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Federal Workforce Flexibilities: A Side-by-Side Comparison of S. 129 (108th Congress) with Current Law

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Federal Workforce Flexibilities: A Side-by-Side Comparison of S. 129 (108th Congress) with Current Law

Summary

A bill related to the management of the federal workforce is being considered by the 108th Congress. S. 129, the Federal Workforce Flexibility Act of 2003, passed the Senate with an amendment by unanimous consent on April 8, 2004. In the House, the Subcommittee on Civil Service and Agency Organization forwarded S. 129 to the House Committee on Government Reform on May 18, 2004, after amending it by voice vote. On June 24, 2004, the House committee ordered the bill to be reported to the House of Representatives, after amending it, by voice vote. The bill was introduced by Senator George Voinovich on January 9, 2003. A similar bill, H.R. 1601, the Federal Workforce Flexibility Act of 2003, was introduced in the House of Representatives by Representative Jo Ann Davis on April 3, 2003.

S. 129, as passed by the Senate and as ordered to be reported to the House, would amend current law provisions on critical pay, civil service retirement system computation for part-time service, agency training, and annual leave. The bill also would amend current law provisions on recruitment and relocation bonuses and retention allowances (which would be renamed bonuses). As ordered to be reported to the House, S. 129 would amend the current 5 U.S.C. §§5753 and 5754 language on such bonuses and allowances. As passed by the Senate, it would add new sections 5754a and 5754b on recruitment, relocation, and retention bonuses to Title 5 *United States Code*. Therefore, if S. 129, as passed by the Senate, were enacted, agencies would be able to use the current law provisions on recruitment and relocation bonuses and retention allowances at 5 U.S.C. §§5753 and 5754 and the enhanced authority for recruitment, relocation, and retention bonuses proposed at 5 U.S.C. §§5754a and 5754b.

S. 129, as ordered to be reported to the House, would amend current law provisions on pay administration. These amendments were included in S. 129, as introduced, but they were dropped during Senate committee markup and are not included in the Senate-passed version of the bill. Provisions that would amend current law on retirement service credit for cadet or midshipman service and compensatory time off for travel were added to S. 129 during Senate committee markup and are included in the legislation as passed by the Senate and as ordered to be reported to the House. Added during Senate Committee markup as well were provisions on Senior Executive Service authority for the White House Office of Administration that are in the Senate-passed bill, but are not in the legislation as ordered to be reported to the House. Other provisions that would have amended current law provisions relating to contributions to the Thrift Savings Plan, annuity commencement dates, and retirement for air traffic controllers were included in S. 129, as forwarded by the House Civil Service and Agency Organization Subcommittee to the House Government Reform Committee, but were removed during the full committee markup.

This report compares each of the provisions in S. 129, as passed by the Senate and as ordered to be reported to the House, with current law.

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Introduction

As in the previous Congress, management of the federal workforce continues to be an issue of interest to the Senate and the House of Representatives in the 108th Congress. S. 129, the Federal Workforce Flexibility Act of 2003, passed the Senate with an amendment by unanimous consent on April 8, 2004. Senator George Voinovich introduced the bill on January 9, 2003, and it was referred to the Senate Committee on Governmental Affairs. On October 22, 2003, the committee ordered the bill to be reported with an amendment in the nature of a substitute; and it was reported on January 27, 2004.¹ The committee substitute, as amended, was agreed to by unanimous consent on April 8, 2004. In the House of Representatives, the Subcommittee on Civil Service and Agency Organization of the House Committee on Government Reform marked up S. 129 on May 18, 2004. Before forwarding the legislation to the full committee, the subcommittee agreed by voice vote to an amendment in the nature of a substitute offered by Representative Jo Ann Davis and en bloc amendments offered by Representative Danny Davis. On June 24, 2004, the House committee ordered the bill to be reported to the House of Representatives by voice vote, after agreeing, by voice vote, to an amendment in the nature of a substitute offered by Representative Jo Ann Davis.

Another bill related to management of the federal workforce was introduced in the House of Representatives on April 3, 2003. Representative Jo Ann Davis introduced H.R. 1601, the Federal Workforce Flexibility Act of 2003, and it was referred to the House Committee on Government Reform. As introduced, S. 129 and H.R. 1601 were identical except for one provision relating to personnel demonstration projects.² On April 8, 2003, the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia of the Senate Committee on Governmental Affairs, along with the Subcommittee on Civil Service and Agency Organization of the House Committee on Government Reform, conducted a joint hearing on the federal government's human capital

¹ U.S. Congress, Senate Committee on Governmental Affairs, *Federal Workforce Flexibility Act of 2003*, report to accompany S. 129, 108th Cong., 2nd sess., S.Rept. 108-223 (Washington: GPO, 2004).

² Under S. 129, as introduced, OPM would have submitted a recommendation to Congress as to whether a demonstration project should be made permanent before the end of five years. This provision was dropped from the bill during markup by the Senate Committee on Governmental Affairs on October 22, 2003. H.R. 1601 would require the recommendation to be made at or before the end of seven years.

challenge.³ A hearing that included discussion of H.R. 1601 was conducted by the House Subcommittee on Civil Service and Agency Organization on February 11, 2004.⁴ Both S. 129 and H.R. 1601 include a number of the provisions that were in S. 2651, the Federal Workforce Improvement Act of 2002, introduced by Senator Voinovich in the 107th Congress. Several of the S. 2651 provisions, including those on agency Chief Human Capital Officers, alternative ranking and selection procedures, voluntary separation incentive payments, the repeal of recertification requirements for the Senior Executive Service, academic degree training, and modifications to the National Security Education Program, were enacted in P.L. 107-296, Homeland Security Act of 2002, signed by President George Bush on November 25, 2002 and are applicable governmentwide.⁵

S. 129, as passed by the Senate and as ordered to be reported to the House, would amend current law provisions on critical pay, civil service retirement system computation for part-time service, agency training, and annual leave. The bill also would amend current law provisions on recruitment and relocation bonuses and retention allowances (which would be renamed bonuses). As ordered to be reported to the House, S. 129 would amend the current 5 U.S.C. §§5753 and 5754 language on such bonuses and allowances. As passed by the Senate, it would add new sections 5754a and 5754b on recruitment, relocation, and retention bonuses to Title 5 *United States Code*. Therefore, if S. 129, as passed by the Senate, were enacted, agencies would be able to use the current law provisions on recruitment and relocation bonuses and retention allowances at 5 U.S.C. §§5753 and 5754 and the enhanced authority for recruitment, relocation, and retention bonuses proposed at 5 U.S.C. §§5754a and 5754b.⁶

S. 129, as ordered to be reported to the House, would amend current law provisions on pay administration. These amendments were included in S. 129, as introduced, but they were dropped during Senate committee markup and are not included in the Senate-passed version of the bill. Provisions that would amend current law on retirement service credit for cadet or midshipman service and compensatory time off for travel were added to S. 129 during Senate committee markup and are included in the legislation as passed by the Senate and as ordered to

³ U.S. Congress, Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia and House Committee on Government Reform, Subcommittee on Civil Service and Agency Organization, *The Human Capital Challenge: Offering Solutions and Delivering Results*, hearing, 108th Cong., 1st sess., April 8, 2003 (Washington: GPO, 2003).

⁴ U.S. Congress, House Committee on Government Reform, Subcommittee on Civil Service and Agency Organization, *Esprit de Corps: Recruiting and Retaining America's Best for the Federal Civil Service*, Hearing, 108th Cong., 2nd sess., Feb. 11, 2004 (unpublished).

⁵ For a discussion of these provisions, see CRS Report RL31500, *Homeland Security: Human Resources Management*, by Barbara L. Schwemle.

⁶ According to staff of the Senate Committee on Governmental Affairs, the current authority at 5 U.S.C. 5753 and 5754 allows political appointees to be eligible for recruitment and relocation bonuses and retention allowances. S. 129, as passed by the Senate, would provide enhanced recruitment, relocation, and retention bonuses, but political appointees would be excluded from being eligible for the enhanced bonuses.

be reported to the House. Added during Senate Committee markup as well were provisions on Senior Executive Service authority for the White House Office of Administration that are in the Senate-passed bill, but are not in the legislation as ordered to be reported to the House (the provisions were removed from the House version of the bill during the full House committee markup). Other provisions that would have amended current law provisions relating to contributions to the Thrift Savings Plan, annuity commencement dates, and retirement for air traffic controllers were included in S. 129, as forwarded by the House Civil Service and Agency Organization Subcommittee to the House Government Reform Committee, but were removed during the full committee markup.

In the 107th Congress, Senator Voinovich introduced S. 1603, the Federal Human Capital Act of 2001, on October 31, 2001 and S. 1639, the Federal Employee Management Reform Act of 2001, on November 6, 2001. Senator Fred Thompson introduced S. 1612, the Managerial Flexibility Act of 2001, on November 1, 2001.⁷ The bills were referred to the Senate Committee on Governmental Affairs. Representative Constance Morella introduced H.R. 4580, the Good People, Good Government Act, on April 24, 2002, and it was referred to the House Committee on Government Reform. Earlier, on October 15, 2001, the Administration of President George W. Bush submitted a legislative proposal entitled The Managerial Flexibility Act of 2001 to Congress. The Office of Management and Budget (OMB) described the proposal as “a key component of the Bush Administration’s ‘Freedom to Manage’ initiative . . . to eliminate legal barriers to effective management.”⁸ The proposal included provisions on personnel management flexibilities, including voluntary separation incentive payments, voluntary early retirement, recruitment and retention bonuses and relocation allowances, academic degrees, the Senior Executive Service, personnel management demonstration projects, and direct hire.

On March 18 and 19, 2002, the Subcommittee on International Security, Proliferation, and Federal Services of the Senate Committee on Governmental Affairs conducted hearings on several of the civil service bills. Following the hearings, Senator Voinovich, joined by Senators Thompson and Cochran, revised some of the provisions in S. 1603 and S. 1639, as introduced, and merged them into one bill, S. 2651. As mentioned above, several of the S. 2651 provisions were enacted in P.L. 107-296. No further action was taken on any of the other 107th Congress bills.

This report compares each of the provisions in S. 129, as passed by the Senate and as ordered to be reported to the House, with current law. The information in this report is presented according to the sequential organization of Title 5 *United States*

⁷ For a discussion of the provisions of S. 1603, S. 1639, and S. 1612, see CRS Memorandum, *Civil Service Reform Proposals*, coordinated by Sharon S. Gressle. Available from CRS.

⁸ U.S. Office of Management and Budget, OMB News Release 2001-47, “President Bush Proposes Legislation to Improve Management of Federal Agencies,” Oct. 15, 2001. Available at [<http://www.whitehouse.gov/omb/pubpress/2001-47.html>], visited June 30, 2004. Senator Fred Thompson introduced S. 1613, the Freedom to Manage Act, on Nov. 1, 2001, and it was referred to the Senate Committee on Governmental Affairs.

Code as current law. Patrick Purcell, Specialist in Social Legislation, Domestic Social Policy Division, Congressional Research Service (CRS), prepared the rows in Table 1 on retirement provisions under 5 U.S.C. Chapters 83 and 84. L. Elaine Halchin, Analyst in American National Government, Government and Finance Division, CRS, prepared the rows in Table 1 on Senior Executive Service Authority for the White House Office of Administration under 3 U.S.C. Chapter 2.

Table 1. S. 129 Provisions Compared with Current Law

Current Law	108 th Congress Proposals	
U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
Title 5 — Government Organization and Employees		
Chapter 41 — Training		
Section 4103. Establishment of training programs.	Sec. 201, Agency Training Sec. 201(a), Training to accomplish performance plans and strategic goals , would amend 5 U.S.C. §4103 by adding a new paragraph (c), which would provide that each agency head would, on a regular basis, (1) evaluate each program or plan established, operated, or maintained under 5 U.S.C. §4103(a) with respect to accomplishing specific performance plans and strategic goals in performing the agency mission; and (2) modify such program or plan as needed to accomplish such plans and goals.	Sec. 201, Agency Training Sec. 201(a), Training to accomplish performance plans and strategic goals Same provision, but does not include the words “on a regular basis.”
Chapter 41 — Training. Authorizes training for federal employees.	No similar provision	Sec. 201(b), Agency training officer; specific training programs , would amend 5 U.S.C. Chapter 41 by adding a new section:

Current Law	108 th Congress Proposals	
<p align="center">U.S. Code (Title 5, unless otherwise noted)</p>	<p>Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives</p>	<p>Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate</p>
		<p>Sec. 4120, Agency training officer, would provide that each agency would appoint or designate a training officer who would be responsible for developing, coordinating, and administering training for the agency.</p>
<p>Chapter 41 — Training. Authorizes training for federal employees.</p>	<p>Sec. 201(b), Specific training programs, would amend 5 U.S.C. Chapter 41 by adding a new section:</p> <p>Sec. 4121, Specific training programs, would provide that in consultation with OPM, each agency head would establish (1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and (2) a program to train managers on actions, options, and strategies a manager could use in (A) relating to employees with unacceptable performance; (B) mentoring employees and improving performance and productivity; and (C) conducting employee performance appraisals.</p>	<p>Sec. 201(b), Agency training officer; specific training programs, would amend 5 U.S.C. Chapter 41 by adding a new section:</p> <p>Sec. 4121, Specific training programs, which would provide the same, except as noted.</p> <p>(C) No similar provision</p>

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
Chapter 45 — Incentive Awards		
<p>Section 4505a. Performance-based cash awards. (B) For purposes of computing a percentage of a rate of basic pay under subparagraph (A), (on cash awards) the rate of basic pay used shall be determined without taking into account any locality-based comparability payment under 5 U.S.C. §5304.</p>	<p>Sec. 301(c), Repeal, would amend 5 U.S.C. §4505a(a)(2) by striking subparagraph (B).</p>	<p>No similar provision</p>
Chapter 53 — Pay Rates and Systems		
<p>Section 5302. Definitions. Sec. 5302(8) defines terms on General Schedule (GS) rates of pay as the rates set forth in the GS and, for an employee receiving retained pay, the basic pay under 5 U.S.C. §5363.</p>	<p>Sec. 301, Corrections Relating to Pay Administration Sec. 301(a)(1) would amend 5 U.S.C. §5302(8) to provide that “rates of pay under the General Schedule” (GS), “rates of pay for the GS,” or “scheduled rates of basic pay” would mean the rates of basic pay under the GS as established by 5 U.S.C. §5332, excluding pay under 5 U.S.C. §5304 and any other additional pay of any kind.</p>	<p>No similar provision</p>

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
<p>Section 5304. Locality-based comparability payments.</p> <p>Sec. 5304(g)(2)(A) provides that Executive Schedule level III is the maximum total pay for senior-level, Senior Executive Service (SES), FBI and DEA SES, and administrative law judge positions.</p>	<p>Sec. 302, Technical Corrections</p> <p>Sec. 302(a)(1) would amend (A) 5 U.S.C. §5304(g)(2)(A) to provide that the provision would apply to senior-level, Senior Executive Service (SES), and FBI and DEA SES positions.</p> <p>Sec. 302(a)(2) would provide that the amendments made by this subsection would take effect as if included in the enactment of P.L. 108-136.</p>	No similar provision
<p>Section 5305. Special pay authority.</p> <p>Sec. 5305(a) authorizes the President to establish special pay rates. A minimum rate could not exceed the maximum statutory pay rate for the grade or level by more than 30% and no rate may exceed level V of the Executive Schedule. The President may delegate the authority to OPM, or to another agency for individuals not subject to Title 5.</p>	<p>Sec. 301(a)(2)(A) would amend 5 U.S.C. §5305(a) to provide that (a)(1) OPM could establish special pay rates. A minimum rate could not exceed the maximum basic pay rate (excluding locality-based comparability payments) for the grade or level by more than 30% and no rate could exceed level IV of the Executive Schedule. For individuals not subject to Title 5 provisions governing appointment in the competitive service, the President could designate another agency to authorize special rates under this section.</p> <p>(2) The agency head could determine that a category of agency employees would not be covered by a special rate authorization. The</p>	No similar provision

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	agency head would provide written notice to OPM (or other agency designated by the President to authorize special rates under the last sentence of paragraph (1)) which identifies the specific category or categories of employees that will not be covered by special rates. If the agency head removes a category of employees from coverage after the special rate authorization takes effect, the loss of coverage would take effect on the first day of the first pay period after the notice date.	
Sec. 5305(b)(4): any other circumstances which the President (or an agency duly authorized or designated by the President in accordance with the last sentence of subsection (a)) considers appropriate.	Sec. 301(a)(2)(B) would amend 5 U.S.C. §5305(b)(4) to read: (4) any other circumstances which OPM (or such other agency as the President may under the last sentence of subsection (a)(1) designate) considers appropriate.	No similar provision
Sec. 5305(d): ... rates of pay established under this Sec. may be revised from time to time by the President or by such agency as he may designate	Sec. 301(a)(2)(C) would amend 5 U.S.C. §5305(d), (i) by striking “President” and inserting “Office of Personnel Management” and (ii) by striking “or by such agency as he may designate” and	No similar provision

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
	inserting “(or by such other agency as the President may designate under the last sentence of subsection (a)(1).”	
Sec. 5305(e): an increase in a rate of basic pay established under this section is not an equivalent increase in pay within the meaning of Sec. 5335.	Sec. 301(a)(2)(D) would amend 5 U.S.C. §5305(e) by striking “basic pay” and inserting “pay.”	No similar provision
Sec. 5305(f) covers adjustment of special pay rates, under conversion rules prescribed by the President or such agency he designates, when statutory pay rates increase.	Sec. 301(a)(2)(E) would amend 5 U.S.C. §5305(f) to provide that when special rates are adjusted under subsection (d), a covered employee’s special rate would be adjusted in accordance with conversion rules prescribed by OPM (or by such other agency as the President may under the last sentence of subsection (a)(1) designate.	No similar provision
Sec. 5305(g)(1): ... any comparability payments ... shall be available to individuals receiving rates of basic pay established under this Sec. to such extent as the President (or his designated agency) considers appropriate....	Sec. 301(a)(2)(F) would amend 5 U.S.C. §5305(g)(1), (i) by striking “basic pay” and inserting “pay” and (ii) by striking “President (or his designated agency)” and inserting “Office of Personnel Management (or such other agency as the President may under the last sentence of subsection (a)(1) designate).”	No similar provision

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Sec. 5305(h): pay cannot be less than basic (including locality pay) payable if special pay were not available.	Sec. 301(a)(2)(G) would amend 5 U.S.C. §5305(h) to provide that an employee would not for any purpose be considered to be entitled to a rate of pay established under this section with respect to any period for which such employee is entitled to a higher rate of basic pay under any other provision of law. “Basic pay” would include any applicable locality-based comparability payment under 5 U.S.C. §5304 or similar provision of law.	No similar provision
No similar provision	Sec. 301(a)(2)(H) would amend 5 U.S.C. §5305 by adding a new subsection (i) which would provide that if an employee who is receiving a rate of pay under this section becomes subject, by virtue of moving to a new official duty station, to a different pay schedule, such employee’s new rate of pay would be initially established under conversion rules prescribed by OPM (or such other agency as the President may under the last sentence of subsection (a)(1) designate) in conformance with the following:	No similar provision

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
	(1) First, determine the pay rate to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move. (2) Then, if (in addition to the change in pay schedule) the move also involves any personnel action or other change requiring a rate adjustment under any other provision of law, rule, or regulation, apply the applicable rate adjustment provisions, treating the rate determined under paragraph (1) as if it were the rate last received by the employee before the rate adjustment.	
No similar provision	Sec. 301(a)(2)(H) would amend 5 U.S.C. §5305 by adding a new subsection (j) which would provide that a rate determined under a special rates schedule would be part of basic pay for purposes of civil service retirement, federal employees' retirement system, life insurance, premium pay, miscellaneous allowances, and for such other purposes as may be expressly provided for by law or as OPM could prescribe by regulation.	No similar provision

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
<p>Section 5305, note: Federal Law Enforcement Pay Reform Act of 1990. ... in the same manner as rates established under 5 U.S.C. §5305, as so amended, and may be increased in accordance with 5 U.S.C. §5305(f). [Sec. 403(c) of the Federal Employees Pay Comparability Act of 1990 (104 Stat. 1465; 5 U.S.C. §5305 note)]</p>	<p>Sec. 301(b), Special rates for law enforcement officers, would amend Sec. 403(c) by striking the current language and inserting: “and shall be basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General Schedule to maintain the step linkage set forth in subsection (b)(2).”</p>	<p>No similar provision</p>
<p>Sec. 5305, note: authorizes relocation payments for law enforcement officers. [Sec. 407 of the Federal Employees Pay Comparability Act of 1990 (104 Stat. 1467; 5 U.S.C. §5305 note)]</p>	<p>Sec. 101(b), Relocation payments, would repeal Sec. 407.</p>	<p>No similar provision</p>
<p>Section 5314. Positions at level III (Executive Schedule).</p>	<p>Sec. 302(b) would amend 5 U.S.C. §5314 by adding: “Administrator of the Office of Electronic Government.”</p>	<p>No similar provision</p>
<p>Section 5334. Rate on change of position or type of appointment; regulations. (Pay) Sec. 5334(b) covers employee entitlement to basic pay rates upon promotion or transfer to a higher grade.</p>	<p>Sec. 301(a)(3)(A) would amend 5 U.S.C. §5334(b), (A) by adding new text providing that if an employee’s rate after promotion or transfer is greater than the maximum rate of basic pay for his or her grade, that rate would be treated as a retained rate. OPM would prescribe regulations on the</p>	<p>No similar provision</p>

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	circumstances under which and the extent to which special rates or locality-adjusted rates would be considered to be basic pay in applying this subsection.	
No similar provision	Sec. 301(a)(3)(B) would amend 5 U.S.C. §5334, by adding a new subsection (g) providing that in the case of an employee who (1) moves to a new official duty station, and (2) by virtue of such move, becomes subject to a different pay schedule, any rate adjustment under the preceding provisions of this section, with respect to such employee in connection with such move, would be made (A) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the rate range) before the move, and (B) then, by applying the provisions of this section that would otherwise apply (if any), treating the rate determined under subparagraph (A) as if it were the rate last received by the employee before the rate adjustment.	No similar provision

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<p>Subchapter VI — Grade and Pay Retention.</p> <p>Section 5361. Definitions.</p> <p>(4) “Rate of basic pay” means, in the case of a prevailing rate employee, the scheduled rate of pay determined under 5 U.S.C. 5343.</p>	<p>Sec. 301(a)(4)(A) would amend 5 U.S.C. §5361 by amending paragraph (4) to provide that “rate of basic pay” would mean (A) the rate of basic pay payable to an employee under law or regulations before any deductions or additions of any kind, but including (i) any applicable locality-based comparability payment or (ii) any applicable special pay and (iii) subject to such regulations as OPM could prescribe, any applicable existing retained rate of pay; and (B) in the case of a prevailing rate employee, the scheduled rate of pay determined under 5 U.S.C. §5343.</p> <p>Sec. 301(a)(4)(D) would amend 5 U.S.C. §5361 by adding at the end the following: (8) “retained rate” would mean the rate of basic pay to which an employee is entitled under 5 U.S.C. §5363(b)(2).</p>	No similar provision
<p>Section 5363. Pay Retention.</p> <p>Sec. 5363(a), matter following paragraph (4): ... is entitled to basic pay at a rate equal to (A) the employee’s allowable former rate of basic pay, plus (B) 50 % of the amount of</p>	<p>Sec. 301(a)(5)(A) would amend 5 U.S.C. §5363(a) by striking the matter following paragraph (4) and inserting: “is entitled to a rate of basic pay in accordance with regulations prescribed by OPM in</p>	No similar provision

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each increase in the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay if such allowable former rate exceeds such maximum rate for such grade.	conformity with the provisions of this section.”	
Sec. 5363(b): For the purpose of subsection (a) of this section, “allowable former rate of basic pay” means the lower of — (1) the rate of basic pay payable to the employee immediately before the reduction in pay; or (2) 150 % of the maximum rate of basic pay payable for the grade of the employee's position immediately after such reduction in pay.	Sec. 301(a)(5)(B) would amend 5 U.S.C. §5363 by striking subsection (b) and inserting: “(b)(1)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is less than or equal to the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at the lowest rate of basic pay payable for such grade that equals or exceeds such former rate of basic pay. (B) This section shall cease to apply to an employee to whom subparagraph (A) applies once the appropriate rate of basic pay has been determined for such employee under this paragraph.” “(2)(A) If, as a result of any event described in subsection (a), the employee's former rate of basic pay is greater than the	No similar provision

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	<p>maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, the employee is entitled to basic pay at a rate equal to the lesser of (i) the employee's former rate of basic pay; or (ii) 150 percent of the maximum rate of basic pay payable for the grade of the employee's position immediately after the occurrence of the event involved, as adjusted by subparagraph (B). (B) A rate to which an employee is entitled under this paragraph shall be increased at the time of any increase in the maximum rate of basic pay payable for the grade of the employee's position by 50 percent of the dollar amount of each such increase."</p> <p>(3) "Former rate of basic pay," as used with respect to an employee in connection with an event described in subsection (a), would mean the rate of basic pay last received by such employee before the occurrence of such event.</p>	

Current Law	108th Congress Proposals	
U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
<p>Sec. 5363(c) provides that pay retention ceases to apply to an employee who has a break in service of one workday or more; is entitled to a basic pay rate which is equal to or higher than, or declines a reasonable offer of a position whose basic pay rate is equal to or higher than, the rate to which the employee is entitled under pay retention; or is demoted for personal cause or at the employee's request.</p>	<p>Sec. 301(a)(5)(B) would amend 5 U.S.C. §5363 by striking subsection (c) and inserting: “(c)(1) Notwithstanding any other provision of this section, in the case of an employee who (A) moves to a new official duty station, and (B) in conjunction with such move, becomes subject to both a different pay schedule and (disregarding this subsection) the preceding provisions of this section, this section shall be applied (i) first, by determining the rate of pay to which such employee would be entitled at the new official duty station based on such employee's position, grade, and step (or relative position in the pay range) before the move, and (ii) then, by applying the provisions of this section that would apply (if any), treating the rate determined under clause (i) as if it were the rate last received by the employee before the application of this section. (2) A reduction in an employee's rate of basic pay resulting from a determination under paragraph (1)(ii) is not a basis for an entitlement under this section. (3) The rate of basic pay for an employee who is receiving a retained rate at</p>	<p>No similar provision</p>

Current Law	108 th Congress Proposals	
U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
	the time of moving to a new official duty station at which different pay schedules apply shall be subject to regulations prescribed by OPM consistent with the purposes of this section.”	
No similar provision	Sec. 301(a)(5)(B) would add a new subsection (d) at 5 U.S.C. §5363 to provide that a retained rate would be considered part of basic pay for purposes of this subchapter and for purposes of civil service retirement, federal employees’ retirement system, life insurance, premium pay, miscellaneous allowances, and for such other purposes as could be expressly provided for by law or as OPM could prescribe by regulation. OPM would, for any purpose other than any of the purposes referred to in the preceding sentence, prescribe by regulation what constitutes basic pay for employees receiving a retained rate.	No similar provision
Sec. 5363(c) provides that pay retention ceases to apply to an employee who has a break in service of one workday or more; is entitled to a basic pay rate which is equal to	Sec. 301(a)(5)(B) would provide, at 5 U.S.C. §5363(e), that “This section shall not apply, or shall cease to apply, to an employee who (1) has a break in service of	No similar provision

Current Law	108 th Congress Proposals	
U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
or higher than, or declines a reasonable offer of a position whose basic pay rate is equal to or higher than, the rate to which the employee is entitled under pay retention; or is demoted for personal cause or at the employee's request.	1 workday or more; (2) is entitled, by operation of this subchapter, chapter 51 or 53, or any other provision of law, to a rate of basic pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic pay for which is equal to or higher than, the retained rate to which the employee would otherwise be entitled; or (3) is demoted for personal cause or at the employee's request."	
<p>Section 5365. Regulations. Authorizes OPM to prescribe regulations to administer grade and pay retention.</p>	<p>Sec. 301(a)(6) would amend 5 U.S.C. §5365(b) to provide that, under the regulations, OPM could provide for the application of all or portions of the provisions on grade and pay retention (subject to any conditions or limitations OPM could establish).</p>	No similar provision
No similar provision	<p>Sec. 301, Effective Date; Conversion Rules Sec. 301(d)(1) would provide that Section 301 would take effect on the first day of the first applicable pay period beginning on or after the 180th day after the act's enactment.</p>	No similar provision

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<p>Section 5361. Definitions. (5) “covered pay schedule” means the General Schedule, any prevailing rate schedule, or a special occupational pay system.</p>	<p>Sec. 301(d)(2) would provide for conversion rules. (A) Individuals receiving a retained rate or a rate greater than the maximum rate for the grade, Subject to any regulations OPM could prescribe, an employee under a covered pay schedule who, on the day before the effective date of this section, is receiving a retained rate under 5 U.S.C. §5363, or is receiving under similar authority a rate of basic pay that is greater than the maximum rate of basic pay payable for the grade of the employee’s position would have that rate converted as of the effective date of Section 301, and the employee would be considered to be receiving a retained rate under 5 U.S.C. §5363 (as amended by Section 301). The newly applicable retained rate would equal the formerly applicable retained rate as adjusted to include any applicable locality-based comparability payment. (B) “Covered pay schedule” would have the meaning given such term by 5 U.S.C. §5361.</p>	

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
<p>Section 5377. Pay Authority for Critical Positions.</p> <p>Sec. 5377(c) authorizes OMB, in consultation with OPM, to, upon the request of an agency head, grant authority to fix the basic pay rate for one or more positions in the agency in accordance with critical pay.</p>	<p>Sec. 102, Streamlined Critical Pay Authority</p> <p>Sec. 102(1) would amend 5 U.S.C. §5377(c) to provide that OPM, in consultation with OMB, would grant the authority.</p>	<p>Sec. 102, Streamlined Critical Pay Authority</p> <p>Same provision</p>
<p>Sec. 5377(e)(1) provides that the authority to fix the basic pay rate for a position terminates whenever OMB determines (in accordance with such procedures and subject to such terms or conditions as OMB regulations prescribe) that one or more of the requirements for critical pay are no longer met.</p>	<p>Sec. 102(2) would amend 5 U.S.C. §5377(e)(1) to substitute OPM for OMB.</p>	<p>Same provision</p>
<p>Sec. 5377(f) provides that OMB may not authorize the exercise of critical pay authority for more than 800 positions at any time, of which not more than 30 may at any time, be positions which would otherwise be paid on the Executive Schedule.</p>	<p>Sec. 102(2) would amend 5 U.S.C. §5377(f) to substitute OPM for OMB.</p>	<p>Same provision</p>

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<p>Sec. 5377(g) directs OMB to consult with OPM before prescribing regulations or making any decision to grant or terminate any critical pay authority.</p>	<p>Sec. 102(3) would amend 5 U.S.C. §5377(g) to provide that OPM would consult with OMB before making any decision to grant or terminate any critical pay authority. The language relating to prescribing regulations would be struck.</p>	<p>Same provision</p>
<p>Sec. 5377(h) authorizes OMB to report annually and in writing to the House Committee on Post Office and Civil Service and the Senate Committee on Governmental Affairs on the operation of critical pay.</p>	<p>Sec. 102(4) would amend 5 U.S.C. §5377(h) to substitute OPM for OMB and the House Committee on Government Reform for the House Committee on Post Office and Civil Service.</p>	<p>Same provision</p>
Chapter 55 — Pay Administration		
<p>No similar provision</p> <p>Section 5542. Overtime rates; computation. Sec. 5542(b)(2) provides that time spent in a travel status away from the official-duty station of an employee is not hours of</p>	<p>Sec. 203, Compensatory Time Off for Travel Sec. 203(a) would amend 5 U.S.C. Chapter 55, Subchapter V by adding a new Section 5550b at the end. Sec. 5550b, Compensatory time off for travel, would provide that (a) Notwithstanding 5 U.S.C. §5542(b)(2), each hour spent by an employee in travel status away from the his or her official duty station, that is not otherwise compensable, would be treated as an hour of work or</p>	<p>Sec. 203, Compensatory Time Off for Travel Sec. 203(a) would amend 5 U.S.C. Chapter 55, Subchapter V by adding a new Section 5550b at the end. Same provision</p>

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<p>employment unless — (A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or (B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions; or (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of the employee from the event to his or her official-duty station.</p>	<p>employment for purposes of calculating compensatory time off. (b) An employee who has any hours treated as hours of work or employment for purposes of calculating compensatory time would not be entitled to payment for any such hours that are unused as compensatory time. (c) OPM would prescribe implementing regulations not later than 30 days after enactment of the section.</p>	
Chapter 57 — Recruitment, Relocation, and Retention Bonuses		
<p>Section 5753. Recruitment and relocation bonuses.</p> <p>See 5 U.S.C. §5753(a) below. Sec. 5753(e) provides that the President, at the request of an executive agency head, may authorize application of the provisions to one</p>	<p>Sec. 101, Recruitment, Relocation, and Retention Bonuses Sec. 101(a) would amend 5 U.S.C. Chapter 57 by striking sections 5753 and 5754 and inserting the following.</p> <p>5 U.S.C. §5753, Recruitment and relocation bonuses Sec. 5753(a)(1) would provide that the section could be applied to (A) General</p>	<p>Sec. 101, Recruitment, Relocation, and Retention Bonuses Sec. 101(a) would amend 5 U.S.C. Chapter 57 by inserting after section 5754 the following.</p> <p>5 U.S.C. §5754a, Recruitment and relocation bonuses. (Provisions are the same as House version except as noted.) (A) Sec. 5754a(b)(2) Generally, a bonus</p>

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<p>or more categories of employees within the agency who would not otherwise be covered.</p> <p>Political appointees are eligible for recruitment and relocation bonuses.</p> <p>Sec. 5753(c)(1) defines “agency” and “employee” to mean the same as in 5 U.S.C. §5102.</p> <p>“Employee” means an individual employed in or under an agency.</p> <p>“Agency” means an executive agency, the Library of Congress, the Botanic Garden, the Government Printing Office, the Office of the Architect of the Capitol, and the government</p>	<p>Schedule employees; and (B) employees in a category approved by OPM at the request of an executive agency head.</p> <p>(a)(2) A bonus could not be paid to an individual who is appointed to or who holds (A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate; (B) a position in the SES as a noncareer appointee (as such term is defined under 5 U.S.C. §3132(a)); or (C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.</p> <p>(a)(3) “employee” would have the same meaning as in 5 U.S.C. §2105, including subsection (c) of that section. “Employee” would mean (except as otherwise provided by 5 U.S.C. §2105 or when specifically modified): an officer and an individual who is (1) appointed in the civil service by the President; Member(s) of Congress, or the Congress, a member of a uniformed service,</p>	<p>could be paid only to a GS employee. (B) Sec. 5754a(h)(1)</p> <p>(a)(2) Sec. 5754a(h)(2)</p> <p>Sec. 5754a(a)</p>

Current Law	108th Congress Proposals	
U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
<p>of the District of Columbia. It does not include a government controlled corporation; the Tennessee Valley Authority; the Central Intelligence Agency; the National Security Agency; the General Accounting Office; the Defense Intelligence Agency; the National Imagery and Mapping Agency.</p>	<p>an individual who is an employee under 5 U.S.C. §2105, the head of a government controlled corporation, or an adjutant general; (2) engaged in the performance of a federal function under authority of law or an executive act; and (3) subject to the supervision of an individual named under (1) above while engaged in the performance of the duties of his or her position. Certain individuals employed at the United States Naval Academy also are covered by the term (5 U.S.C. §2105). “Agency” would not be defined.</p>	
<p>Sec. 5753(a) provides that OPM may authorize an agency head to pay a bonus to an employee who is newly appointed to a General Schedule (GS) position, or to an employee under the GS or any other pay authority in the executive, legislative, or judicial branch who must relocate to accept a GS position, if OPM determines that the agency would be likely, in the absence of the bonus, to encounter difficulty in filling the position.</p>	<p>Sec. 5753(b) would amend 5 U.S.C. §5753(a) to provide that OPM could authorize an agency head to pay a bonus to an individual only if (1) the position to which the individual is appointed (as described in (2)(A) below) or to which he or she moves or must relocate (as described in (2)(B) below) is likely to be difficult to fill in the absence of such a bonus; and (2) the individual (A) is newly appointed as a federal employee; or (B)(i) is a current federal employee; and (ii)(I) moves to a</p>	<p>Sec. 5754a(b)(1) OPM could authorize an agency head to pay a bonus to an individual appointed or moved to a position that is likely to be difficult to fill in the absence of such a bonus, if the individual (A)(i) is newly appointed as a federal employee; or (ii) is currently a federal employee and moves to a new position in the same geographic area under circumstances described in OPM regulations; or (B) is a current federal employee and must relocate to accept a</p>

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	new position in the same geographic area under circumstances described in OPM regulations; or (II) must relocate to accept a position in a different geographic area.	position stationed in a different geographic area.
<p>Sec. 5753(b)(2) provides that payment of a bonus is contingent upon the employee entering into an agreement with the agency to complete a period of employment, with the required period determined by OPM regulations. If the employee voluntarily fails to complete the service period or is separated from service before completing the period for cause on misconduct or delinquency charges, the employee must repay the bonus on a pro rata basis.</p>	<p>Sec. 5753(c)(1) would amend 5 U.S.C. §5753(b) to provide that payment of a bonus would be contingent upon the employee entering into a written service agreement to complete a period of employment with the agency, not longer than four years. OPM, by regulation, could prescribe a minimum service period. (2)(A) The service agreement would include (i) the commencement and termination dates of the required service period (or provisions for the determination thereof); (ii) the amount of the bonus; (iii) the method of payment; and (iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and OPM regulations. (B) The terms and conditions for paying a bonus, as specified in the service agreement, would include (i) the conditions under which the agreement could be terminated before the agreed-upon</p>	<p>Sec. 5754a(c)</p> <p>(i) the length of the required service period</p>

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	service period has been completed; and (ii) the effect of the termination. (C) The required service period would commence upon the commencement of service with the agency or movement to a new geographic area, as applicable, unless the service agreement provides for a later commencement date in circumstances and to the extent allowable under OPM regulations, such as when there is an initial period of formal basic training.	(3) The agreement would be made effective upon employment with the agency or movement to a new position or geographic area, as applicable, except that a service agreement for a recruitment bonus could be made effective at a later date under circumstances described in OPM regulations, such as when there is an initial period of formal basic training.
<p>Sec. 5753(b)(1)(A) provides that the amount of a bonus is determined by OPM regulations, but cannot exceed 25% of the annual basic pay rate for the position to which the employee is being appointed or relocated.</p> <p>(b)(3) provides that a bonus must be paid as a lump sum and is not part of basic pay.</p>	<p>Sec. 5753(d)(1) would amend 5 U.S.C. §5753(b) to provide that, except as provided in (e) below, a bonus would not exceed 25% of the employee's annual basic pay rate at the beginning of the service period multiplied by the number of years (including a fractional part of a year, as determined under OPM regulations) in the required service period of the employee involved.</p> <p>(d)(2) A bonus could be paid as an initial lump sum, in installments, as a final lump sum upon completion of the full service</p>	<p>Sec. 5754a(d)(1) Except as provided in (e) below, a bonus would not exceed 25% of the employee's annual basic pay rate at the beginning of the service period multiplied by the number of years (or fractions thereof) in the service period, not to exceed four years.</p>

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<p>Sec. 5753(b)(1)(B) provides that basic pay does not include locality pay.</p> <p>Sec. 5753(b)(4) provides that a recruitment bonus may be paid before a newly hired employee enters on duty, under OPM regulations.</p>	<p>period required by the agreement, or in a combination of these.</p> <p>(d)(3) A bonus is not part of basic pay.</p> <p>The current 5 U.S.C. §5753(b)(1)(B) provision would not be provided.</p> <p>(d)(4) Under OPM regulations, a recruitment bonus could be paid to an eligible individual before he or she enters on duty.</p>	
No similar provision	<p>Sec. 5753(e) would add new text to provide that OPM, subject to regulations it prescribes, could authorize an agency head to waive the 25% limitation based on a critical agency need. Under a waiver, the maximum bonus allowable would (1) be equal to the maximum that would be determined if subsection (d)(1) were applied by substituting 50% for 25%; but (2) in no event exceed 100% of the employee's annual basic pay rate at the beginning of the service period.</p>	Sec. 5754a(e)

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	Nothing in this section would be considered to permit the waiver of any requirement under (c).	No similar provision
No similar provision	Sec. 5753(f) would add new text to provide that OPM, subject to regulations it prescribes, would require that agencies establish plans for paying recruitment and relocation bonuses before paying such bonuses.	Sec. 5754a(f)
Sec. 5753(d) authorizes OPM to prescribe regulations.	Sec. 5753(g) would provide that OPM could prescribe regulations to administer the section, including those related to repayment of a recruitment or relocation bonus in appropriate circumstances when the agreed-upon service period has not been completed.	Sec. 5754a(g)
No similar provision	Sec. 101(c), Reports Sec. 101(c)(1), Recruitment and relocation bonuses , (A) OPM would submit an annual report for each of the first five years on recruitment and relocation bonuses to the Senate Committee on Governmental Affairs and the House Committee on Government Reform.	Sec. 5754a(i)(1) OPM would submit an annual report on bonuses paid to the Senate Committee on Governmental Affairs and the House Committee on Government Reform. (2) Each report would include the use by each agency of recruitment and relocation bonuses, including, with respect to each agency and

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	(B) Each report would include a description of how the authority to pay recruitment and relocation bonuses was used by the respective agencies, including, with respect to each such agency and each type of bonus (i) the number and dollar amount of bonuses paid (I) to individuals holding positions within each pay grade, pay level, or other pay classification; and (II) if applicable, to individuals who moved between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and (ii) a determination of the extent to which such bonuses furthered the purposes of 5 U.S.C. 5753.	each type of bonus, the number and amount of bonuses by grade (including the General Schedule, SES, and Executive Schedule positions).
No similar provision	No similar provision	Sec. 5754a(j)(1)(2) An individual could not be paid a recruitment or relocation bonus under the proposed Section 5754a and a recruitment or relocation bonus under 5 U.S.C. §5753.

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<p>Section 5754. Retention allowances.</p> <p>Sec. 5754(a) authorizes allowances for GS employees.</p> <p>Sec. 5754(e): The President may authorize application of the Section to employees otherwise not covered.</p> <p>Political appointees are eligible for retention allowances.</p>	<p>Sec. 101, Recruitment, Relocation, and Retention Bonuses 5 U.S.C. §5754, Retention bonuses Sec. 5754(a)(1) would provide that the section could be applied to</p> <p>(A) General Schedule employees; and (B) employees in a category approved by OPM at the request of an executive agency head.</p> <p>(2) A bonus could not be paid to an individual who is appointed to or who holds (A) a position to which an individual is appointed by the President, by and with the advice and consent of the Senate; (B) a position in the SES as a noncareer appointee (as such term is defined under 5 U.S.C. §3132(a)); or (C) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.</p>	<p>Sec. 101, Recruitment, Relocation, and Retention Bonuses 5 U.S.C. §5754b, Retention bonuses Would amend Title 5 to create a new section 5754b to be inserted after proposed new section 5754a. (Provisions are the same as House version except as noted.)</p> <p>(A) Sec. 5754b(d) would provide that generally, a bonus could be paid only to a GS employee. (B) Sec. 5754b(j)(1)</p> <p>(2) Sec. 5754b(j)(2)</p>

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Sec. 5754(c)(1) defines “agency” and “employee” to mean the same as in 5 U.S.C. §5102. (See 5 U.S.C. §5753(c)(1) above.)	(3) “employee” would have the same meaning as in 5 U.S.C. §2105, including subsection (c) of that section. (See 5 U.S.C. §5753(a)(3) above.) “Agency” would not be defined.	Sec. 5754b(a)
Sec. 5754(a) provides that OPM may authorize an agency head to pay an allowance to a GS employee if (1) the employee’s unusually high or unique qualifications or the agency’s special need for the employee’s services makes it essential to retain the employee; and (2) the agency determines that the employee would be likely to leave in the absence of a retention allowance.	Sec. 5754(b) would amend 5 U.S.C. §5754(a) by renaming the allowances as bonuses and providing that OPM could authorize an agency head to pay a retention bonus if (1) the employee’s unusually high or unique qualifications or the agency’s special need for the employee’s services makes it essential to retain the employee; and (2) the agency determines that, in the absence of a bonus, the employee would be likely to leave (A) the federal service; or (B) for a different federal government position under conditions described in OPM regulations.	Sec. 5754b(b)
No similar provision	Sec. 5754(c) would add new text to provide that OPM could authorize an agency head to pay retention bonuses to a	Sec. 5754b(c)

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	group of employees in one or more categories of positions in one or more geographic areas, subject to subsection (b)(1) above and OPM regulations, if there is a high risk that a significant portion of employees in the group would be likely to leave in the absence of bonuses.	
No similar provision	Sec. 5754(d) would add new text to provide that (1) payment of a retention bonus would be contingent upon the employee entering into a written service agreement to complete a period of employment with the agency. (2)(A)The service agreement would include (i) the length of the required service period; (ii) the amount of the bonus; (iii) the method of payment; and (iv) other terms and conditions under which the bonus is payable, subject to the requirements of this section and OPM regulations. (B) The terms and conditions for paying a bonus, as specified in the service agreement, would include (i) the conditions under which the agreement could be terminated before the agreed-upon service period has been	Sec. 5754b(e)

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	<p>completed; and (ii) the effect of the termination. (3)(A) Notwithstanding (1), a written service agreement would not be required if the retention bonus is paid in biweekly installments with the payment set at the full bonus percentage rate established for the employee with no portion of the bonus deferred. (B) In this case, if the agency makes a determination to terminate the payments, the agency would provide written notice to the employee of that determination. Except as provided in OPM regulations, the employee would continue to be paid the retention bonus through the end of the pay period in which the notice is provided. (4) A retention bonus could not be based on any period of service which is the basis for a recruitment or relocation bonus.</p>	
<p>Sec. 5754(b)(1) limits a retention allowance to 25% of basic pay (excluding locality pay).</p>	<p>Sec. 5754(e)(1) would provide that, except as provided in (f) below, a retention bonus would be stated as a percentage of the employee's basic pay for the service period associated with the bonus, and could not exceed (A) 25% of the employee's basic</p>	<p>Sec. 5754b(f)</p>

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
	<p>pay if paid to the employee individually or (B) 10% of the employee's basic pay if paid to the employee as part of a group. (2)(A) A bonus could be paid in installments after completion of specified periods of service or in a single lump sum at the end of the full period of service required by the agreement. (B) An installment payment would be derived by multiplying the amount of basic pay earned in the installment period by a percentage not to exceed the bonus percentage rate established for the employee. (C) If the installment payment percentage established for the employee is less than the bonus percentage rate established for the employee, the accrued but unpaid portion of the bonus is payable as part of the final installment payment to the employee after completion of the full service period under the terms of the service agreement. (D) The bonus percentage rate established for an employee would mean the bonus percentage rate established in accordance with (e)(1) or (f) below, as the case may be.</p>	<p>(D) No similar provision</p>

Current Law	108 th Congress Proposals	
U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
<p>Sec. 5754(b)(2) provides that a retention allowance is not part of basic pay and its reduction or elimination is not appealable.</p> <p>Sec. 5754(b)(3) provides that a retention allowance is paid at the same time and in the same manner as basic pay.</p>	<p>(3) A retention bonus would not be part of basic pay. Would delete current law provision on lack of appeal.</p>	
No similar provision	<p>Sec. 101(a)(1) would add new text at 5 U.S.C. §5754(f) to provide that OPM, upon request of an agency head, could waive the 25% or 10% limitations and permit the agency head to pay bonuses of up to 50% of basic pay, based on a critical agency need, to otherwise eligible employees or categories of employees.</p>	Sec. 5754b(g)
No similar provision	<p>Sec. 101(a)(1) would add new text at 5 U.S.C. §5754(g) to provide that OPM, subject to regulations it prescribes, would require that agencies establish a plan for paying retention bonuses before paying such bonuses.</p>	Sec. 5754b(h)

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Sec. 5754(d) authorizes OPM to prescribe regulations.	Sec. 101(a)(1) would place text at 5 U.S.C. §5754(h) to provide that OPM could prescribe regulations to administer the section.	Sec. 5754b(i)
No similar provision	Sec. 101(a)(3), Sense of Congress , would provide that it is the sense of Congress that the OPM Director (A) should, each time a bonus is paid to recruit or relocate a federal employee from one government agency to another within the same geographic area or to retain a federal employee who might otherwise leave one government agency for another within the same geographic area, be notified of that payment within 60 days after the date on which the bonus is paid; and (B) should monitor the payment of such bonuses (in the circumstances described in paragraph (A)) to ensure that they are an effective use of the federal government's funds and have not adversely affected the ability of those government agencies that lost employees to other government agencies (in such circumstances) to carry out their mission.	No similar provision

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No similar provision	<p>Sec. 101(c), Reports</p> <p>Sec. 101(c)(2), Retention bonuses, (A) OPM would submit an annual report for each of the first five years on retention bonuses to the Senate Committee on Governmental Affairs and the House Committee on Government Reform. (B) Each report would include a description of how the authority to pay retention bonuses was used by the respective agencies, including, with respect to each such agency (i) the number and dollar amount of bonuses paid (I) to individuals holding positions within each pay grade, pay level, or other pay classification; and (II) if applicable, to prevent individuals from moving between positions that were in different agencies but the same geographic area (including the names of the agencies involved); and (ii) a determination of the extent to which such bonuses furthered the purposes of 5 U.S.C. 5754.</p>	<p>Sec. 5754b(k)(1) OPM would submit an annual report on bonuses paid to the Senate Committee on Governmental Affairs and the House Committee on Government Reform. (2) Each report would include the use by each agency of retention bonuses, including, with respect to each agency, the number and amount of bonuses by grade (including the General Schedule, SES, and Executive Schedule positions).</p>

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
No similar provision	No similar provision	Sec. 5754b(1) An employee could not be paid a retention bonus under the proposed Section 5754b and a retention allowance under 5 U.S.C. §5754.
No similar provision	Sec. 101(d)(1), Effective date , would provide that, except as stated immediately below, Section 101 would take effect on the first day of the first applicable pay period beginning on or after the 180 th day after the act's enactment.	Sec. 101(b), Effective date and application , would provide that the proposed Section 101 would be effective on the first day of the first applicable pay period beginning on or after 180 days after the act's enactment.
No similar provision	<p>Sec. 101(d)(2), Application to agreements, would provide that a recruitment or relocation bonus service agreement that was authorized under 5 U.S.C. §5753 before the effective date stated immediately above, would continue, until its expiration, to be subject to 5 U.S.C. §5753 as in effect on the day before such effective date.</p> <p>Sec. 101(d)(3), Application to allowances, would provide that payment of a retention allowance that was authorized under 5 U.S.C. §5754 before the effective date stated above, would continue to be</p>	<p>No similar provision</p> <p>No similar provision</p>

Current Law	108 th Congress Proposals	
<p align="center">U.S. Code (Title 5, unless otherwise noted)</p>	<p>Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives</p>	<p>Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate</p>
	<p>subject to 5 U.S.C. §5754 as in effect on the day before such effective date, until the retention allowance is reauthorized or terminated (but no longer than one year after such effective date).</p>	
Chapter 63 — Leave		
<p>Section 6303. Annual leave; accrual. No similar provision</p>	<p>Sec. 202, Annual Leave Enhancements Sec. 202(a), Creditability of prior nongovernmental service for purposes of determining rate of leave accrual, would amend 5 U.S.C. §6303 by (1) adding a new paragraph (e) to provide that (1) Not later than 180 days after this subsection’s enactment, OPM would prescribe regulations under which, for purposes of determining years of service under subsection (a), credit would, in the case of a newly appointed employee, be given for any prior service of such employee that would not otherwise be creditable for such purposes if (A) such service (i) was performed in a position the duties of which directly relate to the duties of the position to which such employee is so appointed; and</p>	<p>Sec. 202, Annual Leave Enhancements Sec. 202(a), Accrual of leave for newly hired federal employees with qualified experience, would amend 5 U.S.C. §6303 by (1) adding a new paragraph (e)(1) to provide that “period of qualified non-federal career experience” would mean any equal period of service performed by an individual that, (A) except for this subsection, would not otherwise be service performed by an employee for purposes of annual leave accrual; and (B) was performed in a position (i) the duties of which were directly related to the duties of the position in an agency that the individual holds and (ii) which meets such other conditions as OPM would prescribe by regulation.</p>

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
<p>Section 6303. Annual leave; accrual. provides for calculation of annual leave accrued</p>	<p>(ii) meets such other requirements as OPM may prescribe; and (B) in the judgment of the head of the appointing agency, the application of this subsection is necessary in order to achieve an important agency mission or performance goal.</p> <p>(2) Service described in (1) above, (A) would be creditable, for the purposes described in (1), as of the effective date of the employee's appointment; and (B) would not thereafter cease to be so creditable unless the employee fails to complete a full year of continuous service with the agency.</p> <p>(3) An employee would not be eligible for the application of paragraph (1) on the basis of any appointment if, within 90 days before the effective date of the appointment, he or she has held any position in the civil service.</p> <p>Sec. 202(a)(2) would amend the second sentence of 5 U.S.C. §6303(a) by striking the period and inserting “,and for all service which is creditable by virtue of subsection (e).”</p>	<p>(e)(2) For purpose of annual leave accrual, an agency head could deem a period of qualified non-federal career experience performed by an individual to be a period of service performed as an employee.</p> <p>(2) This section would take effect 120 days after the act's enactment and would apply only to an individual hired on or after the effective date.</p> <p>No similar provision</p>

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U.S. Code (Title 5, unless otherwise noted)	Federal Workforce Flexibility Act of 2004: S. 129, as ordered to be reported to the House of Representatives	Federal Workforce Flexibility Act of 2003: S. 129, as passed by the Senate
<p>Section 6303. Annual leave; accrual. Only employees who have at least 15 years of service accrue one day of annual leave for each full biweekly pay period.</p>	<p>Sec. 202(b), Other annual leave enhancements, would amend 5 U.S.C. §6303 by adding after (e) (as added by Sec. 202(a)(1)) a new paragraph (f) which would provide that notwithstanding any other provision of this section, the rate of accrual of annual leave under subsection (a) would be 1 day for each full biweekly pay period in the case of any employee who holds positions classified above GS-15 or in scientific or professional positions established under 5 U.S.C. §3104, members of the Senior Executive Service, and employees in an equivalent category, as determined by OPM.</p> <p>Sec. 202(c), Applicability, would provide that none of the amendments made by Sec. 202(a) would apply in the case of any employee holding a position pursuant to an appointment made before the effective date of the regulations implementing such amendments.</p>	<p>Sec. 202(b), Senior Executive Service annual leave enhancements, would amend 5 U.S.C. §6303(a) by (1) adding a paragraph (4) to provide the following. Employees in positions classified above GS-15 or in scientific or professional positions established under 5 U.S.C. §3104, members of the Senior Executive Service, and employees in an equivalent category for which the minimum rate of basic pay is greater than GS-15, step 10, could accrue one day of annual leave for each full biweekly pay period. (2) OPM would prescribe implementing regulations not later than 120 days after the act's enactment. (3) The provision in paragraph 1 would take effect 120 days after the act's enactment.</p> <p>No similar provision</p>

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Chapter 83 — Civil Service Retirement System; and Chapter 84 — Federal Employees' Retirement System		
<p>Employees covered by CSRS who work part-time can experience disproportionately large cuts in their retirement annuities as the result of a regulation adopted by OPM in response to the <i>Comprehensive Omnibus Budget Reconciliation Act of 1986</i> (P.L. 99-272). This law requires retirement annuities for a federal worker whose career includes part-time employment to be based on the rate of pay that would be paid for full-time service, with the employee's service time prorated for the actual number of hours worked. In its regulation, however, OPM adopted an interpretation of this statute that also applies a lower rate of pay than would be applied if these individuals had worked full-time for their entire careers.</p>	<p>Section 211, Civil Service Retirement System Computation for Part-Time Service</p> <p>Sec. 211 would amend 5 U.S.C. §8339 to clarify that CSRS retirement annuities based in whole or in part on part-time service are to be prorated only for the period of service that was performed on a part-time basis.</p>	<p>Same provision at Sec. 103.</p>
<p>Prior military service of a civilian federal employee is creditable under CSRS or FERS provided that a required deposit is made to the Civil Service Retirement and Disability Fund. (5 U.S.C. §8331(13) and 5 U.S.C. §8401(31)).</p>	<p>Section 212, Retirement Service Credit for Cadet or Midshipman Service</p> <p>Sec. 212 of the bill would amend 5 U.S.C. §8331(13) and 5 U.S.C. §8401(31) to include service as a cadet at the U.S. Military Academy, the U.S. Air Force Academy, or the U.S. Coast Guard Academy, or as a midshipman at the U.S.</p>	<p>Same provision at Sec. 104.</p>

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	Naval Academy in the definition of military service that can be creditable under CSRS or FERS.	
Title 3 — The President		
Chapter 2 — Office and Compensation of President		
<p>Section 107. Domestic Policy Staff and Office of Administration; personnel.</p> <p>Subsection (b)(2) authorizes the President, or his designee, to employ individuals in the Office of Administration in accordance with the general authority to employ (5 U.S.C. §3101) and related provisions. Any individual so employed is subject to the limitation specified in 3 U.S.C. §114.</p>	No similar provision	<p>Sec. 105, Senior Executive Service Authority for White House Office of Administration</p> <p>Subsection (1) would amend 3 U.S.C. §107(b) by extending the President’s authority to include the employment of senior executives. Employment of senior executives would be carried out in accordance with 5 U.S.C. §3132 and related provisions. Any permanent Senior Executive Service (SES) positions established under this provision would be career reserved positions.</p>
<p>Section 114. General pay limitation.</p> <p>Notwithstanding any provision of law, other than the provisions of this chapter, no employee of the Vice President appointed under 3 U.S.C. §106, the White House Office, the Executive Residence at the White House, the Domestic Policy Staff, or the Office of</p>	No similar provision	<p>Sec. 105, Senior Executive Service Authority for White House Office of Administration</p> <p>Subsection (2) would amend 3 U.S.C. §114, changing the limitation on basic pay to the maximum rate of basic pay currently paid for GS-15 of the General Schedule</p>

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<p>Administration may be paid a rate of basic pay that exceeds the minimum rate of basic pay for GS-16 of the General Schedule. Under 5 U.S.C. §5376, a GS-16 is a senior-level position for which basic pay may be set at a rate no less than 120% of GS-15, step 1, and not greater than level IV of the Executive Schedule.</p>		<p>and stating that this limitation would not apply to any senior executives appointed by the President under the authority in 3 U.S.C. §107(b)(2).</p>