

CRS Report for Congress

Civil Service Reform – H.R. 1836, Homeland Security Act, and Current Law

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Civil Service Reform – H.R. 1836, Homeland Security Act, and Current Law

Summary

The House Government Reform Committee, on May 8, 2003, ordered a bill, that would significantly change the system for managing civilian personnel within the Department of Defense (DOD) and the National Aeronautics and Space Administration (NASA), to be reported. If passed, H.R. 1836 would also change the compensation system for Senior Executive Service members throughout the government and make other general systemic changes with regard to human resources management.

In April 2003, DOD General Counsel, William Haynes, sent Congress a significant reform proposal packaged as the “Defense Transformation for the 21st Century Act.” Among the changes proposed would be establishing a chapter within Title 5 of the U.S. Code which would govern personnel management provisions unique to DOD. H.R. 1836 incorporates most of these provisions. Some of the provisions have been included in the House or Senate versions of FY2004 Defense Authorizations (H.R. 1588, S. 1050). In particular, H.R. 1588, as reported, incorporates Title I and most of Title II of H.R. 1836, as reported.

The Homeland Security Act of 2002 (P.L. 107-296, H.R. 5005) provides that the Secretary of Homeland Security and the Director of the Office of Personnel Management will work together to develop a system of personnel management unique to the Department of Homeland Security (DHS). It also provides for some government-wide changes in workforce management. The system is under development.

Representative Tom Davis, Chairman of the House Committee on Government Reform introduced H.R. 1836, to be known as the “Civil Service and National Security Personnel Improvement Act.” The bill, by making changes in selected federal personnel management statutory provisions, is intended to improve the flexibility and competitiveness of federal human resources management. Defense authorization measures S.297, as introduced, S. 1050, as reported, and H.R. 1588, as reported, echo many of the government-wide provisions of Title II of H.R. 1836. Provisions similar to those affecting NASA and the Securities and Exchange Commission (SEC) are also in H.R. 1085, S. 610, and H.R. 658. Overall, these proposals would grant agency heads more flexibility with respect to hiring, disciplining, and compensating civilian personnel. Some would argue that the most significant of these changes would relate to compensation. In each case, it is presumed that some form of pay banding would result.

The purpose of this report is to present, in tabular format, the alignment of H.R. 1836 with current statutory provisions and with those sections of the Homeland Security Act of 2002 related to personnel management and unique to the Department of Homeland Security. If H.R. 1836 or similar human capital legislation were to be enacted, there would be four chapters in Title 5 of the U.S. Code which established personnel provisions and flexibilities unique to specific agencies: Internal Revenue Service, DHS, DOD, and NASA.

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Civil Service Reform – H.R. 1836, Homeland Security Act, and Current Law

Introduction

In April 2003, the Department of Defense (DOD) sent Congress a proposal entitled the “Defense Transformation for the 21st Century Act.”¹ The proposal is principally directed to changes in the uniformed military personnel and acquisition systems. However, it also would change the statutory bases for much of the civilian personnel system. Policies related to general employment rules, compensation, and post retirement re-employment would be affected. H.R. 1588 has been reported from the House Committee on Armed Services² incorporating most of the transformation proposal provisions. DOD employs approximately 25% of the total federal civilian workforce.³

The Homeland Security Act of 2002⁴ provides that the Secretary of Homeland Security and the Director of the Office of Personnel Management will jointly develop a system of personnel management unique to the Department of Homeland Security (DHS). It also provides for some government-wide changes in workforce management. The system is under development.⁵ DHS employs approximately 6.3% of the total federal civilian workforce.⁶

Representative Tom Davis, Chairman of the House Committee on Government Reform, has introduced legislation (H.R. 1836) titled “Civil Service and National Security Personnel Improvement Act.” The bill, by making changes in selected federal personnel management statutory provisions, is intended to improve the

¹ The text of the DOD proposal can be accessed at [<http://www.defenselink.mil/dodgc/lrs/docs/Transformation.pdf>], visited May 6, 2003.

² U.S. Congress, House, Committee on Armed Services, H.Rept. 108-106 (other publication data unavailable). See also, CRS Report RL31916, *Defense Department Transformation Proposal: Side by Side with Current Law*, by Robert L. Goldich, Gary J. Pagliano, Barbara L. Schwemle, and Thomas J. Nicola.

³ U.S. Office of Personnel Management, *Federal Civilian Workforce Statistics – Employment and Trends as of March 2002*. Available at [<http://www.opm.gov/feddata/index.asp>], visited May 19, 2003.

⁴ P.L. 107-296, H.R. 5005; Nov. 25, 2002; 116 Stat. 2135-2321.

⁵ For further narrative analysis of the Department of Homeland Security personnel provisions, see CRS Report 31500, *Homeland Security: Human Resources Management*, by Barbara L. Schwemle.

⁶ *Employment and Trends, March 2002* does not provide DHS numbers. It is estimated that DHS will be staffed by 170,000 federal civilian employees.

flexibility and competitiveness of federal human resources management. In addition to the civilian personnel provisions from the DOD proposal, it would make significant changes in the personnel management system at the National Aeronautics and Space Administration (NASA), with limited amendments to the system at the Securities and Exchange Commission (SEC). H.R. 1836 was ordered to be reported by the House Government Reform Committee on May 8, 2003.

A preliminary reading of H.R. 1588, as reported, shows that Title I of H.R. 1836 has been incorporated. One difference is that at the proposed new 5 U.S.C. 9902(j) in H.R. 1588, Section 1111 would specify that the hiring flexibility authorities the secretary could exercise would be those under 5 U.S.C. 4703(a)(1), (3), and (8). H.R. 1836, as reported, identified the authorities as hiring flexibilities under Chapter 47 as a whole. Two sections included in Title II of H.R. 1836, as reported, appear not to have been incorporated. Those are H.R. 1836, Section 202, "Civil Service Retirement System computation for part-time service" and H.R. 1836, Section 212, "Nonreduction in pay while Federal employee is serving on active duty in a reserve component of the uniformed services."

Two proposals, entitled the "Federal Workforce Flexibility Act of 2003," have also been introduced in the 108th Congress by Senator George Voinovich (S. 129) and Representative JoAnn Davis (H.R. 1601). They contain several of the government-wide provisions of the proposed "Federal Workforce Improvement Act of 2002" (S. 2651, 107th Congress) which were not enacted as part of the Homeland Security Act of 2002. These bills would amend current law provisions on personnel management demonstration projects; recruitment, relocation, and retention bonuses; critical pay; civil service retirement system computation for part-time service; pay administration; agency training; and annual leave. Although some provisions correspond to provisions in the newer proposals, for example, part-time service computation for retirement, there has been no effort to incorporate these provisions into this report.⁷

The purpose of this report is to present, in tabular format, the alignment of the provisions of H.R. 1836 with current statutory provisions and with those sections of the Homeland Security Act of 2002 related to personnel management and unique to the Department of Homeland Security. If H.R. 1836 or similar human capital legislation were enacted, there would be four chapters in Title 5 of the U.S. Code which established personnel provisions and flexibilities unique to specific agencies (the Internal Revenue Service, DHS, NASA, and DOD). Contributors to this report are L. Elaine Halchin, Jon Shimabukuro, Patrick Purcell, Jack Maskell, Bob Lyke, and Sharon Gressle.

The report is keyed off H.R. 1836. The other columns are current law, which is Title 5 U.S. Code, unless otherwise noted, and related personnel provisions, under P.L. 107-296, unique to DHS. Because H.R. 1588, as reported, incorporates significant sections of H.R. 1836, the H.R. 1588 (as reported) sections are denoted in bold where appropriate. The provisions are similar, if not identical.

⁷ For a comparison of the proposals in S. 129 and H.R. 1601, see CRS Report RL31516, *Civil Service Reform Proposals: A Side-by-Side Comparison of S. 129 and H.R. 1601 (108th Congress) with Current Law*, by Barbara L. Schwemle and L. Elaine Halchin.

Given the scope of the proposed legislation, the authors and other contributors have, in this first look, set out the basic provisions, hoping to provide the readers with a type of roadmap to the bill. The reader should understand that every effort has been made to be comprehensive in identifying statutes currently in effect which would relate to the proposed changes in policy. However, there may be related statutory provisions that we have not identified.

H.R. 1836, As Ordered to Be Reported, Compared to Current Law and Homeland Security Act

H.R. 1836, the Civil Service and National Security Personnel Improvement Act	Current Law	Homeland Security Act of 2002 P.L. 107-296
Sec. 1. Short title: "Civil Service and National Security Personnel Improvement Act."		
Title I – Department of Defense National Security Personnel System		
Sec. 101. Short title: "National Security Personnel System Act."		
Sec. 102 - Department of Defense (DOD) National Security Personnel System. [H.R. 1588, Sec. 1111] (a) In General. Would amend 5 U.S.C. Part III, Subpart I by adding New Title 5, Chapter 99 – Department of Defense National Security Personnel System	No similar provision	Sec. 841 of P.L. 107-296 - Establishment of Human Resources Management System. Amended 5 U.S.C. Part III, Subpart I by adding a new Chapter 97- Department of Homeland Security
New 5 U.S.C. 9901 - Definitions. The term "Director" means the Director of the Office of Personnel Management; the term "Secretary" means the Secretary of Defense.	No similar provision	No similar provision
New 5 U.S.C. 9902. Establishment of human resources management system	No similar provision	5 U.S.C. 9701 - Establishment of human resources management system.

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H.R. 1836, the Civil Service and National Security Personnel Improvement Act	Current Law	Homeland Security Act of 2002 P.L. 107-296
hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing; (B) any provision of 5 U.S.C. 2302 relating to prohibited personnel practices; (C)(i) any provision of law referred to in 5 U.S.C. 2302(b)(1), (8), and (9); or (ii) any provision of law implementing any provision of law referred to in 5 U.S.C. 2302(b)(1), (8), and (9) by (I) providing for equal employment opportunity through affirmative action; or (II) providing any right or remedy available to any employee or applicant for employment in the public service; (D) any other provision of 5 U.S.C. Part III (as described in subsection (c)); or (E) any rule or regulation prescribed under any provision of law referred to in this paragraph; (4) ensure that employees could organize, bargain collectively as provided for in Chapter 99, and participate through labor organizations of their own choosing in decisions which affect them, subject to the provisions of Chapter 99 and any exclusion from coverage or limitation on negotiability established pursuant to law; (5) not be limited by any specific law or authority under Title 5 that is waivable under Chapter 99 or by any provision of Chapter 99 or any rule or regulation prescribed under Title 5 that is waivable under Chapter 99, except as specifically provided for in this section; and (6) include a performance management system that	waived, modified, or otherwise affected are 5 U.S.C. 2301 – Merit System Principles 5 U.S.C. 2302 – Prohibited Personnel Practices	uses “civil service” instead of “public service” does not include “subject to the provisions of Chapter 99” (5) not included; (5) in the DHS Act permits category rating system

H.R. 1836, the Civil Service and National Security Personnel Improvement Act	Current Law	Homeland Security Act of 2002 P.L. 107-296
incorporates the following elements: (A) adherence to merit principles set forth in 5 U.S.C. 2301; (B) a fair, credible, and transparent employee performance appraisal system; (C) a link between the performance management system and the agency's strategic plan; (D) a means for ensuring employee involvement in the design and implementation of the system; (E) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system; (F) a process for ensuring ongoing performance feedback and dialogue between managers, supervisors, and employees throughout the appraisal period, and setting timetables for review; (G) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and (H) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.		
New 5 U.S.C. 9902(c) Other Nonwaivable Provisions. The other provisions of this part referred to in subsection (b)(3)(D) are (to the extent not otherwise specified in this title)–(1) Subparts A, B, E, G, and H of 5 U.S.C. Part III; and Chapters 41, 45, 47, 55 (except Subchapter V thereof), 57, 59, 72, 73, and 79, and this chapter [Chapter 99].	Other protected Title 5 provisions would be: (1) Part III – Employees (table of contents of Part III precedes 5 U.S.C. 2101) Subpart A – General Provisions Subpart B – Employment and Retention Subpart E – Attendance and Leave Subpart G – Insurance and Annuities Subpart H – Access to Criminal History Information	5 U.S.C. 9701(c) – Other Nonwaivable Provisions. Same, except that Chapter 55 Subchapter V – Premium Pay also is nonwaivable at DHS, as is Chapter 97 – Department of Homeland Security.

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H.R. 1836, the Civil Service and National Security Personnel Improvement Act	Current Law	Homeland Security Act of 2002 P.L. 107-296
	(2) 5 U.S.C. Chapters 41 – Training 45 – Awards for Superior Accomplishments 47 – Personnel Research Programs and Demonstration Projects 55 – Pay Administration (Subchapter V is Premium Pay) 57 – Travel, Transportation, and Subsistence 59 – Allowances 72 – Anti-discrimination; Right to Petition Congress 73 – Employees’ Right to Petition Congress 79 – Services to Employees waiver	
New 5 U.S.C. 9902(d) – Limitations Relating to Pay (1) Nothing in this section would constitute authority to modify the pay of any employee who serves in an Executive Schedule position under 5 U.S.C. Chapter 53, Subchapter II. (2) Except as provided for in (1), the total amount in a calendar year of allowances, differentials, bonuses, awards, or other similar cash payments paid under Title 5 to any employee who is paid under 5 U.S.C. 5376 or 5383 or under Title 10 or under other comparable pay authority established for payment of Department of	Title 5, Chapter 53 (Pay Rates and Systems), Subchapter II (Executive Schedule Pay Rates) Same, except for “under title 10”; 5 U.S.C. 5307 - Limitation on certain payments caps total pay, including all cash payments such as allowances and awards to the annual rate of basic pay for level I of the Executive	5 U.S.C. 9701(d) Limitations Relating to Pay. Nothing in this section constitutes authority (1) Same, except that it adds “or a position for which the rate of basic pay is fixed in statute by reference to a section or level under 5 U.S.C. Chapter 53, Subchapter II,” (2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under 5 U.S.C. 5307 - Limitations on certain payments in a year; or

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Defense senior executive or equivalent employees could not exceed the total annual compensation payable to the Vice President.	Schedule (\$171,900 in 2003); however, for those paid under 5 U.S.C. 5376 – Pay for certain senior level positions (including those classified above GS-15, scientific and professional positions under 5 U.S.C. 3104, and SES); or 5 U.S.C. 5383 – Setting individual senior executive pay, the cap is the total compensation payable to the Vice President under 3 U.S.C. 104 – Salary of the Vice President (\$198,600) 10 U.S.C. 1603 Basic pay (Defense Intelligence Senior Executive Service and Intelligence Senior Level positions)	(3) to exempt any employee from the application of 5 U.S.C. 5307. The cap for positions under 5 U.S.C. 5376 and 5383 was raised from level I of the Executive Schedule to the total compensation of the Vice President by Sec. 1322 of P.L. 107-296.
New 5 U.S.C. 9902(e) – Provisions to Ensure Collaboration with Employee Representatives The secretary and OPM director would be required to provide a written description of the proposed human resources management system or adjustments to such system to employee representatives. The representatives would be given at least 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal. These recommendations would have to be given full and fair consideration. The secretary and director would notify Congress of those parts of the proposal for which recommendations were	No similar provision concerning collaboration and development of a new human resources management system, but labor organizations having national consultation rights in connection with any agency must be informed of any substantive change in conditions of employment proposed by an agency, and must be permitted reasonable time to present their views and recommendations regarding changes. <i>See</i> 5 U.S.C. 7113 –National consultation rights.	5 U.S.C. 9701(e) Same as DOD proposal, except that the DHS Secretary is not granted authority to engage in collaborative activities at a national organizational level above the level of exclusive recognition. Moreover, DHS collaboration procedures must ensure—(1) in the case of individuals in a labor organization that has been accorded exclusive recognition, representation by individuals designated by or from such organization; (2) in the case of individuals not within a bargaining unit, representation by an organization which

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made but not accepted. They also would be required to meet and confer with employee representatives for not less than 30 calendar days to attempt to reach agreement on whether and how to proceed with those parts of the proposal for which recommendations were not accepted. The secretary or a majority of the employees representatives participating in the consultation could use the services of the Federal Mediation and Conciliation Service to assist with the discussions. After 30 calendar days following notification and consultation, the secretary could implement any or all of the disputed parts if it was determined that further consultation and mediation would be unlikely to produce agreement. The secretary and director would develop a method for employee representatives to participate in any further planning or development if a proposal was implemented. Any procedures necessary to facilitate collaboration would be established as internal rules of department procedure not subject to review.	5 U.S.C. 553 - Rule making -- waives <i>Federal Register</i> notice and comment procedures for internal agency rules of procedure. 5 U.S.C. 7103(b) - Definitions; application authorizes the President to issue an order excluding an agency or subdivision thereof if	represents a substantial number; (3) fair and expeditious handling of the consultation and mediation process, including procedures by which, if the number of employee representatives exceeds 5, for representatives to select a committee to meet and confer with the secretary and Director of OPM; and (4) selection of representatives in a manner consistent with the relative number of employees represented by organizations or other representatives involved. Title 5, chapter 71 - Labor-Management and Employee Relations is subject to waiver or adjustment in developing a new human resources management system. <i>See also</i> 5 U.S.C. 9701(g) - Establishment of Human Resources Management System - Provisions Relating to Labor-Management Relations, which provides that nothing in the new section shall be construed as conferring authority on the Secretary to modify any provisions of section 842 - Labor- Management Relations of P.L. 107-296. Sec. 642 grants some measure of protection to agencies, bargaining units, and individuals from

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	the President determines that either has as a primary function intelligence, counter-intelligence, or national security work and that Chapter 71 procedures cannot be applied consistent with national security. The President may issue an order with respect to any agency, installation, or activity located outside the 50 states and D.C. if the President determines the suspension necessary in the interest of national security.	exclusion from coverage of Title 5 Chapter 71- Labor Management and Employee Relations unless missions change to intelligence, counterintelligence, or investigating terrorism; and Sec. 1512 of P.L. 107-296 - Savings Provisions, which states that completed administrative actions, including contracts, of an agency affected by the DHS Act shall not be affected by enactment of the Act, and, except as otherwise provided in the Act, transfer of personnel does not alter the terms and conditions of employment, including compensation, of any transferred employee.
New 5 U.S.C. 9902(f) – Provisions Regarding National Level Bargaining Any human resources management system implemented or modified under the new Title 5, Chapter 99 could include DOD employees from any bargaining unit with respect to which a labor organization was accorded exclusive recognition. For any such bargaining unit, the secretary could bargain at a level above the level of exclusive recognition. Such bargaining would be binding on all subordinate bargaining units and DOD and its subcomponents; it would supersede all other collective bargaining	No similar provision with respect to national level bargaining, <i>but see</i> 5 U.S.C. 7111 - Exclusive recognition of labor organizations, and 5 U.S.C. 7114 - Representation rights and duties	No similar provision, but Title 5, Chapter 71 - Labor-Management and Employee Relations is subject to waiver or adjustment in developing a human resources management system.

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agreements, except as otherwise determined by the secretary; would not be subject to further negotiations for any purpose, except as provided for by the secretary; and would not be subject to review or statutory third-party dispute resolution procedures outside DOD, except as otherwise provided in the new Chapter 99.	5 U.S.C. 7105 - Powers and duties of the [Federal Labor Relations] Authority	
New 5 U.S.C. 9902(g) - Provisions Relating to Appellate Procedures. (1) Directs the secretary to (A) establish an appeals process which provides that DOD employees are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and (B) in prescribing regulations for any such appeals process the secretary would be required to (i) ensure that DOD employees are afforded the protections of due process; and (ii) toward that end, would have to consult with the Merit Systems Protection Board before issuing any such regulations. (2) Any regulations establishing the appeals process (1) that relate to any matters within the purview of Chapter 77 - Appellate Procedures would have to (A) provide for an independent review panel, appointed by the President, not including the secretary or assistant secretary or their subordinates; (B) be issued only after (i) notifying the appropriate congressional committees; and consulting with the Merit Systems Protection	Title 5, Chapter 77 - "Appellate procedures" grants right to appeal agency disciplinary actions to the Merit Systems Protection Board.	Sec. 841(a) created 5 U.S.C. 9701(f) Provisions Relating to Appellate Procedures. - Same with the following differences: - Expression as sense of the Congress rather than directive to the DHS Secretary - authority to issue appellate procedure regulations is granted jointly to the DHS Secretary and the OPM Director, not only to the Secretary as in DOD - no requirement for independent review panel - no notification to appropriate

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Board and the Equal Employment Opportunity Commission; (C) ensure the availability of procedures that (i) are consistent with the requirements of due process; and (ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving DOD; and (iii) modify Chapter 77 procedures only insofar as those modifications are designed to further the fair, efficient, and expeditious resolution of matters involving DOD employees.		congressional committees – consultation with Merit Systems Protection Board only not MSPB and the Equal Employment Opportunity Commission Title 5, Chapter 77 - “Appellate procedures” is subject to waiver or adjustment in developing a human resources management system.
New 5 U.S.C. 9902(h) Provisions Related to Separation and Retirement Incentives Authorizes the Secretary of Defense to offer (1) early retirement to employees who are age 50 or older with 20 years of service or any age with 25 years of service and (2) separation incentive pay of up to \$25,000 to DOD employees who retire or resign. Prohibits re-employment within DOD for 12 months after receipt of separation pay unless prohibition is waived by the Secretary case-by-case. Requires anyone who is re-employed by the federal government within 5 years of receiving separation pay to repay the full amount to the DOD. No OPM review is required.	With the approval of the Office of Personnel Management (OPM), a federal agency undergoing restructuring or downsizing can offer voluntary early retirement to employees in specific occupational groups, organizational units, or geographic locations who are age 50 or older and have at least 20 years of service, or are any age and have at least 25 years of service. Also with the approval of OPM, a federal agency may offer voluntary separation incentive payments of up to \$25,000 to employees who retire or resign. The full amount must be repaid if individual is re-employed by the federal government within five years. 5 U.S.C. 8336 - Immediate Retirement (Civil Service Retirement System) and 5 U.S.C.	Sec. 472. Similar voluntary separation incentives authorized for the Immigration and Naturalization Service and Border Patrol. Sec. 1313(b) Made the changes that are now law.

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	8414 - Early retirement (Federal Employees' Retirement System) Title 5, Chapter 35 - Retention Preference, Voluntary Separation Incentive Payments, Restoration, and Reemployment, Subchapter II - Voluntary Separation Incentive Payments (5 U.S.C. 3521-3525)	
New 5 U.S.C. 9902(i) Provisions Relating to Reemployment: Provides that if a retired federal employee who is receiving an annuity from the Civil Service Retirement and Disability Fund becomes employed by the Department of Defense, his or her annuity will continue. The employee will not accrue additional credit under either CSRS or FERS during this period of re-employment.	Generally, a retired federal employee who is re-employed by the federal government may not receive a federal retirement annuity and a federal salary simultaneously. Sections 8344 (CSRS) and 8468 (FERS) of Title 5, U.S.C. provide that a retired federal employee who is receiving an annuity from the Civil Service Retirement and Disability Fund who is re-employed by a federal agency, will have an amount equal to the annuity deducted from his or her pay. If re-employment lasts more than one year, the individual will be eligible for a supplemental annuity for the period of re-employment when he or she retires.	No similar provision
New 5 U.S.C. 9902(j) Provisions relating to hiring — Notwithstanding section 9902(c), the secretary could exercise hiring flexibilities that would otherwise be available to the secretary under 5 U.S.C. 4703.	5 U.S.C. 4703 - Authorizes OPM to conduct demonstration projects. Subject to 4703, demonstration projects are not limited by any lack of specific Title 5 authority or by any Title 5 provision or regulation which is	No similar provision; law stated that 5 U.S.C. Chapter 47 could not be waived or modified.

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	inconsistent with the action, including any law or regulation relating to the methods of establishing qualification requirements for, recruitment for, and appointment to positions.	
No sunset provision	No similar provision	5 U.S.C. 9701 - Sunset Provisions. Provides that all authority of the Secretary and OPM Director jointly to issue regulations to establish and adjust the DHS human resources management system ceases to be available.
New 5 U.S.C. 9903. Attracting highly qualified experts.	See counterpart for 9904(b) below.	No similar provision
New 5 U.S.C. 9903(a) In General. The secretary could carry out a program using the authority provided in (b) in order to attract highly qualified experts in needed occupations, as determined by the secretary.	P.L. 105-261, Sec. 1101 (1998) (5 U.S.C. 3104(a) note) - Defense Advanced Research Projects Agency Experimental Personnel Management Program for Technical Personnel granted the Secretary of Defense for five years experimental special management authority to facilitate recruitment of eminent experts in science and engineering for the Defense Advanced Research Projects Agency.	No similar provision

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New 5 U.S.C. 9903(b) - Authority Under the program, the secretary could — (1) appoint personnel from outside the civil service and uniformed services (as such terms are defined in 5 U.S.C. 2101) to positions in DOD without regard to any provision of this title governing the appointment of employees to positions in DOD; (2) prescribe the rates of basic pay for positions to which employees are appointed under (1) at rates not in excess of the maximum rate of basic pay authorized for senior-level positions under 5 U.S.C. 5376, as increased by locality-based comparability payments, notwithstanding any provision of this title governing the rates of pay or classification of employees in the executive branch; and (3) pay any employee appointed under (1) payments in addition to basic pay within the limit applicable to the employee under (d)(1) below.	5 U.S.C. 3104 - Employment of specially qualified scientific and professional personnel 5 U.S.C. 3104 note. Similar, but special appointment authority is limited to “scientists and engineers” and “not more than 20 scientific and engineering positions in the Defense Advanced Research Projects Agency.” Same authority to prescribe basic rate of pay, but no authority to increase basic pay by locality-based comparability payments. 5 U.S.C. 3324 - Appointments to positions classified above GS-15 (generally requires OPM approval) 5 U.S.C. 3325 - Appointments to scientific and professional positions (generally requires OPM approval of qualifications) 5 U.S.C. 3326 - Appointments of retired members of the armed services in the Department of Defense (imposes certain requirements on appointments of a retired armed services member in the period within 180 days immediately following retirement from the armed services) proposed for repeal, <i>see sec. 404)</i>	No similar provision

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	5 U.S.C. 5376 - "Pay for certain senior- level positions" generally limits pay to not less than 120 percent of the maximum basic pay rate for GS-15 and not greater than basic pay rate for level IV of the Executive Schedule. 5 U.S.C. 5377 - "Pay authority for critical positions" generally limits the maximum basic rate to level I of the Executive Schedule. See 5 U.S.C. 9502 - Pay authority for critical positions and 5 U.S.C. 9503 Streamlined critical pay authority [in the Internal Revenue Service] which allows pay for up to the salary of the Vice President.	
New 5 U.S.C. 9903(c) - Limitation on Term of Appointment (1) Except as provided in (2), the service of an employee under an appointment made pursuant to this section may not exceed 5 years. (2) The secretary could, in the case of a particular employee, extend the period to which service is limited under (1) by up to one additional year if the secretary determines that such action is necessary to promote DOD's national security missions.	5 U.S.C. 3104(c) note. Term of initial appointment limited to 4 years with up to a 2 year extension	No similar provision

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New 5 U.S.C. 9903(d) - Limitations on Additional Payments (1) The total amount of the additional payments paid to an employee under this section for any 12-month period could not exceed the least of the following amounts: (A) \$50,000 in FY 2004, which could be adjusted annually thereafter by the secretary, with a percentage increase equal to one-half of one percentage points less than the percentage by which the Employment Cost Index, published quarterly by the Bureau of Labor Statistics, for the base quarter of the year before the preceding calendar year exceeds the Employment Cost Index for the base quarter of the second year before the preceding calendar year. (B) The amount equal to 50 percent of the employee's annual rate of basic pay. (2) An employee appointed under this section would not be eligible for any bonus, monetary award, or other monetary incentive for service except for payments authorized under this section.	5 U.S.C. 3104 note. Similar, but additional payments may not exceed the least of (A) \$25,000; (B) the amount equal to 25 percent of the employee's annual rate of basic pay; (C) the amount of the limitation applicable for a calendar year under 5 U.S.C. 5307(a). Same with respect to ineligibility for any bonus, monetary award, or other monetary incentive. 5 U.S.C. 5307 - Limitation on certain payments limits the amount to cash payments such as allowances and awards plus salary to level I of the Executive Schedule (\$171,900 in 2003), except for some high level positions which are limited to the salary of the Vice President (\$198,600). Title 5, Chapter 45 - Incentive Awards	Sec. 841(a) (5 U.S.C. 9701(d)) Limitations Relating to Pay of P.L. 107-296 generally prohibits paying any employee at a rate greater than the maximum amount allowable under 5 U.S.C. 5307 or exempting any employee from 5 U.S.C. 5307, which generally limits total pay, including awards and other cash payments, to level I of the Executive Schedule, except for some high level positions which are limited to the salary of the Vice President.
New 5 U.S.C. 9903(e) - Savings Provisions In the event that the secretary terminates this program, in the case of an employee who, on the day before the termination of the program, is serving in a position pursuant to an appointment under this section—(1) the termination of the program does not terminate the employee's employment in that position before the expiration of the lesser of—(A) the period for which		

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the employee was appointed; or (B) the period to which the employee's service is limited under (c), including any extension made under this section before the termination of the program; and (2) the rate of basic pay prescribed for the position under this section could not be reduced as long as the employee continues to serve in the position without a break in service.	5 U.S.C. 5363 - Pay retention	Sec. 841(b) of P.L. 107-296 - Nonseparation or Nonreduction in Grade or Compensation of Full-Time and Part-Time Personnel Holding Permanent Positions generally prevents separation or reduction in pay or grade for one year following transfer to DHS
New 5 U.S.C. 9904. Employment of older Americans. Would allow the Secretary of Defense to appoint American citizens age 55 or older to positions in the excepted service (i.e., not part of the competitive civil service) for a period not to exceed two years (plus a possible additional two-year reappointment). The appointed individual could not displace another DOD employee or be in reduction-in-force status from an equivalent job in DOD, and must be qualified for the job, "as determined by the Secretary." An individual appointed to such a position who was receiving an annuity, pension, Social Security, retired pay or similar payment could not have such payment reduced as a result of the appointment.	Generally, under 5 U.S.C. 8344 (CSRS) and 8468 (FERS) a retired federal employee who is re-employed by the federal government may not receive a federal retirement annuity and a federal salary simultaneously. Under section 203 of the Social Security Act (42 U.S.C. 403), an individual under age 65 who receives Social Security benefits and who also is employed is subject to an "earnings test." In 2003, a Social Security recipient under age 65 has his or her Social Security benefit reduced by \$1 for each \$2 of earnings in excess of \$11,520.	No similar provision

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New 5 U.S.C. 9905. Special pay and benefits for certain employees outside the United States [No (a) designation appears in the text.] The secretary could provide to certain civilian employees of DOD assigned to activities outside the United States and designated by the secretary for the purposes of this subsection— (1) allowances and benefits—(A) comparable to those provided by the Secretary of State to members of the Foreign Service under Chapter 9 of Title I of the Foreign Service Act of 1980 or any other provision of law; or (B) comparable to those provided by the Director of Central Intelligence to personnel of the Central Intelligence Agency (CIA); and (2) special retirement accrual benefits and disability in the same manner provided for by the CIA Retirement Act and in Section 18 of the CIA Act of 1949. Authority to pay these benefits is not limited to extent appropriations have been provided.	10 U.S.C. 1605 - Benefits for certain employees assigned outside the United States. (Provisions is similar, but authorizes providing allowances and benefits from more statutory sources and makes this authority effective only to the extent appropriations are available for this purpose. 50 U.S.C. 403r - Special annuity computation rules for certain employees' service abroad generally allows higher annuity rates for overseas service.	No similar provision
Sec. 102(b) Impact on Department of Defense Civilian Personnel (1) Any exercise of authority under the new Chapter 99 of Title 5, including under any system established under such chapter, would have to be in conformance with the requirements of this subsection. (2) No other provision of the act, or any provision made by it, should be construed or applied in a manner so as to limit, supersede, or otherwise affect provisions of Sec. 9905, except to the extent that it does so by specific reference to Sec. 9905.	No similar provision	Sec. 841(b)(3) of P.L. 107-296 - Coordination Rule is identical to the proposed 5 U.S.C. 9905(b)(1), but there is no counterpart to 5 U.S.C. 9905(b)(2).

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Title II - Department of Defense Civilian Personnel (Includes Government-wide Provisions)		
Sec. 201. Modification of the overtime pay cap [H.R. 1588, Sec. 1101] Would amend 5 U.S.C. 5542(a)(2) by (1) inserting “the greater of” before “one and one-half”; and (2) by inserting “or the hourly rate of basic pay of the employee” after “law)” the second place it appears.	5 U.S.C. 5542 - Overtime rates; computation (a)(2) For an employee whose basic pay is at a rate which exceeds the minimum rate of basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), the overtime hourly rate of pay is an amount equal to one and one-half times the hourly rate of the minimum rate or basic pay for GS-10 (including any applicable locality-based comparability payment under section 5304 or similar provision of law and any applicable special rate of pay under section 5305 or similar provision of law), and all that amount is premium pay.	No similar provision
Sec. 202. Civil Service Retirement System computation for part-time service 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	5 U.S.C. 8339 - Computation of annuity. Employees covered by CSRS who work part-time before retiring experience disproportionately large cuts in their retirement annuities as the result of a	No similar provision

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service that was performed on a part-time basis.	regulation adopted in response to the Comprehensive Omnibus Budget Reconciliation Act of 1986 (P.L. 99-272).	
Sec. 203. Military leave for mobilized federal civilian employees [H.R. 1588, Sec. 1102] (a) In General. Would amend 5 U.S.C. 6323 by redesignating subparagraphs; and by inserting the following before the text beginning with “is entitled”: (B) performs full-time military service as a result of a call or order to active duty in support of a contingency operation as defined in 10 U.S.C. 101(a)(13). Effective Date. The amendments made by (a) would apply to military service performed on or after the act’s enactment.	5. U.S.C. 6323 - Military leave; Reserves and National Guardsmen	No similar provision
Sec. 204. Common occupational and health standards for differential payments as a consequence of exposure to asbestos [H.R. 1588, Sec. 1103] (a) Prevailing Rate Systems. Would amend 5 U.S.C. 5343(c)(4) by inserting before the semicolon at the end: “, and for any hardship or hazard related to asbestos, such differentials would be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970.”	5 U.S.C. 5343 - Prevailing rate determinations; wage schedule; night differentials (c)(4) for proper differentials, as determined by OPM, for duty involving unusually severe working conditions or unusually severe hazards;	No similar provision

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(b) General Schedule Pay Rates. 5 U.S.C. 5545(d) would be amended by inserting before the period at the end of the first sentence: “and for any hardship or hazard related to asbestos, such differentials would be determined by applying occupational safety and health standards consistent with the permissible exposure limit promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970.” (c) Applicability. Subject to any vested constitutional property rights, any administrative or judicial determination after the act’s enactment date concerning backpay for a differential established under 5 U.S.C. 5343(c)(4) or 5545(d) would be based on occupational safety and health standards described in the amendments made by (a) and (b).	5 U.S.C. 5545(d) - Night, standby, irregular, and hazardous duty differential (d) The Office shall establish a schedule or schedules of pay differentials for duty involving unusual physical hardship or hazard.	
Sec. 205. Increase in annual student loan repayment authority [H.R. 1588, Sec. 1104] Would amend 5 U.S.C. 5379(b)(2)(A) by striking \$6,000 and inserting \$10,000.	5 U.S.C. 5379 - Student loan repayments (b)(2)(A) repayments may not exceed \$6,000 for any employee in any calendar year	No similar provision
Sec. 206. Authorization for cabinet secretaries of military departments, and heads of executive agencies to be paid on a biweekly basis [H.R. 1588, Sec. 1105] Would amend 5 U.S.C. 5504 by redesignating subsections and by adding at the end: “(2) OPM would provide guidelines by regulation for exemptions to be	5 U.S.C. 5504 - Biweekly pay periods; computation of pay	No similar provision

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made by the heads of agencies under (c)(3). Such guidelines would provide for such exemptions only under exceptional circumstances.”		
Sec. 207 - Additional classes of individuals eligible to participate in the federal long-term care insurance program. [H.R. 1588, Sec. 551] Would amend 5 U.S.C. 9001 by extending eligibility to certain employees of the District of Columbia, to former federal employees who have met the service but not the minimum age requirement for title for an annuity, and reservists transferred to the retired reserve who are under age 60 and so do not yet qualify for an annuity.	Eligibility is restricted for the most part to federal employees and annuitants, members of the uniformed services (including those entitled to retirement or retainer pay), retired military reservists at the time they qualify for an annuity, and the spouse, surviving spouse, and (in some cases) family members. 5 U.S.C. 9001 - Definitions (Long-Term Care Insurance)	No similar provision
Sec. 208. Clarification to Hatch Act; Limitation on disclosure of certain records [H.R. 1588, Sec. 1109] (a) Clarification to Hatch Act No federal employee or individual who voluntarily separates from the civil service (including by transferring to an international organization in the circumstances described in 5 U.S.C. 3582(a)) would be subject to enforcement of the provisions of 5 U.S.C. 7326 (including any loss of rights under 5 U.S.C. Chapter 35, Subchapter IV resulting from any proceeding under 5 U.S.C. 7326), except that this subsection would not apply in the event that such	5 U.S.C. Chapter 73 - Suitability, Security, and Conduct, Subchapter III - Political Activities	No similar provision

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employee or individual subsequently becomes reemployed in the civil service. The preceding sentence would apply to any complaint which is filed with or pending before the Merit Systems Protection Board after the act's enactment date. (b) Limitation on disclosure of certain records Notwithstanding any other provision of law, rule, or regulation, nothing described in paragraph (2) or (3) of use "q" of the proposed revisions published in the <i>Federal Register</i> on July 12, 2001 would be considered to constitute a routine use of records maintained by the Office of Special Counsel. (c) Definitions (1) "Federal employee or individual" would mean any employee or individual as referred to in 5 U.S.C. 7326; (2) "civil service" would have the meaning given such term by 5 U.S.C. 2101; (3) "international organization" would have the meaning given such term under 5 U.S.C. 3581; (4) "routine use" and "record" would have the meanings given under 5 U.S.C. 552a(a).		
Sec. 209. Senior Executive Service and performance [H.R. 1588, Sec. 1106] Sec. 209(a) Senior Executive Pay (1) would amend 5 U.S.C. 5304(g)(2) and (h)(2)(B). Positions in the SES; positions in the FBI and DEA SES; and positions in a system equivalent to the SES, as determined by the President's pay agent, would not receive locality pay.	5 U.S.C. 5304. Locality-based comparability payments (g)(2) - Level III of the Executive Schedule is the cap for locality pay for positions in the Senior Executive Service (SES); positions in the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) SES; administrative law judges;	No similar language

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	contract appeals board members; and positions not included in the general schedule that have basic rates of pay that do not exceed level IV of the Executive Schedule.	
Sec. 209(a)(2) would replace 5 U.S.C. 5382. (a) Would require the establishment of a range of rates of basic pay for the SES, subject to regulations prescribed by the Office of Personnel Management (OPM). Each senior executive would be paid at one of the rates within the range, based on individual performance, contribution to the agency's performance, or both. Determination would be made under a "rigorous performance management system." The cap on basic pay would be level III of the Executive Schedule. (b) For any agency whose performance appraisal system is certified as making meaningful distinctions based on relative performance, the cap on basic pay would be level II of the Executive Schedule. (c) The pay of a senior executive who transfers from a certified agency to a noncertified agency would not be reduced.	5 U.S.C. 5382. Pay for the Senior Executive Service (a) Requires the establishment of five or more rates of basic pay for the SES; each member of the SES shall be paid at one of the rates. (b) The cap on basic pay is level IV of the Executive Schedule. No similar language	
Sec. 209(b) Post-employment restrictions Would apply post-employment conflict of interest provision commonly known as the one-year "cooling off" period (18 U.S.C. 207(c)(1)) to (in addition to	18 U.S.C. 207(c)(2)(A)(ii). Applies post-employment conflict of interest provision commonly known as the one-year "cooling off" period (18 U.S.C. 207(c)(1)) to (in	No similar provisions

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those paid on the Executive Schedule) those not paid on the Executive Schedule but who are compensated at a rate of pay equal to or greater than 96% of the rate of basic pay for level II of the Executive Schedule (\$148,512 in 2003), or, for two years after the enactment of this Act, those persons who would have been covered by the restriction the day before the Act was passed (those compensated at a base rate of pay equal to or greater than a level 5 for the Senior Executive Service, \$134,000 for 2003). Would amend 18 U.S.C. 207(c)(2)(A)(ii).	addition to those paid on the Executive Schedule) those not paid on the Executive Schedule but who are compensated at a base rate of pay equal to or greater than the basic pay for a level 5 on the Senior Executive Service. (\$134,000 for 2003)	
Sec. 210. Design elements of pay-for-performance systems in demonstration projects [H.R. 1588, Sec. 1107] A pay-for-performance system could not be initiated under 5 U.S.C. Chapter 47 after this act's enactment date, unless it incorporates the following elements: (1) adherence to merit principles set forth in 5 U.S.C. 2301; (2) a fair, credible, and transparent employee performance appraisal system; (3) a link between elements of the pay-for-performance system, the employee performance appraisal system, and the agency's strategic plan; (4) a means for ensuring employee involvement in the design and implementation of the system; (5) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the pay-for-performance system; (6) a process for ensuring	5 U.S.C. Chapter 47 - Personnel research programs and demonstration projects	No similar provision

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ongoing performance feedback and dialogue between managers, supervisors, and employees throughout the appraisal period, and setting timetables for review; (7) effective safeguards to ensure that the management of the system is fair and equitable and based on employee performance; and (8) a means for ensuring that adequate agency resources are allocated for the design, implementation, and administration of the pay-for-performance system.		
Sec. 211. Federal flexible benefits plan administrative costs [H.R. 1588, Sec. 1108] Would prohibit federal agencies offering a flexible spending account option from imposing fees on employees to defray administrative costs. Would require agencies to forward to the Office of Personnel Management (or an entity it designates) amounts to offset the costs. Would require the Office of Personnel Management to submit reports to congressional committees on the administrative costs. Would require agencies to submit reports to the Office of Management and Budget on the employment tax savings from the option, net of administrative fees paid.	There is no explicit authority for federal agencies to offer FSAs or for OPM to administer them. However, agency heads may make allotments from employee pay as they think appropriate (5 USC 5525) and OPM has general authority to advise the President regarding the civil service (5 USC 1103(a)(7)).	No similar provision
Sec. 212. Nonreduction in pay while federal employee is serving on active duty in a reserve component of the uniformed services	5 U.S.C. Chapter 55 - Pay Administration; Subchapter IV - Dual Pay and Dual Employment	No similar provision

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(a) In General. Would amend 5 U.S.C. Chapter 55, Subchapter IV by adding: Sec. 5538. Nonreduction in pay while serving on active duty in a reserve component (a) An employee who is also a member of a reserve component and is absent from a position of employment with the federal government under a call or order to serve on active duty for a period of more than 30 days would be entitled to receive, for each pay period described in (b), an amount equal to the difference (if any) between (1) the amount of civilian basic pay that would otherwise have been payable to the employee for such pay period if the employee's civilian employment with the government had not been interrupted by the service on active duty; and (2) the amount of military compensation that is payable to the employee for the service on active duty and is allocable to such pay period. (b) and (c) States the requirements for payment; (d) Directs that OPM, in consultation with the DOD secretary, prescribe regulations; (e) Directs that procedures on applying the provisions be prescribed by agency heads in consultation with OPM; (f) Defines terms. Application of amendment. Provisions would apply with respect to pay periods beginning on or after the act's enactment date.		

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Sec. 213. Employee surveys [H.R. 1588, Sec. 1110] (a) In General. Each agency would conduct an annual survey of its employees (including survey questions unique to the agency and questions prescribed under (b) to assess—(1) leadership and management practices that contribute to agency performance; and (2) employee satisfaction with (A) leadership policies and practices; (B) work environment; (C) rewards and recognition for professional accomplishment and personal contributions to achieving organizational mission; (D) opportunity for professional development and growth; and (E) opportunity to contribute to achieving organizational mission. (b) Regulations. OPM would issue regulations prescribing survey questions that would appear on all agency surveys in order to allow a comparison across agencies. (c) Availability of results. The results of the agency surveys would be made available to the public and posted on the Web site of the agency involved, unless the agency head determines it will jeopardize or negatively impact on national security. (d) Agency defined. “Agency” would mean an executive agency as defined by 5 U.S.C. 105.	No similar provision	No similar provision

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Title III – Provisions Relating to the Securities and Exchange Commission and the National Aeronautics and Space Administration		
Subtitle A - Securities and Exchange Commission		
Sec. 301. Securities and Exchange Commission Would amend 5 U.S.C. Chapter 31, Subchapter I by adding a new Sec. 3114. Sec. 3114, Appointment of Accountants, economists, and examiners by the Securities and Exchange Commission (SEC) (a) Applicability. This section would apply to any position of accountant, economist, and securities compliance examiner at the SEC that is in the competitive service. (b) Appointment Authority. (1) In General. The SEC could appoint candidates to any position described in (a)—(A) in accordance with the statutes, rules, and regulations governing appointments in the excepted service; and (B) notwithstanding any statutes, rules, and regulations governing appointments in the competitive service. (2) Rule of Construction. The appointment of a candidate to a position under this subsection's authority would not be considered to cause such position to be converted from the competitive service to the excepted service. (c) Reports. No later than 90 days after the end of FY	5 U.S.C. Chapter 31 - Authority for employment	No similar provision

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2003 (for FY 2003) and 90 days after the end of FY 2005 (for FY 2004 and 2005), the SEC would submit a report with respect to its exercise of the authority granted by (b) during such fiscal years to the House Committees on Government Reform and Financial Services and the Senate Committees on Governmental Affairs and Banking, Housing, and Urban Affairs. Such reports would describe the changes in the hiring process authorized by such subsection, including relevant information related to (1) the quality of candidates; (2) the procedures used by the SEC to select candidates through the streamlined hiring process; (3) the numbers, types, and grades of employees hired under the authority; (4) any benefits or shortcomings associated with the use of the authority; (5) the effect of the exercise of the authority on the hiring of veterans and other demographic groups; and (6) the way in which managers were trained in the administration of the streamlined hiring system. Commission Defined. "Commission" would mean the Securities and Exchange Commission.		

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Subtitle B - National Aeronautics and Space Administration		
Sec. 311. Workforce authorities and personnel provisions (a) In General. Would amend 5 U.S.C. Part III, Subpart I: adding New Title 5, Chapter 98 – National Aeronautics and Space Administration	No similar provision; related Title 5 sections are identified in the specific sections below	Law added a new Chapter 97 - Department of Homeland Security to Title 5
New Subchapter I – Workforce Authorities. New 5 U.S.C. 9801. Definitions (1) “Administration” means the National Aeronautics and Space Administration (NASA); (2) “Administrator” means the Administrator of NASA; (3) “Critical need” means a specific and important requirement of the Administration’s mission that it is unable to fulfill because it lacks the appropriate employees because of the inability to fill positions or because employees do not possess the requisite skills; (4) “Employee” means an individual employed in or under the Administration; and (5) “Workforce plan” means the plan required under the proposed section 9802(a). (6) Defines “appropriate committees of Congress” and “redesignation bonus.”	42 U.S.C. 2472 - National Aeronautics and Space Administration (defined) 42 U.S.C. 2466b - Administrator (defined)	No similar provision
New 5 U.S.C. 9802. Planning, notification, and reporting requirements (a) Not later than 90 days before exercising any of the	5 U.S.C. Chapter 31 - Authority for employment 5 U.S.C. 3104 - Employment of specially	No similar provision; law stated that 5 U.S.C. Chapter 31 could not be waived or modified.

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workforce authorities under this subchapter, the administrator would submit a written plan to the appropriate committees of Congress. A plan could not be implemented without OPM's approval. (b) The plan would include a description of (1) each critical need of the administration and the criteria used in its identification; (2) the functions, approximate number, and classes or other categories of positions or employees that address critical needs and that would be eligible for each authority proposed to be exercised under the proposed Sec. 9803, and how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under (1); (3) any critical need identified under (1) which would not be addressed by the authorities made available under this subchapter, and the reasons why those needs would not be so addressed; (4) the specific criteria to be used in determining which individuals may receive the benefits described in the proposed Secs. 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need, and 9810, and how the level of those benefits will be determined; (5) the safeguards or other measures that will be applied to ensure that this subchapter is carried out in a manner consistent with merit system principles; (6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B); (7) the methods that will be used to determine if the authorities	qualified scientific and professional personnel Authorizes OPM director to establish scientific or professional positions which require services of specially qualified personnel and which may be established outside the General Schedule.	

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exercised under this subchapter have successfully addressed each critical need identified under (1); and (8) the recruitment methods used by NASA before the enactment of this chapter to recruit highly qualified individuals, including how it intends to use nongovernmental recruitment or placement agencies; and Internet technologies. (c) Not later than 60 days before first exercising any of the workforce authorities made available under this subchapter, the administrator would provide to all employees, the workforce plan and any additional information which the administrator considers appropriate. (d)(1) The administrator could submit any modifications to the workforce plan to OPM. Modifications could not be implemented without OPM's approval. Not later than 60 days before implementing any such modifications, the administrator would provide an appropriately modified plan to all NASA employees and to the appropriate committees of Congress. Any reference in this subchapter or any other provision of law to the workforce plan would be considered to include any modification made in accordance with this subsection. (e) Provides for employee representatives to review and make recommendations on the plan before the administrator submits it to OPM. (f) None of the workforce authorities made available under this subchapter could be exercised in a manner		

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inconsistent with the workforce plan. (g) Whenever the administration submits its performance plan under 31 U.S.C. 1115 to the Office of Management and Budget for any year, the administration would at the same time submit a copy of the plan to the Senate Committees on Governmental Affairs, Appropriations, and commerce, Science, and Transportation and the House Committees on Government Reform, Science and Appropriations. (h) Provides for an evaluation of the plan not later than six years after the enactment of Sec. 9802 and states what the evaluation must include. Note: Title I provisions would permit changes to certain sections of 5 U.S.C. Chapter 31 for Defense personnel.		
New 5 U.S.C. 9803. Workforce authorities. (a) The workforce authorities under this subchapter are the authority (1) to pay recruitment, redesignation, and relocation bonuses under the proposed section 9804; (2) to pay retention bonuses under the proposed Sec. 9805; (3) to make term appointments and to take related personnel actions under the proposed Sec. 9806; (4) to fix rates of basic pay for critical positions under the proposed Sec. 9807; (5) to extend intergovernmental personnel act assignments under Sec. 9808; (6) to apply 5 U.S.C. Chapter 35, Subchapter II in accordance with Sec. 9810. (b) No authority could be exercised with respect to any	Relevant Title 5 sections are noted in the specific sections below.	Relevant sections of the law are noted in the specific sections below.

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officer who is appointed by the President, by and with the advice and consent of the Senate. (c) Unless specifically stated otherwise, all authorities provided under this subchapter are subject to 5 U.S.C. 5307 (limitation on certain payments).		
New 5 U.S.C. 9804. Recruitment, redesignation, and relocation bonuses (a) Notwithstanding 5 U.S.C. 5753, the administrator could pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if the administrator determines that NASA would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and the individual is newly appointed as a federal employee; currently employed by the federal government and newly appointed to another position in the same geographic area; or currently employed by the federal government and required to relocate to a different geographic area to accept a position with NASA. (b) If the position is described as addressing a critical need in the workforce plan, the bonus could not exceed (1) 50% of the employee's annual rate of basic pay (including locality-based comparability payments) as of the beginning of the service period multiplied by the service period specified under (d)(1)(B)(i) below; or (2) 100% of the employee's annual rate of basic pay (including locality-based comparability payments) as of the beginning of the service period.	5 U.S.C. 5753 - Recruitment and relocation bonuses Authorizes bonuses of up to 25% of basic pay and requires service agreement. 5 U.S.C. 9504 - Recruitment, retention, relocation incentives, and relocation expenses (Internal Revenue Service) Allows for IRS variations from the Title 5 authority for a 10-year period.	No similar provision; law states that 5 U.S.C. Chapter 57 provisions cannot be waived or modified.

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(c) If the position is not described as addressing a critical need in the workforce plan, the bonus could not exceed (1) 25% of the employee's annual rate of basic pay (including locality-based comparability payments) as of the beginning of the service period multiplied by the service period specified under (d)(1)(B)(i) below; or (2) 100% of the employee's annual rate of basic pay (including locality-based comparability payments) as of the beginning of the service period. (d)(1)(A) Payment of a bonus would be contingent upon the individual entering into a service agreement with the administration. (B) The service agreement would, at a minimum, include (i) the required service period; (ii) the method of payment, including a payment schedule, which could include a lump-sum payment, installment payments, or a combination thereof; (iii) the amount of the bonus and the basis for calculating such amount; and (iv) the conditions under which the agreement could be terminated before the agreed-upon service period has been completed, and the effect of the termination. (d)(2) For purposes of determinations under (b)(1) and (c)(1), the employee's service period would be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period could not be less than 6 months and could not exceed 4 years. (d)(3) A bonus under this section could not be		

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considered to be part of an employee's basic pay. (e) Before paying a bonus, the administration would establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to OPM approval. (f) Requires the administrator to submit a summary of all bonuses paid under (b) and (c) to the appropriate committees of Congress not later than February 28 of each of the next 10 years and states what the summary must include. Note: Title I would prohibit waiver or modification of 5 U.S.C. Chapter 57 for Defense personnel.		
New 5 U.S.C. 9805. Retention bonuses (a) Notwithstanding 5 U.S.C. 5754, the administrator could pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the administrator determines that (1) the employee's unusually high or unique qualifications or a special need of the administration for the employee's services makes it essential to retain the employee; and (2) the employee would be likely to leave in the absence of a retention bonus. (b) If the position is described as addressing a critical need in the workforce plan, the bonus could not exceed 50% of the employee's annual rate of basic pay (including locality-based comparability payments). (c) If the position is not described as addressing a critical need in the workforce plan, the bonus could not exceed 25% of the employee's annual rate of basic pay	5 U.S.C. 5754 - Retention allowances Authorizes allowances of up to 25% of basic pay. 5 U.S.C. 9504 - Recruitment, retention, relocation incentives, and relocation expenses (Internal Revenue Service) Allows for IRS variations from the Title 5 authority for a 10-year period.	No similar provision; law stated that 5 U.S.C. Chapter 57 provisions could not be waived or modified.

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(including locality-based comparability payments). (d)(1)(A) Payment of a bonus would be contingent upon the employee entering into a service agreement with NASA. (B) The service agreement would, at a minimum, include (i) the required service period; (ii) the method of payment, including a payment schedule; which could include a lump-sum payment, installment payments, or a combination thereof; (iii) the amount of the bonus and the basis for calculating the amount; and (iv) the conditions under which the agreement could be terminated before the agreed-upon service period has been completed, and the effect of the termination. (d)(2) The employee's service period would be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period could not be less than 6 months and could not exceed 4 years. (d)(3) Notwithstanding (1), a service agreement is not required if NASA pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, NASA would inform the employee in writing of any decision to change the retention bonus payments. The employee would continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided. (e) A bonus under this section could not be considered		

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to be part of an employee's basic pay. (f) An employee would not be entitled to a retention bonus under this section during a service period previously established for that employee under 5 U.S.C. 5753, or the proposed Sec. 9804. (g) Requires the administrator to submit a summary of all bonuses paid under (b) and (c) to the appropriate committees of Congress not later than February 28 of each of the next 10 years and states what the summary must include. Note: Title I would prohibit waiver or modification of 5 U.S.C. Chapter 57 for Defense personnel.		
New 5 U.S.C. 9806. Term Appointments (a) The administrator could authorize term appointments within NASA under 5 U.S.C. Chapter 33, Subchapter I, for a period of not less than one year and not more than six years. (b) Notwithstanding 5 U.S.C. Chapter 33, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the administrator could convert an employee serving under a term appointment to a permanent appointment in the competitive service within the administration without further competition. These conditions would apply: (1) the individual was appointed under open, competitive examination under 5 U.S.C. Chapter 33, Subchapter I; (2) the announcement for the term appointment from which	5 U.S.C. 3301 - Civil Service; generally 5 U.S.C. 3302 - Competitive service; rules 5 CFR Part 316 - Temporary and Term Employment Authorizes term appointments for more than one year, but not more than four years (beyond four years could be authorized with justification) where the need for an employee's services is not permanent.	No similar provision; law stated that 5 U.S.C. Chapter 33 could not be waived or modified.

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the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment; (3) the employee has completed at least two years of current continuous service under a term appointment in the competitive service; (4) the employee's performance under the term appointment was at least fully successful or equivalent; and (5) the position to which such employee is being converted under this section is in the same occupational series, the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted. (c) Notwithstanding 5 U.S.C. Chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the administrator could convert an employee serving under a term appointment to a permanent appointment in the competitive service within the administration through internal competitive promotion procedures if the conditions under (b)(1) through (4) are met. (d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure. (e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion. (f) Requires the administrator to submit to the		

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appropriate committees of Congress, not later than February 28 of each of the next 10 years, the total number of term appointments and conversions. Note: For Defense, see proposed new section 9904.		
New 5 U.S.C. 9807. Pay authority for critical positions (a) "Position" means (1) a position to which 5 U.S.C. Chapter 51 applies, including a Senior Executive Service position; (2) an Executive Schedule position; (3) a position established under 5 U.S.C. 3104; or (4) a senior-level position to which 5 U.S.C. 5376(a)(1) applies. (b) Authority under this section (1) could be exercised only with respect to a position that is described as addressing a critical need in the workforce plan, and requires expertise of an extremely high level in a scientific, technical, professional, or administrative field; (2) could be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and (3) could be exercised only in retaining employees of the administration or in appointing individuals who were not employees of another federal agency as defined by 5 U.S.C. 5102(a)(1). (c)(1) Notwithstanding 5 U.S.C. 5377, the administrator could fix the rate of basic pay for a position in NASA in accordance with this section. The administrator could not delegate this authority. (c)(2) The number of positions with pay fixed under	5 U.S.C. 5377 - Pay authority for critical positions Authorizes OMB to establish critical pay positions for positions at an extremely high level and critical to agency missions; up to 800 may be established at any time. Compensation cannot exceed Executive Schedule level I without the President's approval. 5 U.S.C. 9502 - Pay authority for critical positions (Internal Revenue Service) Authorizes critical pay positions. Compensation cannot exceed the Vice President's salary. 5 U.S.C. 9503 - Streamlined critical pay authority (Internal Revenue Service) Secretary of the Treasury may establish critical pay positions for positions at an extremely high level and critical to the IRS mission for a 10-year period. Appointments are limited to four years. Total compensation cannot exceed the Vice President's salary.	No similar provision; law permits the new personnel system to make changes to 5 U.S.C. Chapter 53.

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this section could not exceed 10 at any time. (d)(1) The rate of basic pay fixed under this section could not be less than the rate of basic pay (including locality-based comparability payments) which would otherwise be payable for the position involved if this section had never been enacted. (d)(2) The annual rate of basic pay fixed under this section could not exceed the per annum rate of salary payable for the Vice President. (d)(3) Notwithstanding any provision of 5 U.S.C. 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment could be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom 5 U.S.C. Chapter 51 applies), such payment would cause the total to exceed the Vice President's salary. (e) Requires the administrator to submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years, the number of positions for which the rate of basic pay was either fixed or terminated under this section. Note: Title I would permit the new personnel system to make changes to 5 U.S.C. Chapter 53 for Defense personnel.		

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New 5 U.S.C. 9808. Assignments of intergovernmental personnel For purposes of applying the third sentence of 5 U.S.C. 3372(a) (relating to the authority of the head of a federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the administrator could, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking "two" and inserting "four." Note: Title I would permit the new personnel system to make changes to 5 certain sections of 5 U.S.C. Chapter 33 for Defense personnel.	5 U.S.C. Chapter 33, Subchapter VI - Assignments to and from States (5 U.S.C. 3371-3376) 5 U.S.C. 3372 - General provisions	No similar provision; law stated that 5 U.S.C. Chapter 33 could not be waived or modified.
New 5 U.S.C. 9809. Enhanced demonstration project authority When conducting a demonstration project at NASA, 5 U.S.C. 4703(d)(1)(A), could be applied by substituting "such number of individuals as determined by the administrator" for "not more than 5,000 individuals." Note: Title I would prohibit waiver or modification of 5 U.S.C. Chapter 47 for Defense personnel.	5 U.S.C. Chapter 47 - Personnel research programs and demonstration projects 5 U.S.C. 4703(d)(1)(A) limits size of demonstration projects to not more than 5,000 individuals. 5 U.S.C. 9507 - Streamlined demonstration project authority (Internal Revenue Service) 5 U.S.C. 4703(d) does not apply to IRS demonstration projects.	No similar provision; law states that 5 U.S.C. Chapter 47 cannot be waived or modified.
New 5 U.S.C. 9810. Voluntary separation incentive payments Would allow the Administrator to offer voluntary	With the approval of the Office of Personnel Management, a federal agency may offer voluntary separation incentive payments of	No similar provisions

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separation payments of up to 50% of annual basic pay to no more than 10 employees each year (unless payments to a larger number are approved by the Office of Management & Budget.)	up to \$25,000 to employees who retire or resign. The full amount must be repaid if individual is re-employed by the federal government within five years.	
New 5 U.S.C. 981.1. Limitations relating to bonuses (a) Of the total amount in bonuses awarded under the proposed new sections 9804 and 9805, respectively, in any year, not to exceed 15 percent of any such total amount could be awarded to supervisors (within the meaning of 5 U.S.C. 7103(a)(10)). (b) A separate appropriations account would be maintained for such bonuses.	No similar provision 5 U.S.C. 5753 - Recruitment and relocation bonuses 5 U.S.C. 5754 - Retention allowances 5 U.S.C. 9504 - Recruitment, retention, relocation incentives, and relocation expenses (Internal Revenue Service)	No similar provision; law states that 5 U.S.C. Chapter 57 provisions cannot be waived or modified.
New Subchapter II – Personnel Provisions. New 5 U.S.C. 9831. Definitions (1) “Administration” means the National Aeronautics and Space Administration (NASA); (2) “Administrator” means the administrator of NASA.	42 U.S.C. 2472 - National Aeronautics and Space Administration (defined) 42 U.S.C. 2466b - Administrator (defined)	No similar provision
New 5 U.S.C. 9832. Defines “detail” and states employees eligible. Assignments would be for a period of between six months and one year, and could be extended in three-month increments for up to one additional year. A NASA employee generally would have to agree to serve in NASA after completion of an exchange for the same amount of time as the exchange. A NASA employee would be deemed to be on detail to	P.L. 107-347, 12/17/02, 116 Stat. 2923, Sec. 209(c) - Federal information technology workforce development Authorizes exchanges of employees from private sector to government and from government to private sector in information technology management. Individuals eligible to participate must be at pay grade	No similar provision

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a regular work assignment in NASA. Reimbursements by the private sector entity could be made to NASA. A private sector employee assigned to NASA is deemed to be on detail to NASA. Laws and regulations which cover the private sector employee while on detail are stated. Policies in the case of a private sector employee's disability or death while assigned to NASA are detailed. Requires the administrator, not later than February 28 of each year, to report to the appropriate committees of Congress on the operation of the section.	GS-11 (or equivalent) or above. Exchanges may be for a period between three months and one year and may be extended in increments of three months for one additional year. 5 U.S.C. Chapter 33, Subchapter VI - Assignments to and from States (5 U.S.C. 3371-3376)	
New 5 U.S.C. 9833. Science and technology scholarship program Would authorize the NASA administrator to provide scholarships to individuals at accredited institutions of higher education who are pursuing academic programs appropriate for careers in professions needed by NASA.	No similar provision	No similar provision
New 5 U.S.C. 9834. Distinguished scholar appointment authority (1) "Professional position" means a position that is classified to an occupational series identified by OPM as a position that (A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and (B) is covered by the Group Coverage	5 U.S.C. 3104 - Employment of specially qualified scientific and professional personnel Authorizes OPM director to establish scientific or professional positions which require services of specially qualified personnel and which may be established outside the General Schedule.	No similar provision; law states that 5 U.S.C. Chapter 31 cannot be waived or modified.

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Qualification Standard for Professional and Scientific Positions; and (2) “research position” means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study. (b) NASA could appoint, without regard to 5 U.S.C. 3304(b) and 3309 through 3318, candidates directly to General Schedule professional positions in NASA for which public notice has been given, if (1) with respect to a GS-7 position, the individual (A) received, from an accredited institution authorized to grant baccalaureate degrees (BAs), a BA in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by OPM for the position to which the individual is being appointed; and (B) achieved a cumulative grade point average (GPA) of 3.0 or higher on a 4.0 scale and a GPA of 3.5 or higher for courses in the field of study required to qualify for the position; (2)-(4) with respect to a GS-9, GS-11, GS-12 position, the individual (A) received, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by OPM for the position to which the individual is being appointed; and (B) achieved a cumulative GPA		

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of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position. Veterans preference procedures would apply when selecting candidates. Preference eligibles who meet the criteria for distinguished scholar appointments would be considered ahead of nonpreference eligibles. (d) An appointment made under this authority would be a career-conditional appointment in the competitive civil service.		
New 5 U.S.C. 9835. Travel and transportation expenses of certain new appointees (a) "Appointee" means (1) a person newly appointed or reinstated to federal service to NASA to (A) a career or career-conditional appointment; (B) a term appointment; (C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment; (D) a career or limited term Senior Executive Service appointment; (E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958; (F) an appointment to a position established under 5 U.S.C. 3104; or (G) an appointment to a position established under 5 U.S.C. 5108; or (2) a student trainee who, upon completion of academic work, is converted to an appointment in NASA that is identified in (1) in accordance with an appropriate authority. (b) The administrator could pay the travel, transportation, and relocation expenses of a new appointee to the same	5 U.S.C. Chapter 57, Subchapter II - Travel and transportation expenses; new appointees, student trainees, and transferred employees 5 U.S.C. 5724 - Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis; 5 U.S.C. 5724a - Relocation expenses of employees transferred or reemployed; 5 U.S.C. 5724b - Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred; 5 U.S.C. 5724c - Relocation services	No similar provision; law stated that 5 U.S.C. Chapter 57 could not be waived or modified.

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extent, in the same manner, and subject to the same conditions as the payment of such expenses under 5 U.S.C. 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the U.S. Government. (c) Requires the administrator to submit to the appropriate committees of Congress, not later than February 28 of each of the next 10 years, the average and highest payments made under this section. Note: Title I would permit changes to certain sections of 5 U.S.C. Chapter 31 for Defense civilian personnel.		
New 5 U.S.C. 9836. Annual leave enhancements (a)(1) "Newly appointed employee" means an individual who is first appointed (i) regardless of tenure, as an employee of the federal government (ii) as an employee of the federal government following a break in service of at least 90 days after that individual's last period of federal employment, other than (I) employment under the Student Educational Employment Program administered by OPM; (II) employment as a law clerk trainee; (III) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled; (IV) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or (V) employment under a temporary appointment that is	5 U.S.C. 6303 - Annual leave accrual 5 U.S.C. 6304 - Annual leave accumulation Only employees who have at least 15 years of service accrue one day of annual leave for each full biweekly pay period.	No similar provision; law stated that 5 U.S.C. Chapter 63 could not be waived or modified.

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neither full-time nor the individual's principal employment. (B) "period of qualified non-federal service" means any period of service performed by an individual that (i) was performed in a position the duties of which were directly related to the duties of the position in NASA to which that individual will fill as a newly appointed employee; and (ii) except for this section would not otherwise be service performed by an employee for purposes of 5 U.S.C. 6303; and (C) "directly related to the duties of the position" means duties and responsibilities in the same line of work which require similar qualifications. (2)(A) For purposes of 5 U.S.C. 6303, the administrator could deem a period of qualified non-federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee. (B) A period deemed by the administrator under (A) would continue to apply to the employee during (i) the period of federal service in which the deeming is made; and (ii) any subsequent period of federal service. 3(A) Notwithstanding 5 U.S.C. 6303(a), the annual leave accrual rate for a NASA employee in a position paid under 5 U.S.C. 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, would be one day for each full biweekly pay period. (B) The accrual rate established under this paragraph would continue to apply to the employee during (i) the period of federal service in		

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which such accrual rate first applies; and (ii) any subsequent period of federal service. Note: Title I would prohibit waiver or modification of 5 U.S.C. Chapter 63 for Defense civilian personnel.		
New 5 U.S.C. 9837. Limited appointment to Senior Executive Service positions. (a)(1)(A)-(B). A career reserved position may be filled by a career appointee, a limited emergency appointee, or a limited term appointee. Either type of limited appointee would have to meet certain conditions and the appointment would have to be approved in advance by the Office of Personnel Management (OPM).	5 U.S.C. 3132.(a)(8). Only Senior Executive Service (SES) career appointees may fill career reserved positions.	No similar provision
New 5 U.S.C. 9837(a)(3) A limited term appointee is an individual appointed to an SES position to meet a bona fide temporary need, as determined by the Administrator.	5 U.S.C. 3132(a)(5) A limited term appointee is an individual appointed under a nonrenewable appointment to an SES position the duties of which will expire at the end of the term. The appointment may not exceed three years.	No similar provision
New 5 U.S.C. 9837(a)(2) No change from current law.	5 U.S.C. 3132(a)(8) A limited emergency appointee is an individual appointed under a nonrenewable appointment to an SES position established to meet a bona fide, unanticipated, urgent need. The appointment may not exceed 18 months.	No similar provision
New 5 U.S.C. 9837(b) The number of career reserved positions which are	No comparable language because limited appointees are prohibited from filling career	No similar provision

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filled by limited emergency appointees and limited term appointees may not exceed 10% of the total number of SES positions allocated to NASA.	reserved positions.	
New 5 U.S.C. 9837(c) The administrator may appoint individuals as limited term appointees for four years or less to a position the duties of which will expire at the end of the term, or one year or less to a position that has continuing duties. The administrator may authorize extensions of up to two years (for positions whose duties will expire) and one year (for positions whose duties are continuing).	Sec. 3394. Noncareer and limited appointments. (b) Agencies may appoint limited term appointees and limited emergency appointees only with prior approval of the exercise of such authority by OPM.	No similar provision
New 5 U.S.C. 9837(d) Limited term appointees, who previously were employed in career or career-conditional appointments outside the SES, shall have reemployment rights. OPM shall establish the conditions and requirements for reemployment and shall have the authority to direct placement in any agency.	5 U.S.C. 3594. Guaranteed placement in other personnel systems. This section, which guarantees, under certain circumstances, placement in other personnel systems applies only to SES career appointees.	No similar provision
New 5 U.S.C. 9837(e)-(f) A limited term appointee may be reassigned to another SES position in NASA, the duties of which will expire at the end of a term of four years or less. A limited term appointee may be reassigned to another continuing SES position in NASA, but the appointee may not serve in one or more positions in NASA under such appointment in excess of one year. In rare	5 U.S.C. 3395. Reassignment and transfer within the Senior Executive Service (b)(2)-(c) A limited term appointee may be reassigned to another SES position in the same agency the duties of which will expire at the end of a term of three years or less. An appointee may not serve in one or more positions under this appointment for more	No similar provision

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circumstances, the Administrator may approve an extension of no more than one year. A limited term appointee may not serve more than seven years in any combination of limited appointments.	than three years. A limited term appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in the aggregate, under any combination of such types of appointment.	
New 5 U.S.C. 9837(g) The administrator may authorize performance awards to limited term appointees in the same amounts and in the same manner as career appointees.	5 U.S.C. 5384. Performance awards in the senior executive service A career appointee may receive performance awards. The amount shall not be less than 5% nor more than 20% of the career appointee's basic rate of pay. The agency head shall determine the amount of performance awards.	No similar provision
New 5 U.S.C. 9838, Superior qualifications pay (a) "Employee" means an employee as defined under 5 U.S.C. 2105 who is employed by NASA. (b) Notwithstanding 5 U.S.C. 5334, the administrator could set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, based on the superior qualifications of the employee, or the special need of NASA. (c) If an exercise of the authority under this section relates to a current employee selected for another position within NASA, a determination would be made that the employee's contribution in the new	5 U.S.C. 5377 - Pay authority for critical positions Authorizes OMB to establish critical pay positions for positions at an extremely high level and critical to agency missions; up to 800 may be established at any time. Compensation cannot exceed Executive Schedule level I without the President's approval. 5 U.S.C. 9502 - Pay authority for critical positions (Internal Revenue Service) Authorizes critical pay positions.	No similar provision; law permits the new personnel system to make changes to 5 U.S.C. Chapter 53.

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position will exceed that in the former position, before setting pay under this section. (d) Pay as set under this section is basic pay for such purposes as pay set under 5 U.S.C. 5334. (e) If the employee serves for at least one year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position could be used in succeeding actions to set pay under 5 U.S.C. Chapter 53. (f) The administrator could waive the restrictions in (e), based on criteria established in the plan required under (g). (g) Before setting any employee's pay under this section, the administrator would submit a plan to OPM, that includes (1) criteria for approval of actions to set pay under this section; (2) the level of approval required to set pay under this section; (3) all types of actions and positions to be covered; (4) the relationship between the exercise of authority under this section and the use of other pay incentives; and (5) a process to evaluate the effectiveness of this section. Note: Title I would permit changes to 5 U.S.C. Chapter 53 for Defense civilian personnel.	Compensation cannot exceed the Vice President's salary. 5 U.S.C. 9503 - Streamlined critical pay authority (Internal Revenue Service) Secretary of the Treasury may establish critical pay positions for positions at an extremely high level and critical to the IRS mission for a 10-year period. Appointments are limited to four years. Total compensation cannot exceed the Vice President's salary.	
Sec. 311(b) Technical and Conforming Amendments		
Sec. 311(b)(1) Notes new Title 5 Chapter 98.		

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Sec. 311(b)(2) Compensation for certain excepted personnel 42 U.S.C. 2473(c)(2)(A) would be amended by striking GS-18 and inserting Executive Schedule (EX) level III.	42 U.S.C. 2473 - Functions of administration	No similar provision
Sec. 311(b)(3) Compensation clarification 18 U.S.C. 209, as amended, would be amended by adding at the end: (h) This section would not prohibit an employee of a private sector entity, while assigned to NASA under the proposed Sec. 9832, from continuing to receive pay and benefits from that entity in accordance with Sec. 9832.	18 U.S.C. 209 - Salary of government officials and employees payable only by United States	No similar provision
Sec. 311(b)(4) through (b)(7). Continued TSP eligibility; Ethics provisions; Contract advice; and Title 5 conforming amendments.	5 U.S.C. 8432 - Contributions (Thrift Savings Plan) 18 U.S.C. 207(c)(A)(v) and 18 U.S.C 1905 18 U.S.C. 207(l) 5 U.S.C. 3111(D), 7353(B)(4)	No similar provision

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Title IV – Human Capital Performance Fund		
Sec. 401. Human Capital Performance Fund (a) Would amend 5 U.S.C. Part III, Subpart D by adding a New Title 5, Chapter 54 - Human Capital Performance Fund Note: Title I would prohibit modifications or changes to 5 U.S.C. Chapter 45 for Defense civilian personnel.	5 U.S.C. Chapter 54 which had provided for an earlier system of merit pay was repealed by P.L. 103-89, Sec. 3(a)(1), Sept. 30, 1993 (107 Stat. 981). Termination of the merit pay system was effective Nov. 1, 1993. 5 U.S.C. Chapter 45 - Incentive awards (includes 5 U.S.C.4505a - Performance-based cash awards)	No similar provision; law stated that 5 U.S.C. Chapter 45 could not be waived or modified
New 5 U.S.C. 5401. Purpose The purpose of the chapter would be to promote, through the creation of a Human Capital Performance Fund, greater performance in the federal government. Monies from the Fund would be used to reward agencies' highest performing and most valuable employees. This Fund would offer federal managers a new tool to recognize employee performance that is critical to the achievement of agency missions.	No similar provision	No similar provision
New 5 U.S.C. 5402. Definitions (1) "Agency" would mean an executive agency under 5 U.S.C. 105, but does not include the General Accounting Office; (2) "Employee" would include (A) an individual paid under a statutory pay system defined in 5 U.S.C. 5302(1); (B) a prevailing rate employee, as defined in 5 U.S.C. 5342(a)(2); and (C) a category of	No similar provision	No similar provision

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employees included by the Office of Personnel Management (OPM) following the review of an agency plan under 5 U.S.C. 5403(b)(1). It would not include (i) an individual paid at an annual rate of basic pay for a level of the Executive Schedule, or at a rate provided for one of those levels under another provision of law; (ii) a member of the Senior Executive Service (SES); (iii) an administrative law judge; (iv) a contract appeals board member; (v) an administrative appeals judge; and (vi) an individual in a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; and (3) "Office" would mean the Office of Personnel Management.		
New 5 U.S.C. 5403. Human Capital Performance Fund (a) There is hereby established the Human Capital Performance Fund, to be administered by OPM. (b)(1)(A) An agency would submit a plan as described in Sec. 5406 to be eligible for consideration by OPM for an allocation. An allocation would be made only upon approval by OPM of an agency's plan. (B)(i) After the reduction for training required under Sec. 5408, 90 percent of the remaining amount appropriated to the Fund could be allocated by OPM to the agencies. Of the amount to be allocated, an agency's pro rata distribution could not exceed its pro rata share of executive branch payroll. (ii) If OPM does not allocate	No similar provision	No similar provision

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an agency's full pro rata share, the undistributed amount remaining from that share would become available for distribution to other agencies as provided in (C). (C)(i) After the reduction for training under Sec. 5408, 10 percent of the remaining amount appropriated to the Fund, as well as the amount of the pro rata share not distributed because of an agency's failure to submit a satisfactory plan, would be allocated among agencies with exceptionally high-quality plans. (ii) An agency with an exceptionally high-quality plan would be eligible to receive an additional distribution in addition to its full pro rata distribution. (2) Each agency is required to provide to OPM such payroll information as OPM specifies necessary to determine the executive branch payroll.		
New 5 U.S.C. 5404. Human capital performance payments (a)(1) Notwithstanding any other provision of law, OPM could authorize an agency to provide human capital performance payments to individual employees based on exceptional performance contributing to the achievement of the agency mission. (2) The number of employees in an agency receiving payments from the Fund, in any year, would not be more than the number equal to 15 percent of the agency's average total civilian full- and part-time permanent employment for the previous fiscal year. (b)(1) A human capital performance payment provided to an individual	No similar provision	No similar provision

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employee from the Fund, in any year, would not exceed 10 percent of the employee's rate of basic pay. (2) The aggregate of an employee's rate of basic pay, adjusted by any locality-based comparability payments, and human capital performance pay, as defined by regulation, could not exceed the rate of basic pay for Executive Schedule level IV in any year. (3) Any human capital performance payment provided to an employee from the Fund is in addition to any annual pay adjustment and any locality-based comparability payment that may apply. (c) No monies from the Human Capital Performance Fund could be used to pay for a new position, for other performance-related payments, or for recruitment or retention incentives paid under 5 U.S.C. 5753 and 5754. (d)(1) An agency could finance initial human capital performance payments using monies from the Human Capital Performance Fund, as available. (2) In subsequent years, continuation of previously awarded human capital performance payments would be financed from other agency funds available for salaries and expenses		
New 5 U.S.C. 5405. Regulations OPM would issue such regulations as it determines to be necessary to administer the chapter, including the administration of the Fund. OPM's regulations would include criteria governing (1) an agency plan under 5 U.S.C. 5406; (2) the allocation of monies from the Fund to agencies; (3) the nature, extent, duration, and	No similar provision	No similar provision

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adjustment of, and approval processes for, payments to individual employees under this chapter; (4) the relationship to this chapter of agency performance management systems; (5) training of supervisors, managers, and other individuals involved in the process of making performance distinctions; and (6) the circumstances under which funds could be allocated by OPM to an agency in amounts below or in excess of the agency's pro rata share.		
Sec. 5406. Agency plan To be eligible for consideration by OPM for an allocation under this section, an agency would be required to develop a plan. States the requirements for the plan. (b) OPM, in consultation with the Chief Human Capital Officers Council, would review and approve an agency's plan. (c) Requires Chief Human Capital Officers Council evaluation.	No similar provision	No similar provision
New 5 U.S.C. 5407. Nature of payment Any payment to an employee under this section would be part of the employee's basic pay for the purposes of Subchapter III of 5 U.S.C. Chapter 83 and 5 U.S.C. Chapters 84 and 87, and for such other purposes (other than Chapter 75) as OPM would determine by regulation.	No similar provision	No similar provision

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New 5 U.S.C. 5408. Appropriations There is authorized to be appropriated \$500 million for FY 2004, and, for each subsequent fiscal year, such sums as may be necessary to carry out the provisions of the proposed Chapter 54. In the first year of implementation, up to 10 percent of the amount appropriated to the Fund would be available to participating agencies to train supervisors, managers, and other individuals involved in the appraisal process on using performance management systems to make meaningful distinctions in employee performance and on the use of the Fund.	No similar provision	No similar provision

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Title V—Miscellaneous		
Sec. 501. Prohibition of use of quotas (a) This provision would prohibit the Office of Management and Budget (OMB) from establishing, applying, or enforcing any numerical goal, target, or quota for competing or converting, under OMB Circular A-76, the work of federal employees, unless the goal, target, or quota is based upon considered research and sound analysis. (b) The prohibition shall not affect the implementation of the Government Performance and Results Act (GPRA) of 1993 or prevent any agency from conducting public-private competitions or carrying out direct conversions.	No similar language in permanent statute. Sec. 647 of P.L. 108-7, the Consolidated Appropriations Act, FY2003, states: “[N]one of the funds made available in this Act may be used by an agency of the executive branch to establish, apply, or enforce any numerical goal, target, or quota for subjecting the employees of the executive agency to public-private competitions or for converting such employees or the work performed by such employees to private contractor performance under the Office of Management and Budget Circular A-76 or any other administrative regulation, directive, or policy unless the goal, target, or quota is based on considered research and sound analysis of past activities and is consistent with the stated mission of the executive agency.”	No similar language

Personnel Provisions Unique to Proposed Defense Transformation for the 21st Century Act

Although Title I of H.R. 1836, as introduced, contains most of the provisions of Sec. 101 of the proposed Defense Transformation for the 21st Century, there are some personnel-related provisions in the transformation proposal which are not included.

Contracting for Personal Services

The transformation proposal would create a new section in Title 5, U.S. Code (proposed 5 U.S.C. 9903) relating to contracting for personal services –

- New 5 U.S.C. 9903(a) – Outside the United States. Funds available to the Department of Defense would be available to contract with individuals for services to be performed outside the United States as determined by the secretary to be necessary and appropriate. These contractors would not be considered employees of the United States government for purposes of any law administered by OPM or under any human resources management system established pursuant to the new Chapter 99 of Title 5. These contracts could be negotiated, their terms prescribed, and the work could be performed where necessary, without regard to statutory provisions that relate to negotiating, making, and performing contracts and performing work in the United States. **Current law** – *See, for example*, U.S. Code Title 41, Chapter 6 – Service Contract Labor Standards. **Homeland** – Sec. 835 of P.L. 107-296 is related in that it addresses the issue of prohibiting contracts with corporate expatriates.
- New 5 U.S.C. 9903(b) - National Security Missions. Notwithstanding any other provision of law, sums made available to DOD by appropriation or otherwise could be expended as determined by the secretary to be necessary to carry out the national security mission of DOD for personal services contracts, including personal service without regard to limitations on types of persons to be employed. **Current law** – *See, for example*, 10 U.S.C. 2393 - Prohibition against doing business with certain offerors or contractors, 10 U.S.C. 2408 - Prohibition on persons convicted of defense contract related felonies and related criminal penalty on defense contractors, and 50 U.S.C. 403j - Central Intelligence Agency; appropriations; expenditures. *See also* 50 U.S.C. 403j - Central Intelligence Agency; appropriations; expenditures, which authorizes sums made available to the CIA by appropriation or otherwise to be expended, among other things, for personal services, including personal services without regard to limitations on types of persons to be employed. **Homeland** – There are no similar provisions.

- New 5 U.S.C. 9903(c) - Experts and Consultants. - Subject to paragraphs (2) and (3) and notwithstanding provisions of 10 U.S.C. 129b, the secretary would be authorized to (A) procure by contract the services of experts and consultants (or organizations of them), who may provide such services with or without compensation as determined by the secretary, and may perform such duties as the secretary may prescribe without being deemed to be employees of DOD except, at the discretion of the secretary, for the purposes of (i) the Ethics in Government Act of 1978; (ii) Chapter 73 of Title 5 (Suitability, Security, and Conduct); and (iii) section 27 of the Office of Federal Procurement Policy Act; and (B) pay travel expenses of individuals, including transportation and per diem in lieu of subsistence while such individuals travel from their homes or places of business to official duty stations and return, as may be authorized by law. (2) To procure the services of experts or consultants (or an organization of them), the secretary would be required to determine that (A) such procurement is advantageous to the United States; and (B) these services cannot be provided adequately by DOD; (3) [Note: The text on which this report is based did not have a subsection (3) of 9903(c), only subsections (1) and (2).] **Current law** – 5 U.S.C. 3109 - Employment of experts and consultants generally limits temporary contract services to one year and pay for temporary and intermittent contract services to the daily equivalent rate of pay to the highest allowed in 5 U.S.C. 5332 (the General Schedule). 10 U.S.C. 129b - Experts and Consultants; authority to procure such services generally provides that authority should be exercised in accordance with 5 U.S.C. 3109. **Homeland** – Sec. 831(c) of P.L. 107-296 - Procurement of Temporary and Intermittent Services (in research and development projects) authorizes procurement of temporary and intermittent services of experts and consultants in accordance with 5 U.S.C. 3109, without regard to pay limitation in section 3109. Sec. 832 - Personal services. Authorizes procurement of temporary or intermittent services of experts or consultants in accordance with 5 U.S.C. 3109, but, when necessary to meet an urgent homeland security needs, without regard to the pay limitations in section 3109.
- New 5 U.S.C. 9903(d) - Implementation. Implementation of this section would be at the secretary's sole, exclusive, and unreviewable discretion. There are no similar provisions in law.

Contracting for Security Guards and Firefighting Services

Title II of the DOD transformation proposal would relate to acquisition policy. Subtitle B would affect the contracting process. Specifically, Sec. 211, Contracting of security guards and firefighting services, would repeal the provisions of 10 U.S.C. 2465. Currently, 10 U.S.C. 2465 places a prohibition on contracts for performance of firefighting or security-guard functions and generally denies obligation or expenditure of DOD appropriated funds for firefighting and security guard functions

at any military installation or facility. There were no similar provisions in the Homeland Security Act of 2002.

Administrative Transformation

The DOD transformation proposal contains some provisions which are directed to the issue of organization within the department and administrative management. However, as the comparison below shows, the proposal could have significant effects on personnel management policy.

DOD Transformation for the 21st Century Act	Current Law	Homeland Security Act of 2002 – P.L. 107-296
Title IV – ADMINISTRATIVE TRANSFORMATION Subtitle A – Transformation of DOD Organization		
Sec. 401. Reorganization Within the Department of Defense. Subsections (b) and (c) of 10 U.S.C. 125 would redesignated as subsections (c) and (d) and a new section (b) would be added, providing that, “Notwithstanding any provision of this title, after the expiration of 60 days after providing notice of such action to Congress, the Secretary of Defense, subject to direction of the President, would be authorized substantially to transfer, reassign, consolidate, reorganize, or abolish a function, power, organization, position, or duty vested in the Office of the Secretary of Defense, or an officer, official, or agency thereof.”	10 U.S.C. 125 - Functions, powers, and duties; transfer, reassignment, consolidation, or abolition restricts the power of the secretary, except when determined by the president to be necessary because of hostilities or an imminent threat thereof, to transfer, reassign, consolidate, or abolish a function, power, or duty vested in DOD by law.	Sec. 872 - Reorganization of P.L. 107- 296 authorizes the Secretary to allocate or reallocate functions among officers and establish, consolidate, alter, or discontinue organizational units but only pursuant to the President’s reorganization plan in Sec. 1502(b) of P.L. 107-296 or after expiration of 60 days after notifying appropriate congressional committees. This authority does not extend to abolishing any agency, entity, organizational unit, program, or function established or required to be maintained by the P.L. 107-108 or other statute.
Sec. 402. Reassignment of Personnel Serving in the Office of the Secretary of Defense. Section 143 of Title 10, U.S.C., would be repealed.	10 U.S.C. 143 - Office of the Secretary of Defense (OSD) personnel establishes a permanent limitation on OSD military and civilian personnel, defines personnel, and limits reassignment of functions to evade the personnel limitation	No similar provision

DOD Transformation for the 21st Century Act	Current Law	Homeland Security Act of 2002 – P.L. 107-296
Sec. 403. Appointments of Retired Members of the Armed Forces to Positions in the Department of Defense. Section 3326 of title 5, U.S.C., would be repealed.	5 U.S.C. 3326 - Appointments of retired members of the armed forces to positions in the Department of Defense. A retired armed forces member may not be appointed to a civil service position in DOD within 180 days immediately following retirement unless the secretary concerned authorizes it, the minimum rate of basic pay for the position has been increased under 5 U.S.C. 5305, or a state of national emergency exists.	No similar provision
Sec. 404 - Transfer of Department of Defense Personnel Security Investigative Functions and Defense Personnel Performing Those Functions grants the secretary discretion to transfer to OPM discretion to accept personnel security investigation functions currently performed by DOD's Defense Security Service and, if OPM accepts those functions, it must accept the employees performing those functions and their supervisors and may accept support staff and higher level supervisors. Transferred personnel would be protected from separation or reduction in grade of compensation	5 U.S.C. 3503 - Transfer of function provides that when a function is transferred from one agency to another or when one agency is replaced by another, each competing employee must be transferred before the	No similar provision with respect to transferring security investigative functions, but <i>see</i> below. Sec. 841(b) of P.L. 107-296 - Effect on Personnel, provides that (1) generally the transfer to the Department of Homeland Security of full-time and part-time employees holding permanent positions shall not cause them to be separated or reduced in pay for 1 year after transfer; (2) any person who, on the day preceding transfer to the Department, held an Executive Level position and who, without a break in service, is appointed to a DHS

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for one year after transfer date. Any transfer for this purpose would be considered a transfer of function under 5 U.S.C. 3503.	receiving agency may make an appointment from another source.	position with comparable duties continues to be compensated in the new position at not less than the rate provided for such position for the duration of service in the new position; and (3) that any exercise of authority under chapter 97 of title 5 must conform with the requirements of Sec. 841(b).
Sec. 405. Conversions of Commercial Activities.		No similar provision
(a) Section 2461(b)(3)(A) of Title 10, U.S.C., would be amended by (1) striking “of the cost”; (2) striking “savings” and inserting “best value”; (3) redesignating clause (iii) as (iv); and (4) inserting after (ii) the following new clause (iii) “Benefits in addition to price that warrant performance of the function by a source at a cost higher than that of performance by Department of Defense civilian employees.”	10 U.S.C. 2461 - Commercial or industrial type functions; required studies and reports of savings to be achieved before converting to contractor performance Section 2461(b)(3)(A) states that: (3) An analysis of commercial or industrial type function for possible change to performance by the private sector shall include the following: (A) An examination of the cost of performance of the function by Department of Defense civilian employees and by one or more private contractors to demonstrate whether change to performance by the private sector will	

DOD Transformation for the 21st Century Act	Current Law	Homeland Security Act of 2002 – P.L. 107-296
	result in savings to the government over the life of the contract, including in the examination the following: (i) The cost to the government, estimated by the Secretary of Defense (based on offers received), for performance of the function by the private sector. (ii) The estimated cost to the government of Department of Defense civilian employees performing the function. (iii) In addition to the costs referred to in clause (i), an estimate of all other costs and expenditures that would incur because of the award of such a contract.	
(b) Contracting if Best Value. - Section 2462(a) of Title 10, U.S.C., would be amended by striking “such a source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, executive order, or regulation) than the cost at which the Department can provide the same supply or service” and inserting “performance by that source represents	10 U.S.C. 2462 - Contracting for certain supplies and services required when cost is lower Section 2462(a) states that: (a) In General.—Except as otherwise provided by law, the Secretary of Defense shall procure each supply or service necessary for or beneficial to the accomplishment of the authorized functions of	No similar provision

DOD Transformation for the 21st Century Act	Current Law	Homeland Security Act of 2002 – P.L. 107-296
the best value to the government, determined in accordance with the competition requirements of OMB Circular A-76.”	the Department of Defense (other than functions which the Secretary of Defense determines must be performed by military or government personnel) from a source in the private sector if such source can provide such supply or service to the Department at a cost that is lower (after including any cost differential required by law, executive order, or regulation) than the cost at which the Department can provide the same supply or service.	