-
32 penses.

33 **“§ 5405. Regulations**

34 “The Office shall issue such regulations as it determines
35 to be necessary for the administration of this chapter, including
36 the administration of the Fund. The Office’s regulations shall
37 include criteria governing—



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- 1 “(1) an agency plan under section 5406;
- 2 “(2) the allocation of monies from the Fund to agen-
- 3 cies;
- 4 “(3) the nature, extent, duration, and adjustment of,
- 5 and approval processes for, payments to individual employ-
- 6 ees under this chapter;
- 7 “(4) the relationship to this chapter of agency per-
- 8 formance management systems;
- 9 “(5) training of supervisors, managers, and other indi-
- 10 viduals involved in the process of making performance dis-
- 11 tinctions; and
- 12 “(6) the circumstances under which funds may be allo-
- 13 cated by the Office to an agency in amounts below or in
- 14 excess of the agency’s pro rata share.

15 **“§ 5406. Agency plan**

- 16 “(a) To be eligible for consideration by the Office for an
- 17 allocation under this section, an agency shall—
- 18 “(1) develop a plan that incorporates the following ele-
- 19 ments:
- 20 “(A) adherence to merit principles set forth in sec-
- 21 tion 2301;
- 22 “(B) a fair, credible, and transparent employee
- 23 performance appraisal system;
- 24 “(C) a link between the pay-for-performance sys-
- 25 tem, the employee performance appraisal system, and
- 26 the agency’s strategic plan;
- 27 “(D) a means for ensuring employee involvement
- 28 in the design and implementation of the system;
- 29 “(E) adequate training and retraining for super-
- 30 visors, managers, and employees in the implementation
- 31 and operation of the pay-for-performance system;
- 32 “(F) a process for ensuring ongoing performance
- 33 feedback and dialogue between supervisors, managers,
- 34 and employees throughout the appraisal period, and
- 35 setting timetables for review;



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1 “(G) effective safeguards to ensure that the man-
2 agement of the system is fair and equitable and based
3 on employee performance; and

4 “(H) a means for ensuring that adequate agency
5 resources are allocated for the design, implementation,
6 and administration of the pay-for-performance system;

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

9 “(3) make payments to individual employees in accord-
10 ance with the agency’s approved plan; and

11 “(4) provide such information to the Office regarding
12 payments made and use of funds received under this sec-
13 tion as the Office may specify.

14 “(b) The Office, in consultation with the Chief Human
15 Capital Officers Council, shall review and approve an agency’s
16 plan before the agency is eligible to receive an allocation of
17 funding from the Office.

18 “(c) The Chief Human Capital Officers Council shall in-
19 clude in its annual report to Congress under section 1303(d)
20 of the Homeland Security Act of 2002 an evaluation of the for-
21 mulation and implementation of agency performance manage-
22 ment systems.

23 **“§ 5407. Nature of payment**

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

29 **“§ 5408. Appropriations**

30 “There is authorized to be appropriated \$500,000,000 for
31 fiscal year 2004, and, for each subsequent fiscal year, such
32 sums as may be necessary to carry out the provisions of this
33 chapter. In the first year of implementation, up to 10 percent
34 of the amount appropriated to the Fund shall be available to
35 participating agencies to train supervisors, managers, and other
36 individuals involved in the appraisal process on using perform-



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1 ance management systems to make meaningful distinctions in
2 employee performance and on the use of the Fund.”.

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

“54. Human Capital Performance Fund 5401”.

