Managerial Flexibility Act of 2001

Section-by-Section Summary

TITLE I - FEDERAL EMPLOYEE MANAGEMENT REFORMS

SUBTITLE A - FEDERAL EMPLOYMENT RESTRUCTURING ASSISTANCE

This proposal would create a permanent Government-wide authority for voluntary separation incentives ("buyouts"). Buyouts have been available under various statutory authorities since 1992. Over the years, they have proven to be an extremely effective tool for agencies facing major downsizing or restructuring. They were a key tool in efforts to reduce the Federal workforce by over 370,000 in the last seven years and to accomplish base realignments and closures. The Office of Personnel Management (OPM), the General Accounting Office, and the Congressional Budget Office agree that buyouts are more cost-effective and less disruptive than reductions in force (RIFs). They reduce the number of involuntary separations when an agency is downsizing or restructuring. Buyouts are more manageable and flexible than RIFs, protect diversity, and minimize damage to morale brought about by RIFs. Over the last few years more than 26 different buyout laws have been enacted. Two of these were time-limited Government-wide authorities, and the remainder covered specific agencies.

The proposal includes all of the safeguards and features that have allowed buyouts to be useful and effective for agencies and attractive to employees while still saving the taxpayers money.
These safeguards include: (1) requiring an agency to submit a detailed plan to the Office of Management and Budget (OMB) describing the intended use of buyouts and how the agency will be streamlined; (2) reducing an agency's full-time equivalent (FTE) employment level by one position for each employee who receives a buyout; and (3) requiring that any employee who received an incentive and then accepted any paid employment with the Government, or under a personal services contract with the Government, within five years after separating, would have to repay the entire amount of the incentive before the first day of the reemployment.

Sec. 101. Voluntary separation incentives

This section would create a new subchapter II in chapter 35 of title 5 U.S.C., to permanently authorize buyouts.

The new 5 U.S.C. 3521 would provide definitions of "agency" and "employee." This section would exclude certain employees from eligibility for a buyout. Among these exclusions are reemployed annuitants, employees eligible for disability retirement, employees about to be separated for misconduct or unacceptable performance, and employees who have previously received a buyout from the Federal Government.

The new 5 U.S.C. 3522 would require each agency that is considering offering buyouts to submit to OMB a detailed plan describing the use of incentives and how the agency would be streamlined. The plan, which could not be implemented without OMB's approval, would have to identify to whom incentive payments would be offered. Offers could be targeted on the basis of organizational unit, occupational series or level, geographic location, specific window periods, skills, knowledge, other similar job-related factors, or a combination of these factors. The plan also would have to specify the time period during which incentive payments would be offered, as well as the number and amounts of payments to be offered. No payment to an individual could exceed $25,000. OMB could condition its approval of an agency plan on the agency's making OMB's requested modifications.

The new 5 U.S.C. 3523 would require an agency to pay buyouts in accordance with its approved plan and in a lump sum, to employees who voluntarily retire or resign. An incentive payment would be the lesser of the amount of severance pay the employee would be entitled to or the amount offered by the agency, not to exceed $25,000.

The new 5 U.S.C. 3524 would require repayment of the entire amount of a buyout by an employee who receives an incentive payment and then accepts any paid employment with the Federal Government (other than the legislative branch) within five years after separating. The repayment would have to be completed before the individual's first day of work in the new position. If the subsequent employment is within the Executive branch, including the U.S. Postal Service, the Director of OPM could waive the repayment at the request of the agency head if the individual possesses unique abilities. Repayment could also be waived in situations involving emergencies that threaten life or property. The Director of the Administrative Office of the U.S. Courts could waive repayment on the same basis, in the case of subsequent employment in the judicial branch. Employment under a personal services contract with the Government would be subject to the requirement for repayment, but would be excluded from the waiver provision.

The new 5 U.S.C. 3525 would require a reduction in full-time equivalent employment in each agency by one position for each separation of an employee who receives a buyout under subchapter II of chapter 35. It also would direct the OMB to take any action necessary to ensure compliance. At the request of the agency head, the Director of OMB could waive this required reduction if the agency's plan demonstrated that the incentive payments would be used to reallocate occupations or reshape its workforce in a way that would produce a cost-effective result.

The new 5 U.S.C. 3526 would authorize OPM to issue regulations implementing the subchapter's provisions.

Subsection (b) of section 101 of the draft bill would allow the Director of the Administrative Office of the U.S. Courts to establish a similar program for employees of the judicial branch.

Sec. 102. Existing authorities valid until expiration

This section provides that an agency subject to a previously enacted buyout authority may continue to use the authority until the authority expires.

Sec. 103. Effective date

This section provides that the bill shall be effective 60 days after the date of enactment.

SUBTITLE B - FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT AMENDMENTS

Last year, section 651 of P.L. 106-58 made permanent the temporary voluntary early retirement authority in section 7001 of P.L. 105-174. The amendments made by this bill would differ from section 7001 of P.L. 105-174, as amended, in that the draft bill would allow OPM to authorize voluntary early retirements in an agency (or component thereof) undergoing delayering, reduction in force, reorganization, transfer of function, or other workforce restructuring (or shaping) where employees in the agency or component are likely to be separated, immediately reduced in pay, or identified as being in positions that are becoming surplus to the agency's ability to carry out its mission effectively. Thus, the amendments made by subsection (a) would broaden the criteria for authorizing voluntary early retirement under the Civil Service Retirement System (CSRS) and Federal Employees' Retirement System (FERS). These provisions would make it possible for an agency to use voluntary early retirement as a tool to assist in making an agency flatter and reshaping the agency's workforce when the agency finds that the mix of skills throughout its workforce is no longer the most appropriate one for carrying out the agency’s mission effectively. In these circumstances, a voluntary early retirement authority could be triggered even if the agency had not yet determined that it would have to separate a portion of its workforce. This subtitle would support the Administration's Government reform initiatives by giving agencies more flexibility to address skills imbalances at an earlier stage, in a way that is less disruptive than waiting until involuntary separations become inevitable. At the same time, OPM would retain authority to approve each agency's use of voluntary early retirements in such circumstances.

Sec. 111. Voluntary early retirement authority

Section 111 of the draft bill would amend sections 8336(d)(2) and 8414(b)(1)(B) of title 5 U.S.C., regarding the voluntary early retirement authorities under the CSRS and FERS, respectively.

Section 111(a) would place in title 5 U.S.C., provisions very similar to those in section 7001 of P.L. 105-174, as amended. As noted above, the circumstances under which voluntary early retirements could be offered would be broadened. In addition, early out offers could also be made on the basis of skills, knowledge, or other job-related factors. Previously, offers could only be based upon non-personal factors.

Section 111(b) would repeal section 7001 of P.L. 105-174, the Supplemental Appropriations and Rescissions Act, 1998, as amended. Section 7001 would be rendered obsolete by the amendments to title 5 in subsection (a).

SUBTITLE C - CIVIL SERVICE RECRUITMENT AND RETENTION INCENTIVES

This subtitle would substantially change the authorities in chapter 57 of title 5 U.S.C., for Federal agencies to pay employees recruitment, relocation, and retention bonuses. The current authorities already offer agencies important tools for recruiting and retaining key employees to perform critical functions. However, the changes included in the draft bill would make these tools much more flexible and effective, enabling agencies to use them in a targeted way to achieve the results they need. These changes are particularly appropriate to the current environment in which Federal agencies are engaged in keen competition for the most qualified candidates.

The enhancements of recruitment, relocation, and retention bonuses under the draft bill include: (1) authority to pay larger recruitment and relocation bonuses based on the length of an agreed-upon service period, capped at 25 percent of the employee's annual salary multiplied by the number of years the employee would agree to serve in the position (up to a maximum of four years); (2) authority to pay recruitment and relocation bonuses in installments; (3) authority to waive the normal cap on recruitment and relocation bonuses because of a critical agency need to pay higher amounts over shorter periods of time (not to exceed a total of 100 percent of the employee's starting annual salary); (4) authority to pay recruitment bonuses to current Federal employees under conditions prescribed in OPM regulations, such as when a current employee is moving to a difficult-to-fill position in a different career field; (5) the option of delaying the effective date of a recruitment bonus payment (e.g., until after the employee has completed a period of formal basic training); (6) authority to pay group-based retention bonuses of up to 10 percent of the annual salary of each employee in a targeted group when agencies determine there is a high risk that a significant number of employees in the targeted group are likely to leave Federal service and employees in the group have unusually high or unique qualifications or are serving a special agency need that makes it essential to retain employees in the targeted group (authority currently provided by OPM regulations); (7) authority for agencies to pay retention bonuses to employees who are likely to leave for other Federal positions, not just to those likely to leave Federal employment altogether; and (8) flexible payment provisions for retention bonuses to be paid at the end of specified installment periods (biweekly, monthly, quarterly, etc.) or after the employee has completed the entire agreed-upon service period.

By expanding the circumstances in which recruitment, relocation, and retention bonuses may be paid and by enabling agencies to make the payments in more strategic ways that enhance their desired effect, this subtitle would help Federal agencies be more competitive in recruiting and retaining the kind of workforce they will need in the 21st century.

Sec. 121. Recruitment, relocation, and retention bonuses

Section 121(a) would amend sections 5753 and 5754 of title 5 U.S.C., concerning recruitment and relocation bonuses and retention allowances, respectively.

In addition to the current authorities to pay either a recruitment bonus to a new employee entering his or her first Federal job or a relocation bonus to a current employee who must relocate to accept a new job, subsection (a) of the new section 5753 would allow OPM to authorize the head of an agency to pay recruitment bonuses to current employees who accept a new position within the same geographic area. The circumstances in which a bonus could be paid to such an employee would be limited by OPM regulations. They could include a situation in which an employee is changing career fields. In all situations, the law would continue to require that recruitment and relocation bonuses be used for difficult-to-fill positions. The authority to pay recruitment and relocation bonuses also would continue to be limited to General Schedule positions, except as provided in subsection (g).

Subsection (b) of the new 5 U.S.C. 5753 would continue to require a service agreement between the employee and the agency, but would add a provision limiting service agreements to four years. OPM could establish a minimum service period by regulation. The agreement would establish the length of the required service period, the amount of the bonus, the method for paying the bonus (e.g., installments, lump sum), the conditions under which an agreement may be terminated, and any other terms and conditions for paying the bonus, consistent with OPM regulations. Payment of the bonus and the service period generally would begin when the employment in the new position begins, but the effective date could be delayed under circumstances described in OPM regulations, such as when the new position includes a period of formal basic training.

Subsection (c) of the new 5 U.S.C. 5753 would address the amount and the method of paying recruitment and relocation bonuses. A bonus would be limited to 25 percent of the employee's annual rate of basic pay at the beginning of the service period multiplied by the number of years (or fractions of years) in the service period. Since the service period could not exceed four years, the total bonus could not exceed 100 percent of the employee's annual pay. The bonus could be paid as a lump sum at the outset, in installments, or as a lump sum payable at the end of the service period. The agency also could use a combination of these payment methods. This would give the agency more flexibility to structure the payments in a manner that offers the employee greater incentives to complete the full service period stipulated in the service agreement. Subsection (c) would retain provisions in current law permitting payment of a recruitment or relocation bonus before the employee enters on duty and barring consideration of a bonus as part of an employee's basic pay. OPM would issue regulations regarding the calculation of a non-exempt employee's "regular rate" for overtime pay purposes consistent with OPM’s authority to administer the Fair Labor Standards Act for Federal employees.

The new section 5753 would not include the provision currently in subsection (b) of section 5753 that prohibits the inclusion of locality pay in determining the employee's annual rate of basic pay for purposes of calculating the bonus. It would be left up to OPM to address this matter in its regulations.

Subsection (d) of the new 5 U.S.C. 5753 would allow OPM to authorize the head of an agency to waive the 25 percent limit on the amount of a bonus under subsection (c) and pay a higher bonus over a shorter period of time. Under this waiver authority, which would be subject to OPM regulations, a bonus could not exceed 50 percent of the employee's annual rate of basic pay multiplied by the years (or fractions thereof) in the service agreement. The total bonus still could not exceed 100 percent of the employee's annual pay, but this provision would enable the agency to pay a bonus equal to 100 percent of the employee’s annual salary over two years instead of over four years, for example.

Subsection (e) of section 5753 would require an agency to establish a plan for paying recruitment bonuses, as well as a plan for paying relocation bonuses, before they could pay such bonuses. The plans would have to be consistent with OPM regulations.

Subsection (f) of section 5753 would authorize OPM to issue whatever regulations it believes are necessary to administer this bonus authority. The regulations would address the circumstances under which OPM would require an employee to repay a recruitment bonus if the agreed-upon service period has not been completed. As part of its oversight responsibilities, OPM would also continue to monitor agencies' use of recruitment and relocation bonuses to ensure the authorities are used in a fair and equitable manner and in accordance with the regulations and merit system principles. If an agency were found to not be complying with these standards, OPM could revoke or suspend an agency's authority to pay these bonuses.

Subsection (g) would allow OPM, at the request of the head of an Executive agency, to extend coverage under section 5753 to categories of employees who would not otherwise be eligible for recruitment and relocation bonuses. Coverage could not under any circumstances be extended to the head of any Executive agency, including an agency headed by a board or any other collegial body composed of two or more individuals.

Subsection (h) of 5 U.S.C. 5753 would provide a definition of "employee".

The new 5 U.S.C. 5754 would rename retention allowances "retention bonuses." This change would eliminate confusion surrounding the use of different terms for retention payments and recruitment and relocation payments and would reflect the availability of new options for paying retention payments in the same forms in which recruitment and relocation bonuses may be paid (e.g., installments, lump sums, etc.), in addition to recurring payments that are paid concurrently with the employee's regular salary.

Subsection (a) of the new 5 U.S.C. 5754 would continue to allow OPM to authorize the head of an agency to pay a retention bonus to an employee who is likely to leave the Federal service and would specify that this includes an employee who is likely to leave his or her job for another Federal position. The authority to pay a bonus to an employee who is likely to leave for another Federal job would be limited by OPM regulations. As under current law, retention bonuses could be paid only if the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee. As with recruitment and relocation bonuses, the current provision barring inclusion of locality pay in determining the employee's annual pay for purposes of calculating a retention bonus would be removed, giving OPM discretion to address this issue in its regulations.

Subsection (b) of the new section 5754 would specify that OPM may authorize the head of an agency to pay retention bonuses to groups of employees if there is a high risk that a significant number of employees in the group would otherwise leave. The group of employees must also have unusually high or unique qualifications, or the agency must have a special need for the employees' services that makes it essential to retain employees in the group. This authority is currently provided to agencies under OPM's retention allowance regulations at 5 CFR 575.305(d).

Subsection (c) of section 5754, like the current law, would provide that the retention bonus authority applies to an employee paid under the General Schedule. However, coverage could be extended to employees in other pay systems as provided by subsection (i).

Subsection (d) of section 5754 would require a written service agreement between the agency and the employee receiving a retention bonus. The agreement would stipulate how long the employee would agree to continue working in exchange for receiving the bonus, as well as the amount of the bonus and how it would be paid. The agreement would also address what would happen if the individual's employment terminated before the end of the agreed-upon service period. All of the terms and conditions stipulated in the service agreement would have to be consistent with OPM regulations.

A written service agreement would not be required if the agency pays a retention bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee with no portion of the bonus deferred. In this case, the agency would have to provide written notice of the decision to discontinue the retention bonus payments. Except as provided in OPM regulations, the employee would continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is given.

Subsection (d) also would prohibit an employee from accruing entitlement to a retention bonus during a service period previously established for that employee under the recruitment or relocation bonus authority in section 5753.

Subsection (e) would provide that, in general, a retention bonus to an individual under subsection (a) may not exceed 25 percent of the employee's basic pay, and a retention bonus to an employee in a group receiving a bonus under subsection (b) may not exceed 10 percent of that employee's basic pay.

A retention bonus could be paid in installments at the end of specified periods (biweekly, monthly, quarterly, etc.), or at the end of the entire agreed-upon service period. Unlike recruitment and relocation bonuses, no retention bonus payments could be made before the employee has performed the service to which the payments are linked. Accordingly, an installment payment could not exceed the amount of basic pay the employee would earn during the installment period (taking into account any increases in basic pay occurring during that period), multiplied by the percentage rate of the bonus payment. OPM could allow the agency to make installment payments that were smaller than this amount, setting aside the excess in a reserve account that would be payable at the completion of the full agreed-upon service period. This would give agencies another option to enhance the retention effect of the bonus. Because of this payment approach, there are no repayment requirements. Employees would be entitled to keep any retention bonus payments properly received, regardless of the reason for early termination of the service agreement.

Like recruitment and relocation bonuses, retention bonuses would not be part of basic pay. OPM would issue regulations regarding the calculation of a non-exempt employee's "regular rate" for overtime pay purposes consistent with OPM's authority to administer the Fair Labor Standards Act for Federal employees.

Subsection (f) of 5 U.S.C. 5754 would provide a waiver authority. At the request of an agency head, OPM could waive the limit on the amount of the bonus under subsection (e) and allow a retention bonus of up to 50 percent of an employee's annual pay, based on a critical agency need.

Subsection (g) of section 5754 would require an agency to establish a plan for paying retention bonuses before it could make any such payments. The plan would have to be consistent with OPM regulations.

Subsection (h) of section 5754 would allow OPM to prescribe whatever regulations it considered necessary to administer the authority to pay retention bonuses. As part of its oversight responsibilities, OPM would monitor agencies' use of retention bonuses to ensure the authority is used in a fair and equitable manner and in accordance with the regulations and merit system principles. If an agency were found to not be complying with these standards, OPM could revoke or suspend the agency's authority to pay retention bonuses.

Subsection (i) would allow OPM, at the request of an agency head, to extend coverage under section 5754 to categories of employees who would not otherwise be eligible for a retention bonus. Coverage could not be extended under any circumstances to the head of any Executive agency, including an agency headed by a board or any other collegial body composed of two or more individuals.

Subsection (j) of 5 U.S.C. 5754 would provide a definition of "employee".

Paragraph (2) of section 121 of the draft bill would amend the table of sections for chapter 57 of title 5 U.S.C., to reflect the use of the term "retention bonus" instead of "retention allowance."

Section 121(b) of the draft bill would repeal section 407 of the Federal Employees Pay Comparability Act (FEPCA) of 1990, which provides a special exception to the 25 percent cap on a recruitment or relocation bonus for law enforcement officers. This provision currently sets the cap on a bonus at $15,000 for a law enforcement officer whose annual pay is less than $60,000. Repealing this special exception would simplify administration of the bonus authority and make treatment of all employees more consistent and equitable. At the same time, it would not remove a benefit for law enforcement officers, since under the new 5 U.S.C. 5753, such an officer could still be paid a bonus of $15,000 simply by extending the service period to cover more than one year.

Sec. 122. Academic degree training

Section 122 of the draft bill provides that sections 4107(a) (1), (2) and (3) together operate as three conditions that agencies must meet before they can pay for academic degrees. This means that in order for an agency to pay for academic degrees, the agency must have done some assessment/planning to determine that an academic degree program: (1) contributes significantly to meeting an identified agency training need, to resolving an identified agency staffing problem, or to accomplishing goals in the agency's strategic plan; (2) is part of a planned, systematic, and coordinated agency employee development program linked to accomplishing the agency's strategic goals and objectives; and (3) is accredited and provided by a college or university that is accredited by a nationally recognized body. Even in the situation where an agency has determined that paying for academic degrees is necessary for an identified recruitment or retention need, the agency must have a planned, systematic and coordinated agency program to implement the academic degree program consistent with merit system principles. It must also be logically linked to the accomplishment of the agency's strategic goals for recruitment and/or retention.

An agency must have an employee development program if it wants to use academic degrees to fill identified agency needs. Individuals would compete for the training positions. An individual applying for an authorized academic degree program must meet the minimum qualification requirements of the Federal position used by the degree program. If Federal employees are selected, they are transferred from their previous positions to occupation-related training positions. If an individual who is not a Federal employee is selected, he or she is brought on board in the training position associated with the degree program.

Section 122 does not change the prohibition for paying for degrees if the only purpose is to provide a personal benefit to the employee in the form of the degree or as a means of qualifying an employee for a position for which the academic degree program is a requirement.

Sec. 123. Professional credentials

Section 123 of the draft bill would add a new section 5757 to chapter 57 of title 5, U.S.C. Under this section, when consistent with the agency’s strategic goals and objectives, an agency may pay the cost of employees' licenses, certificates, and other professional credentials, as well as the cost of examinations to obtain these credentials. The amendment would not apply to employees occupying or seeking to qualify for appointment to any position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character. This authority would provide agencies with another useful tool in meeting their staffing needs.

It should be noted that, even under current law, an agency may pay for training to prepare employees for examinations if the training itself is related to the employee's official duties and can be expected to improve performance. For example, a bar review or accounting course could be approved for an attorney or an accountant who already meets the qualifications requirements for his or her Federal position and who is taking the course to refresh or update the individual's skills or knowledge base. The reason the agency might pay for these courses is to meet its needs (and the public's need) for a proficient employee. However, it would be an improper use of appropriated funds to pay for training to prepare an employee for a credentialing exam, such as a bar review course, so that he or she may qualify for a Federal position.

Sec. 124. Correction of pay administration problems

Section 124 of the draft bill would amend chapter 53 of title 5 U.S.C., relating to special pay rates. These changes are designed to improve the effectiveness of the special salary rates program as a recruitment and retention tool and restore confidence in the fairness of individual pay administration determinations for employees receiving special salary rates. The changes would correct a variety of pay administration anomalies associated with special rates and pay retention that resulted from the introduction of locality pay under the General Schedule pay system.

For example, one provision of law makes it impractical for an agency to request the reduction or termination of special rates when they are no longer needed because current employees would receive an unintended and unwarranted windfall pay increase. In other situations, employees sometimes experience reductions in pay that are difficult to explain when they are promoted to or placed in a special rate range. The proposed changes would go a long way toward reinvigorating the special rates program as a useful recruitment and retention tool and would thereby help to relieve pressure for authority to set pay outside the General Schedule system. No current employee would lose pay because of these changes.

Subsection (a)(1) of section 124 would amend 5 U.S.C. 5302(8), which defines the terms "rates of pay under the General Schedule," "rates of pay for the General Schedule," and "scheduled rates of basic pay." The proposed amendment would exclude from these definitions any retained rates of pay under section 5363 of title 5. This means that locality pay would not be paid on top of a retained rate. This change, in combination with other changes in sections 5361 and 5363 of title 5, would prevent an unnecessary and unintended windfall increase in pay for employees who become entitled to pay retention because their special rates are terminated or reduced.

Subsection (a)(2) of section 124 would amend section 5305 of title 5, which authorizes special rates. These amendments would correct various pay anomalies that produce unwarranted windfalls or pay reductions, while providing greater consistency between the rules for special rates and locality rates and simplifying administration of the special rates program.

Subparagraphs (A), (D), and (F) of subsection (a)(2) would make conforming amendments to clarify that special rates under this section are not necessarily "basic pay" for all purposes. In addition, subparagraph (A) would amend section 5305(a) with respect to the limitations on special rates. First, it would clarify that the cap on the minimum special rate is equal to the rate that is 30 percent above the regular maximum rate of basic pay for the grade or level, without considering any locality payments or other geographic adjustments. Second, it would increase the limitation on special rates to the rate for level IV of the Executive Schedule. This would put special rates on the same footing as locality rates, which are subject to a level IV cap for General Schedule employees.

Subparagraph (A) also would amend 5 U.S.C. 5305(a) to provide special rates authority directly to OPM without the need for a delegation from the President, consistent with other pay-setting authorities in title 5. Subparagraphs (B), (C), (E), and (F) would make conforming changes in other subsections of 5 U.S.C. 5305.

Subparagraph (A) would add a new subsection (a)(2) to 5 U.S.C. 5305, which would allow the head of an agency to "opt out" of a special rate authorization. The head of an agency could provide a formal written notice to OPM (or other agency that is authorized by the President to establish special rates) that identified the specific category or categories of employees that would not be covered by a particular special rates authorization. Agencies could decide to use this authority when they determined that they did not need to pay higher rates of pay to recruit or retain employees in certain occupations or locations, or they did not have the additional funds needed to pay the higher special rates. If an agency removed employees from coverage after a special rate authorization took effect, the employees would be covered by the pay retention provisions of 5 U.S.C. 5363, as applicable.

Subparagraph (E) would amend 5 U.S.C. 5305(f), which currently refers to "conversion rules" prescribed by the President or his designee for adjusting an employee's special pay rate at the time of a statutory pay increase. The proposed amendment would clarify that this confusing reference to conversion rules applies to the conversion of an employee's pay to a new special rate schedule and not to the adjustment of the special rate schedule itself. (The latter is addressed in subsection (d) of 5 U.S.C. 5305.) This amendment would make clear that the Government has full authority to adjust or not to adjust special rate schedules based on staffing needs. It also would allow the Government to discontinue mandatory annual reviews of all special rate schedules (currently over 400), which pose an unnecessary administrative burden. Instead, the Government would be free to pursue a targeted approach that is more effective and efficient.

Subparagraph (G) would amend 5 U.S.C. 5305(h) to clarify that an employee's entitlement to a special rate is eliminated if that employee is entitled to a higher locality rate. Under current law, an employee's special rate is not automatically terminated when surpassed by a locality rate, but remains as an underlying rate of basic pay that is used for certain pay administration purposes. Thus, different pay rules may apply to two employees being paid the same rate of pay. Under current law, the underlying special rate cannot be terminated without triggering pay retention and a windfall pay increase. The new subsection (h), in combination with other changes in the bill, would prevent such illogical and inequitable results in the future.

Subparagraph (H) of subsection (a)(2) would add two new subsections to 5 U.S.C. 5305. The new subsection (i) of 5 U.S.C. 5305 would provide that a special rate employee who is assigned to a different geographic location will have his or her pay either increased or decreased to reflect the pay entitlement that exists in the new area. In contrast to current law, no pay retention would result if an employee is moved involuntarily and pay is reduced solely due to a geographic-based pay conversion. This reflects the principle that local special rates are a Government tool to address a local labor market problem, not an employee entitlement that employees should be allowed to carry to another area where there is no such problem. This subsection would make it clear that an employee with the same work history as another employee will not have higher pay simply because he or she came from an area where higher pay rates applied. This provision also would ensure consistency between the treatment of locality rates and special rates. An employee who moves from a higher locality rate area to a lower locality rate area is not entitled to pay retention even if the move is involuntary.

Finally, the new subsection (j) of 5 U.S.C. 5305 would provide that special rates are basic pay only for the specific purposes stated here, including retirement and other major benefits. These are generally the same as the purposes for which locality-based rates are basic pay under
5 U.S.C. 5304(c)(2).

Subsection (a)(3) of section 124 of the bill would amend 5 U.S.C. 5334(b), which provides that, upon promotion to a higher grade, an employee is entitled to basic pay at the lowest rate that exceeds the employee's existing rate by at least two step-increases of the grade from which promoted. This amendment would authorize OPM to determine how special rates and locality rates should be used in applying the two-step promotion rule. Under current law, when a special rate employee is promoted to a grade at which no special rates apply, the employee receives not only a two-step increase (based on the higher special-rate schedule), but also receives locality pay on top of the adjusted rate of basic pay. This windfall occurs because the rate corresponding to the two-step increase on the special-rate pay schedule is then slotted into the regular General Schedule to determine the employee's new step. (This results in a higher step placement than if the rate after the two-step promotion rule is applied were slotted directly into the applicable locality pay schedule.) Then the employee receives the locality rate corresponding to the step at which he or she is placed in the General Schedule rate range. The windfall could be avoided if the rate corresponding to the two-step increase on the special-rate schedule were slotted directly into the locality rate range instead of using the General Schedule first to determine the appropriate step of the grade after promotion.

In addition to this problem, some employees can experience an unwarranted pay reduction. This happens when an employee who is entitled to pay retention is receiving a locality pay adjustment in addition to his or her retained rate of pay is promoted to a grade at which special rates apply, causing the employee to lose the locality adjustment. The proposed amendments to 5 U.S.C. 5334(b) would allow OPM to remedy these problems, as well as to address the processing of promotions that take effect simultaneously with geographic moves.

The amendment to section 5334(b) also would provide that, when the two-step promotion rule results in a rate above the maximum rate of the grade for the employee's position, that rate will be considered a retained rate under section 5363. Under current law, application of the promotion rule in cases involving special rates can sometimes result in saved rates in excess of the maximum rate of the employee's grade. These saved rates under section 5334(b) are subject to different rules than rates that are retained under section 5363; for example, when the maximum rate of the grade is adjusted, the section 5334(b) saved rates are adjusted by the full dollar amount of the change in the maximum rate of the grade. Since subsection (a)(5) of section 124 would change the character of retained rates under 5 U.S.C. 5363 - a change that will require a one-time conversion - and since the same approach should apply to all above-maximum rates, it greatly simplifies matters if there is only one type of above-the-maximum rate, i.e., a retained rate under section 5363.

Section 5334 would be further amended by adding a new subsection (g), which is similar to the new 5 U.S.C. 5305(h) described above. This amendment would provide that a General Schedule employee who is assigned to a new geographic location will have his or her pay adjusted upward or downward to reflect the pay entitlement of the area to which the employee is reassigned.

Paragraph (4) would amend 5 U.S.C. 5361 by providing definitions of new terms used in the amended section 5363, relating to pay retention. The new terms support using adjusted rates of basic pay in determining a retained rate. Also, a retained rate would be linked to the highest applicable adjusted rate range. This is needed because, in some cases, employees are entitled to more than one rate of basic pay (i.e., a special rate and a lower locality rate), thus necessitating the use of the "highest applicable" concept.

Paragraph (5) would amend 5 U.S.C. 5363 to provide that pay retention does not apply to employees whose rate of basic pay is reduced solely because of the recomputation of pay upon movement to a new official duty station at which different pay schedules apply. Just as an employee is not entitled to retain a locality rate upon movement to a lower-paying area, an employee would not be entitled to retain a special rate upon movement to a lower-paying area. (When a geographic move is accompanied by a simultaneous pay action that reduces the employee's rate of basic pay after the employee's pay has been recomputed to reflect the geographic move, pay retention may be applicable.)

The amendment to section 5363 would authorize OPM to prescribe regulations governing how a retained rate is to be adjusted when an employee is moved to a different pay area. A retained rate would be made basic pay for only those purposes specified in law or OPM regulations, consistent with the treatment of locality rates and special rates. OPM would prescribe by regulation what constitutes basic pay for other purposes. Section 5363 would also be amended to clarify that the specified conditions that terminate entitlement to pay retention also operate to deny initial entitlement to pay retention.

Paragraph (6) would amend 5 U.S.C. 5365(b) to allow OPM to establish additional limitations and conditions for employees to whom pay retention eligibility is extended under that section. For example, this provision would allow OPM to limit adjustments of retained rates for former members of the Senior Executive Service (SES) who are involuntarily downgraded to General Schedule positions.

Subsection (b) of section 124 would amend section 403(c) of FEPCA, concerning special statutory pay rates for law enforcement officers. Section 403(c) currently provides that these rates are payable in the same manner as rates established under section 5305 of title 5 U.S.C. This language fails to take into account the differences between the special rates for law enforcement officers and special rates payable under section 5305. For instance, the former are used as base pay for purposes of determining locality and geographic adjustments. The amendment would remove this language so that it is clear that OPM is not required to treat special rates for law enforcement officers like special rates under section 5305.

In addition, section 403(c) of FEPCA would be amended to clarify that increases in General Schedule pay rates are automatically passed on to these law enforcement statutory special rates to maintain the linkages to General Schedule step rates set forth in section 403. (In contrast, OPM administratively determines the amount of special rate increases under section 5305(f); thus, the current reference to section 5305(f) is confusing.)

Subsection (c) of section 124 would provide that, when the amendments made by this section take effect, all current retained rates will be converted. The newly applicable retained rate will equal the formerly applicable locality-adjusted retained rate. In addition, any above-maximum rate (e.g., a saved rate established by the promotion rule in section 5334(b)) will be converted to a retained rate under section 5363 of title 5.

Sec. 125. Civil service retirement system computations for part-time service

Section 125 would amend the Civil Service Retirement law (subchapter III of chapter 83 of title 5, U.S.C.) to simplify and rationalize the computation of annuities under the CSRS involving part-time service. The current provisions governing the computation of annuities involving part-time service have an unintended adverse effect on employees who perform part-time service at the end of their careers. Section 125 would correct this anomaly, thereby eliminating a disincentive for employees nearing the end of their careers who would like to phase into retirement by working part-time schedules. This amendment would allow agencies to keep senior staff on board as part of a succession planning effort.

A CSRS annuity is computed based on an employee's "high-3" years' average salary, multiplied by a factor representing years of service. Before 1986, the high-3 average salary for employees who worked part-time was pro-rated based on the number of hours actually worked. Because an employee could switch to a full-time schedule in the last three years of service and thereby reap a benefit equal to that of an employee who worked full-time for an entire career, Congress decided in 1986 to reverse the computation formula. Beginning with service performed after April 6, 1986, the computation of part-time service would be based on a deemed full-time high-3 average salary, multiplied by the factor representing years of service. The resulting benefit would be reduced by a fraction representing the actual time worked over the equivalent full-time service. Because this new computation applied only to service performed after April 6, 1986, the old formula continued to apply to service performed before that date. Consequently, if an employee with substantial full-time service before 1986 switches to a part-time schedule at the end of his or her career, the high-3 average salary that is applied to service before 1986 is the pro-rated salary or, if higher, the full-time salary from the years before the employee began working part-time. This results in a disproportionate reduction in the employee's benefit.

Section 125 of the draft bill would amend 5 U.S.C. 8339(p) to provide a special annuity computation formula for employees who performed part-time service after April 6, 1986. For these employees, the proposed amendment would extend application of the full-time rates of pay in computing average salary to all service, regardless of when it was performed.

Sec. 126. Promotional items received pursuant to official travel

Section 126(a) of the draft bill would amend section 404 of title 37 U.S.C., which allows military members who receive promotional items while on travel arranged by the Government to retain those items. Normally, these items belong to the Government. However, where the transportation has been obtained for the military member by the Government, the ability to obtain private gain through the use of one's official position is extremely limited. Promotional items usually have little intrinsic value, and the overall costs to the Government of tracking, accounting for, and processing these items exceed all benefits received. Guidance would be provided to the members through implementing regulations.

Subsection (b) of section 126 would amend section 5702 of title 5 U.S.C., to provide the same treatment for civilian employees of the Government.

Subsection (c) would amend section 901 of the Foreign Service Act to provide similar treatment for members of the Foreign Service.

Subsection (d) would repeal section 6008 of the Federal Acquisition Streamlining Act of 1994. That section requires the Administrator of the General Services Administration (GSA) to issue guidelines to ensure that agencies promote and encourage the use of frequent traveler programs to realize cost savings for official travel.

The administrative expense and labor-intensive burden of accounting for unsolicited items of little value are inconsistent with the Government's efforts to adopt commercial practices where possible. Federal supply schedule contracts negotiated by GSA and transportation arranged by the United States Transportation Command represent the lowest fares for the Government that can be obtained through the acquisition process. Despite repeated requests, transportation providers will not make the nominal costs of promotional items directly transferable to the Government, nor will they reduce the cost of transportation by such amounts. Although the Government has expended significant effort on programs to use frequent flyer miles, the Government has not been able to use these benefits effectively.

The proposal would have no impact on the use of the Government Travel Card. The amendments made by section 126 would be effective upon enactment of this Act. Enactment of this section would not increase the budgetary requirements of the Federal Government.

Sec. 127. Student volunteer transit subsidy

Section 127 amends section 7905 of title 5 U.S.C. to authorize any agency covered by that section to provide transit subsidies to student volunteers at that agency. It also amends section 3111 of that title to make a conforming change.

Sec. 128. Effective date

Section 128(a) of the draft bill would provide a delayed effective date for the provisions of sections 121, 122, 123, and 124. The amendments made by those sections would take effect starting with the first pay period beginning on or after the 180th day after enactment. Sections 126 and 127 would take effect upon enactment of this Act.

Subsections (b) and (c) of section 128 would provide that 5 U.S.C. 5753 and 5754, as in effect immediately before the effective date of these amendments, would continue to govern recruitment and relocation bonuses and retention allowances that were authorized before the effective date of these amendments. In the case of retention allowances, this would remain true until the retention allowance is reauthorized or terminated (but no longer than one year after such effective date).

Subsection (d) would provide that the amendments made by section 125 are effective upon enactment and apply only to individuals who, on or after the date of enactment, separate from employment that is covered by CSRS or FERS.

SUBTITLE D - PROMOTION OF RESULTS-ORIENTED PERFORMANCE EVALUATION AND COMPENSATION FOR SENIOR EXECUTIVES

This subtitle strengthens results-based performance and accountability of the Government's senior executives. It will reinforce the link between performance, pay, and awards. It also gives agencies additional incentive tools for recruiting highly qualified senior-level employees.

The subtitle would provide full recognition for executive excellence by amending an aggregate pay limitation that causes some award payments to senior executives to be deferred. The amendment would not increase pay, but would enable members of the SES and other senior-level employees to promptly and fully receive performance awards and other payments at the time they are authorized.

The subtitle would also repeal provisions that require senior executive recertification. This provision would not diminish the accountability of senior executives in the Federal Government. In addition to annual performance appraisals, current law requires recertification of career members of the SES every three years as an additional tool for assessing their performance. However, recertification has proven to be a redundant, ineffective, and wasteful process that poorly serves the taxpayers. The results of a 1997 evaluation of recertification, a 1999 survey of senior executives, and additional OPM discussions with stakeholders strongly support eliminating recertification. Respondents and stakeholders believed that recertification was not very useful in identifying and dealing with individuals whose performance did not reflect the excellence expected of SES members. They said that executive performance can be assessed more effectively using a strengthened, meaningful annual performance appraisal. Therefore, OPM amended its regulations governing SES performance management to change the focus from process to results and to give agencies more flexibility to tailor performance management systems to their unique mission requirements and organizational climates. The amended regulations promote executive accountability by strengthening the link between performance management and agency strategic planning, as well as emphasizing the responsibility of agency leaders to communicate performance expectations, evaluate performance, and take action on the results. The regulations also emphasize an approach to senior executive performance evaluation that balances the achievement of the organization's business or operational results with the needs and opinions of customers, employees, and other stakeholders.

Finally, the subtitle would provide certain annual leave enhancements to be used as incentive tools to help recruit highly qualified senior executives. Most employees who are selected as senior executives have already completed enough service (15 years) to accrue annual leave at the eight-hour rate. However, executives recruited from outside Government are treated as entry-level employees for leave purposes, beginning with no leave balance and accruing only four hours per pay period. Agencies and executives have reported that this is often a disincentive to recruiting experienced executives from the private sector. Senior executives and certain other senior-level employees, regardless of length of service, would accrue annual leave at the maximum rate under the leave system for Federal employees: one day (eight hours) for each biweekly pay period. As an additional, optional tool for recruiting exceptional candidates, a new authority would allow agency heads to give senior-level employees who are newly-appointed from outside Government an annual leave credit of up to 10 full days. This credit is in addition to the annual leave individuals would accrue during their first year of service. Both provisions are important to attracting experienced senior level employees to Government service. OPM would be authorized to extend these provisions to other equivalent categories of employees.

Sec. 131. Cap on total annual compensation

This section would amend section 5397(a) of title 5 U.S.C., to set the cap on total annual compensation for employees paid at rates of basic pay above the General Schedule at an amount equal to the Vice President's rate of basic pay, instead of the rate for level I of the Executive Schedule. This amendment would not raise the rate of basic pay for senior executives; rather it is a technical change that would enable career senior executives to promptly receive performance awards and other payments that have already been authorized under other legislation.

Sec. 132. Repeal of senior executive recertification

Section 132(a)(1) amends chapter 33 of title 5, by repealing section 3393a, which currently provides for the recertification of senior executives. That paragraph also makes the necessary conforming changes in that chapter.

Paragraph (a)(2) amends subchapter V of chapter 35 of title 5, to eliminate references to the recertification process, by amending section 3592(a) by striking paragraph (3) and the last sentence of subsection (a), by amending section 3593(a), and by striking paragraph (3) of section 3594(b).

Paragraph (a)(3) amends section 7701 by eliminating a reference to the recertification process.

Paragraph (a)(4) amends subchapter III of chapter 83 by eliminating references to the recertification process in sections 8336 and 8339. This would eliminate a special annuity provision for the SES and other equivalent services.

Paragraph (a)(5) amends subchapter II of chapter 84 by eliminating references to the recertification process in sections 8414 and 8421. This change would eliminate a special annuity provision for the SES and other equivalent services.

Subsection (b) would provide that an appeal of a removal from the SES for failure to be recertified, which was pending on the effective date of the repeal of the recertification provision, would proceed as though this section had not been enacted.

Subsection (c) would provide that an individual who left the SES before 90 days after the date of enactment for failure to be recertified will remain ineligible for reinstatement under 5 U.S.C. 3593(a).

Sec. 133. Annual leave enhancements

Section 133 of the draft bill would amend chapter 63 of title 5 to provide certain annual leave enhancements to be used as incentives for recruiting highly qualified senior executives and other senior-level employees.

Paragraph (1) of section 133 would amend 5 U.S.C. 6303(a) to provide that senior executives and certain other senior-level employees accrue annual leave at the maximum rate: one day (eight hours) for each biweekly pay period. It also would authorize OPM to extend coverage of this section to other equivalent categories of employees.

Paragraph (2) of section 133 would create a new section 6304a to allow an agency head to provide an employee who is newly-appointed from outside the civil service to a senior executive or senior-level position with an annual leave credit of up to 10 full days in order to complete the recruitment of a highly qualified candidate. Agencies could provide such credit only to an individual employee on a case-by-case basis. In order to prevent unwarranted windfalls, the draft bill provides that an employee who receives an annual leave credit under this authority but fails to complete one year of service will not be allowed to receive payment for the leave credit in any lump sum payment made upon separation. In most cases, the leave will be used within the first year of employment.

Sec. 134. Effective date

Section 134 provides that the amendments made by this subtitle shall take effect on the first day of the first pay period beginning on or after 180 days following the date of enactment of this Act.

SUBTITLE E - FEDERAL HUMAN RESOURCES MANAGEMENT INNOVATIONS

This subtitle would give agencies more flexibility to meet the challenges of attracting, managing, developing, and retaining the workforce they need to support the Government's mission today and in the future. The subtitle would simplify and streamline the process for implementing a personnel management demonstration project under chapter 47 of title 5, U.S.C. The current process is cumbersome, which tends to lead Federal agencies to seek special statutory exemptions from title 5. In addition to streamlining the procedures for all agencies seeking to implement a demonstration project, the proposal would create a mechanism for making a demonstration project permanent and for extending the innovation to other Federal organizations. Because there is no such mechanism in current law, innovations that have been tested successfully in a demonstration project cannot be implemented permanently in the testing agency, or extended to other Federal organizations, unless authorized by Congress in special legislation.

The draft bill would authorize the creation of permanent alternative personnel systems (APS). An APS would be a system that requires a waiver of a provision of title 5 (or a rule or regulation prescribed under title 5) or that uses policies and procedures not specifically authorized. An APS would have to be designed to improve the agency's ability to accomplish its mission efficiently and effectively, and would have to be determined by OPM not to require testing as a demonstration project before being implemented on a permanent basis in the agency. Like a demonstration project, an APS would be barred from waiving certain specified provisions of title 5, including provisions relating to certain employee benefits such as retirement and insurance, certain provisions relating to merit system principles and prohibited personnel practices, restrictions on political activities, and other ethics laws. This proposal offers agencies great flexibility while ensuring that all agencies adhere to the core values of the Government-wide merit system.

Sec. 141. Project management and alternative personnel systems

Section 141(a) would amend chapter 47 of title 5.

Paragraph (1) would amend 5 U.S.C. 4701, which defines terms used in chapter 47. The new definition of "agency" includes Government corporations and any entity that is subject to any provision of title 5 that could be waived as part of a personnel management demonstration project under chapter 47. The definition retains the current exclusion of intelligence agencies and the General Accounting Office.

Paragraph (2) would make several amendments to 5 U.S.C. 4703. In subsection (a) of section 4703, OPM's authority to conduct and evaluate demonstration projects is amended to make explicit that OPM also may modify a project. Of course, an agency could request a modification of a project, just as it may request that a project be terminated. Although OPM would continue to make the final decisions on such matters, it would do so only in extremely close consultation with the agency and other interested parties. OPM regulations would address the process for considering a proposed modification. Also, the list of examples of categories of laws and regulations that can be waived in a demonstration project would be eliminated. This is not a substantive change, but merely an attempt to eliminate unnecessary verbiage. The list was intended - at a time when demonstration projects were a new and unfamiliar concept - merely to provide examples of provisions that could be waived; it was not meant to be restrictive. While this list served a purpose in the early days of the demonstration project authority, now that Federal agencies generally are familiar with this authority and how it works, it is no longer necessary to retain this list in statute.

Paragraph (2) also would amend the requirements regarding a plan for a demonstration project as set forth in subsection (b) of 5 U.S.C. 4703. It would consolidate and simplify the requirements to make them less burdensome. For instance, the amendment would eliminate the requirement for a public hearing on each proposed demonstration project and would shorten the requirement for OPM to provide advance notification of the project to the affected employees from 180 days to 30 days before the project is to take effect. This advance notification requirement is only a minimum, however. An agency could provide more notice than this, if it choses to. Consistent with recent efforts to eliminate Congressional reporting requirements, this draft bill does not include a requirement to notify Congress of a proposed demonstration project. A proposed plan would not have to be published in the Federal Register; only a final plan and any subsequent modification would have to be published. Agencies would be required to address resource implications in the plan, as well as the project's relationship to carrying out the agency's strategic plan and its mission. The agency's system for ensuring accountability for merit system principles would have to be described.

The list of provisions of title 5 that could not be waived in a demonstration project would be amended to add references to ethics laws that have been enacted since the demonstration project authority was first created. The list would include a clarification to ensure that categorical ranking procedures like those that have already been tested in demonstration projects, including the project at the Department of Agriculture (USDA) that was made permanent in 1998, could not be viewed as prohibited personnel practices under chapter 23 of title 5. The draft bill would not remove anything from the list of provisions that cannot be waived, nor would it change the current bar on waivers of any statutory provision for equal employment opportunity through affirmative action.

Under paragraph (2)(D) of section 141(a), the limitation on the number of employees who can be covered by a demonstration project would be eliminated, as would the limit on the number of demonstration projects that could be underway at the same time. The five-year time limit on these projects also would be changed. The new 5 U.S.C. 4703(d) would require OPM, before the fifth anniversary of the launching of the project, to determine whether the project should be terminated, continued beyond the five-year time limit for purposes of evaluation, or converted to an APS as authorized by the proposed new chapter 49 of title 5 U.S.C., to be created by subsection (b) of section 141 of the draft bill. In effect, conversion would mean that the demonstration project would be made permanent. A decision to convert a demonstration project to an alternative personnel system would be made at the agency's request. The conversion of a demonstration project to an alternative personnel system would be subject to the same provisions regarding union involvement and employee consultation that apply to the launching of a demonstration project.

Subsection (e) of 5 U.S.C. 4703 would allow OPM to terminate a demonstration project if OPM found that the project was not consistent with merit system principles, veterans preference principles, or the provisions of chapter 47. OPM also could terminate a project if it found the project was not in the best interests of the public, the Government, employees, or eligible candidates for appointments in the agency. OPM regulations would address the process for considering a proposed termination. Of course, the agency could request OPM to terminate a project. Termination would always be considered in close consultation with the affected agency and employees.

Subsection (b) of section 141 of the draft bill would create a new chapter 49 in title 5, authorizing APS. The new subchapter contains four sections.

The new 5 U.S.C. 4901 would provide definitions for the new chapter. "Alternative personnel system" is defined as a system for human resources management in an agency, which requires a waiver of a provision of title 5 or a rule or regulation prescribed under title 5 (or which uses policies and procedures not specifically authorized by law, rule, or regulation), is designed to improve the agency's ability to accomplish its mission and strategic goals efficiently and effectively, and is similar to one or more systems already tested as a demonstration project or has been determined by OPM not to require testing as a demonstration project before being implemented on a permanent basis in the agency.

The new 5 U.S.C. 4902 would authorize agencies to implement APS. Before implementing a particular APS, an agency would have to develop a specific plan for the APS, the elements of which would be virtually the same as for a demonstration project under chapter 47. The plan would have to be submitted to OPM for approval, and the agency would have to provide advance notification to affected employees. Section 4902 explicitly allows for subsequent modifications of an APS that is already underway. OPM regulations would address the process for considering a proposed modification.

Like a demonstration project, an APS would be barred from waiving certain specified provisions of title 5, including provisions relating to certain employee benefits such as retirement and insurance, certain provisions relating to merit system principles and prohibited personnel practices, and restrictions on political activities. Provisions relating to the acceptance of gifts and other ethics requirements have also been included in this list.

Under 5 U.S.C. 4902(d), agencies would be bound by the same requirements regarding union involvement and employee consultation that apply to demonstration projects under chapter 47. For purposes of the duty to bargain under 5 U.S.C. 7117, an APS would be considered to be a Government-wide regulation.

The new 5 U.S.C. 4903 would set forth OPM's responsibilities relating to APS. An APS could not be implemented or subsequently modified without the approval of OPM, in consultation with OMB. Approval would be based on a determination that the proposed APS met all the requirements of chapter 49. OPM would be required to approve or disapprove an APS plan within 90 days after receiving a complete plan. OPM would have to publish a notice of its approval of an APS in the Federal Register. The notice requirement would also apply to any subsequent modification of an APS which OPM determines is sufficiently significant to warrant publication.

OPM also could, at the request of the agency, convert a demonstration project (including one that is already underway when these amendments are enacted) to an APS, without requiring the agency to develop a plan for the APS as otherwise required by section 4902, if it determined that the project had been sufficiently tested to warrant being made permanent. Of course, the conversion of a demonstration project to an APS would be subject to the same labor-management relations provisions that would apply to any implementation of a proposed APS under the new 5 U.S.C. 4902(d). Subsequent modifications to a converted demonstration project would still require OPM approval.

Like a demonstration project, an APS could be terminated by OPM if found to be inconsistent with merit system principles, veterans preference principles, or the provisions of chapter 49, or if OPM otherwise determined it was not in the best interests of the public, the Government, employees, or individuals eligible for an appointment in the agency. An agency could ask OPM to terminate an APS. OPM regulations would address the process for considering a requested termination.

The new 5 U.S.C. 4904 would require OPM to prescribe regulations to administer chapter 49.

Paragraph (2) of section 141(b) would amend the table of sections in title 5 to reflect the creation of the new chapter 49.

Subsection (c) of section 141 would amend the table of chapters for part III of title 5 to reflect the creation of the new chapter 49.

Subsections (d), (e), and (f) of section 141 would convert the demonstration projects at the National Institute of Standards and Technology, the China Lake Naval Weapons Center, and USDA, respectively, to APS under chapter 49. By being designated APS under the new chapter 49, these projects would not be frozen in place but would have access to all the flexibilities, including the ability to be modified as provided in chapter 49, that are available to any APS. Subsection (e) also would repeal the authority for Department of Defense laboratory demonstration projects. However, any such projects underway on the effective date of the bill would be continued as demonstration projects under the revised chapter 47 of title 5.

Subsection (g) of section 141 would amend 5 U.S.C. 1104 to extend the oversight authority OPM currently has with respect to authorities delegated to agencies under section 1104 to apply also to activities exercised by an agency as part of a demonstration project or APS under chapter 47 or 49 of title 5.

Sec. 142. Effective date

Section 142 would provide that the amendments made by section 141 take effect 180 days after enactment.

SUBTITLE F - FEDERAL HUMAN RESOURCES HIRING FLEXIBILITY

This subtitle contains two key amendments to introduce more flexibility and efficiency into the Federal hiring process. These amendments would provide agencies with the authority to directly hire candidates for certain positions for which there is a shortage of candidates or a critical hiring need and would authorize alternative ranking and selection procedures in the hiring process.

Sec. 151. Employment flexibility amendments

Section 151 would amend chapter 33 of title 5 U.S.C., to provide two new hiring flexibilities to enhance agencies' ability to employ the most qualified individuals as efficiently as possible.

Paragraph (1) of section 151 would add authority for agencies to hire directly, without regard to the provisions of law governing the treatment of preference eligibles and the use of the "rule of three" (sections 3309 through 3318 of title 5), candidates for certain positions for which there is a shortage of candidates or a critical hiring need, as determined under OPM regulations. OPM could delegate to agencies the authority to determine that such a shortage or critical need exists as long as agencies exercise the authority in a manner consistent with the regulations.

Paragraph (2) would add to chapter 33 of title 5, a new section 3319, authorizing alternative ranking and selection procedures, which USDA has used successfully for many years under a demonstration project. In 1998, Congress made this authority permanent for the components of USDA in which these alternative procedures had been tested.

The new section 5 U.S.C. 3319 includes a reference to 2302(b)(11) to make clear that using this authority does not constitute a prohibited personnel practice. It would permit OPM, or any agency with delegated examining authority, to establish alternative systems for evaluating job applicants. Rather than assigning numerical ratings to individual applicants, an agency could divide qualified candidates into two or more quality categories, consistent with regulations prescribed by OPM. The appointing official could select any applicant in the highest quality grouping. If fewer than three applicants were assigned to the highest quality grouping, then the top two categories could be merged and any candidate in the merged category could be selected. Preference eligibles would have to be listed ahead of other candidates, within each quality grouping. An appointing official wanting to pass over a preference eligible and select another individual from the same category as the preference eligible would have to comply with all of the requirements for OPM review and notification of the preference eligible that are specified in sections 3317(b) and 3318(b). If there were no veterans in the highest grouping, then candidates in the highest category could be selected.

The alternative procedures would give agencies more discretion and flexibility in hiring decisions, while protecting veterans' rights to preference in hiring. Agencies would have the discretion to choose between the traditional rating and ranking methods and the alternative ranking and selection procedures authorized here.

Paragraph (3) of section 151 would amend the table of sections for chapter 33 of title 5 to reflect the creation of the new section 3319 described above. The amendments made by section 151 would be effective upon enactment of this Act.

TITLE II - BUDGETING AND MANAGING FOR RESULTS: FULL FUNDING FOR FEDERAL RETIREE COSTS

The purpose of this title of the Managerial Flexibility Act is to make budgeting and management in the Executive Branch more performance-orientated and to improve accountability. This title would fill in the gaps so that all retirement costs are funded as they are earned, and the large unfunded liabilities are amortized. Subtitle A would charge agencies the full Government share of the accruing cost of CSRS benefits, and make conforming changes to the Foreign Service Retirement and Disability System and the Central Intelligence Agency Retirement and Disability System. It would also establish accrual retirement systems for uniformed services in the Coast Guard, Public Health Service, and National Oceanic and Atmospheric Administration (NOAA). Subtitle B would charge agencies the full accruing cost of the Government's share of post-retirement health benefits for Federal civilian employees in the Federal Employees Health Benefits (FEHB) Program. It would also adjust the recently enacted accrual of military health benefits for Medicare-eligible retirees to include military health care for all retirees from the uniformed services, and to charge the non-defense uniformed services for their accruing costs.

SUBTITLE A - ACCRUAL FUNDING OF PENSIONS AND RETIRED PAY FOR FEDERAL EMPLOYEES

Sec. 201. Civil Service Retirement System

Section 201 of the bill contains amendments designed to reform the funding of benefits under CSRS.

Subsection (a)(1)(A) amends section 8331 of title 5, U.S.C., by retitling the definition of "normal cost" in paragraph (17) of that section as "normal cost percentage." The insertion of the phrase "and standards (using dynamic assumptions)" after "actuarial practice" changes the method of computing normal cost from a static basis to a dynamic one.

Subparagraph (B) redefines "Fund balance" to provide a more accurate and functionally useful definition.

Subparagraph (C) transforms the old definition of "unfunded liability" in paragraph (19) into a definition of "accrued liability" for use in calculating payments due from entities, such as the Postal Service, whose funding processes are not being changed by this subtitle.

Subparagraphs (D) through (F) add the definitions of the terms "dynamic assumptions" and "unfunded liability," which are virtually identical to the definitions in paragraphs (9) and (27) of section 8401, which are used in the administration of FERS. The definition of "unfunded liability" includes provisions for recognizing the present value of other appropriate amounts that would be received by the Fund (as determined by OPM in accordance with generally accepted actuarial practices and principles), such as payments from the Postal Service.

In paragraph (2), subparagraph (A) amends section 8334(a)(1) to revise the method of determining the contributions by most employing agencies. Subparagraph (A)(i) eliminates the requirement that the employing agency contribute for each covered employee an amount equal to that deducted from an employee's basic pay. Subparagraph (A)(ii) redesignates the remaining language relating to the deduction from an employee's basic pay as section 8334(a)(1)(A). Subparagraph (A)(iii) adds four new subparagraphs to section 8334(a)(1) outlining the determination of the employing agency contribution. New subparagraph (B) contains the formula to be used in computing agency contributions in the amount of the dynamic normal cost of benefits for the agency's employees, determined without regard to their status as "offset" employees, under subsection (k). New subparagraph (C) requires each agency to subtract the percentage of basic pay deducted from employees' pay in determining the agency's contribution. New subparagraph (D) specifies the sources of funding of contributions for special groups of employees. New subparagraph (E) provides that the Postal Service, the Metropolitan Washington Airports Authority, and the government of the District of Columbia continue to make contributions in amounts matching the deductions withheld from the basic pay of their employees.

Paragraph (2)(B) makes conforming changes in section 8334(k), relating to "offset" employees.

Paragraph (3) amends the financing provisions in section 8348 in several respects. Subparagraph (A) repeals subsection (f), thereby eliminating the authorization of 30-year appropriations to cover the liabilities created by pay increases, benefit changes, and extensions of coverage. Those liabilities will be addressed by the general financing provisions elsewhere in the bill.

Subparagraph (B) amends subsection (g) to eliminate the existing provisions governing payment of interest on the unfunded liability of the Fund and of an amount representing a net payment for military service credit and replaces them with provisions relating to the amortization of the unfunded liability of the Fund. The new provisions direct the Board of Actuaries to determine, by June 30, 2002, the unfunded liability of the Fund, as of September 30, 2001, that is attributable to benefits payable under chapter 83 of title 5, U.S.C., and to make recommendations regarding the liquidation of that liability. After considering those recommendations, OPM is required to determine an appropriate amortization schedule, including a series of annual installments commencing September 30, 2002, providing for the liquidation of that liability by September 30, 2041. Then, for each fiscal year beginning after September 30, 2001, through the fiscal year ending September 30, 2036, OPM is required to redetermine the unfunded liability of the Fund at the close of the fiscal year and establish a new amortization schedule, including a series of installments commencing on September 30 of the subsequent fiscal year, providing for the liquidation of that redetermined unfunded liability by September 30, 2041. For each fiscal year beginning after September 30, 2036, OPM is required to redetermine the unfunded liability of the Fund at the close of the fiscal year and establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, providing for the liquidation of that redetermined unfunded liability over five years. All amortization schedules established under this section must be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement and Disability System.

At the end of each fiscal year, OPM is required to notify the Secretary of the Treasury of the amount due for that year under the most recent amortization schedule and the Secretary is, in turn, required to credit that amount to the Fund out of any money in the Treasury not otherwise appropriated. In making the necessary computation, OPM may require the Board Actuaries of CSRS to make actuarial determinations and valuations, make recommendations, and maintain records in accordance with section 8347(f), and may use the latest such determinations and valuations.

Subparagraph (C) makes conforming changes in subsections (h), (i), and (m), to reflect the use of the term "accrued liability."

Subparagraph (D) adds a new subsection to section 8348. New subsection (n) provides that, under regulations prescribed by OPM, the head of an agency may request reconsideration of any amount of the normal cost determined to be payable by the agency. Any such request shall be referred to the Board of Actuaries, which is required to review the computations by OPM and make any appropriate adjustment. The determination by the Board of Actuaries is final.

Subsection (b) contains technical amendments to section 8423, designed to maintain conformity between financing of CSRS and FERS.

Sec 202. Central Intelligence Agency Retirement and Disability System

Section 202 of the draft bill, in order to maintain existing conformity between CSRS and the Central Intelligence Agency Retirement and Disability System, amends the Central Intelligence Agency Retirement Act.

In subsection (a), paragraph (1) amends section 101 of the Central Intelligence Agency Retirement Act, paragraph (5), to revise the definition of "unfunded liability." Paragraph (2) retitles the definition of "normal cost" in paragraph (6) of that section as "normal cost percentage." The insertion of the phrase "and standards (using dynamic assumptions)" after "practice" changes the method of computing normal cost from a static basis to a dynamic one. Paragraph (3) adds the definition of the term "dynamic assumptions" which is virtually identical to the definition of that term in paragraph (9) of section 8401 of title 5, U.S.C., which is used in the administration of FERS.

Subsection (b) amends section 202 to provide that funds will be appropriated for the payment of benefits as provided in this title.

Subsection (c) amends section 211 to revise the method of determining contributions for the Central Intelligence Agency (CIA) by computing them in a manner similar to that used under section 8334(a) of title 5, U.S.C.

In subsection (d), paragraph (1) repeals subsections (c) and (d) of section 261, thereby eliminating the authorization of 30-year appropriations to cover the liabilities created by pay increases, benefit changes, and extensions of coverage as well as the authorization language. Those liabilities and the necessary authorization will be addressed by the general financing provisions elsewhere in the bill. Subsection (e) is redesignated as subsection (c) in view of the deletions. Paragraph (2) amends subsection (c), as redesignated, to eliminate the existing provisions governing payment of interest on the unfunded liability of the Fund and of an amount representing a new payment for military service credit and replaces them with provisions relating to the amortization of the unfunded liability of the Fund. The new provisions require the Director of the CIA to have actuarial valuations made of the Fund, by June 30, 2002, that determine the unfunded liability of the Fund, as of September 30, 2001, that is attributable to benefits and expenses payable under title II of the Central Intelligence Agency Retirement Act and to make recommendations regarding the liquidation of that liability. After considering those recommendations, the Director of the CIA is required to determine an appropriate amortization schedule, including a series of annual installments commencing September 30, 2002, providing for the liquidation of that liability by September 30, 2041. Then, for each fiscal year beginning after September 30, 2001, through the fiscal year ending September 30, 2036, the Director of the CIA is required to redetermine the unfunded liability of the Fund at the close of the fiscal year and establish a new amortization schedule, including a series of installments commencing on September 30 of the subsequent fiscal year, providing for the liquidation of the redetermined unfunded liability by September 30, 2041. For each fiscal year beginning after September 30, 2036, the Director of the CIA is required to redetermine the unfunded liability of the Fund at the close of the fiscal year and establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, providing for the liquidation of that redetermined unfunded liability over five years. All amortization schedules established under this section must be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement and Disability System.

Subsection (e) prospectively changes the manner in which the CIA will pay the costs for FERS Special Category employees only. The CIA will continue to make FERS payments for employees stationed domestically and overseas as required by Federal law and regulations. Under this subsection, the CIA will obligate and expend funds available for salaries and expenses to cover the costs of future FERS Special Category employees based on actuarial calculations and projections of the Director of OPM, in consultation with the Director of the CIA. This paragraph also requires the CIA to pay the difference between the amount of employee contributions made by current FERS employees and the total amount of contributions due the Fund based on the projected number of future FERS Special Category employees. The Director of OPM, in consultation with the Director of the CIA, will determine the amount of this payment in a manner similar to that used for determining employee contributions under

FERS under chapter 84 of title 5, U.S.C., based on the average salary of projected FERS Special Category employees. As is currently the case, once an employee is designated as being within FERS Special Category, the employee's FERS contributions will increase in accordance with the applicable provisions of the FERS.

Subsection (b)(1) of subsection (e) requires the Director of OPM and the Director of the CIA to determine the total amount of unpaid Government and employee contributions, with interest, due the Fund as of September 30, 2001. The total amount due will reflect the number of FERS employees on duty with the CIA on September 30, 2001, who are projected to become FERS Special Category employees by the end of their careers. The CIA must "make up" the difference between the regular FERS level of contributions to the Fund and the FERS Special Category level of contributions, retroactive to the individuals' entry on duty with the CIA, plus interest charged by OPM as the manager of the Fund.

Subsection (b)(2) requires the CIA and OPM to establish an amortization schedule to retire the debt calculated under subsection (b)(1) by 2011.

Subsection (b)(3) requires the Director of the CIA to notify the Secretary of the Treasury at the end of each fiscal year of the annual installment payment to be made by the Treasury to pay off the debt in accordance with the schedule established by subsection (b)(2).

Subsection (c) provides permanent authorization for the obligation and expenditure of funds to carry out the provisions of this section.

Sec. 203. Foreign Service Retirement and Disability System

Section 203 of the draft bill contains the amendments designed to reform the funding of benefits under the Foreign Service Retirement and Disability System to maintain conformity with CSRS.

In subsection (a), paragraph (1) amends section 804 of the Foreign Service Act of 1980. First, it retitles the definition of "normal cost" in paragraph (5) of that section as "normal cost percentage." Then, insertion of the phrase "and standards (using dynamic assumptions)" after "practice" changes the method of computing normal cost from a static basis to a dynamic one. Paragraph (2) amends the definition of "unfunded liability" to make it virtually identical to the definition of that term in paragraph (28) of section 8401 of title 5, U.S.C., which is used in the administration of FERS. Paragraph (3) adds the definition of the term "dynamic assumptions" which is identical to the definition of that term in paragraph (27) of section 8401 of title 5, U.S.C.

In subsection (B), paragraph (1) amends section 852 to retitle "normal cost" in paragraph (4) of that section as "normal cost percentage" and to delete the reference to the Secretary of State as unnecessary. Paragraph (2) retitles and revises the definition of "supplemental liability" to make it virtually identical to the definition of that term in paragraph (28) of section 8401 of title 5, U.S.C., used in the administration of FERS. Paragraph (3) adds the definition of the term "dynamic assumptions" which is identical to the definition of that term in paragraph (27) of section 8401 of title 5, U.S.C.

Subsection (c) amends section 805 to revise the method of determining contributions by each employing agency having participants by computing them in a manner similar to that used under section 8334(a) of title 5, U.S.C.

Subsection (d) repeals sections 821 and 822 and replaces them with the new financing provisions for the Foreign Service Retirement and Disability System. The new provisions direct the Secretary of State to determine, by June 30, 2002, the unfunded liability of the Fund, as of September 30, 2001, that is attributable to benefits payable under that subchapter and to make recommendations regarding the liquidation of that liability. After considering those recommendations, the Secretary of State is required to determine an appropriate amortization schedule, including a series of annual installments commencing September 30, 2002, providing for the liquidation of that liability by September 30, 2041. Then, for each fiscal year beginning after September 30, 2001, through the fiscal year ending September 30, 2036, the Secretary of State is required to redetermine the unfunded liability of the Fund at the close of the fiscal year and establish a new amortization schedule, including a series of installments commencing on September 30 of the subsequent fiscal year, providing for the liquidation of that redetermined unfunded liability by September 30, 2041. For each fiscal year beginning after September 30, 2036, the Secretary of State is required to redetermine the unfunded liability of the Fund at the close of the fiscal year and establish a new amortization schedule, including a series of annual installments commencing on September 30 of the subsequent fiscal year, providing for the liquidation of that redetermined unfunded liability over five years. All amortization schedules established under this section must be set in accordance with generally accepted actuarial practices and principles, with interest established at the rate used in the most recent valuation of the Foreign Service Retirement and Disability System.

At the end of each fiscal year, the Secretary of State is required to notify the Secretary of Treasury of the amount due for that year under the most recent amortization schedule and the Secretary of the Treasury is, in turn, required to credit that amount to the Fund out of any money in the Treasury not otherwise appropriated.

Subsection (e) contains a technical amendment to section 857 designed to maintain conformity between financing of the Foreign Service Pension System and the Foreign Service Retirement and Disability System.

Subsection (f) contains a technical amendment to section 859 to conform with the retitling of "normal cost" in paragraph (4) of section 852 as "normal cost percentage."

Subsection (g) amends section 802 to provide that funds will be appropriated for the payment of benefits as provided by that subchapter.

Subsection (h) amends section 818 to make clear that the provisions of this section apply to both Foreign Service pension systems.

Sec. 204. Public Health Service Commissioned Corps Retirement System

Section 204 of the draft bill establishes a Public Health Service Commissioned Corps Retirement Fund in the Treasury and provides for funding on an accrual basis benefits payable on account of retirement, disability, or death to commissioned officers and their survivors. The section adds to title II of the Public Health Service Act (PHSA) a new "Part C--Public Health Service Commissioned Corps Retirement System."

New PHSA section 251 establishes on the books of the Treasury a fund to be known as the "Public Health Service Commissioned Corps Retirement Fund."

New PHSA section 252 lists the sources of assets of the Fund.

New PHSA section 253 provides that benefits payable on account of retirement, disability, or death to commissioned officers of the Public Health Service and their survivors shall be paid from the Fund.

New PHSA section 254 provides for the determination of contributions to the Fund.

Subsection (a) directs the Secretary of Health and Human Services (HHS) to determine the unfunded liability of the Fund attributable to service performed before September 30, 2001, and an amortization schedule for the liquidation of this liability by the end of fiscal year 2041. The Secretary of HHS is to redetermine the unfunded liability annually (and establish a new amortization schedule).

Subsection (b) provides for the annual determination of the contribution to the Fund necessary each fiscal year to cover the current benefit costs attributable to services performed during that year.

Subsection (c) requires the Secretary of HHS to carry out an actuarial valuation of benefits not less often than every four years, or whenever there is a statutory change affecting benefits, and to determine a single level percentage of basic pay for commissioned officers on active duty and for commissioned officers in the Reserve Corps.

Subsection (d) directs that all determinations under the section be made in accordance with generally accepted actuarial principles and practices, and, where appropriate, shall follow the general pattern of methods and assumptions approved by the Department of Defense Retirement Board of Actuaries.

Subsection (e) directs the Secretary of HHS to keep such records as are necessary for determining the actuarial status of the Fund.

New PHSA section 255 provides for payments into the Fund.

Subsection (a) directs the Secretary of HHS to pay monthly into the Fund the contribution attributable to services performed during that month.

Subsection (b) directs the Secretary of HHS to certify to the Secretary of the Treasury at the end of each fiscal year the amount of the payment necessary for that year under the schedule for the amortization of the unfunded liability of the Fund in section 254(a). This subsection also directs the Secretary of the Treasury to promptly pay into the Fund from the General Fund of the Treasury the amount so certified.

New PHSA section 256 directs the Secretary of the Treasury to invest the assets of the Fund not needed for current benefit payments in par value special issue securities having maturities determined by the Secretary of HHS and bearing interest at rates determined by the Secretary of Treasury.

New PHSA section 257 provides that if actuarial determinations are not yet available in time for budget preparation during the first year of implementation, estimates made under section 254 will be the actual payments contributed to the Fund. The unfunded liability will be adjusted to correct for the difference.

Subsection (b) contains conforming amendments.

Paragraph (1) amends section 214 of the PHSA (concerning the detail of commissioned officers) to require the Secretary of HHS to condition any detail upon the agreement of the organization requesting the detail to reimburse HHS for its contributions to the Fund attributable to the detailed personnel.

Paragraph (2) amends the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the new separation in accounting for retirement benefits for Public Health Service commissioned officers.

Subsection (c) provides for the transfer into the Fund on October 1, 2002, of any obligated or unobligated balances of appropriations made to HHS for benefits payable on account of retirement, disability, or death to commissioned officers and their survivors.

Sec. 205. National Oceanic and Atmospheric Administration Commissioned Officer Corps Retirement System

Section 205 of the draft bill establishes a NOAA Commissioned Officer Corps Retirement Fund in the Treasury and provides for funding on an accrual basis benefits payable on account of military retirement and survivor benefit programs to NOAA commissioned officers and their survivors. The section amends title 33 U.S.C. by inserting, immediately after section 853g, the following new section.

New subsection (a)(1) establishes on the books of the Treasury a fund to be known as the "National Oceanic and Atmospheric Administration Commissioned Officer Corps Retirement Fund." Subsection (a)(2) defines the term "military retirement and survivor benefit program" to include programs applicable to the NOAA Commissioned Officer Corps.

New subsection (b) lists the sources of assets of the Fund.

New subsection (c) provides that benefits payable on account of military retirement and survivor benefit programs to commissioned officers of the NOAA Commissioned Officer Corps and their survivors shall be paid from the Fund.

New subsection (d) provides for the determination of the contributions to the Fund.

Paragraph (1) directs the Secretary of Commerce to determine the unfunded liability of the Fund attributable to service performed before September 30, 2001, and an amortization schedule for the liquidation of this liability by the end of fiscal year 2041. The Secretary is to redetermine the unfunded liability annually (and establish a new amortization schedule).

Paragraph (2) provides for the annual determination of the contribution to the Fund necessary each fiscal year to cover the current benefit costs attributable to services performed during that year.

Paragraph (3) requires the Secretary of Commerce to carry out an actuarial valuation of benefits not less often than every four years, or prior to the effective date of any statutory change affecting benefits payable on account of retirement, disability, or death to commissioned officers or their survivors, and to determine a single level percentage of basic pay for commissioned officers on active duty.

Paragraph (4) directs that all determinations under the section be made in accordance with generally accepted actuarial principles and practices, and, where appropriate, shall follow the general pattern of methods and assumptions approved by the Department of Defense Board of Actuaries.

Paragraph (5) directs the Secretary of Commerce to keep such records as are necessary for determining the actuarial status of the Fund.

New subsection (e) provides for payments into the Fund.

Paragraph (1) directs the Secretary of Commerce to pay monthly into the Fund the contribution attributable to services performed during that month.

Subparagraph (A) of paragraph (2) directs the Secretary of Commerce to determine and certify to the Secretary of Treasury at the beginning of each fiscal year the amount of the payment necessary for that year under the schedule for the amortization of the original unfunded liability of the Fund, as well as the amount of additional adjustments necessitated by changes in benefits and actuarial assumptions and from experience different from those assumptions and from experience different from that assumed since that last valuation. Subparagraph (B) directs the Secretary of Treasury to promptly pay into the Fund from the General Fund of the Treasury the amount so certified.

New subsection (f) directs the Secretary of the Treasury to invest the assets of the Fund not needed for current benefit payments in par value special issue securities having maturities determined by the Secretary of Commerce and bearing interest at rates determined by the Secretary of Treasury.

New subsection (g) provides that if actuarial determinations are not available in time for budget preparation during the first year of implementation, estimates made under section 254 will be the actual payments contributed to the Fund. The unfunded liability will be adjusted to correct for the difference.

Paragraph (2) amends the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the new separation in accounting for retirement benefits for NOAA commissioned officers.

Paragraph (3) provides for the transfer into the Fund on October 1, 2002, of any obligated or unobligated balances of appropriations made to the Department of Commerce for benefits payable on account of military retirement and survivor benefit programs to commissioned officers and their survivors.

Paragraph (4) provides that subsections (b) (relating to payments from the Fund) and (d) (relating to payments into the Fund) would take effect on October 1, 2002.

Sec. 206. Coast Guard Military Retirement System

Section 206 of the bill establishes a Coast Guard Military Retirement Fund in the Treasury and provides for funding on an accrual basis benefits payable on account of retirement, disability, or death to Coast Guard military personnel and their survivors. The Secretary of Transportation, except when the Coast Guard is operating as a service in the Navy, is responsible for determining contributions to the Fund and making required payments into the Funds. The section adds to title 14 a new "Chapter 14--Coast Guard Military Retirement Funds."

New section 561 establishes on the books of the Treasury a fund to be known as the "Coast Guard Military Retirement Fund."

New section 562 lists the sources of assets of the Fund.

New section 563 provides that benefits payable on account of retirement, disability, or death to Coast Guard military personnel and their survivors shall be paid from the Fund.

New section 564 provides for the determination of contributions to the Fund.

Subsection (a) directs the Secretary of Transportation to determine the original unfunded liability of the Fund attributable to service performed before September 30, 2001, and an amortization schedule for the liquidation of this liability by September 30, 2041.

Subsection (b) provides for the annual determination of the contribution to the Fund necessary each fiscal year to cover the future benefit costs attributable to services performed during that year, and for the inclusion of the necessary contribution in the President's budget for that fiscal year.

Subsection (c) requires the Secretary of Transportation to carry out an actuarial valuation of benefits not less often than every four years, and to determine a schedule for the amortization of any additional liability or actuarial gain to the Fund created by changes in benefits or actuarial assumptions.

Subsection (d) directs that all determinations under the section be made in accordance with generally accepted actuarial principles and practices, and, where appropriate, shall follow the general pattern of methods and assumptions approved by the Department of Defense Retirement Board of Actuaries.

Subsection (e) directs that Secretary of Transportation to keep such records as are necessary for determining the actuarial status of the Fund.

New section 565 provides for payments into the Fund.

Subsection (a) directs the Secretary of Transportation to pay monthly into the Fund the contribution attributable to services performed during that month.

Paragraph (1) of subsection (b) directs the Secretary of Transportation to determine and certify to the Secretary of the Treasury at the beginning of each fiscal year the amount of the payment necessary for that year under the schedule for the amortization of the original unfunded liability of the Fund, as well as the amount of additional adjustments necessitated by changes in benefits, actuarial assumptions, or plan experience. Paragraph (2) directs the Secretary of the Treasury to promptly pay into the Fund from the General Fund of the Treasury the amount so certified.

New section 566 directs the Secretary of the Treasury to invest the assets of the Fund not needed for current benefit payments in par value special issue securities having maturities determined by the Secretary of Transportation and bearing interest at rates determined by the Secretary of Treasury.

New section 567 provides that if actuarial determinations are not available in time for budget preparation during the first year of implementation, estimates made under section 254 will be the actual payments contributed to the Fund. The unfunded liability will be adjusted to correct for the difference.

Subsection (c) amends the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the new separation in accounting for retirement benefits for the Coast Guard.

Subsection (d) provides for the transfer into the Fund on October 1, 2002, of any obligated or unobligated balances of appropriations made to the Coast Guard for benefits payable on account of retirement, disability, or death to Coast Guard military personnel and their survivors.

Subsection (e) provides that sections 563 (relating to payments from the Fund) and 565 (relating to payments into the Fund) would take effect on October 1, 2002.

SUBTITLE B - ACCRUAL FUNDING OF POST-RETIREMENT HEALTH BENEFITS COSTS FOR FEDERAL EMPLOYEES

Sec. 211. Federal Employees Health Benefits Fund

Section 211 of the draft bill amends section 8906 of title 5 U.S.C., to prefund the cost of post-retirement health benefits for current employees under FEHB.

Subsection (a)(1) would amend section 8906(c) of title 5 U.S.C., by adding a new requirement for each agency to fund the accruing actuarial cost of Government contributions for post-retirement health benefits for its current participating employees. OPM will determine the amounts due based on generally accepted actuarial practice and principles. Contributions will come from the appropriations or fund used to pay the participant's salary. Agencies will pay the amounts on a schedule to be determined by OPM. A separate schedule of payments is necessary to segregate contributions received for current subscription charges from post-retirement prefunding contributions. The practice of using cash accounting to fund the Postal Service liability attributable to civilian service performed after June 30, 1971, under section 8906(g)(2) remains unchanged by this subtitle. Therefore, a provision is added to exempt the Postal Service from the requirements of subsection (c)(2).

Subsection (a)(2) would amend paragraph (1) of section 8906(g) providing annual appropriations to pay the Government's portion of health benefits premiums for annuitants generally, to instead specify that such contributions shall be paid from amounts deposited to the Employees Health Benefits Fund for that purpose, to the extent such amounts are available, and then from annual appropriations if necessary. Annual appropriations would be necessary if the accumulated total of prefunding contributions under section 8906(c)(2) and amortization installments under new section 8909(j) in the

Fund is insufficient to cover the Government's share of annuitant premium charges. This change is consistent with the adoption of accrual accounting.

Subsection (b) would add a new subsection (j) to section 8909 of title 5 U.S.C. New section 8909(j) would provide for the liquidation of the Government's current liability for post-retirement health benefits.

Subsection 8909(j)(1) would require OPM to determine the current liability of the Government for post-retirement costs under FEHB, excluding the Postal Service liability for post-June 30, 1971, service, for the period prior to enactment and then to establish an amortization schedule to liquidate the liability over 40 years beginning in fiscal year 2002 and continuing through 2041.

Paragraph (j)(2) would require OPM to determine the supplemental unfunded liability of the Fund as of the close of each fiscal year for fiscal years beginning after September 30, 2001, and provide for liquidation of such liability over the succeeding 30 years. This will provide for liquidation of any unfunded liability that may accrue after enactment.

Paragraph (3) would require that amortization schedules reflect generally accepted actuarial practices and principles.

Paragraph (4) would require OPM to annually notify the Secretary of the Treasury of the amount of the amortization installment on the unfunded liability for the year. The Secretary would be required to credit that amount to the Fund out of any money in the Treasury of the United States not otherwise appropriated.

Paragraph (5) would authorize OPM to perform or arrange for actuarial determinations and valuations and to require retention of such records as it considers necessary for making periodic actuarial valuations of the Fund.

Paragraph (6) would require that amounts deposited into the Employees Health Benefits Fund for post-retirement health benefits under section 8906(c)(2) or section 8909(j) be segregated and used exclusively for purposes of post-retirement health benefits costs.

Paragraph (7) would define "supplemental unfunded liability" for purposes of paragraph (2).

Sec. 212. Uniformed services health benefits for retirees

Amendments to the title of Chapter 56, and Sections 1111, 1113, and 1114, would expand accrual funding for military health care to include all retirees, and not just Medicare-eligible retirees.

The amendments to Section 1115 and 1116 requires that payments to the Fund for the Department of Defense uniformed services are from amounts appropriated for military personnel accounts, rather than the Defense Health Program.

The further amendment to section 1116(a) and the addition of section 1116(c) to the existing law - National Defense Authorization Act for Fiscal Year 2001, Section 713 - would charge to the non-defense uniformed services the accruing cost of retiree health benefits for their respective uniformed service.

New Section 1118 provides that if actuarial determinations are not available in time for budget preparation during the first year of implementation, estimates made under Section 1115 will be the actual payments contributed to the Fund. The original unfunded liability as defined in Section 1115 will be adjusted to correct for the difference.

Sec. 213. Effective date

Section 213 provides that the subtitle shall take effect upon enactment with respect to fiscal years beginning after 2002, except as otherwise provided.

TITLE III - FEDERAL PROPERTY ASSET MANAGEMENT REFORMS

The Federal Property and Administrative Services Act of 1949 (Property Act), as amended (40 U.S.C. 471 et seq.), is the law of general application governing real and personal property acquired to carry out Federal missions and programs. The Federal Government owns or controls over 24 million acres of land and facilities, which have been acquired for use and operation by Federal agencies in support of their missions. Since 1949, the Property Act has provided the foundation for the management and disposal of these properties as well as for surplus personal property.

This title reforms the Property Act by addressing all phases of an asset's life cycle and would support an integrated portfolio-wide perspective for overall property management decision-making by providing incentives for managing Federal property by authorizing agencies to:
(1) exchange or transfer unneeded property with other Federal agencies; (2) sublease unexpired portions of government-leased property; and (3) outlease assets that must remain in Federal ownership, including underutilized portions of non-excess property to ensure full utilization. Further, this title would not alter existing authorities for properties under the current Property Act structure nor would it alter authorities that were granted under other statutes. Rather, it would provide incentives and flexibility in addition to those authorities and grant agencies the necessary tools to effectively and efficiently manage their assets.

Sec. 301. Definitions

This section amends Section 3 of the Property Act by adding a definition for the term "landholding agency." This term means any Federal agency that, by specific or general statutory authority, has jurisdiction, custody, or control over real property and would exclude agencies when they are acting on behalf of a third party during the conveyance process for a public benefit purpose.

SUBTITLE A - LIFE CYCLE PLANNING AND MANAGEMENT

New Section 213 amends Title II of the Property Act by requiring the GSA Administrator, along with the heads of the landholding agencies, to establish a set of real and personal property asset management principles as a guide in the real and personal property decision-making process. It also establishes specific principles that must be used with respect to the outlease of Federal property through the use of public-private partnerships. Additionally, it requires the GSA Administrator to establish performance measures to determine the effectiveness of Federal real property management.

New Section 214 amends Title II of the Property Act and requires the head of each landholding agency to designate a Senior Real Property Officer (SRPO) to oversee all real property asset management activities. The agency SRPO would work with the Chief Financial Officer, Chief Information Officer, and Chief Human Resources Officer to integrate facilities, technology, human resources, and financial management considerations into agency strategic planning. Also, it would provide that the agency SRPO first give consideration to available Federal real property holdings prior to a Federal agency acquiring any interest in real property from a non-Federal source.

SUBTITLE B - ENHANCED AUTHORITIES FOR REAL PROPERTY ASSET MANAGEMENT

Sec. 311. Enhanced asset management tools

Section 311 amends the Property Act by adding at the end of Title II the following new sections to make several new enhanced asset management tools available to landholding agencies.

The new Section 215 of Title II of the Property Act establishes criteria for use of the new asset management tools. That criteria includes determining if the use of the asset management tool: (1) supports the goals and objectives in the agency's Strategic Plan and the asset management plan required in section 214 of the Property Act as amended; (2) is economical, cost effective, and in the best interest of the United States for the use of the real property; and (3) is documented in a business plan that analyzes all reasonable options for use of the property and takes into account provisions of other applicable law (e.g., the McKinney-Vento Homeless Assistance Act and the National Environmental Policy Act).

The new Section 216 of Title II of the Property Act authorizes the use of asset management tools and sets requirements for how and when they should be used.

Subsection 216(a) authorizes Federal agencies to be able to acquire replacement real property by exchange or transfer in participation with another agency under mutually agreeable terms.

Subsection 216(b) provides that a Federal agency would be able to acquire replacement real property interests by selling or exchanging real property assets to or with any non-Federal source. A transaction under this authority would be subject to the following requirements:
(1) compliance with applicable law concerning Federal agency acquisitions of real property;
(2) making the property available for transfer or exchange with other Federal agencies; and
(3) receiving fair market value consideration for the property sold or exchanged, which may include future consideration such as construction of a building, development rights, fee interests, or leasehold interests.

Subsection 216(c) allows a Federal agency to be able to make unexpired portions of leases of real property available for interim uses. Such uses could be enabled by a lease, license, permit, or similar instrument issued to another Federal agency or a non-Federal entity.

Subsection 216(d) authorizes a Federal agency to be able to make underutilized portions of Government-owned real property available through outlease agreements with a Federal agency or a non-Federal entity. These outlease agreements could be in the form of a partnership, cooperative venture, limited liability company, or other business arrangement. A decision to outlease property would be subject to the head of the agency once he or she determines that:
(1) there is no long-term mission requirement for the property (but the Federal government is not permitted to dispose of it) or there is a continuing long-term mission requirement to retain the property; and (2) the use of the property by the prospective lessee will not be inconsistent with the agency's mission. Additionally, any outleasing agreement shall not be for more than 50 years.

This section also authorizes agencies to dispose of leased property if the head of the agency determines, during the term of an outlease involving the development or substantial rehabilitation/renovation of a Federal asset in partnership with a non-Federal entity, that the property is no longer needed. This authority would not affect any authorities currently in statute that authorize agencies to outlease property.

The new Section 217 of Title II of the Property Act provides for the receipt of cash or cash equivalents, in-kind assets, services, future consideration, or any combination of those values from the operation of one of the enhanced asset management tools authorized in section 216.

The new Section 218 of Title II of the Property Act requires Federal agencies to submit business plans to OMB and appropriate committees of the Congress concerning each transaction under section 216 that involves a sale, exchange, or outlease to a non-Federal party where the asset has a value of more than $2 million.

Sec. 312. Repeal of section 312 of the Federal Property and Administrative Services Act

Section 312 of the draft bill repeals section 321 of the Act of June 30, 1932, 47 Stat. 412 (40 U.S.C. 303b).

Sec. 313. Disposal of surplus property

Section 313 would amend subsection 203(b) of the Property Act concerning the authority for the care and handling and disposition of surplus property. The provision requires that the GSA Administrator delegate, upon the written request of the head of the landholding agency, disposal authorities for surplus real and related personal property.

SUBTITLE C - INCENTIVES FOR REAL AND PERSONAL PROPERTY MANAGEMENT IMPROVEMENT

Sec. 321. Proceeds from transfer or disposition of property

Section 321 amends section 204 of the Property Act (40 U.S.C. §485) to allow agencies to retain the bulk of the net proceeds from real property transactions.

It also amends section 204 of the Property Act to authorize the establishment of individual agency capital asset accounts to fund the Federal agencies' capital transactional needs. The balances in each agency's capital account would be made available until expended without further appropriation action. Such account would consist of funds generated from real property transactions. Funds in an agency account would generally be available for such capital asset projects as acquisitions of new facilities and equipment, major construction, capital improvements; non-reoccurring maintenance including renovations, alterations, expansions, environmental remediations; and disposition expenses. In addition, agencies would be required to annually submit with the President's budget a detailed account of all real property transactions carried out during the previous fiscal year and of receipts and disbursements from the agency's capital asset account.

This section authorizes landholding agencies to be reimbursed for their full direct and indirect costs in disposing of property, from the monetary proceeds of real property dispositions or other available resources, including the agency's capital asset account.

Section 321 also amends subsection 204(i) of the Property Act to authorize an agency selling personal property to retain the proceeds of a sale such in amounts as are necessary to cover the full, direct and indirect, disposal costs.

Sec. 322. Relationship to other agencies' authorities to use disposal proceeds

Section 322 states that the authority to retain proceeds granted under section 321 would not supersede other provisions of Federal law.

Sec. 323. Impact on other authorities to use disposal proceeds

Section 323 authorizes agencies to retain the proceeds from real property dispositions rather than providing the funds to other funding sources, such as the Land and Water Conservation Fund.

Sec. 324. Using a share of sale proceeds to maintain historic Treasury receipts

Section 324 requires agencies to transfer to the Treasury an amount equal to the FY 2002 baseline estimate of surplus real property sales receipts for FYs 2002 through 2006. OMB is required to notify the affected agencies and House and Senate Appropriation Committees of the allocation by agency within 30 days of enactment of this Act. If an agency realizes less sale proceeds than its allocation for a fiscal year, it will transfer all of the actual sale proceeds to the Treasury, and its allocation for the subsequent year will be increased by the shortfall. If by September 30, 2006, an agency has transferred less to Treasury than its cumulative five-year allocation, the agency will be required to transfer the difference out of funds otherwise available to the agency. Agencies will be allowed to retain and use any surplus sale proceeds that exceed the allocation made by OMB.

SUBTITLE D - STREAMLINED AND ENHANCED DISPOSAL AUTHORITIES

Sec. 331. Including nonprofit organizations as eligible donees

Section 331 amends subsection 203(k)(3) of the Property Act to add qualified nonprofit institutions to the set of entities eligible to receive surplus property for historic monument purposes.

Sec. 332. Elimination of certain negotiated sale requirements

Section 332(a) amends subsection 203(e) of the Property Act by modifying certain requirements concerning negotiated sales of surplus real and personal property in order to eliminate obsolete and unnecessary limitations and therefore providing increased flexibility on negotiated sales of both real and personal property.

Section 332(a) amends Subsection 203(e)(6) by repealing the current requirements and adding new ones for the preparation of explanatory statements and annual reports to Congress concerning negotiated sales of surplus personal property. In the case of surplus real property, the provision makes the negotiated sale value threshold of the surplus real property above the explanatory statements threshold and equal to the threshold value prescribed in section 218 of the Property Act as amended by Subtitle B of this title. Consistent with personal property, the annual real property report to Congress required under Section 203(e)(6) would be eliminated.

Section 332(b) adds a subsection (s) to section 203 of the Property Act, which would eliminate that any priority consideration be given to a specific public benefit conveyance.

Sec. 333. Exchange and sale of personal property

Section 333 amends subsection 201(c) of the Property Act (40 U.S.C. 481(c)) by: (1) authorizing the acquisition of personal property and/or related services through an exchange/sale of personal property; (2) repealing the current provision that allows negotiated sales of such property only when the reasonable value involved in the contract does not exceed $500 or when otherwise authorized by law; and (3) making the sale of personal property under the exchange/sale authority subject to the same conditions that apply to the sale of surplus personal property under Subsection 203(e) of the Property Act.

Sec. 334. Expansion of abandonment authority

Section 334 amends subsection 202(h) of the Property Act by expanding the current authority for abandonment of property to property which has no commercial value or of which the estimated costs of continued care and handling would exceed the estimated proceeds from its sale. The new authority allows agencies to abandon property to both public and private organizations when such property has no value.

Sec. 335. Clarifying certain donation authorities

Section 335 amends subsection 203(j) of the Property Act by making educational activities of special interest eligible to acquire both civilian agency and Department of Defense property through their local State agencies for surplus property.

Sec. 336. Streamlining consideration of surplus real property for homeless assistance

Section 336 would streamline and reform the process whereby Federal real property is considered for use to assist the homeless by making several amendments to section 501 of the McKinney-Vento Homeless Assistance Act, as amended (42 U.S.C. 11411).

Section 336(a)(1) and (2) would limit agency quarterly reporting on Federal properties to the Department of Housing and Urban Development (HUD) to cover only those properties that have not been previously reported to HUD in a prior quarterly period.

Paragraph (3) would reduce the deadline for agencies to submit "notices of intent" concerning property availability from 45 days to 30 days.

Paragraphs (4) and (5) would limit the HUD quarterly publications in the Federal Register to cover only properties that have not been previously published in a prior quarterly period.

Paragraph (6) would reduce the administrative and Federal Register publication costs for HUD and would repeal certain reporting and publication requirements.

Paragraph (7) would require that the list of available properties be published on a website maintained by the Secretary of HUD, and that the local Continuum of Care (CoC) organization for homeless assistance where the property is located (or the State if a CoC is not available) be notified of the information on the list.

Paragraph (8) extends the holding period in which properties are available solely for the purpose of assisting the homeless from 60 days to 90 days.

Paragraph (9) allows applicants to submit a written expression of interest in properties published quarterly to HHS after the 90-day proposed holding period has expired if the property is still available to assist the homeless.

Paragraph (10) requires HHS to give a preference to applications for properties that contain a certification that their proposal is consistent with the local CoC strategy for homeless assistance.

Paragraph (11) adds language to the McKinney-Vento Homeless Act that states that the priority of consideration to obtain property will only apply if HHS receives a written notice of intent with the 90-day proposed holding period as described in paragraph 8.

Paragraph (12) changes the heading in Section 501(h) of the McKinney-Vento Homeless Act to reflect the change in paragraph (11) to add other property exemptions unrelated to the base closure process.

Paragraph (13) exempts from Section 501 of the McKinney-Vento Homeless Act, buildings and property that are in a secured area for national defense purposes or inaccessible by road and can be reached only by crossing private property.

Subsection 13(b) requires HUD, within 30 days of enactment of this Act, to survey landholding agencies to determine whether the properties included in the last comprehensive list of properties published pursuant to section 501(c)(1)(A) of the McKinney-Vento Act remain available for application for use by the homeless. Such properties would be required to remain available for application for use to assist the homeless in accordance with sections 501(d) and 501(e) (as amended by subsection (a) of this section) as if such properties had been published under section 501(c)(1)(A)(ii).

SUBTITLE E - MISCELLANEOUS

Sec. 341. Scope and construction

Section 341 emphasizes that unless specifically expressed within, this title neither itself imposes, nor places in the Property Act, any provision that is to be construed to preempt or otherwise contest with any preexisting statute that authorizes a Federal agency to manage or engage in transactions involving real property.

Sec. 342. Severability
Sec. 343. No waiver
Sec. 344. Agency discretion
Sec. 345. Effective date

The remaining sections in this subtitle address statutory housekeeping subjects of severability, waiver, the exercise of agency discretion, and the effective date of the Title, and requires the General Accounting Office to report to Congress no later than five years from the date of enactment of this Title on the use by Federal agencies of the authorities provided by this Title.