

A BILL

To modernize certain laws governing the civil service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America
in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Civil Service Modernization Act of
2005”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Purpose.

TITLE I—AUTHORITIES OF THE OFFICE OF PERSONNEL MANAGEMENT; MISCELLANEOUS

AUTHORITIES RELATING TO FEDERAL HUMAN CAPITAL MANAGEMENT

Sec. 101. Office of Personnel Management.

Sec. 102. References to the General Schedule.

Sec. 103. Chief Human Capital Officers Council.

Sec. 104. Definitions; occupational structure of the civil service.

Sec. 105. Authority for surveys.

TITLE II—PAY FOR PERFORMANCE

Sec. 201. Performance management.

Sec. 202. Strategic compensation system.

Sec. 203. Additional compensation amendments.

TITLE III—STAFFING MODERNIZATION

Sec. 301. Authority for employment.

Sec. 302. Examination, selection, and placement.

Sec. 303. Conforming and realigning amendments.

TITLE IV—LABOR-MANAGEMENT RELATIONS; ADVERSE ACTIONS; APPEALS; MERIT SYSTEMS

PROTECTION BOARD

Sec. 401. Labor-management relations.

Sec. 402. Adverse actions.

Sec. 403. Appeals.

Sec. 404. Merit Systems Protection Board.

FOR OFFICIAL USE ONLY, TECHNICAL CORRECTIONS ONGOING

1 TITLE V—MISCELLANEOUS PROVISIONS

2 Sec. 501. Savings provisions.

3 Sec. 502. Technical and conforming amendments; other references.

4 Sec. 503. Effective date; application.

5 SEC. 2. PURPOSE.

6 The purpose of this Act is to establish a modern Federal civil service system that better
7 serves the public interest in the face of changes in mission, technology, and human capital
8 requirements. The Act will amend title 5, United States Code, to do so by balancing additional
9 authority with greater accountability for the management of Federal employees without
10 compromising merit system principles and veterans' preference. Such a system shall—

11 (1) not waive or modify—

12 (A) the public employment principles of merit and fitness set forth in
13 section 2301 of that title;14 (B) any provision of section 2302 of that title, relating to prohibited
15 personnel practices;16 (C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9) of
17 that title; or18 (ii) any provision of law implementing any provision of law referred to in
19 section 2302(b)(1), (8), and (9) of that title by—

20 (I) providing for equal opportunity through affirmative action; or

21 (II) providing any right or remedy available to any employee or
22 applicant for employment in the public service;

23 (D) any other provision of that title, except as provided for in this Act; or

1 (E) any rule or regulation prescribed under any provision of law referred to
2 in this paragraph;

3 (2) include pay-for-performance systems that incorporate the elements specified in
4 section 4317 of that title;

5 (3) ensure that employees may organize, bargain collectively as provided for in this
6 Act, and participate through labor organizations of their own choosing in decisions which
7 affect them, subject to the provisions of this Act and any exclusion from coverage or
8 limitation on negotiability established pursuant to law; and

9 (4) ensure that agencies are held accountable for meeting standards for effective
10 human capital management in support of agency missions.

11 TITLE I—AUTHORITIES OF THE OFFICE OF PERSONNEL
12 MANAGEMENT; MISCELLANEOUS AUTHORITIES RELATING TO
13 FEDERAL HUMAN CAPITAL MANAGEMENT

14 SEC. 101. OFFICE OF PERSONNEL MANAGEMENT.

15 Chapter 11 of title 5, United States Code, is amended—

16 (1) in section 1103—

17 (A) by amending subsection (a) to read as follows:

18 “(a) The following functions are vested in the Director of the Office of Personnel
19 Management, and shall be performed by the Director, or subject to section 1104, by such
20 employees of the Office as the Director designates:

21 “(1) securing accuracy, uniformity, and justice in the functions of the Office;

1 “(2) appointing individuals to be employed by the Office;

2 “(3) directing and supervising employees of the Office, distributing business among
3 employees and organizational units of the Office, and directing the internal management of
4 the Office;

5 “(4) directing the preparation of requests for appropriations for the Office and the
6 use and expenditure of funds by the Office, including incurring official reception and
7 representation expenses of the Office, subject to any limitation prescribed in law;

8 “(5) aiding the President in preparing such civil service rules as the President
9 prescribes, and otherwise advising the President on actions which may be taken to
10 promote the strategic management of an effective, results-oriented civil service and a
11 systematic application of the merit system principles, including recommending policies
12 relating to the selection, training, promotion, transfer, performance, compensation,
13 conditions of service, tenure, and separation of employees;

14 “(6) executing, administering, and enforcing the civil service rules and regulations
15 of the President and the Office and the laws governing the civil service, except with
16 respect to functions for which the Merit Systems Protection Board, the Special Counsel,
17 or the Federal Labor Relations Authority is primarily responsible;

18 “(7) serving as a point of contact for Congress on issues concerning the strategic
19 management of human resources within the Executive branch;

20 “(8) conducting broad systemic reviews of various aspects of Federal human
21 capital management;

22 “(9) designing, developing, and delivering human resources management

1 strategies, policies, and technical assistance that sustain agencies' capacity to identify their
2 current and future workforce requirements; attract and appoint a high quality and diverse
3 workforce; train, develop, and deploy employees to their fullest capacity; hold employees
4 accountable for the highest standards of conduct and ethics; offer employees
5 compensation that reinforces and rewards high performance; and provide employees and
6 their dependents with benefits that meet their personal and family needs;

7 “(10) ensuring that the Office carries out its responsibilities with respect to the
8 Federal civil service by establishing and administering Governmentwide authorities,
9 systems, and programs and by carrying out responsibilities for the approval, certification,
10 or coordination of agency-specific authorities, systems, and programs established under
11 this title;

12 “(11) assisting agencies in establishing accountability systems under section 1105
13 and, when necessary, informing the President of serious violations of merit system
14 principles and the laws governing the civil service and directing appropriate action;

15 “(12) leading the development and management of information technologies that
16 enhance human resources management strategies, policies, programs, and operations; and

17 “(13) chairing the Chief Human Capital Officers Council established under section
18 1403 to facilitate interagency cooperation and action on common human resources
19 management concerns.”; and

20 (B) in subsection (c)–

21 (i) by striking “Office of Personnel Management” and inserting

22 “Director”; and

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1 (ii) by striking “of Personnel Management”;

2 (2) in section 1104–

3 (A) in the catchline by striking “personnel” and inserting “human
4 resources”; and

5 (B) in subsection (a)(1) by striking “personnel” and inserting “human
6 resources”;

7 (3) by redesignating section 1105 as section 1107;

8 (4) by inserting after section 1104 the following new sections:

9 “§ 1105. Accountability for management of human capital

10 “(a)(1) For purposes of this section, ‘agency’ means–

11 “(A) an Executive agency; and

12 “(B) an agency, or a component thereof, which, although excluded from
13 one or more provisions of this title, is subject to section 2301 or similar merit-
14 based principles or has entered into an agreement under subsection (d).

15 “(2) Notwithstanding paragraph (1), the President or the Office may exempt from the
16 requirements of this section a specific agency or group of employees, including an agency or
17 group of employees within the Intelligence Community, upon determining that special
18 circumstances warrant such an exemption.

19 “(b) The Director of the Office of Personnel Management may require an agency to
20 establish and maintain a system of accountability for the management of human capital in
21 accordance with section 1103(c) and may certify that such system–

22 “(1) incorporates the standards for the management of human capital set under
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1 such section;

2 “(2) measures the agency’s effectiveness in meeting those standards; and

3 “(3) provides for correcting any deficiencies in meeting those standards.

4 “(c) The Office may review the human resources management programs and practices of
5 any agency and report to the head of the agency and the President on the effectiveness of these
6 programs and practices, including whether they are consistent with the merit system principles.

7 “(d) The Office may enter into an agreement with an agency described in subsection
8 (a)(1)(B) prescribing conditions under which employees of such an agency may be moved into the
9 competitive civil service. Before entering into an agreement under this subsection, the Office may
10 review human resources management activities of the agency to determine whether they are
11 consistent with merit system principles. The Office may terminate an agreement under this section
12 if it determines that the agency has failed to comply with one or more merit system principles.

13 “(e) The Office may prescribe such regulations as it determines necessary for the
14 administration of this section.

15 “§ 1106. Workforce information

16 “(a)(1) Notwithstanding any other provision of law, except as provided in subsection (b),
17 an agency shall comply, in accordance with standards issued by the Office of Personnel
18 Management, with a request from the Office for any workforce information it determines is
19 necessary to carry out its responsibilities under this title.

20 “(2) For purposes of this section, ‘agency’ means any Federal entity with civilian
21 employees who are subject to any provision of this title.

22 “(b) The President or the Office may exempt from subsection (a) a specific agency or
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1 group of employees upon determining that special circumstances warrant such an exemption. An
2 exemption under this subparagraph shall be made with respect to an agency or group of
3 employees within the Intelligence Community when the Director of National Intelligence
4 determines that national security or other special circumstances warrant their exclusion.”; and

5 (5) in the table of sections–

6 (A) by amending the items relating to sections 1104 and 1105 to read as
7 follows:

8 “1104. Delegation of authority for human resources management.”

9 “1105. Oversight of agency human resources management systems.”; and

10 (B) by adding at the end the following new items:

11 “1106. Workforce information.

12 “1107. Administrative procedure.”.

13 SEC. 102. REFERENCES TO THE GENERAL SCHEDULE.

14 Chapter 13 of title 5, United States Code, is amended–

15 (1) by amending section 1307 to read as follows:

16 “§1307. References to the General Schedule

17 “The Office of Personnel Management is authorized to interpret, in such form as the

18 Office may determine, statutory references to–

19 “(1) ‘General Schedule employees’ or ‘employees covered by the General

20 Schedule’ or references of a similar nature to determine coverage under provisions of this

21 title or related statutes; and

22 “(2) a grade or grades of the General Schedule or other related terminology for

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1 the purpose of determining equivalencies under other classification or pay systems.”; and

2 (2) in the table of sections by amending the item relating to section 1307 to read as
3 follows:

4 “1307. References to the General Schedule.”.

5 SEC. 103. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

6 Chapter 14 of title 5, United States Code, is amended–

7 (1) by adding a new section 1403 to read as follows:

8 “§ 1403. Chief Human Capital Officers Council

9 “(a) There is established a Chief Human Capital Officers Council, consisting of–

10 “(1) the Director of the Office of Personnel Management, who shall act as
11 chairperson of the Council;

12 “(2) the Deputy Director for Management of the Office of Management and
13 Budget, who shall act as vice chairperson of the Council; and

14 “(3) the Chief Human Capital Officers of Executive departments and any other
15 members who are designated by the Director of the Office of Personnel Management.

16 “(b) The Chief Human Capital Officers Council shall meet periodically to advise and
17 coordinate the activities of the agencies of its members on such matters as modernization of
18 human resources systems, improved quality of human resources information, and legislation
19 affecting human resources operations and organizations.

20 “(c) The Chief Human Capital Officers Council shall ensure that representatives of Federal
21 employee labor organizations are present at a minimum of 1 meeting of the Council each year.

22 Such representatives shall not be members of the Council.

1 “(d) Each year the Chief Human Capital Officers Council shall submit a report to Congress
2 on the activities of the Council.”; and

3 (2) in the table of sections by adding at the end the following new item:

4 “1403. Chief Human Capital Officers Council.”.

5 SEC. 104. DEFINITIONS; OCCUPATIONAL STRUCTURE OF THE CIVIL SERVICE.

6 Chapter 21 of title 5, United States Code, is amended—

7 (1) by amending the chapter heading to read as follows:

8 “CHAPTER 21—DEFINITIONS; OCCUPATIONAL STRUCTURE OF THE CIVIL
9 SERVICE”;

10 (2) by redesignating sections 2101 through 2109 as subchapter I and inserting a
11 new subchapter heading after the chapter heading to read as follows:

12 “SUBCHAPTER I—DEFINITIONS”;

13 (3) by amending section 2101a to read as follows:

14 “§ 2101a. The Senior Civil Service

15 “The ‘Senior Civil Service’ consists of senior professional and senior executive positions
16 as defined in sections 3104 and 3132(a)(2), respectively.”;

17 (4) by inserting at the end of subchapter I as so redesignated the following new
18 sections:

19 “§ 2110. Coordination

20 “For the purposes of this chapter and chapters 11, 43, and 52, except as otherwise
21 provided in regulations prescribed by the Office of Personnel Management, ‘coordination’ means
22 the process by which an agency, after appropriate staff-level consultation, officially provides the

1 Office with written notice of a proposed action and intended effective date. If the Office concurs,
2 or does not respond within 30 days of the Office's receipt of that notice, the agency may proceed
3 with the proposed action. If the Office indicates any aspect of the proposed action may have
4 Governmentwide implications, the agency shall not proceed with that matter while it remains
5 unresolved.

6 "§ 2111. Implementing directives

7 "For purposes of this title, 'implementing directives' means rules issued by the agency
8 head or designee at the agency headquarters level to carry out any policy or procedure established
9 in accordance with this title; these directives may apply agency-wide or to any part of the agency
10 as determined by the agency at its sole and exclusive discretion.";

11 (5) by inserting after section 2111 the following new subchapter:

12 "SUBCHAPTER II—OCCUPATIONAL STRUCTURE OF THE CIVIL SERVICE

13 "§ 2121. Responsibilities of the Office of Personnel Management

14 "(a) Except as provided by regulations prescribed by the Office of Personnel Management,
15 the Office shall define occupational series in the civil service. Such definitions shall be published
16 in such form as the Office may determine.

17 "(b) The Office may designate categories of occupational series for such purposes as the
18 Office may determine necessary.

1 “§ 2122. Agency responsibilities

2 “(a) An agency, on the request of the Office, shall furnish information for, and cooperate
3 in, defining and designating occupational series and occupational categories.

4 “(b) For purposes of this subchapter, ‘agency’ includes any Federal entity with civilian
5 employees who are covered by any provision of this title.”; and

6 (6) by amending the table of sections to read as follows:

7 “CHAPTER 21—DEFINITIONS; OCCUPATIONAL STRUCTURE OF THE CIVIL

8 SERVICE

9 “SUBCHAPTER I—DEFINITIONS

10 “2101. Civil service; armed forces; uniformed services.

11 “2101a. The Senior Civil Service.

12 “2102. The competitive service.

13 “2103. The excepted service.

14 “2104. Officer.

15 “2105. Employee.

16 “2106. Member of Congress.

17 “2107. Congressional employee.

18 “2108. Veteran; disabled veteran; preference eligible.

19 “2109. Air traffic controller; Secretary.

20 “2110. Coordination.

21 “2111. Implementing directives.

22 “SUBCHAPTER II—OCCUPATIONAL STRUCTURE OF THE CIVIL SERVICE

23 “2121. Responsibilities of the Office of Personnel Management.

24 “2122. Agency responsibilities.”.

25 SEC. 105. AUTHORITY FOR SURVEYS

1 “§ 2951. Reports to the Office of Personnel Management

2 “An agency, as defined in section 1106(a)(2), shall report to the Office of Personnel
3 Management, at regular intervals and in accordance with standards issued by the Office,
4 information relating to positions and employees in the agency. The Office shall prescribe the form
5 and frequency of these reports. The President or the Office may exempt from this section an
6 agency or group of employees as provided in section 1106(b).”;

7 (2) by amending the heading for subchapter II to read as follows:

8 “SUBCHAPTER II—REPORTS AND SURVEYS”;

9 (3) by adding a new section 2955 at the end to read as follows:

10 “§ 2955. Employee surveys

11 “(a) Each Executive agency shall conduct an annual survey of its employees (including
12 survey questions unique to the agency and questions prescribed under subsection (b)) to assess—

13 “(1) leadership and management practices that contribute to agency performance;

14 and

15 “(2) employee satisfaction with—

16 “(A) leadership policies and practices;

17 “(B) work environment;

18 “(C) rewards and recognition for professional accomplishment and personal

1 questions that should appear on all agency surveys under subsection (a) in order to allow a
2 comparison across agencies.

3 “(c) The results of the agency surveys under subsection (a) shall be made available to the
4 public and posted on the website of the agency involved, unless the head of the agency determines
5 that doing so would jeopardize or negatively impact national security.

6 “(d) Notwithstanding the preceding subsections, the Office may waive the requirement in
7 subsection (a) with respect to an agency when the Office determines the requirement–

8 “(1) would create a substantial hardship; or

9 “(2) is not in the best interests of the Federal Government.”; and

10 (4) by amending the table of sections for subchapter II to read as follows:

11 “SUBCHAPTER II—REPORTS AND SURVEYS

12 “2951. Reports to the Office of Personnel Management.

13 “2952. Time of making annual reports.

14 “2953. Reports to Congress on additional employee requirements.

15 “2954. Information to committees of Congress on request.

16 “2955. Employee surveys.”.

17 TITLE II—PAY FOR PERFORMANCE

18 SEC. 201. PERFORMANCE MANAGEMENT.

19 Chapter 43 of title 5, United States Code, is amended–

20 (1) in the chapter heading by striking “APPRAISAL” and inserting

21 “MANAGEMENT”

1 “SUBCHAPTER I—GENERAL PROVISIONS

2 “§ 4301. Authority

3 “In accordance with regulations issued by, and subject to coordination with, the Office of
4 Personnel Management, each agency shall establish one or more performance management
5 systems to promote high performance and may administer and maintain such systems
6 electronically.

7 “§ 4302. Coverage

8 “(a) Except as provided by subsection (b), this chapter applies to all positions and
9 employees of an Executive agency and the Government Printing Office.

10 “(b) Except as provided by subsection (c), this chapter does not apply to—

11 “(1) employees of the Department of Defense covered by the National Security
12 Personnel System established under chapter 99 or employees of the Department of
13 Homeland Security covered by the human resources management system established under
14 chapter 97;

15 “(2) employees of a Government controlled corporation;

16 “(3) employees of the Government Accountability Office;

17 “(4) employees of the Central Intelligence Agency or any Executive agency or unit
18 thereof which is designated by the President and the principal function of which is the

1 “(7) physicians, dentists, nurses, and other employees in the Veterans Health
2 Administration of the Department of Veterans Affairs whose pay is fixed under chapter 73
3 of title 38;

4 “(8) administrative law judges appointed under section 3105;

5 “(9) individuals appointed by the President;

6 “(10) employees specifically exempted by law from this chapter; or

7 “(11) individuals occupying positions excluded from coverage of this chapter by
8 regulations of the Office of Personnel Management.

9 “(c) Notwithstanding any other provision of this chapter, an otherwise excluded category
10 of employees may be covered under this chapter with the joint approval of the Office and the
11 agency responsible for the performance management of such employees.

12 “§ 4303. Definitions

13 “For the purpose of this chapter–

14 “(1) ‘appraisal’ means the review and evaluation of an employee’s performance;

15 “(2) ‘appraisal period’ means the period of time established under a performance
16 management system for reviewing employee performance;

17 “(3) ‘coordination’ has the meaning given that term in section 2110;

18 “(4) ‘employee’ has the meaning given that term in section 2105;

19 “(5) ‘minimum period’ means the period of time established by an agency during

1 “(7) ‘performance appraisal system’ means the policies and procedures established
2 by a covered agency for reviewing and evaluating the performance of covered employees
3 and assigning a summary rating;

4 “(8) ‘performance management’ means application of the integrated processes of
5 setting and communicating performance requirements and expectations, monitoring
6 performance and providing feedback, developing performance and addressing poor
7 performance, and rating and rewarding performance in support of the organization’s goals
8 and objectives;

9 “(9) ‘performance management system’ means the policies and procedures
10 established by a covered agency in accordance with this chapter, as supplemented by
11 appropriate regulations of the Office, for setting and communicating performance
12 requirements and expectations, monitoring performance and providing feedback,
13 developing performance and addressing poor performance, rating performance in
14 accordance with a performance appraisal system, and rewarding performance in
15 accordance with a pay-for-performance system; and

16 “(10) ‘unacceptable performance’ means performance of an employee which fails
17 to meet one or more performance requirements or expectations.

18 “§ 4304. Responsibilities of the Office of Personnel Management

19 “(a) The Office, from time to time, may review each performance appraisal system

1 system meets the requirements of section 4317.

2 “(c) If the Office determines that a performance appraisal system or a pay-for-performance
3 system does not meet the requirements of section 4317 or of regulations prescribed under this
4 chapter or the requirements of section 5382 and its implementing regulations, the Office shall–

5 “(1) direct the agency to take appropriate corrective action; or

6 “(2) rescind any applicable certification and direct the agency to implement an
7 appropriate system or to take other appropriate corrective action, and any such agency
8 shall take any action so required.

9 “§ 4305. Regulations

10 “The Office shall prescribe regulations to carry out the purpose of this chapter.”;

11 (3) by redesignating–

12 (A) subchapter II as subchapter III; and

13 (B) sections 4311– 4315 as sections 4321– 4325, respectively;

14 (4) by inserting after subchapter I the following new subchapter:

15 “SUBCHAPTER II—PERFORMANCE MANAGEMENT FOR THE GENERAL
16 WORKFORCE

17 “§ 4311. Definitions

18 “In addition to the definitions in subchapter I, for purposes of this subchapter–

19 “(1) ‘agency’ means the department, division, bureau, or office of the state, and shall include any

1 or organizational mission, goals, or objectives, and may include an employee's actions,
2 effort, initiative, and manner of performance, as demonstrated by his or her approach to
3 completing work assignments;

4 “(3) ‘pay-for-performance system’ means the policies and procedures an agency
5 uses to link an employee's performance, as rated under a performance appraisal system
6 established under this chapter, and the employee's pay, as set and adjusted under a pay
7 system established under chapter 52;

8 “(4) ‘performance’ means contributions and demonstrated competencies as
9 defined in this section;

10 “(5) ‘performance appraisal’ means the review and evaluation of an employee's
11 performance compared to the employee's performance requirements and expectations
12 over the applicable appraisal period, including the employee's relative contribution to
13 accomplishment of any group or organizational expectations;

14 “(6) ‘performance expectations’ means the specific contributions and
15 demonstrated competencies management expects of an employee, as described in section
16 4313(d), consistent with the performance requirements of the employee's position;

17 “(7) ‘performance requirements’ means those general duties, responsibilities, or
18 competencies required by, or general objectives associated with, the employee's position;

1 against performance requirements and expectations over the applicable period; or

2 “(B) to support a pay determination made in accordance with chapter 52 or

3 other applicable provisions.

4 “§ 4312. Performance management systems

5 “(a) Subject to any regulations the Office may prescribe, each performance management

6 system shall provide for—

7 “(1) specifying the employees covered by the system and the effective date of such

8 coverage;

9 “(2) appraising the performance of each employee, generally once a year, based on

10 performance requirements and expectations;

11 “(3) specifying the minimum period during which an employee shall perform before

12 receiving a performance appraisal;

13 “(4) holding supervisors and managers accountable for effectively managing the

14 performance of employees under their supervision as set forth in subsection (b);

15 “(5) specifying procedures for setting and communicating performance

16 requirements and expectations, monitoring performance and providing feedback, and

17 developing, correcting, rating, and rewarding performance; and

18 “(6) specifying the criteria and procedures to address the performance of

19 employees who are detailed or transferred and for employees in other special

1 “(1) clearly communicating performance requirements and expectations and
2 holding employees accountable for accomplishing them;

3 “(2) making meaningful distinctions among employees based on performance;

4 “(3) fostering and rewarding excellent performance;

5 “(4) addressing poor performance; and

6 “(5) assuring that employees are assigned a rating of record as required by
7 regulations of the Office and agency implementing directives.

8 “§ 4313. Setting and communicating performance requirements and expectations

9 “(a) Performance requirements and expectations shall support and align with agency
10 mission and strategic goals, organizational program and policy objectives, annual performance
11 plans, and other measures of performance.

12 “(b) Supervisors and managers shall communicate performance requirements and
13 expectations, including those that may affect an employee’s retention in the position.

14 Performance requirements and expectations shall be communicated to the employee prior to
15 holding the employee accountable for them. Performance requirements shall be in writing, but
16 performance expectations need not be in writing. Notwithstanding any provision of this
17 subsection, employees shall be held accountable for demonstrating professionalism and standards
18 of appropriate conduct and behavior, such as civility and respect for others.

19 “(c) Performance requirements for supervisors and managers shall include planning

1 “(1) goals or objectives that set general or specific performance targets at the
2 individual, team, or organizational level, or some combination of those levels;

3 “(2) standard operating procedures, operating manuals, internal rules and
4 directives, or other instructions generally applicable and available to the employee;

5 “(3) a particular work assignment, including expectations (whether communicated
6 orally or otherwise) regarding the quality, quantity, accuracy, timeliness, or other expected
7 characteristics of the completed assignment, or some combination of such characteristics;

8 or

9 “(4) competencies an employee is expected to demonstrate in the position or the
10 contributions an employee is expected to make;

11 and may be in any form, as long as it is reasonable to assume that the employee will understand
12 the performance that is expected.

13 “(e) Supervisors shall involve employees, insofar as practicable, in the development of
14 their performance requirements and expectations. However, final decisions regarding
15 performance requirements and expectations and the means of communicating expectations are
16 within the sole and exclusive discretion of management.

17 “§ 4314. Monitoring performance and providing feedback

18 ““In applying the regulations and policies of the Office and the requirements of agency

19 performance management systems, supervisors shall

1 performance reviews during each appraisal period.

2 “§ 4315. Developing performance and addressing poor performance

3 “(a) In accordance with regulations of the Office, agencies shall prescribe procedures
4 which supervisors shall use to develop employee performance and to address poor performance.

5 “(b) If during the appraisal period a supervisor determines that an employee’s performance
6 is unacceptable, the supervisor shall–

7 “(1) consider the range of options available to address the performance deficiency,
8 which include but are not limited to remedial training, an improvement period, a
9 reassignment, an oral warning, a letter of counseling, a written reprimand, or adverse
10 action specified in chapter 75, including a reduction in rate of basic pay or a demotion as
11 defined in section 7511; and

12 “(2) take appropriate action to address the deficiency.

13 “(c) As specified in section 7512, an employee may appeal an adverse action based on
14 unacceptable performance to the Merit Systems Protection Board.

15 “§ 4316. Rating and rewarding performance

16 “(a) Agency performance appraisal systems–

17 “(1) shall establish a single summary rating level of unacceptable performance, a
18 summary rating level of fully successful performance (or equivalent), and at least one

1 band established under section 5212.

2 “(b) An appropriate rating official shall prepare and issue a rating of record after the
3 completion of the appraisal period. When appropriate, an additional rating of record may be
4 issued that reflects a substantial and sustained change in the employee’s performance since the last
5 rating of record.

6 “(c) A rating of record shall be used as a basis for–

7 “(1) a pay determination under chapter 52 or other applicable pay provisions;

8 “(2) awards under an agency awards program as authorized under chapter 45 or
9 other applicable legal authority;

10 “(3) eligibility for promotion; or

11 “(4) such other action that the agency considers appropriate, or as required by
12 regulations of the Office.

13 “(d) A rating of record shall summarize the review and evaluation of an employee’s
14 performance with respect to performance requirements and expectations and is considered final
15 when issued to the employee with all appropriate reviews and signatures.

16 “(e) Agencies may not impose fixed numeric or percentage limitations on the assignment
17 of any summary rating level or levels.

18 “(f) A rating of record issued under this subchapter is an official rating of record for the

19 purpose of any provision of this title for which an official rating of record is required.

1 employee may grieve a rating of record through a negotiated grievance procedure, as provided in
2 chapter 71. An arbitrator hearing a grievance is subject to the standards of review set forth in
3 chapter 71. Except as otherwise provided by law, an arbitrator may not conduct an independent
4 evaluation of the employee's performance, or otherwise substitute his or her judgment for that of
5 the supervisor.

6 “(h) Agencies shall transfer ratings of record within their subordinate organizations and to
7 other Federal departments or agencies in accordance with regulations of the Office.

8 “(i) An appropriate rating official may prepare an additional performance appraisal for the
9 purposes specified in the applicable performance management system (such as transfers and
10 details) at any time after the completion of the minimum period. Such an appraisal is not a rating
11 of record.

12 “§ 4317. Certification of pay-for-performance systems

13 “(a) Consistent with section 5202, an agency may implement the core strategic
14 compensation system under chapter 52 or establish an alternative system under section 5209 for a
15 category of employees only after the Office has certified that the pay-for-performance system that
16 will cover those employees incorporates the following characteristics:

17 “(1) adherence to merit system principles set forth in section 2301;

18 “(2) a fair, credible, and transparent employee performance appraisal system;

19 “(3) a link between elements of the pay-for-performance system, the employee

1 “(5) adequate training and retraining for supervisors, managers, and employees in
2 the implementation and operation of the pay-for-performance system;

3 “(6) a process for ensuring periodic performance feedback and dialogue between
4 supervisors, managers, and employees throughout the appraisal period, and setting
5 timetables for review;

6 “(7) effective safeguards to ensure that the management of the pay-for-
7 performance system is fair and equitable and based on employee performance; and

8 “(8) a means for ensuring that adequate agency resources are allocated for the
9 design, implementation, and administration of the pay-for-performance system.

10 “(b)(1) To obtain certification under this section and implement a pay-for-performance
11 system, an agency shall—

12 “(A) publish a notice in the Federal Register describing the proposed system and
13 provide for a public comment period of at least 30 days;

14 “(B) meet and confer regarding the proposed system with representatives of labor
15 organizations with national consultation rights representing affected employees for a
16 period of at least 30 days following publication of such notice;

17 “(C) consider any written comments provided by such representatives to the head
18 of the agency (or designee) in making final agency decisions regarding the pay-for-

19 performance system prior to requesting OPM certification;

1 than 30 days after the date of publication.

2 “(2) The process provided under this subsection is not subject to any requirements in
3 chapter 71 and is the exclusive process for the participation of employee representatives in
4 establishing or amending a pay-for-performance system subject to certification. Any pay-for-
5 performance system certified under the provisions of this chapter shall immediately supersede, and
6 render unenforceable, any conflicting provision of any collective bargaining agreement.”; and

7 (5) by amending the table of sections to read as follows:

8 “CHAPTER 43—PERFORMANCE MANAGEMENT

9 “SUBCHAPTER I—GENERAL PROVISIONS

10 “Sec.

11 “4301. Authority.

12 “4302. Coverage.

13 “4303. Definitions.

14 “4304. Responsibilities of the Office of Personnel Management.

15 “4305. Regulations.

16 “SUBCHAPTER II—PERFORMANCE MANAGEMENT FOR THE GENERAL WORKFORCE

17 “4311. Definitions.

18 “4312. Performance management systems.

19 “4313. Setting and communicating performance requirements and expectations.

20 “4314. Monitoring performance and providing feedback.

21 “4315. Developing performance and addressing poor performance.

22 “4316. Rating and rewarding performance.

23 “4317. Certification of pay-for-performance systems.

24 “SUBCHAPTER III—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

25 “4321. Definitions.

1 Title 5, United States Code, is amended by inserting after chapter 51 the following new
2 chapter:

3 “CHAPTER 52—STRATEGIC COMPENSATION SYSTEM

4 “SUBCHAPTER I—GENERAL PROVISIONS

5 “Sec.

6 “5201. Purpose.

7 “5202. Eligibility and coverage.

8 “5203. Preemption.

9 “5204. Relationship to other provisions.

10 “5205. Definitions.

11 “5206. Bar on collective bargaining.

12 “5207. Continuing collaboration.

13 “5208. Office of Personnel Management and agency responsibilities.

14 “5209. Alternative strategic compensation systems.

15 “SUBCHAPTER II—CORE POSITION CLASSIFICATION SYSTEM

16 “5211. General provisions.

17 “5212. Classification structure.

18 “5213. Classifying positions.

19 “5214. Review of classification of positions.

20 “5215. Reconsideration of classification decisions.

21 “SUBCHAPTER III—CORE PAY SYSTEM

22 “5221. General provisions.

23 “5222. Pay limitations.

24 “5223. Federal Pay Council.

25 “SUBCHAPTER IV—CORE PAY SYSTEM; RATE RANGES

26 “5231. Rate ranges.

27 “5232. Setting and adjusting rate ranges.

28 “5233. Eligibility for pay increase associated with a rate range adjustment

- 1 “5243. Special market supplements.
- 2 “5244. Setting and adjusting local and special market supplements.
- 3 “5245. Eligibility for pay increase associated with a supplement adjustment.
- 4 “5246. Treatment of an employee with a rating of record below fully successful.

5 “SUBCHAPTER VI—CORE PAY SYSTEM; PERFORMANCE-BASED PAY

- 6 “5251. Purpose.
- 7 “5252. Performance pay increases.
- 8 “5253. Within-band reductions.
- 9 “5254. Special within-band increases.
- 10 “5255. Developmental pay adjustments.
- 11 “5256. Performance-based cash awards.

12 “SUBCHAPTER VII—CORE PAY SYSTEM; PAY ADMINISTRATION

- 13 “5261. Setting an employee’s starting pay.
- 14 “5262. Use of highest previous rate.
- 15 “5263. Setting pay upon promotion.
- 16 “5264. Setting pay upon demotion.
- 17 “5265. Setting pay upon movement to a different career/occupational group.
- 18 “5266. Pay retention.
- 19 “5267. Miscellaneous.

20 “SUBCHAPTER VIII—CORE PAY SYSTEM; SPECIAL PAYMENTS

- 21 “5271. Special skills payments.
- 22 “5272. Special assignment payments.
- 23 “5273. Special staffing payments.

24 “CHAPTER 52—STRATEGIC COMPENSATION SYSTEM

25 “SUBCHAPTER I—GENERAL PROVISIONS

- 26 “§ 5201. Purpose

- 27 “(a) This chapter establishes a core compensation system for covered Federal employees

1 performance management and pay-for-performance systems. A primary goal of the system is to
2 allow for the strategic allocation of resources to meet mission needs and priorities, taking into
3 account staffing conditions, labor market conditions, employee and organizational performance,
4 and other relevant factors. The core compensation system and any alternative strategic
5 compensation systems established under this chapter are designed to be mission-centered and
6 performance-focused; to generate respect and trust through employee involvement; and to be
7 based on the principles of merit and fairness embodied in the merit system principles established
8 under section 2301. In implementing a strategic compensation system under this chapter, an
9 agency may establish policies and procedures to address agency-specific mission requirements or
10 policy goals.

11 “(b) A position classification system established under subchapter II of this chapter or
12 section 5209 shall replace, for covered employees and positions, any such classification system
13 established under other authority, including but not limited to chapter 51 and subchapter IV of
14 chapter 53.

15 “(c) A pay system established under subchapters III through VIII of this chapter or section
16 5209 shall replace, for covered employees and positions, any pay system established under other
17 authority, including but not limited to chapter 53 (except to the extent that chapter 53 provisions
18 continue in effect as provided in section 5203).

19 “(d) The authority provided by this chapter shall be exercised in a manner consistent with

1 qualification requirements (considering the levels of difficulty, accountability, and other
2 appropriate factors associated with any position);

3 “(2) levels of employee performance (including demonstrated competencies and
4 contributions to mission accomplishments and other appropriate factors); and

5 “(3) rates of pay paid by other agencies and employers in the labor market (based
6 on type of work, location, employee performance, and other appropriate factors).

7 “(e) To ensure that this chapter’s purposes are accomplished, this chapter shall be
8 interpreted in a way that recognizes each agency’s critical missions. Each provision of this
9 chapter shall be construed to promote the efficient and effective day-to-day accomplishment of
10 those missions, as defined by the agency. The interpretation of this chapter and implementing
11 regulations issued by the Office of Personnel Management shall be accorded great deference.

12 “§ 5202. Eligibility and coverage

13 “(a)(1) Notwithstanding section 5205(2), for purposes of this subsection, ‘agency’ means–

14 “(A) an Executive agency;

15 “(B) the Library of Congress;

16 “(C) the Botanic Garden;

17 “(D) the Government Printing Office; and

18 “(E) the Office of the Architect of the Capitol.

19 “(2)(A) Except as provided by subparagraph (B), an employee of an agency shall become

1 “(i) employees of the Department of Defense or the Department of Homeland
2 Security;

3 “(ii) employees of a Government controlled corporation, the Tennessee Valley
4 Authority; the Nuclear Regulatory Commission; or the Federal Energy Regulatory
5 Commission;

6 “(iii) employees of the Board of Governors of the Federal Reserve System; the
7 Federal Deposit Insurance Corporation; the Office of the Comptroller of the Currency; the
8 National Credit Union Administration; the Office of Thrift Supervision; the Farm Credit
9 Administration; the Federal Housing Finance Board; the Securities and Exchange
10 Commission; or the Commodity Futures Trading Commission;

11 “(iv) employees of the Government Accountability Office;

12 “(v) employees of the Central Intelligence Agency or the Federal Bureau of
13 Investigation Intelligence Career Service;

14 “(vi) employees who are covered by the Executive Schedule established by
15 subchapter II of chapter 53 or similar employees whose rate of pay is fixed by law at an
16 Executive Schedule rate;

17 “(vii) members of the Senior Executive Service established under subchapter II of
18 chapter 31 and members of the Federal Bureau of Investigation and Drug Enforcement

19 Administration Senior Executive Service established under subchapter III of chapter 31;

1 “(ix) members of the Foreign Service whose pay is fixed under the Foreign Service
2 Act of 1980 and positions in or under the Department of State which are–

3 “(I) connected with the representation of the United States to international
4 organizations; or

5 “(II) specifically exempted by statute from this chapter or another position
6 classification or pay statute;

7 “(x) physicians, dentists, nurses, and other employees in the Veterans Health
8 Administration of the Department of Veterans Affairs whose pay is fixed under chapter 73
9 of title 38;

10 “(xi) employees in the Bureau of Engraving and Printing whose duties are to
11 perform or to direct manual or machine operations requiring special skill or experience, or
12 to perform or direct the counting, examining, sorting, or other verification of the product
13 of manual or machine operations;

14 “(xii) employees of the Government Printing Office whose pay is fixed under
15 section 305 of title 44;

16 “(xiii) aliens or noncitizens of the United States who occupy positions outside the
17 United States;

18 “(xiv) employees who serve without pay or at nominal rates of pay;

19 “(xv) employees whose pay is not payable from appropriated funds of the United

1 Service, Department of Veterans Affairs, this paragraph applies only to employees
2 necessary for the transaction of the business of the Service at canteens, warehouses, and
3 storage depots whose employment is authorized by section 7802 of title 38;

4 “(xvi) employees whose pay is fixed under a cooperative agreement between the
5 United States and—

6 “(I) a State or territory or possession of the United States, or a political
7 subdivision thereof; or

8 “(II) an individual or organization outside the service of the Government of
9 the United States;

10 “(xvii) student nurses, medical or dental interns, residents-in-training, student
11 dietitians, student physical therapists, student occupational therapists, and other student
12 employees, assigned or attached to a hospital, clinic, or laboratory primarily for training
13 purposes, whose pay is fixed under subchapter V of chapter 53 of this title or sections
14 7405 and 7406 of title 38;

15 “(xviii) inmates, patients, or beneficiaries receiving care or treatment or living in
16 Government agencies or institutions;

17 “(xix) experts or consultants appointed under section 3109;

18 “(xx) employees employed on a fee, contract, or piece work basis;

19 “(xxi) employees who successfully perform their duties concurrently with their

1 “(xxii) ‘teachers’ and ‘teaching positions’ as defined by section 901 of title 20;

2 “(xxiii) administrative patent judges and designated administrative patent judges in
3 the United States Patent and Trademark Office;

4 “(xxiv) temporary positions in the Bureau of the Census established under section
5 23 of title 13, and enumerator positions in the Bureau of the Census;

6 “(xxv) employees of the Office of the Architect of the Capitol whose rate of pay is
7 fixed by another statute; or

8 “(xxvi) any other employees in a category that is expressly excluded by statute
9 from coverage under chapter 51 or this chapter.

10 “(C) Notwithstanding subparagraph (B) the only employees of the Office of the Architect
11 of the Capitol who are excluded from this chapter by this paragraph are those employees
12 described in clause (xxv) of such subparagraph.

13 “(3) An employee referred to in paragraph (2)(A) who is eligible for coverage under a
14 pay-for-performance system certified by the Office as provided in section 4317 shall become
15 subject to this chapter on the effective date determined by the agency, but in no case later than the
16 first day of the first pay period beginning on or after January 1, 2010. An agency may establish
17 different effective dates for different categories of employees in order to phase in coverage. Each
18 agency shall inform the Office in advance regarding the affected categories of employees and the

1 as certified by the Office. The agency responsible for the position classification and pay system
2 for such category of employees shall determine the effective date of such coverage.

3 “(c)(1) The Office may extend coverage under this chapter to a category of employees not
4 covered by subsection (a) who are employed in law enforcement positions provided that category
5 of employees would be covered by a pay-for-performance system that meets the requirements of
6 section 4317 as certified by the Office. Such positions shall constitute one or more
7 career/occupational groups within the core position classification system and core pay system
8 established under subchapters II through VIII of this chapter, except as provided by section 5209.

9 “(2) For the purposes of this section, unless otherwise provided, the term ‘law
10 enforcement position’ means a position so defined under regulations prescribed by the Office.
11 The definition shall be limited to positions—

12 “(A) with arrest authority; and

13 “(B)(i) the primary duty or duties of which are the prevention, detection, or
14 investigation of violations of the criminal laws of the United States, or the apprehension or
15 detention of individuals suspected or convicted of such violations;

16 “(ii) the primary duty of which is the protection of officials of the United States
17 against threats to personal safety; or

18 “(iii) the primary duties of which require prior experience in a position meeting the

19 requirements of subparagraphs (i) or (ii), such as supervisory and managerial positions

1 of 'law enforcement position' for specified purposes, and may exclude it for other purposes. The
2 Office may, for one or more purposes, limit the definition to positions that, as determined by the
3 Office and in comparison to positions generally, have rigorous physical requirements such that a
4 substantially higher proportion of incumbents would not be expected to be able to complete a full
5 career through retirement under the generally applicable age and service requirements. The
6 determination of the Office as to which positions meet the definition, and for which purposes,
7 shall be final, and not subject to review.

8 “(3) The Office shall determine the effective date of coverage under this subsection,
9 except that such effective date may be no earlier than 6 months after public notice of the Office’s
10 coverage decision.

11 “(d) The Office shall determine finally the applicability of this chapter to specific positions
12 and employees, except for positions and employees in the Office of the Architect of the Capitol.

13 “§ 5203. Preemption

14 “(a) Notwithstanding any other provision of law, for any category of employees and
15 positions covered by this chapter, the following provisions of law are preempted and replaced by
16 this chapter (except as provided in subsection (b) and section 5204):

17 “(1) chapter 51;

18 “(2) chapter 53; and

19 “(3) classification and pay provisions prescribed in other laws, or established under

1 “(1) section 5307, dealing with the aggregate limitation on pay;

2 “(2) sections 5311 through 5318, dealing with Executive Schedule positions;

3 “(3) section 5371, insofar as it authorizes the Office of Personnel Management to
4 apply the provisions of chapter 74 of title 38 to employees in health care positions covered
5 by section 5371 in lieu of any pay system established under this chapter or the following
6 provisions: chapters 51, 53, and 61, and subchapter V of chapter 55; the reference to
7 ‘chapter 51’ in section 5371 is deemed to include a position classification system
8 established under this chapter;

9 “(4) section 5372, dealing with administrative law judges;

10 “(5) section 5372a, dealing with members of contract appeals boards;

11 “(6) section 5372b, dealing with administrative appeals judges;

12 “(7) section 5377, dealing with the critical pay authority; and

13 “(8) section 5379, dealing with student loan repayments.

14 “§ 5204. Relationship to other provisions

15 “(a) For the purpose of applying provisions of law or regulations that refer to preempted
16 provisions under chapters 51 and 53, the references to such preempted provisions are deemed to
17 be references to corresponding provisions of this chapter, except as otherwise provided in this
18 chapter (including subsection (b)) or in regulations of the Office of Personnel Management. If a

1 “(1) foreign language awards for law enforcement officers under sections 4521
2 through 4523;

3 “(2) the higher aggregate pay limit under section 5307 for employees paid under
4 section 5376 (which shall apply to employees in senior-level and scientific or professional
5 positions, as defined by the Office under section 5216);

6 “(3) pay for firefighters under section 5545b;

7 “(4) differentials for duty involving physical hardship or hazard under section
8 5545(d);

9 “(5) recruitment, relocation, and retention payments under sections 5753 through
10 5754; and

11 “(6) physicians’ comparability allowances under section 5948.

12 “(b) When a specified category of employees is covered by a classification and pay system
13 established under this chapter, the following provisions do not apply to such employees:

14 “(1) time-in-grade restrictions that apply to competitive service General Schedule
15 positions under regulations of the Office;

16 “(2) supervisory differentials under section 5755; and

17 “(3) law enforcement officer special rates and geographic adjustments under
18 sections 403 and 404 of the Federal Employees Pay Comparability Act of 1990.

19 “(c) For a category of employees covered by this chapter in accordance with section

1 “§ 5205. Definitions

2 “For the purpose of this chapter–

3 “(1) ‘48 contiguous States’ means the States of the United States, excluding
4 Alaska and Hawaii, but including the District of Columbia;

5 “(2) ‘agency’ means an Executive agency, a legislative branch agency identified in
6 section 5202(a)(1), or any agency whose employees are covered by this chapter in
7 accordance with section 5202(b) or (c);

8 “(3) ‘alternative compensation system’ means a position classification and pay
9 system established under section 5209 that deviates from the core compensation system, in
10 whole or in part;

11 “(4) ‘band’ means a work level and associated rate range within a
12 career/occupational group or subgroup;

13 “(5) ‘basic pay’ means an employee’s rate of pay before any deductions and
14 exclusive of additional pay of any kind, except as expressly provided by law or regulation;
15 for the specific purposes prescribed in sections 5242(c) and 5243, respectively, basic pay
16 includes local and special market supplements;

17 “(6) ‘career/occupational group’ or ‘group’ means a grouping of one or more
18 associated or related occupations or positions; a career/occupational group may include

19 more than one career/occupational subgroup and series;

1 may include more than one occupational series;

2 “(8) ‘classification’ means the analysis and assignment of a position to an
3 occupational series, group, subgroup (if applicable), and band for pay and other related
4 purposes;

5 “(9) ‘competencies’ has the meaning given that term in section 4311(1);

6 “(10) ‘coordination’ has the meaning given that term in section 2110;

7 “(11) ‘core compensation system’ means the Governmentwide core position
8 classification system under subchapter II and the Governmentwide core pay system under
9 subchapters III through VIII;

10 “(12) ‘demotion’ means a reduction to a lower band within the same
11 career/occupational subgroup (or group if there are no subgroups) or a reduction to a
12 lower band in a different career/occupational group or to a different subgroup in the same
13 career/occupational group under regulations issued by the Office;

14 “(13) ‘employee’ means an employee within the meaning of that term in section
15 2105;

16 “(14) ‘fully successful’ (in connection with a rating of record) means a summary
17 rating level of fully successful performance (or equivalent) established under section 4316;

18 “(15) ‘General Schedule’ means the General Schedule classification and pay

19 system established under chapter 51 and subchapter III of chapter 52;

1 “(18) ‘modal rating’ means the rating of record that occurs most frequently among
2 employees covered by a particular pay pool;

3 “(19) ‘occupational series’ means an occupation defined by the Office under
4 section 2121, including the numerical code assigned to such series for identification
5 purposes;

6 “(20) ‘Office’ means the Office of Personnel Management;

7 “(21) ‘pay pool’ means the dollar value of the funds set aside for allocating
8 performance payouts among employees covered by a pay pool.

9 “(22) ‘position’ means the work, consisting of the duties, responsibilities, and
10 related competency requirements, assignable to an employee.

11 “(23) ‘promotion’ means an increase to a higher band within the same
12 career/occupational group or an increase to a higher band in a different
13 career/occupational group under agency implementing directives pursuant to section 5263;

14 “(24) ‘rate range’ means the range of rates of basic pay (excluding any local or
15 special market supplements) applicable to employees in a particular band, as described in
16 section 5231; each rate range is defined by a minimum and maximum rate;

17 “(25) ‘rating of record’ has the meaning given that term in section 4311(8);

18 “(26) ‘special market supplement’ means an addition to basic pay for a particular
19 category of employees to address staffing problems, as described in section 5242; a special

1 “(27) ‘unacceptable performance’ has the meaning given that term in section

2 4303(10).

3 “§ 5206. Bar on collective bargaining

4 “Notwithstanding the provisions of chapter 71, any position classification system or pay
5 system established under the authority of this chapter is not subject to collective bargaining. This
6 bar on collective bargaining applies to all aspects of the core compensation system or any
7 alternative compensation system, including but not limited to coverage determinations,
8 classification structure, classification methods and criteria, the setting and adjustment of pay
9 levels, pay administration rules and policies, and administrative procedures and arrangements.

10 “§ 5207. Continuing collaboration

11 “(a) Each agency with employees covered by this chapter shall provide representatives of
12 such employees with an opportunity to participate in the development of agency implementing
13 directives through a continuing collaboration process. This process is not subject to the
14 requirements established by chapter 71, including but not limited to section 7110 (regarding
15 national consultation), section 7113 (regarding enforcement of the duty to consult or negotiate),
16 section 7114 (regarding the duty to bargain and consult), or section 7117 (regarding impasse
17 procedures).

18 “(b)(1) For the purpose of this section, the terms ‘employee representatives’ and

1 the continuing collaboration process.

2 “(3) Each national labor organization with multiple collective bargaining units accorded
3 exclusive recognition shall determine how its units shall be represented within the limitations
4 imposed by the agency.

5 “(c)(1) Within timeframes specified by the agency, employee representatives shall be
6 provided with an opportunity to submit written comments, to discuss their views with agency
7 officials, or both, regarding proposed implementing directives.

8 “(2) As the agency determines necessary, employee representatives shall be provided with
9 an opportunity to discuss their views with agency officials or to submit written comments upon
10 initial identification of implementation issues and conceptual design, or upon review of draft
11 recommendations or alternatives, or both.

12 “(d) Employee representatives shall be provided with access to information to make their
13 participation in the continuing collaboration process productive.

14 “(e) Any written comments submitted by employee representatives regarding proposed
15 implementing directives shall become part of the record and shall be forwarded to the agency
16 official issuing such directives for consideration in making a final decision.

17 “(f) Nothing in the continuing collaboration process affects the right of the agency to
18 determine the content of implementing directives and to make them effective at any time.

19 “§ 5208. Office of Personnel Management and agency responsibilities

1 by law, the purposes for which pay under this chapter is considered basic pay.

2 “(2) Covered agencies may prescribe implementing directives as necessary to apply the
3 provisions of this chapter and the regulations of the Office.

4 “(b) Each agency shall provide the Office with such information as the Office may require
5 regarding its implementation of the core or any alternative compensation system established under
6 this chapter.

7 “(c)(1) The Office shall prescribe rules governing the conversion of positions and
8 employees to the core or any alternative compensation system established under this chapter. For
9 the purpose of this subsection, the term ‘conversion’ refers to the conversion of positions and
10 employees to a compensation system established under this chapter as a result of a coverage
11 determination made under section 5202 and excludes the placement of employees (by
12 reassignment or transfer) to a position already covered by a compensation system established
13 under this chapter.

14 “(2) Each agency shall convert an employee to a compensation system established under
15 this chapter without a reduction in the employee’s rate of basic pay (taking into account basic pay
16 and any applicable locality payment under section 5304, special rate under section 5305, local
17 market supplement under section 5242, or special market supplement under section 5243). When
18 an employee receiving a special rate under section 5305 before conversion is converted to an

19 equal rate of pay that consists of a basic rate and a local or special market supplement, the

1 employee's conversion to a compensation system established under this chapter, the agency shall
2 process the other action under the rules pertaining to the employee's former system before
3 processing the conversion action.

4 “(4) An employee on a temporary promotion at the time of conversion shall be returned to
5 his or her official position of record prior to processing the conversion.

6 “(5) The Office may prescribe rules regarding pay adjustments for employees in
7 connection with conversion to a compensation system established under this chapter.

8 “§ 5209. Alternative strategic compensation systems

9 “(a) Subject to certification of the agency's pay-for-performance system by the Office as
10 provided in section 4317, an agency may, with the approval of the Office, establish and from time
11 to time adjust one or more alternative strategic compensation systems covering one or more
12 categories of its employees. Such an alternative system may vary from the core strategic
13 compensation system established by the Office under this chapter with respect to such matters as
14 the number and composition of career/occupational groups or subgroups and bands, the minimum
15 and maximum rates of pay for bands within a given career/occupational group (except that the
16 maximum rate for any career/occupational group may not exceed the rate for level IV of the
17 Executive Schedule unless otherwise approved by the Office), and the method or methods of
18 adjusting an employee's rate of basic pay within a band based on his or her performance.

19 “(b) Before establishing or adjusting an alternative strategic compensation system under

1 proposed system with labor organizations with national consultation rights that represent affected
2 employees. Any written comments provided by such representatives shall be forwarded to the
3 head of the agency (or designee) for consideration in making final agency decisions regarding the
4 alternative system. The agency shall publish a final notice in the Federal Register establishing or
5 adjusting the alternative system with an effective date no earlier than 30 days after the date of
6 publication. The process provided under this subsection is not subject to any requirements in
7 chapter 71 and is the exclusive process for the participation of employee representatives in
8 establishing or adjusting an alternative system.

9 “(c) Each agency with an alternative strategic compensation system shall establish a
10 continuing collaboration process as required by section 5207.

11 “(d) To facilitate interagency consultation on any aspect of an alternative strategic
12 compensation system established under this chapter, the Office may establish one or more
13 interagency advisory groups.

14 “SUBCHAPTER II—CORE POSITION CLASSIFICATION SYSTEM

15 “§ 5211. General provisions

16 “(a) The Office shall establish a core position classification system, which shall be
17 published in such form as the Office may determine. The agencies, on request of the Office, shall
18 furnish information for, and cooperate in, defining components of the classification structure

19 established under section 5212.

1 “(c) The Office may make such inquiries or investigations of the duties, responsibilities,
2 and qualification requirements of positions as it considers necessary.

3 “§ 5212. Classification structure

4 “(a) The Office shall apply occupational series established under subchapter II of chapter
5 21.

6 “(b) The Office shall define career/occupational groups and subgroups based on factors
7 such as mission or function; nature of work; qualifications; competencies; career or pay
8 progression patterns; relevant labor-market features; and other characteristics of those
9 occupations or positions.

10 “(c) For purposes of identifying relative levels of work and corresponding pay ranges, the
11 Office shall establish one or more bands within each career/occupational group or subgroup,
12 where applicable. Each career/occupational group may include, but is not limited to, the
13 following bands:

14 “(1) Entry/Developmental—work that involves gaining the competencies needed
15 to perform successfully in a Full Performance band through appropriate formal training or
16 on-the-job experience, or both;

17 “(2) Full Performance—work by employees who have successfully completed any
18 required entry-level training, or developmental activities, or both, necessary to

19 independently perform the full range of non-supervisory duties of a position in a

1 mission goals and objectives; reserved for a limited number of non-supervisory employees;

2 and

3 “(4) Supervisory—work that may involve hiring or selecting employees, assigning
4 work, managing performance, and other associated duties.

5 “§ 5213. Classifying positions

6 “Except as otherwise provided by this chapter, each agency shall classify each position
7 under its jurisdiction into its appropriate occupational series, career/occupational group and
8 subgroup, where applicable, and band in conformance with standards published by or coordinated
9 with the Office, or, if no published standards apply directly, consistent with published standards.

10 When facts warrant, an agency may change the classification of a position. Subject to the
11 requirements of this chapter, and except as otherwise provided under section 5214, these actions
12 of an agency are the basis for pay and personnel actions.

13 “§ 5214. Review of classification of positions

14 “(a) The Office may review the classification under section 5213 of positions in an agency
15 and direct corrective action with regard to placement of one or more positions in the appropriate
16 series, career/occupational group, subgroup and band. The agency shall take any corrective
17 action directed by the Office.

18 “(b) When the Office finds that positions in an agency were not classified in conformance

1 classification actions become effective; or

2 “(B) exercise the authority otherwise exercised by the agency under section 5213.

3 Notwithstanding that section, the exercise of that authority by the Office shall constitute
4 the basis for pay and personnel actions.

5 “(c) After limiting, revoking, or suspending an agency’s authority as provided in
6 subsection (b), the Office may restore the authority to the extent that it is satisfied that subsequent
7 classification actions by the agency will be in conformance with or consistent with published
8 standards.

9 “§ 5215. Reconsideration of classification decisions

10 “(a) Subject to regulations prescribed by the Office, an employee may request that the
11 agency or the Office reconsider the pay system, career/occupational group or subgroup,
12 occupational series, or band assigned to his or her current official position of record at any time.

13 “(b) An employee may request that the Office review an agency determination made
14 under subsection (a). If an employee does not request a reconsideration decision by the Office,
15 the agency’s classification determination is final and not subject to further review or appeal.

16 “(c) The Office’s final determination on a request made under this section is not subject to
17 further review or appeal.

18 “SUBCHAPTER III— CORE PAY SYSTEM

19 “§ 5221. General provisions

1 under this chapter shall be linked to employees' performance ratings of record, under a pay-for-
2 performance system certified by the Office in accordance with section 4317.

3 “§ 5222. Pay limitations

4 “(a) No agency may pay a covered employee an annual rate of basic pay in excess of the
5 rate for level III of the Executive Schedule, except as permitted under section 5377.

6 “(b) Section 5307 (establishing a limit on aggregate compensation) applies to employees
7 covered by this chapter.

8 “§ 5223. Federal Pay Council

9 “(a) The Director of the Office of Personnel Management shall establish a Federal Pay
10 Council of 16 members, of whom—

11 “(1) 1 shall be an official of the Office who serves as the Chair of the Council;

12 “(2) 3 shall be chosen from among persons generally recognized for their
13 impartiality, knowledge, and experience in the fields of pay, performance, or labor
14 relations policy;

15 “(3) 6 shall be representatives of employee organizations which represent
16 substantial numbers of employees holding positions covered by this chapter, and shall be
17 selected giving due consideration to such factors as the relative numbers of employees
18 represented by the various organizations; and

19 “(4) 6 shall be representatives of the Office of the Chief Human Resources Officer.

1 with section 5703.

2 “(c) The Federal Pay Council shall provide the Director of the Office of Personnel
3 Management and the Director of the Office of Management and Budget with its views and
4 recommendations, if any, regarding—

5 “(1) setting and adjusting the minimum and maximum rates of pay for bands within
6 career/occupational groups or subgroups under the core pay system in accordance with
7 subchapter IV;

8 “(2) the establishment and modification of local market areas established for the
9 core pay system under section 5242; and

10 “(3) the methodology for determining the amounts of local market supplements
11 established for the core pay system under section 5242.

12 “SUBCHAPTER IV—CORE PAY SYSTEM; PAY STRUCTURE

13 “§ 5231. Establishing rate ranges

14 “(a) The Office shall, after consultation with agencies and with the concurrence of the
15 Office of Management and Budget, establish a range of basic pay for each band established under
16 subchapter II, with each range defined by a minimum rate and a maximum rate. Rates shall be
17 expressed as annual rates. In establishing such rate ranges, the Office may consider mission
18 requirements, labor market conditions, availability of funds, rate ranges established under other

19 Federal pay systems, and any other relevant factors.

1 “(c) The Office may prescribe regulations that establish, or allow an agency to establish,
2 pay progression policies applicable to a particular rate range or portion thereof in order to reflect
3 differences in competencies, performance, organizational level, or other factors among employees
4 in a band.

5 “(d) The Office shall determine the effective date of a rate range established under this
6 section.

7 “§ 5232. Adjusting a rate range

8 “(a) The Office shall, after consultation with agencies and with the concurrence of the
9 Office of Management and Budget, make a determination on an annual basis with respect to
10 adjusting each rate range established under section 5231 and may adjust each rate range
11 accordingly. In determining rate range adjustments, the Office may consider mission
12 requirements, labor market conditions, availability of funds, pay adjustments made under other
13 Federal pay systems, and any other relevant factors.

14 “(b) The Office shall determine the effective date of adjusted band rate ranges.

15 “(c) The Office may provide different rate range adjustments for different bands and may
16 adjust the minimum and maximum rates of a band by different percentages.

17 “§ 5233. Eligibility for pay increase associated with a rate range adjustment

18 “(a) When a rate range is adjusted under section 5232, employees covered by that range

1 same time as the corresponding rate range adjustment, except as provided in sections 5234 and
2 5235. For an employee receiving a retained rate, the amount of the increase under this subsection
3 is determined under section 5266.

4 “(b) If an employee does not have a rating of record for the most recently completed
5 appraisal period, he or she shall be treated in the same manner as an employee with a rating of
6 record of fully successful or higher and is entitled to receive an increase based on the rate range
7 adjustment, as provided in subsection (a).

8 “(c) An employee whose rating of record is below fully successful is prohibited from
9 receiving a pay increase as a result of a rate range adjustment, except as provided by
10 sections 5234 and 5235. Failure to receive a pay increase is not an adverse action under chapter
11 75.

12 “§ 5234. Treatment of an employee with a rating of record below fully successful

13 “(a) An employee with a rating of record below fully successful who does not receive a
14 pay increase under section 5233 and whose rate of basic pay does not fall below the minimum rate
15 of his or her band as a result of that rating shall receive such an increase if he or she receives a
16 new rating of record of fully successful or higher under section 4316. Such an increase shall be
17 made effective on the first day of the first pay period beginning on or after the date the new rating
18 of record is final.

19 “(b) In the case of an employee with a rating of record below fully successful who does

1 requirements and expectations within 90 days after the date of the rate range adjustment,
2 issue a new rating of record under section 4316 and adjust the employee's pay
3 prospectively by making the increase effective on the first day of the first pay period
4 beginning on or after the date the new rating of record is final; or

5 “(2) initiate action within 90 days after the date of the rate range adjustment to
6 demote or remove the employee in accordance with the adverse action procedures
7 established in chapter 75.

8 “(c) If an agency fails to initiate a removal or demotion action under subsection (b)(2)
9 within 90 days after the date of a rate range adjustment, the employee becomes entitled to the
10 minimum rate of his or her band rate range on the first day of the first pay period beginning on or
11 after the 90th day following the date of the rate range adjustment.

12 “SUBCHAPTER V—CORE PAY SYSTEM; LOCAL AND

13 SPECIAL MARKET SUPPLEMENTS

14 “§ 5241. General provisions

15 “The basic pay ranges established under subchapter IV may be supplemented in
16 appropriate circumstances by local or special market supplements, as described in this subchapter.
17 These supplements are expressed as a percentage of basic pay and are set and adjusted as
18 described in section 5244. As authorized by section 5266, the Office shall prescribe in regulations

19 the extent to which this subchapter applies to employees receiving a retained rate

1 apply in specified local labor market areas. Local market supplements apply to employees whose
2 official duty station is located in that area. The Office may provide different local market
3 supplements for different career/occupational groups or for different bands within the same
4 career/occupational group in the same local market area.

5 “(b) The Office shall establish and modify local market area boundaries by regulation.
6 Judicial review of any such regulation shall be limited to whether or not it was promulgated in
7 accordance with the notice and comment requirements of section 553.

8 “(c) Local market supplements are considered basic pay for only the following purposes:

9 “(1) retirement under chapter 83 or 84;

10 “(2) life insurance under chapter 87;

11 “(3) premium pay under subchapter V of chapter 55 or similar payments under
12 other legal authority;

13 “(4) severance pay under section 5595;

14 “(5) application of the maximum basic pay rate limitations set forth in sections
15 5209 and 5222;

16 “(6) determining the rate of basic pay upon conversion to an agency pay system
17 established under this chapter, consistent with section 5208(c);

18 “(7) other payments and adjustments as specified by regulations of the Office;

19 “(8) other payments and adjustments under other statutory or regulatory authority.

1 considered part of basic pay.

2 “§ 5243. Special market supplements

3 “The Office may, after consultation with affected agencies, establish special market
4 supplements to address specific conditions that affect a particular labor market and that provide
5 higher pay levels for categories of employees within a career/occupational group or subgroup if
6 the Office determines that such supplements are warranted by current or anticipated recruitment
7 and/or retention needs. A special market supplement replaces any lower local market supplement
8 that would otherwise be applicable. Any special market supplement shall be treated as basic pay
9 for the same purposes as local market supplements, as described in section 5242(c), and for the
10 purpose of computing cost-of-living allowances and post differentials in nonforeign areas under
11 section 5941.

12 “§ 5244. Setting and adjusting local and special market supplements

13 “(a) Within its sole and exclusive discretion, the Office may, after consultation with
14 affected agencies and the Office of Management and Budget, set and adjust local and special
15 market supplements. In determining the amounts of the supplements, the Office may consider
16 mission requirements, labor market conditions, availability of funds, pay adjustments received by
17 employees of other Federal agencies, and any other relevant factors. The Office shall take into
18 account the receipt by employees of allowances and differentials under chapter 59 in evaluating

1 “§ 5245. Eligibility for pay increase associated with a supplement adjustment

2 “(a) When a local or special market supplement is adjusted under section 5244, an
3 employee to whom the supplement applies is entitled to the pay increase resulting from that
4 adjustment if the employee’s rating of record for the most recently completed appraisal period is
5 fully successful or higher. This includes an increase resulting from the initial establishment and
6 setting of a special market supplement. The pay increase takes effect at the same time as the
7 applicable supplement is set or adjusted, except as provided in sections 5246 and 5247.

8 “(b) If an employee does not have a rating of record for the most recently completed
9 appraisal period, he or she shall be treated in the same manner as an employee who meets or
10 exceeds performance requirements and expectations and is entitled to any pay increase associated
11 with a supplement adjustment, as provided in subsection (a).

12 “(c) An employee who has a rating of record below fully successful is prohibited from
13 receiving a pay increase as a result of an increase in an applicable local or special market
14 supplement, except as provided by sections 5246 and 5247. Failure to receive a pay increase is
15 not an adverse action under chapter 75.

16 “§ 5246. Treatment of an employee with a rating of record below fully successful

17 “(a) An employee who does not receive a pay increase under section 5245 and whose rate
18 of basic pay (including a local or special market supplement) does not fall below the minimum

1 “(b) In the case of an employee who does not receive a pay increase under section 5245
 2 and whose rate of basic pay (including a local or special market supplement) falls below the
 3 minimum adjusted rate of his or her band as a result of that rating, an agency shall–

4 “(1) if the employee demonstrates performance that meets or exceeds performance
 5 requirements and expectations within 90 days after the date of the local or special market
 6 supplement adjustment, issue a new rating of record under section 4316 and adjust the
 7 employee’s pay prospectively by making the increase effective on the first day of the first
 8 pay period beginning on or after the date the new rating of record is final; or

9 “(2) initiate action within 90 days after the date of the local or special market
 10 supplement adjustment to demote or remove the employee in accordance with the adverse
 11 action procedures established in chapter 75.

12 “(c) If an agency fails to initiate a removal or demotion action under subsection (b)(2)
 13 within 90 days after the date of a local or special market supplement adjustment, the employee
 14 becomes entitled to the minimum adjusted rate of his or her band rate range on the first day of the
 15 first pay period beginning on or after the 90th day following the date of the local or special market
 16 supplement adjustment.

17 “SUBCHAPTER VI—CORE PAY SYSTEM; PERFORMANCE-BASED PAY

18 “§ 5251. Purpose

19 “This subchapter authorizes various types of performance-based pay adjustments and each

1 higher performance is rewarded with higher pay.

2 “§ 5252. Performance pay increases

3 “(a)(1) An employee in a Full Performance or higher band shall be eligible for an annual
4 performance pay increase based on the rating of record issued under a pay-for-performance
5 system certified under section 4317, subject to the conditions set forth in this section.

6 “(2) The pay system shall allocate performance pay increases based on performance shares
7 that are directly linked to the employee’s rating of record, as described in this section.

8 “(3) The rating of record used as the basis for a performance pay increase is the one
9 assigned for the most recently completed appraisal period (subject to the requirements of chapter
10 43), except that, if the supervisor or other rating official determines that an employee’s current
11 performance is inconsistent with that rating, the supervisor or other rating official may prepare a
12 more current rating of record, consistent with section 4316.

13 “(4) If an employee is eligible to receive a rating of record but no rating has been assigned,
14 the agency shall use the modal rating received by other employees covered by the same pay pool
15 for the most recently completed appraisal period for the purpose of determining the employee’s
16 performance pay increase.

17 “(5) For employees who are not eligible for a rating of record for reasons other than those
18 identified in section 5267(f) or (g), each agency shall establish policies for determining a pay

19 increase under this section.

1 “(3)(A) For 5 years after conversion to a pay-for-performance system established under
2 this chapter, agencies shall allocate annually an amount for performance pay increases equal to the
3 Governmentwide historical average aggregate funds expended for periodic step increases and
4 additional step increases granted under sections 5335 and 5336 , as well as the estimated average
5 amount that otherwise would have been spent on promotions among positions placed in the same
6 band, as determined by the Office.

7 “(B) Beginning on the expiration of the 5-year period referred to in subparagraph (A), an
8 agency head shall determine on an annual basis the amount of funds to be allocated to
9 performance pay increases.

10 “(C) Notwithstanding subparagraph (B), absent submission of an acceptable agency plan
11 for an alternative compensation system, the Office shall continue to certify the amount to be
12 allocated annually for performance pay increases as provided under subparagraph (A).

13 “(4) Subject to regulations prescribed by the Office, an agency may determine the
14 distribution of funds allocated for performance pay increases among pay pools and may adjust
15 those amounts based on overall levels of organizational performance or contribution to the
16 agency’s mission.

17 “(c)(1) For each group of employees covered by a single pay pool, an agency shall
18 establish numbers of shares that correspond to the summary rating levels assigned under the

19 applicable certified performance appraisal system established under chapter 42, so that a single

1 may differ by pay pool.

2 “(2) The agency shall assign zero performance shares to any rating of record below fully
3 successful.

4 “(3) If the agency assigns a range of performance shares to a rating level, the agency shall
5 identify in implementing directives the criteria to be used in assigning employees a specific number
6 of shares within that range.

7 “(4) Notwithstanding paragraph (1), an agency may, for any pay pool, adopt a method of
8 adjusting shares based on an employee’s position in the rate range.

9 “(d)(1) Based on the predetermined dollar value of the pay pool and the distribution of
10 performance shares among pay pool employees, the agency shall determine the value of a
11 performance share, expressed as a percentage of an employee’s rate of basic pay (exclusive of
12 local or special market supplements under sections 5242 and 5243) or as a fixed dollar amount.

13 “(2) To determine an individual employee’s performance pay increase, the agency shall
14 multiply the share value determined under paragraph (1) by the number of performance shares
15 assigned to the employee based on the applicable rating of record.

16 “(3) To the extent that the value of the performance pay increase determined under
17 paragraph (2) does not cause the employee’s rate of basic pay to exceed the maximum rate of the
18 employee’s band rate range (or any limitation established under section 5231(c)), the agency shall

19 adjust the employee’s annual rate of basic pay by the amount of that performance pay increase.

1 not be funded out of the pay pool.

2 “(4) The agency may, after coordination with the Office, determine the effective date of
3 performance pay increases made under paragraph (3).

4 “(5) An employee receiving a retained rate under section 5266 may not receive a lump-
5 sum performance payment that exceeds the amount that may be received by an employee covered
6 by the same pay pool with the same number of performance shares whose rate of pay is at the
7 maximum rate of the same band.

8 “(e) The agency shall issue implementing directives regarding the proration of
9 performance pay increases for employees who, during the period between the effective dates of
10 performance pay increases, are—

11 “(1) hired or promoted;

12 “(2) in a leave-without-pay status (except as provided in section 5267(f) and (g));

13 or

14 “(3) in other circumstances where proration is considered appropriate.

15 “(f) For employees covered by subsection (f) or (g) of section 5267, the agency shall
16 determine performance pay increases consistent with the requirements in those subsections.

17 “(g) Notwithstanding any other provision of this section, an agency may, subject to
18 coordination with the Office, establish an alternative method for awarding performance pay

19 increases that provides, at a minimum, the following elements:

1 above fully successful;

2 “(2) a bar on providing a performance pay increase to the extent it would cause the
3 employee’s rate of basic pay to exceed the maximum rate of the employee’s band (or any
4 applicable limitation established under section 5231(c));

5 “(3) the requirement that only an employee with a rating of record of fully
6 successful or higher may receive a performance pay increase;

7 “(4) the requirement that an employee receiving a retained rate under section 5266
8 may not receive a performance pay increase;

9 “(5) a method for managing costs of performance pay increases within a
10 predetermined salary budget or salary increase allocation fund; and

11 “(6) adherence to section 5267(f) and (g) when applicable.

12 “§ 5253. Within-band reductions

13 “Subject to any applicable adverse action procedures set forth in chapter 75, an agency
14 may reduce an employee’s rate of basic pay within a band for unacceptable performance or
15 conduct. Such a reduction may not be more than 10 percent or cause an employee’s rate of basic
16 pay to fall below the minimum rate of the employee’s band rate range. Such a reduction may be
17 made effective at any time.

18 “§ 5254. Special within-band increases

19 “A

1 are in addition to any performance pay increases made under section 5252 and may be made
2 effective or revoked at any time or when the conditions of this section are no longer met. Special
3 within-band increases may not be based on length of service. Revocation of a special within-band
4 increase is not an adverse action under chapter 75 and shall not entitle the employee to pay
5 retention under section 5266.

6 “§ 5255. Developmental pay adjustments

7 “Each agency may issue implementing directives regarding pay progression within the
8 Entry/Developmental band that are linked to the acquisition and demonstration of competencies
9 and to other relevant factors, subject to regulations issued by the Office.

10 “§ 5256. Performance-based cash awards

11 “(a)(1) An employee may be paid a cash award under this section on the basis of his or her
12 most recent rating of record and any other performance assessment or criteria the agency
13 determines appropriate.

14 “(2) A group of employees may be paid an award under this section based on such
15 performance assessments or criteria as the agency determines appropriate.

16 “(b) An award under this section shall be paid as a lump sum and shall be considered to be
17 part of the basic pay of the employee only for such purposes as the Office determines appropriate.

18 “(c) An employee may not receive a payment under this section and–

1 increases under section 5252 and shall not exceed 20 percent of an employee’s annual rate of
2 basic pay, including any local or special market supplement, unless approved by the agency head.

3 “SUBCHAPTER VII—CORE PAY SYSTEM; PAY ADMINISTRATION

4 “§ 5261. Setting an employee’s starting pay

5 “Each agency shall, after coordination with the Office, issue implementing directives
6 regarding the starting rate of pay for an employee, including—

7 “(1) an individual who is newly appointed or reappointed to the Federal service;

8 “(2) an employee transferring to the agency from another agency; and

9 “(3) an agency employee who moves from a noncovered position to a position
10 already covered by this chapter.

11 “§ 5262. Use of highest previous rate

12 “Subject to regulations prescribed by the Office, each agency may issue implementing
13 directives regarding the discretionary use of an individual’s highest previous rate of basic pay
14 received as a Federal employee in setting pay upon reemployment, transfer, reassignment,
15 promotion, demotion, placement in a different career/occupational group, or change in type of
16 appointment.

17 “§ 5263. Setting pay upon promotion

18 “(a) Except as otherwise provided in this section, upon an employee’s promotion, an

1 “(1) an employee promoted from an Entry/Developmental band to a Full
2 Performance band (consistent with the pay progression plan established for the
3 Entry/Developmental band);

4 “(2) an employee who was demoted and is then repromoted to the higher band; or

5 “(3) an employee in other circumstances specified by agency implementing
6 directives.

7 “(c) An employee receiving a retained rate under section 5266 before promotion is entitled
8 to a rate of basic pay after promotion that is at least 8 percent higher than the maximum rate of
9 the employee’s current band (except in circumstances specified in agency implementing
10 directives). The rate of basic pay after promotion may not be less than the minimum rate of the
11 employee’s new band rate range or the employee’s existing retained rate of basic pay. If the
12 maximum rate of the employee’s new band rate range is less than the employee’s existing rate of
13 basic pay, the employee will continue to be entitled to the existing rate as a retained rate.

14 “§ 5264. Setting pay upon demotion

15 “Subject to regulations prescribed by the Office, each agency may issue implementing
16 directives regarding how to set an employee’s pay when he or she is demoted. The directives
17 shall distinguish between demotions under adverse action procedures, as defined in chapter 75,
18 and other reductions in band or pay. A reduction in basic pay upon demotion under adverse

1 directives regarding how to set an employee's pay when he or she moves voluntarily or
2 involuntarily to a position in a different career/occupational group or subgroup, including rules for
3 determining whether such a movement is to a higher or lower band for the purpose of setting pay
4 upon promotion or demotion under sections 5263 and 5264, respectively.

5 “§ 5266. Pay retention

6 “(a) Subject to the requirements of this section, the Office shall prescribe regulations
7 regarding pay retention for employees whose rate of basic pay would otherwise be reduced. The
8 regulations shall address both eligibility for pay retention and the method of applying pay
9 retention to eligible employees.

10 “(b) For an employee who is entitled to a retained rate that exceeds the maximum rate of
11 the employee's band, the retained rate shall be increased by one-half of the percentage value of
12 any increase in the minimum rate of the employee's band for which the employee would otherwise
13 be eligible under section 5233.

14 “§ 5267. Miscellaneous

15 “(a) Except in the case of an employee who does not receive a pay increase under section
16 5233 or 5245 because of a rating of record of unacceptable, an employee's rate of basic pay may
17 not be less than the minimum rate of the employee's band, including any applicable local or special
18 market supplement.

1 rates of pay shall be converted to hourly rates of pay in computing payments received by covered
2 employees.

3 “(d) Subject to regulations prescribed by the Office, each agency may issue implementing
4 directives regarding the movement of employees to or from a band with a rate range that is
5 increased by a special market supplement.

6 “(e) For the purpose of applying the reduction-in-force provisions, the Office shall
7 establish representative rates for all band rate ranges.

8 “(f) Subject to regulations prescribed by the Office, each agency may issue implementing
9 directives regarding how it sets the rate of basic pay prospectively for an employee who leaves an
10 agency position to perform service in the uniformed services (in accordance with section 4303 of
11 title 38, United States Code, and related regulations issued by the Office) and returns through the
12 exercise of a reemployment right provided by law, Executive order, or regulation under which
13 accrual of service for seniority-related benefits is protected, such as section 4316 of title 38,
14 United States Code. The agency shall credit the employee with intervening rate range
15 adjustments under section 5233(a), as well as developmental pay adjustments under section 5255
16 (as determined by the agency in accordance with its implementing directives), and performance
17 pay increases under section 5252 based on the employee’s last rating of record. For employees
18 who have no such rating of record, the agency shall use the modal rating received by other

19 employees covered by the applicable pay plan for the most recently completed appraisal period.

1 directives regarding how it sets the rate of basic pay prospectively for an employee who returns to
2 duty after a period of receiving injury compensation under subchapter I of chapter 81 (in a leave-
3 without-pay status or as a separated employee). The agency shall credit the employee with
4 intervening rate range adjustments under section 5233(a), as well as developmental pay
5 adjustments under section 5255 (as determined by the agency in accordance with its implementing
6 directives), and performance pay increases under section 5252 based on the employee's last rating
7 of record. For employees who have no such rating of record, the agency shall use the modal
8 rating received by other employees covered by the same pay pool during the most recently
9 completed appraisal period. An employee returning to duty after receiving injury compensation
10 payments shall receive the full amount of the performance pay increase associated with his or her
11 rating of record.

12 "SUBCHAPTER VIII—CORE PAY SYSTEM; SPECIAL PAYMENTS

13 "§ 5271. Special skills payments

14 "An agency may authorize additional payments for specializations for which the incumbent
15 employee is trained and ready to perform at all times. An agency may determine the amount of
16 the payments and the conditions for eligibility, including any performance or service agreement
17 requirements. Payments may be made at the same time as basic pay or in periodic lump-sum
18 payments. Special skills payments are not basic pay for any purpose. Reduction or termination of

19 a special skills payment is not an adverse action under chapter 75.

1 assignments within the employee’s band. An agency may determine the amount of the payments
2 and the conditions for eligibility, including any performance or service agreement requirements.
3 Payments may be made at the same time as basic pay or in periodic lump-sum payments. Special
4 assignment payments are not basic pay for any purpose and may be terminated or reduced at any
5 time without triggering pay retention provisions or adverse action procedures.

6 “§ 5273. Special staffing payments

7 “An agency may authorize additional payments for employees serving in positions for
8 which the agency is experiencing or anticipates significant recruitment or retention problems. An
9 agency may determine the amount of the payments and the conditions for eligibility, including any
10 performance or service agreement requirements. Payments may be made at the same time as basic
11 pay or in periodic lump-sum payments. Special staffing payments are not basic pay for any
12 purpose and may be terminated or reduced at any time without triggering pay retention or adverse
13 action procedures.”.

14 SEC. 203. ADDITIONAL COMPENSATION AMENDMENTS.

15 Title 5, United States Code, is amended–

16 (1) in chapter 51–

17 (A) by repealing section 5108; and

18 (B) in the table of sections by amending the item relating to section 5108 to

19 read as follows:

1 (i) in subsection (g)(2)–

2 (I) in subparagraph (A) by striking “subparagraphs (A)-(D)”

3 and inserting “subparagraphs (A)-(C)”; and

4 (II) in subparagraph (B) by striking “subsection (h)(1)(D)”

5 and inserting “subsection (h)(1)(C)”; and

6 (ii) in subsection (h)–

7 (I) in paragraph (1)–

8 (aa) by striking subparagraph (A);

9 (bb) by redesignating subparagraphs (B), (C), and

10 (D) as subparagraphs (A), (B), and (C), respectively;

11 (cc) in clause (v) by striking “or” at the end;

12 (dd) in clause (vi) by striking the period at the end

13 and inserting “; or;”; and

14 (ee) by adding at the end the following new clause:

15 “(vii) a position to which section 5376 applies (relating to senior
16 professional positions).”;

17 (II) in paragraph (2)–

18 (aa) in subparagraph (B)(i)–

19 (A) by striking “subparagraphs (A) through

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(bb) in subparagraph (B)(ii)–

(AA) by striking “paragraph (1)(D)” and

inserting “paragraph (1)(C)”; and

(BB) by striking “or (vi)” and inserting “(vi),

or (vii)”; and

(cc) in subparagraph (C) by striking the second

sentence; and

(III) in paragraph (3)(B) by striking "shall remain in effect

through the last day of the last applicable pay period commencing

during that calendar year" and inserting "shall remain in effect until

terminated by the President or the President’s designee”;

(B) in section 5307–

(i) in subsection (a)(2)–

(I) in subparagraph (A) by striking “or section 5596”;

(II) by redesignating subparagraphs (B) and (C) as

subparagraphs (C) and (D); and

(III) by inserting after subparagraph (A) the following new

subparagraph:

“(D) section 5596 to the extent that such payment is associated with an

1 by the Office of Personnel Management for up to 6 additional months”;

2 (C) in section 5334 by adding at the end the following new subsection:

3 “(h) Notwithstanding subsection (b), when an employee is reassigned or transfers from a
4 civil service position not covered by this subchapter to a position covered by this subchapter, the
5 gaining agency, at its discretion, may set the employee’s initial rate of basic pay at the lowest rate
6 in the rate range applicable to the new position which exceeds the employee’s existing rate of
7 basic pay by 6 percent, not to exceed the maximum rate of the rate range for the new position.

8 This subsection may be applied only when–

9 “(1) the gaining agency determines that the new position represents a higher-level
10 position such that the movement is reasonably considered to be the equivalent of a
11 promotion; and

12 “(2) the maximum rate of the rate range for the new position exceeds the
13 maximum rate of the rate range for the position held immediately before the reassignment
14 or transfer by at least 6 percent.”;

15 (D) in section 5376–

16 (i) in the catchline by striking “certain senior-level” and inserting

17 “senior professional”;

18 (ii) by amending subsection (a)(1)-(2) and the undesignated material

19 after the last paragraph of such subsection to read as follows:

1 as paragraphs (1) and (2), respectively; and

2 (iv) in subsection (b)–

3 (I) by amending paragraph (1)(B) by striking “level IV” and

4 inserting “level III”; and

5 (II) by inserting at the end the following new paragraph:

6 “(3) Notwithstanding the provisions of paragraph (1), the applicable maximum
7 shall be level II of the Executive Schedule for any agency that is certified under section
8 5307 as having a performance appraisal system which, as designed and applied, makes
9 meaningful distinctions based on relative performance.”;

10 (E) in section 5379–

11 (i) by amending subsection (a)(2) to read as follows:

12 “(2) An employee shall be ineligible for benefits under this section if the employee–

13 “(A) occupies a position that is excepted from the competitive service
14 because of its confidential, policy-determining, policy-making, or policy-
15 advocating character;

16 “(B) is a non-career appointee in the Senior Executive Service as defined in
17 section 3132(a)(7); or

18 “(C) is appointed by the President and is not otherwise excluded by

19 paragraph (A) or (B).”

1 concerned, subject to the limitations established by the Office of Personnel Management in
2 regulations.”;

3 (iii) by amending subsection (c) to read as follows:

4 “(c) An employee selected to receive benefits under this section shall sign a service
5 agreement before receiving any such benefits. The service agreement shall be consistent with
6 regulations prescribed by the Office. The service agreement shall address—

7 “(1) the required period of service;

8 “(2) the benefits to be provided by the agency (including provisions for adjusting
9 the amount of benefits);

10 “(3) the conditions that shall be met by the employee to maintain eligibility for
11 benefits;

12 “(4) the requirement to reimburse the agency for loan repayment benefits under
13 specified conditions; and

14 “(5) the conditions under which reimbursement will not be required.”; and

15 (iv) by striking subsections (d) through (h) and inserting new

16 subsections (d) and (e) as follows:

17 “(d) Any benefit under this section shall not be considered basic pay for any purpose.

18 “(e) The Office shall prescribe such regulations as it determines to be necessary to

19 implement this section. The Office may require agencies to provide information regarding the

1 of the Executive Schedule (rounded to the nearest hundred)”;

2 (3) by repealing chapter 54;

3 (4) in chapter 55—

4 (A) by amending section 5541(2)(iii) to read as follows:

5 "(iii) an employee whose pay is fixed by law at a rate applicable to
6 the Executive Schedule under subchapter II of chapter 53;"

7 (B) in section 5548 by adding at the end the following new subsection:

8 “(c) Notwithstanding any other provision of this subchapter or of section 4109, 6123, or
9 6128, the Office may prescribe regulations that establish alternative premium pay provisions in
10 lieu of the provisions that would otherwise be applicable to employees covered by this subchapter.
11 The Office shall identify in such regulations the categories of employees who are covered by each
12 alternative premium pay provision and shall prescribe the extent to which each alternative
13 premium payment is or is not considered basic pay for specified purposes, such as retirement.”;

14 (C) in section 5595—

15 (i) in subsection (a)(2)—

16 (I) by amending clause (i) to read as follows:

17 “(i) an employee whose pay is fixed by law at a rate applicable to
18 the Executive Schedule under subchapter II of chapter 53 or whose rate of

19 basic pay exceeds the rate for level II of the Executive Schedule”; and

1 involuntary movement from an appointment without time limitation to a
2 time-limited appointment without a break in service is an involuntary
3 separation for purposes of this subsection. The”; and

4 (iii) in subsection (d)–

5 (I) by striking “(d)” and inserting “(d)(1)”; and

6 (II) by adding at the end the following new paragraphs:

7 “(2) If the reemployment referred to in paragraph (1) is under a time-limited
8 appointment, payments discontinued under paragraph (1) shall be resumed when the time-
9 limited appointment expires, unless the individual is reemployed by the Government.

10 “(3) No severance pay is payable for a period between separation from service and
11 the discontinuation of payments under paragraph (1) if that period is 3 days or less.”; and

12 (D) in section 5596(b)(1)(A)(ii) by striking “7701(g) of this title” and
13 inserting “section 7702(g)”;

14 (5) in section 6304(f)(1)(A) by striking “Executive” and inserting “Civil”;

15 (6) in section 8351 by adding at the end a new subsection (f) to read as follows:

16 “(f) An employee making contributions to the Thrift Savings Fund out of basic pay may
17 also contribute (by direct transfer to the Fund) all or any part of an award, bonus pay, or lump-
18 sum payment under section 5252 received by the employee.”; and

19 (7) in section 8432 by adding at the end a new subsection (d) to read as follows:

1 TITLE III—STAFFING MODERNIZATION

2 SEC. 301. AUTHORITY FOR EMPLOYMENT.

3 Chapter 31 of title 5, United States Code, is amended—

4 (1) by amending section 3101 to read as follows:

5 “§ 3101. General authority to employ; types of appointments

6 “(a) The head of each Executive agency and military department may appoint such
7 employees as may be necessary in accordance with the provisions of this title. Career and time-
8 limited appointments in the competitive service shall be filled in accordance with regulations
9 prescribed under sections 3303 and 3303a unless specifically excepted by statute or Executive
10 order. Career and time-limited appointments in the excepted service shall be filled in accordance
11 with regulations prescribed under section 3313.

12 “(b) For the purpose of this chapter—

13 “(1) ‘career appointment’ means an appointment without time limitation, in either
14 the competitive service or the excepted service, to perform work that is expected to
15 continue; and

16 “(2) ‘time-limited appointment’ means an appointment of limited duration, either
17 specified or unspecified, in either the competitive or excepted service.

18 “(c) The Director of the Office of Personnel Management shall prescribe regulations under

1 (A) in the catchline by striking “specially qualified scientific and
2 professional personnel” and inserting “senior professionals”;

3 (B) in subsection (a) by revising the first sentence to read as follows:

4 “The Director of the Office of Personnel Management may establish, and from time to
5 time revise—

6 “(1) standards and procedures under which positions may be classified as senior
7 professional; and

8 “(2) the maximum number of senior professional positions for carrying out
9 research and development and other senior-level functions which require the services of
10 specially qualified personnel.

11 (C) in subsection (c)—

12 (i) by striking “professional” and inserting “other senior-level”; and

13 (ii) by inserting “or other” after “development” each place it
14 appears;

15 (3) by repealing section 3108;

16 (4) in section 3109(b)—

17 (A) by striking “procure by contract the temporary (not in excess of 1 year)
18 or intermittent services of experts or consultants or an organization thereof,

1 (C) by striking the third sentence and inserting the following:

2 “Experts and consultants may be paid on an hourly or daily basis. Notwithstanding any other
3 provision of this section, an agency may not pay compensation for service under this section in
4 excess of the hourly or daily equivalent, as applicable, of the rate for level III of the Executive
5 Schedule, unless specifically authorized by the appropriation or other statute authorizing the
6 service. Compensation for experts and consultants under this section shall be subject to
7 regulations prescribed by the Office under subsection (d).”;

8 (5) by repealing section 3112;

9 (6) in section 3132 by adding at the end the following new subsection:

10 “(g)(1) Notwithstanding subsection (a)(8), a career reserved position may be filled by a
11 limited emergency appointee or a limited term appointee—

12 “(A) who, immediately prior to entering the career reserved position, was serving
13 under a career or career-conditional appointment outside the Senior Executive Service; or

14 “(B) whose limited emergency or limited term appointment is approved in advance
15 by the Office.

16 “(2) The term of an appointee described in paragraph (1) may be for any period not to
17 exceed 3 years, and such an appointee may serve—

18 “(A) two such terms; or

19 “(B) two such terms in addition to any unexpired term applicable at the time of

1 where necessary in the judgment of the Office, to obtain the prior approval of the Office) in
2 accordance with which positions may be classified to the Senior Executive Service.

3 “(g) In the case of positions proposed to be placed in the Federal Bureau of Investigation
4 and Drug Enforcement Administration Senior Executive Service, the President, rather than the
5 Office, shall–

6 “(1) exercise the authority under subsection (f); and

7 “(2) establish, and from time to time revise, the maximum number of positions
8 which may at any one time be classified to the Senior Executive Service.”; and

9 (8) in the table of sections by amending the items relating to sections 3101, 3104,
10 3108, and 3112 to read as follows:

11 “3101. General authority to employ; types of appointments.

12 “3104. Employment of senior professionals.

13 “[3108. Repealed.]

14 “[3112. Repealed.]”.

15 SEC. 302. EXAMINATION, SELECTION, AND PLACEMENT.

16 Chapter 33 of title 5, United States Code, is amended–

17 (1) by redesignating subchapters II through VIII as subchapters III through IX,
18 respectively;

19 (2) in section 3301–

1 (3) in section 3302–

2 (A) by striking the catchline and inserting “(b)” before “The President
3 may”; and

4 (B) in paragraph (2) by striking “sections 2951, 3304(a), 3321, 7202, and
5 7203 of this title” and inserting “sections 2951, 3303, 3310, 7202, and 7203”;

6 (4) by redesignating sections 3303 and 3304 as sections 3302 and 3303,
7 respectively;

8 (5) in section 3302 as redesignated, by amending the catchline to read as follows:
9 “§ 3302. Recommendations of Senators and Representatives”;

10 (6) in section 3303 as redesignated–

11 (A) by amending the catchline and subsections (a)-(e) to read as follows:

12 “§ 3303. Competitive service; examinations

13 “(a) The President may prescribe rules which shall provide, as nearly as conditions of good
14 administration warrant, for open, competitive examinations for rating and ranking applicants for
15 appointment in the competitive service.

16 “(b) Competitive examinations shall–

17 “(1) be consistent with this chapter and with the merit system principles set forth in
18 section 2301;

19 “(2) be consistent with the principles of the merit system set forth in section 2301;

1 A competitive examination may include a written test, an evaluation of relative knowledge, skills,
2 and abilities, or competencies, or other means of assessment.

3 “(c) An individual may be appointed in the competitive service only if he or she has passed
4 an examination or is specifically excepted from examination under section 3301 or other provision
5 of law. Each appointment shall be consistent with the provisions of this chapter and shall be only
6 for the type of position for which public notice was given and for which the application was
7 submitted. Public notice of examination for a time-limited appointment under section 3101(b)(2)
8 shall include notice of potential eligibility for a career appointment.

9 “(d) The rules authorized by subsection (a) shall provide a process for applicants to
10 request reconsideration of a rejection of an application and of an examination rating. No further
11 administrative or judicial review of a reconsideration decision shall be permitted. The preceding
12 sentence shall not be construed to extinguish or lessen any right or remedy under subchapter II of
13 chapter 12 or any of the laws referred to in section 2302(d).

14 “(e)(1) The Office shall prescribe regulations regarding—

15 “(A) the terms and conditions under which an agency may consider applicants for
16 the competitive service; and

17 “(B) the manner and extent to which an individual in a position other than the
18 competitive service, such as the excepted service as defined under section 2103, the

19 legislative, or judicial branch, or appropriate or nonprofit enterprise, may be considered in

1 Forces, or hospitalization continuing for 1 year or less following discharge from such service, may
2 file an application after the closing date for the receipt of applications.

3 “(3) The regulations referred to in paragraph (1)(B) shall not grant any preference based
4 on the fact of service in the legislative or judicial branch and shall be consistent with the principles
5 of equitable competition and merit-based appointments.”; and

6 (B) in subsection (f)–

7 (i) in paragraph (2) by striking “a career or career-conditional
8 appointment, as appropriate” and inserting “a career appointment”; and

9 (ii) in paragraph (4) by striking “section 3327” and inserting
10 “section 3312”;

11 (7) by inserting after section 3303 as redesignated the following new section:

12 “§ 3303a. Establishment of appointing authorities

13 “Notwithstanding any other provision of law, and, after providing public notice and
14 opportunity for comment, the Director of the Office of Personnel Management may establish
15 appointing authorities for entry into the competitive service and the excepted service. The
16 Director may revoke, in whole or in part, any appointing authority established under this
17 section.”;

18 (8) by repealing section 3305;

19 (9) by redesignating sections 3304, 3307, and 3308 as sections 3303b, 3304, and

1 follows:

2 “§ 3304. Maximum entry age requirements

3 “(a) Except as otherwise provided by this section, an agency may not establish a maximum
4 age requirement for entrance into the competitive service.

5 “(b) The Secretaries of Transportation and Defense, in coordination with the Office, may
6 determine and fix the maximum age at which an original appointment to a position as an air traffic
7 controller may be made.”;

8 (B) by amending subsections (d) and (e) to read as follows:

9 “(d) The head of an agency, in coordination with the Office, may determine and fix the
10 maximum age at which an original appointment may be made to a position as a law enforcement
11 officer or firefighter, as defined by section 8331(20) or (21), respectively.

12 “(e) The head of an agency, in coordination with the Office, may determine and fix the
13 maximum age at which an original appointment may be made to a positions as a firefighter or law
14 enforcement officer, as defined in section 8401(14) or (17), respectively.”; and

15 (C) in subsections (e) and (f) by striking “maximum age limit for an original
16 appointment” and inserting “maximum age at which an original appointment may
17 be made”;

18 (11) in section 3305 as redesignated–

19 (A) in the title by striking “Competitive service” and inserting

1 catchline:

2 “(a) The Office of Personnel Management may prescribe minimum Governmentwide
3 qualification standards for career and time-limited appointment to positions or approve agency-
4 specific qualification standards, as appropriate, based on the requirements of the work and for the
5 purpose of conducting examinations under this chapter. Such standards shall be published in such
6 form as the Office may determine.”; and

7 (D) in subsection (b) as redesignated by subparagraph (B)–

8 (i) by striking “The Office of Personnel Management or other
9 examining agency may not” and inserting “Neither the Office nor any other
10 examining agency may”; and

11 (ii) by striking “for the competitive service”;

12 (12) by inserting after section 3305 as redesignated the following new sections:

13 “§ 3306. Preference eligibles; lists of eligibles; numerical ratings

14 “(a) A preference eligible who receives a passing numerical rating in an examination for
15 entrance into the competitive service is entitled to additional points above his or her earned rating,
16 as follows–

17 “(1) a preference eligible under section 2108(3)(C)-(G) is entitled to 10 additional
18 points; and

1 “(b) The names of applicants who have passed an applicable examination for the
2 competitive service shall be entered on appropriate lists of eligibles in the following order–

3 “(1) for scientific and professional positions at GS-9 (or the equivalent) or higher,
4 in the order of their ratings, including points added under subsection (a); and

5 “(2) for all other positions–

6 “(A) disabled veterans who have a compensable service-connected
7 disability of 10 percent or more, in order of their ratings, including points added
8 under subsection (a); and

9 “(B) remaining applicants, in the order of their ratings, including points
10 added under subsection (a).

11 The names of preference eligibles shall be entered ahead of others having the same rating.

12 “(c) The Office or an agency exercising examining authority delegated under section 1104
13 shall hold an examination for a position to which an appointment has been made within the
14 preceding 3 years, on the application of an individual who qualifies as a preference eligible under
15 section 2108(3)(C)–(G). The examination shall be held during the quarter following the
16 application.

17 “(d) In examinations for positions of guards, elevator operators, messengers, custodians,

1 “(1) for service in the armed forces when his or her employment in a similar
2 vocation to that for which examined was interrupted by the service; and

3 “(2) for all experience material to the position for which examined, including
4 experience gained in religious, civic, welfare, service, and organizational activities,
5 regardless of whether the individual received pay for such activities.

6 “(f) If an appointing authority determines that, on the basis of evidence before it, a
7 preference eligible under section 2108(3)(C) who has a compensable service-connected disability
8 of 30 percent or more is not able to fulfill the medical standards or physical requirements of the
9 position, the appointing authority shall notify the Office of the determination and, at the same
10 time, the appointing authority shall notify the preference eligible of the reasons for the
11 determination and of the right to respond, within 15 days after the date of the notification, to the
12 Office. The Office shall require a demonstration by the appointing authority that the notification
13 was timely sent to the preference eligible’s last known address and shall, before the selection of
14 any other person for the position, make a final determination on the physical ability of the
15 preference eligible to perform the duties of the position, taking into account any additional
16 information provided in any such response. When the Office has completed its review of the
17 proposed disqualification on the basis of medical or physical limitation, it shall send its findings to
18 the appointing authority and the preference eligible. The appointing authority shall comply with

1 promotion

2 “In determining qualifications of a preference eligible for examination for, appointment or
3 reinstatement in, or transfer or promotion to another position in the competitive service or an
4 Executive agency, the Office of Personnel Management or other examining agency shall waive—

5 “(1) requirements as to age, height, and weight, unless the requirement is essential
6 to the performance of the duties of the position; and

7 “(2) physical requirements if, in the opinion of the Office or other examining
8 agency, after considering the recommendation of an accredited physician, the preference
9 eligible is physically able to perform efficiently the duties of the position.

10 This section does not apply to an appointment required by law to be made with the advice and
11 consent of the Senate.”;

12 (13) by striking sections 3309 through 3317 and 3329;

13 (14) by redesignating sections 3318 and 3319 as sections 3308 and 3309,
14 respectively;

15 (15) in section 3308 as redesignated—

16 (A) in the catchline by striking “from certificates” and inserting “selection
17 using numerical rating”;

18 (B) in subsection (a)—

19 (i) by striking “The nominating or” and inserting “An”;

1 (i) in the first sentence of paragraph (1), by striking “on a
2 certificate”; and

3 (ii) in paragraph (4) by inserting after “the functions of the Office
4 under this subsection” the following: “apply only to competitive service
5 positions and”;

6 (D) in subsection (c) by striking “register” and inserting “list”; and

7 (E) by adding at the end the following new subsection:

8 “(d)(1) Except as provided in paragraph (2), when an appointing authority, for reasons
9 considered sufficient by the Office, has three times considered and passed over a preference
10 eligible in accordance with the provisions of subsections (a) and (b) for the same position,
11 certification of the preference eligible for appointment to such position may be discontinued.

12 “(2) In the case of lists of eligibles issued from a standing register, a candidate need not be
13 certified again if he or she has been passed over on three prior lists of eligibles. However, the
14 preference eligible is entitled to advance notice of discontinuance of certification in accordance
15 with regulations prescribed by the Office.”;

16 (16) in section 3309 as redesignated–

17 (A) by amending the catchline to read as follows:

18 “§ 3309. Competitive service; selection using category rating”;

19 (B) in subsection (c)(2) by striking “2217(f) or 2218(f), as applicable.”

1 “(d)(1) Except as provided in paragraph (2), when an appointing authority, for reasons
2 considered sufficient by the Office, has considered and passed over a preference eligible in
3 accordance with the provisions of section 3308(b) for the same position, certification of the
4 preference eligible for appointment to such position may be discontinued.

5 “(2) In the case of certificates issued from a standing register, a candidate need not be
6 certified again if he or she has been passed over on three prior certificates. However, the
7 preference eligible is entitled to advance notice of discontinuance of certification in accordance
8 with regulations prescribed by the Office.”;

9 (17) by redesignating section 3321 as section 3310;

10 (18) in section 3310 as redesignated–

11 (A) by amending the catchline to read as follows:

12 “§ 3310. Probationary period; competitive service”;

13 (B) in subsection (a)–

14 (i) by striking “President may” and inserting “Office shall”;

15 (ii) by inserting after “a period of probation” the following: “of at
16 least 1 year, but not to exceed 3 years”; and

17 (iii) by amending paragraph (1) to read as follows;

18 “(1) for a career appointment or a time-limited appointment of specified duration;

19 and”;

1 “(d) For the purpose of this chapter, a probationary period is the time during which the
2 agency determines whether the employee fulfills the requirements of the employee’s new
3 position.”;

4 (19) by inserting after section 3310 as redesignated the following new sections:

5 “§ 3311. Noncompetitive appointments

6 “(a)(1) Positions established under section 3104 are in the competitive service. However,
7 appointments to the positions are made without competitive examination on approval of the
8 qualifications of the proposed appointee by the Office or its designee for this purpose.

9 “(2) This section does not apply to positions established under section 3104(c).

10 “(b) An agency may make a noncompetitive time-limited or career appointment of a
11 disabled veteran who has a compensable service-connected disability of 30 percent or more.

12 “(c)(1) For the purpose of this subsection, the term ‘technician’ has the meaning given
13 such term by section 8337(h)(1).

14 “(2) Notwithstanding any other provision of law or regulation, an individual who served
15 for at least 3 years as a technician acquires a competitive status for transfer to the competitive
16 service if such individual–

17 “(A) is involuntarily separated from service as a technician other than by removal
18 for cause on charges of misconduct;

19 “(B) passes a suitable noncompetitive examination and

1 meaning given that term by section 8401(30).

2 “(2) The Secretary of Defense shall take such steps as may be necessary to ensure that,
3 except as provided in paragraph (4), any military reserve technician who is involuntarily separated
4 from technician service, after completing at least 15 years of such service and 20 years of service
5 creditable under section 1332 of title 10, by reason of ceasing to satisfy the condition described in
6 section 8401(30)(B), shall, if appropriate written application is submitted within 1 year after the
7 date of separation, be given placement consideration through the Priority Placement Program for
8 a position described in paragraph (3) not later than 6 months after the date of the application.

9 “(3) The position to be offered shall be a position—

10 “(A) that does not require military membership;

11 “(B) within the Department of Defense;

12 “(C) for which the individual is qualified; and

13 “(D) for which the rate of basic pay preserves to the maximum extent possible the
14 rate last received for technician service before separation.

15 “(4) This subsection shall not apply in the case of—

16 “(A) an involuntary separation for cause on charges of misconduct; or

17 “(B) a technician who, as of the date of application under this section, is eligible
18 for immediate (including for disability) or early retirement under subchapter III of chapter

19 82, except under chapter 84.

1 “§ 3312. Employment information

2 “(a) For purposes of this section, ‘agency’ means the Government Printing Office and an
3 Executive agency other than an agency in which all the positions are excepted from the
4 competitive service.

5 “(b) Subject to such regulations as the Office may prescribe, each agency shall promptly
6 notify the Office and the employment offices of the United States Employment Service of–

7 “(1) opportunities for participation in competitive examinations;

8 “(2) each vacant position in the agency which is in the competitive service or the
9 Senior Executive Service and for which the agency seeks applications from persons
10 outside the Federal service;

11 “(3) the period during which applications will be accepted; and

12 “(4) the conditions under which applicants may be considered, including any
13 specific area of consideration.

14 “(c)(1) The Office shall establish and keep current a comprehensive list of all
15 announcements of vacant positions in the competitive service within each agency that are to be
16 filled by appointment for more than 1 year and for which applications are being (or will soon be)
17 accepted from outside the agency’s workforce.

18 “(2) Included for any position listed shall be–

19 “(A) a brief description of the position, including its title, terms, location, and rate

1 “(C) any other information which the Office considers appropriate.

2 “(3) The list shall be available to all members of the public.

3 “(d) The Office shall prescribe such regulations as may be necessary to carry out this
4 section. Any requirement under this section that agencies notify the Office as to the availability of
5 any vacant positions shall be designed so as to avoid any duplication of information otherwise
6 required to be furnished under this section or other provision of law.

7 “(e) The Office may, to the extent it determines appropriate, charge such fees to agencies
8 for services provided under this section and for related Federal employment information. The
9 Office shall retain such fees to pay the costs of providing such services and information.”;

10 (20) by redesignating section 3320 as section 3313;

11 (21) by amending section 3313 as redesignated to read as follows:

12 “§ 3313. Excepted service; selection; probationary period

13 “The appointing authority shall select for appointment to each vacancy in the excepted
14 service in the executive branch from the qualified applicants in the same manner and under the
15 same conditions required for the competitive service by sections 3305-3309. This section does
16 not apply to an appointment required by law to be made with the advice and consent of the
17 Senate. An individual appointed under this section shall be subject to a probationary period
18 consistent with section 3310.”;

19 (22) by inserting after section 3313, as redesignated, the following new subchapter

1 respectively;

2 (24) in section 3321 as redesignated—

3 (A) in the catchline by striking “positions classified above GS-15” and
4 inserting “senior professional positions”;

5 (B) in subsection (a) in the first sentence—

6 (i) by striking “position” and inserting “senior professional position
7 established in the competitive service under section 3104 and”; and

8 (ii) by inserting after that sentence the following:

9 “Upon that approval, an appointment to such a position is made
10 without competitive examination.”;

11 (C) by redesignating subsection (b) as subsection (c); and

12 (D) by inserting after subsection (a) the following:

13 “(b) The Office shall establish one or more qualifications review boards to certify the
14 qualifications of candidates for initial appointment as senior professionals in accordance with
15 regulations prescribed by the Office.”;

16 (25) in section 3323—

17 (A) by amending subsection (a) to read as follows:

18 “(a) An individual separated on account of age under a statute or regulation providing for

1 of the individual in the civil service.”;

2 (B) in subsection (b)(1) by striking “other statutes” and inserting “any
3 other provision of law”; and

4 (C) in subsection (d) by striking the last sentence;

5 (26) by redesignating section 3326 as section 3324;

6 (27) by striking sections 3325, 3327, and 3330;

7 (28) by redesignating sections 3330a-3330c as sections 3325-3327, respectively;

8 (29) in section 3326 as redesignated by striking “3330a(d)” each time it appears
9 and inserting “3325(d)”;

10 (30) in section 3327 as redesignated—

11 (A) by striking “3330a” each time it appears and inserting “3325”; and

12 (B) by striking “3330b” each time it appears and inserting “3326”;

13 (31) by amending section 3341 to read as follows:

14 “§ 3341. Details; within Executive agencies and military departments

15 “Subject to regulations prescribed by the Office, the head of an Executive agency or

16 military department may detail employees, except those required by law to be engaged exclusively

17 in some specific work, among the bureaus and offices of the agency or department.”;

18 (32) by inserting after section 3349d the following new section:

19 “§ 3349. Details; within Executive agencies and military departments

1 (34) in section 3393(d)–

2 (A) by striking “1-year”; and

3 (B) by inserting “of at least 1 year, but not to exceed 2 years” after

4 “period”; and

5 (35) by amending the table of sections to read as follows:

6 “CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

7 “SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

8 “Sec.

9 “3301. Civil service employment.

10 “3302. Recommendations of Senators and Representatives.

11 “3303. Competitive service; examinations.

12 “3303a. Establishment of appointing authorities.

13 “3303b. Competitive service; career appointment after 3 years temporary service.

14 “3304. Maximum entry age requirements.

15 “3305. Qualification standards; examinations; educational requirements prohibited; exceptions.

16 “3306. Preference eligibles; lists of eligibles; numerical ratings.

17 “3307. Preference eligibles; waiver of physical qualifications on appointment, transfer, or
18 promotion.

19 “3308. Competitive service; selection using numerical rating.

20 “3309. Competitive service; selection using category rating.

21 “3310. Probationary period, competitive service.

22 “3311. Noncompetitive appointments.

23 “3312. Employment information.

24 “3313. Excepted service; selection; probationary period.

25 “SUBCHAPTER II—MISCELLANEOUS PROVISIONS

26 “3321. Appointments to senior professional positions.

27 “3322. Selective Service registration.

28 “3323. Mandatory separation; reemployment of annuitants

- 1 “3331. Oath of office.
2 “3332. Officer affidavit; no consideration paid for appointment.
3 “3333. Employee affidavit; loyalty and striking against the Government.

4 “SUBCHAPTER IV—DETAILS

- 5 “3341. Details; within Executive agencies and military departments.
6 “[3342. Repealed.]
7 “3343. Details; to international organizations.
8 “3344. Details; administrative law judges.
9 “3345. Acting officer.
10 “3346. Time limitation.
11 “3347. Exclusivity.
12 “3348. Vacant office.
13 “3349. Reporting of vacancies.
14 “3349a. Presidential inaugural transitions.
15 “3349b. Holdover provisions relating to certain independent establishments.¹
16 “3349c. Exclusion of certain officers.
17 “3349d. Notification of intent to nominate during certain recesses or adjournments.
18 “3349e. Regulations.

19 “SUBCHAPTER V—TRANSFERS

- 20 “[3351. Repealed.]
21 “3352. Preference in transfers for employees making certain disclosures.

22 “SUBCHAPTER VI—PROMOTION

- 23 “3361. Promotion; competitive service; examination.
24 “[3362. Repealed.]
25 “[3363. Repealed.]
26 “[3364. Repealed.]

27 “SUBCHAPTER VII—ASSIGNMENTS TO AND FROM STATES

- 28 “3371. Definitions.
29 “3372. General provisions.
30 “3373. Assignments of employees to State or local governments

- 1 “3381. Training.
2 “3382. Involuntary separation for retirement.
3 “3383. Determinations; review procedures.
4 “3384. Regulations.
5 “3385. Effect on other authority.

6 “SUBCHAPTER IX—APPOINTMENT, REASSIGNMENT, TRANSFER, AND DEVELOPMENT IN THE
7 SENIOR EXECUTIVE SERVICE

- 8 “3391. Definitions.
9 “3392. General appointment provisions.
10 “3393. Career appointments.
11 “[3393a. Repealed.]
12 “3394. Noncareer and limited appointments.
13 “3395. Reassignment and transfer within the Senior Executive Service.
14 “3396. Development for and within the Senior Executive Service.
15 “3397. Regulations.”.

16 SEC. 303. CONFORMING AND REALIGNING AMENDMENTS.

17 Title 5, United States Code, is amended—

18 (1) by amending section 2302(e)(1)(A) of to read as follows:

19 “(A) Sections 2108, 3303(e)(1), 3306, 3307, 3308, 3309, 3313, 3352,
20 3501, 3502(b), 3504, 7503(b)(8), 7503(c)(1), and 7701.”;

21 (2) by inserting after chapter 95 the following new chapter:

22 “CHAPTER 96—SECURITIES AND EXCHANGE COMMISSION

23 “Sec.
24 “9601. Securities and Exchange Commission.”;

25 (3) by redesignating section 4802 as section 9601 and amending the catchline to

1 TITLE IV—LABOR-MANAGEMENT RELATIONS; ADVERSE
2 ACTIONS; APPEALS; MERIT SYSTEMS PROTECTION BOARD

3 SEC. 401. LABOR-MANAGEMENT RELATIONS.

4 Chapter 71 of title 5, United States Code, is amended—

5 (1) by amending section 7103(a)(9)(C)(ii) to read as follows:

6 “(ii) any claimed violation, misinterpretation, or misapplication of
7 any law, rule, or regulation issued for the purpose of affecting conditions of
8 employment, including determinations regarding an employee’s pay, except
9 the exercise of managerial discretion or judgment in such determinations.”;

10 (2) in section 7105(a)—

11 (A) by inserting at the end new paragraphs (3) and (4) as follows:

12 “(3)(A) Notwithstanding any other provision of this chapter, the Chairman shall
13 establish a single, integrated process to resolve all matters associated with a bargaining
14 dispute. The Chairman shall establish procedures for the fair, impartial, and expeditious
15 assignment and disposition of such cases, including all processing time limits. These
16 procedures may provide for the use of a combination of mediation, fact finding, and any
17 other appropriate dispute resolution method to resolve all such matters. These procedures
18 shall be applicable in all cases involving two or more of the following—

1 “(iii) bargaining impasses raised under section 7119.

2 “(B) In establishing and implementing the procedures authorized in subparagraph
3 (A), the Chairman shall have the authority to direct the General Counsel, the Federal
4 Service Impasses Panel, or both, to submit a matter before them to the Authority for
5 appropriate action or to take whatever action is appropriate pursuant to the procedures
6 the Chairman establishes under this paragraph.

7 “(4) The Chairman may in his or her sole discretion call a meeting of the members
8 of the Authority without regard to section 552b.”;

9 (B) by amending subsection (d) to read as follows:

10 “(d) The Chairman shall appoint an Executive Director, regional directors, administrative
11 law judges under section 3105, and other individuals as he or she may from time to time find
12 necessary for the proper performance of the Authority’s functions. The Chairman may delegate
13 to officers and employees appointed under this subsection authority to perform such duties and
14 make such expenditures as may be necessary.”;

15 (C) in subsection (e)–

16 (i) by striking “The Authority” in each place it appears and inserting

17 “The Chairman”; and

1 (E) in subsection (g)(3)–

2 (i) by striking “may”; and

3 (ii) by inserting immediately before the period the following:

4 “, but in no case may the Authority impose status quo ante remedies in
5 cases in which there has been a finding of a violation of section 7116(a)(5) or (6)
6 where such remedies would adversely impact the agency’s or activity’s mission or
7 budget, or the public interest.”;

8 (3) in section 7106(a)(2)(D) by inserting after “emergencies” the following:

9 “, to prepare for, practice for or prevent any emergency, or to prevent any
10 fiscal or budgetary exigency;”;

11 (4) in section 7114–

12 (A) in subsection (a)–

13 (i) by amending paragraph (2) to read as follows:

14 “(2) An exclusive representative of an appropriate unit shall be given the
15 opportunity to be represented at–

16 “(A) any discussion between one or more agency representatives
17 and one or more bargaining unit employees concerning any grievance filed

1 employee reasonably believes that the examination may result in
2 disciplinary action against the employee and the employee requests such
3 representation.”; or

4 “(C) any formal discussion between one or more management
5 officials of the agency and one or more bargaining unit employees, the
6 purpose of which is to discuss, announce, or discuss and announce, new or
7 substantially changed personnel policies, practices, or working conditions.

8 This right does not apply to meetings between one or more management
9 officials and one or more bargaining unit employees for the purpose of
10 discussing operational matters where any discussion of personnel policies,
11 practices or working conditions—

12 “(i) constitutes a reiteration or application of one or more
13 existing personnel policies, practices, or working conditions;

14 “(ii) is incidental or otherwise peripheral to the announced
15 purpose of the meeting; or

16 “(iii) does not result in an announcement of a change to, or
17 a promise to change, one or more existing personnel policies,
18 practices, or working conditions.”;

19 (ii) in paragraph (2) by striking “paragraph (2)(D) of this

1 “(4) in the case of an agency, to furnish information to an exclusive representative,
2 or its authorized representative, when—

3 “(A) the exclusive representative has requested such information and
4 demonstrated a particularized need for the information in order to perform its
5 representational functions in grievance or appeal proceedings, or in negotiations;

6 “(B) such information exists, is normally maintained in the regular course
7 of business, and is reasonably available; and

8 “(C) disclosure is not prohibited by law; and”;

9 (C) by redesignating subsection (c) as subsection (d) and inserting after
10 subsection (b) a new subsection (c) as follows:

11 “(c) Disclosure of information in subsection (b)(4) does not include—

12 “(1) disclosure prohibited by law or regulations, including, but not limited to, this
13 chapter, Governmentwide rules and regulations, and Executive orders;

14 “(2) disclosure of information if adequate alternative means exist for obtaining the
15 requested information, or if proper discussion, understanding, or negotiation of a
16 particular subject within the scope of collective bargaining is possible without recourse to
17 the information;

18 “(3) internal agency guidance, counsel, advice, or training for managers and

1 (5) in section 7117 by redesignating subsections (a) through (d) as subsections (b)
2 through (e), respectively, and inserting after the catchline the following new subsection:

3 “(a) The obligation of any agency or any labor organization to bargain or consult extends
4 to any otherwise negotiable subject only if the effect of the change on the bargaining unit, or that
5 portion of the bargaining unit affected by the change, is foreseeable, substantial, and significant in
6 terms of impact and duration.”;

7 (6) in section 7120 by striking “Assistant Secretary of Labor for Labor
8 Management Relations” and “Assistant Secretary” wherever those terms appear and
9 inserting “Department of Labor”;

10 (7) in section 7121–

11 (A) in subsection (c) by amending paragraph (5) to read as follows:

12 “(5) any subject not within the definition of ‘grievance’ in section 7103 (such as
13 the classification of any position), except for an adverse action under applicable authority,
14 including chapter 75, which is not otherwise excluded by this subsection.”;

15 (B) by amending subsection (e) to read as follows:

16 “(e)(1) For matters appealable to the Merit Systems Protection Board, an aggrieved
17 employee may raise the matter under an applicable appellate procedure or under the negotiated
18 grievance procedure, but not both. An employee shall be deemed to have exercised his or her

19 option under this section when the employee timely files an appeal under the applicable appellate

1 “(2) An arbitrator hearing a matter appealable under chapter 77 is bound by section
2 7701(c).

3 “(3) For purposes of review and appeal, an arbitration award under this subsection is
4 considered equivalent to a decision issued under section 7701(b) and is subject to review under
5 procedures described in section 7701(e).”;

6 (C) by striking subsection (f) and redesignating subsection (g) as
7 subsection (f);

8 (D) by amending subsection (f)(4) as redesignated by subparagraph (C) to
9 read as follows:

10 “(4) For the purpose of this subsection, an employee is considered to have elected
11 one of the following, whichever election occurs first:

12 “(A) the procedure described in paragraph (3)(A) if such employee has
13 timely filed a notice of appeal under the applicable appellate procedures;

14 “(B) the procedure described in paragraph (3)(B) if such employee has
15 timely filed a grievance in writing in accordance with the provisions of the parties’
16 negotiated procedure; or

17 “(C) the procedure described in paragraph (3)(C) if such employee has
18 sought corrective action from the Office of Special Counsel by making an

19 allegation under section 1214(c)(1).”;

1 (F) by adding at the end a new subsection (i) as follows:

2 “(i)(1) The only performance appraisal an employee may grieve is a performance rating of
3 record that has not been appealed in connection with an action under chapter 75. Once an
4 employee raises a performance rating of record issue in an appeal under chapter 75, any pending
5 grievance or arbitration concerning that rating of record shall be dismissed with prejudice.

6 “(2) An arbitrator may cancel a performance rating of record upon a finding that the
7 agency applied the employee’s established performance requirements or expectations in violation
8 of applicable law, agency rule or regulation, or provision of a collective bargaining agreement in a
9 manner prejudicial to the grievant. An arbitrator who has properly canceled an employee’s rating
10 of record may order the agency to change the grievant’s rating of record only when the arbitrator
11 is able to determine the rating of record that the agency would have given but for the violation.

12 When an arbitrator is unable to determine what the employee’s rating of record would have been
13 but for the violation, the arbitrator shall remand the case to the agency for re-evaluation. Except
14 as otherwise provided by law, an arbitrator shall not conduct an independent evaluation of the
15 employee’s performance or otherwise substitute his or her judgment for that of the supervisor.”;

16 (8) in section 7122(a) by amending the first sentence to read as follows:

17 “Either party to arbitration under this chapter may file with the Authority an
18 exception to any arbitration award, except an award issued in connection with an

1 Chapter 75 of title 5, United States Code, is amended—

2 (1) in section 7501(1) by striking all after “probationary” and inserting the

3 following:

4 “period under an initial appointment and an individual who is not serving a time-limited

5 appointment of unspecified duration; and”;

6 (2) in the heading for subchapter II by striking “reduction in grade or pay” and

7 inserting “reduction in pay, demotion”;

8 (3) by amending section 7511—

1 (A) in subsection (a)–

2 (i) in paragraph (1)

3 (I) in subparagraph (A) by striking the dash and all that
4 follows and inserting “who is not serving a probationary period and
5 an individual who is not serving a time-limited appointment of
6 unspecified duration;”;

7 (II) in subparagraph (B) by striking “current continuous
8 service in the same or similar positions” and inserting “creditable
9 service and who is not serving a time-limited appointment of
10 unspecified duration” ; and

11 (III) in subparagraph (C) by striking the dash and all that
12 follows and inserting “ who is not serving a probationary period and
13 an individual who is not serving a time-limited appointment of
14 unspecified duration”;

15 (ii) in paragraphs (3) and (4) by striking “and”;

16 (iii) in paragraph (5) by deleting the period and inserting a
17 semicolon; and

18 (iv) by inserting the following new paragraphs immediately after
19 paragraph (5):

1 same career/occupational group under regulations issued by the Office; and”

2 “(7) ‘probationary period’ means that period established pursuant to section 3310,
3 or 3313.”; and

4 (B) in subsection (b)(7) by striking “General Accounting” and inserting
5 “Government Accountability”;

6 (4) in section 7512–

7 (A) in paragraph (3) by striking “reduction in grade” and inserting
8 “demotion”; and

9 (B) by amending subparagraph (C) to read as follows:

10 “(C) a reduction in pay, or a demotion of a supervisor or manager who
11 does not satisfactorily complete the probationary period under section 3310(a)(2)
12 or (3), or section 3313, if the employee is returned to a grade or band and pay rate
13 no lower than that held immediately prior to becoming a supervisor or manager,” ;

14 (C) by striking subparagraph (D);

15 (D) by redesignating subparagraph (E) as subparagraph (D);

16 (E) in subparagraph (D) as redesignated by striking “of this title.” and
17 inserting “, or”; and

18 (F) by inserting after that subparagraph (D) the following new
19 subparagraph:

1 “(F) an action that terminates a temporary promotion or a temporary
2 within-band increase in pay and returns the employee to a grade or band and pay
3 rate no lower than that held immediately prior to the temporary promotion or
4 temporary within-band increase in pay, if the agency informed the employee that
5 the temporary promotion or within-band increase was to be of limited duration,

6 “(G) an action taken against an employee serving on a time-limited
7 appointment of unspecified duration, when such type of appointment is specified as
8 a basic condition of employment at the time the appointment was made, or

9 “(H) termination of a time-limited appointment made under section
10 3101(b)(2) on the expiration date, if such expiration is specified as a basic
11 condition of employment at the time the appointment was made.”;

12 (5) in section 7531–

13 (A) in paragraph (6) by striking “the Coast Guard” and inserting “the
14 Department of Homeland Security”; and

15 (B) in paragraph (7) by striking “Atomic Energy Commission” and
16 inserting “Nuclear Regulatory Commission and the Federal Energy Regulatory
17 Commission”; and

18 (6) in section 7533 by striking “Atomic Energy Commission” both places it

19 and inserting “Nuclear Regulatory Commission and the Federal Energy

1 (1) in section 7701–

2 (A) by amending subsection (a)(1) to read as follows:

3 “(1) to a hearing for which a transcript will be kept except that the scope of the
4 hearing may be limited or no hearing held if the Board determines on its own initiative or
5 upon the request of either party that some or all facts are not in genuine dispute; and”;

6 (B) in subsection (c)–

7 (i) by amending paragraph (1) to read as follows:

8 “(1) Subject to paragraph (3), the decision of the agency shall be sustained under
9 subsection (b) only if the agency's decision is supported by a preponderance of the
10 evidence.”;

11 (ii) by redesignating paragraph (2) as paragraph (3); and

12 (iii) by inserting after paragraph (1) a new paragraph (2) to read as

13 follows:

14 “(2) Subject to paragraph (3), the penalty imposed in any action taken under
15 chapter 75 shall not be overturned unless it is totally unwarranted in light of all relevant
16 factors. In evaluating the appropriateness of the penalty, the Board shall give primary
17 consideration to the impact of the sustained misconduct or poor performance on the
18 mission of the agency or activity as determined by the agency.”; and

19 (2) in section 7702(d) by striking the last sentence

1 “(g) The Chairman of the Board may delegate to any employee of the Board authority to
2 perform any administrative functions under this title.”;

3 (2) by redesignating subsections (j), (k), (l), and (m) as subsections (k), (l), (m),
4 and (n), respectively; and

5 (3) by inserting after subsection (i) a new subsection (j) as follows:

6 “(j) The Chairman may in his or her sole discretion call a meeting of the members of the
7 Board without regard to section 552b.”; and

8 (4) in subsection (k) as redesignated by inserting after the first sentence the
9 following:

10 “The Chairman may delegate to officers and employees appointed under this subsection
11 authority to perform such duties and make such expenditures as may be necessary.”.

12 TITLE V—MISCELLANEOUS PROVISIONS

13 SEC. 501. SAVINGS PROVISIONS.

14 The amendments made by sections 402 and 403 of this Act do not apply to adverse
15 actions proposed prior to the effective date of those amendments.

16 SEC. 502. TECHNICAL AND CONFORMING AMENDMENTS; OTHER REFERENCES.

17 (a) Effective on the date of enactment of this Act, the following provisions of law are

1 (B) subchapter IX of chapter 53; and

2 (2) sections 209, 404, and 406 of the Federal Employees Pay Comparability Act of
3 1990, as contained in section 529 of Public Law 101-509.

4 (b) Effective on the first day of the first pay period beginning on or after January 1, 2010,
5 the following provisions of law are repealed:

6 (1) in title 5, United States Code—

7 (A) chapter 51;

8 (B) sections 4505a, 5304, 5304a, 5305, 5376, and 5755; and

9 (C) subchapters III, IV, and VI of chapter 53;

10 (2) section 4 of Public Law 103-89; and

11 (3) sections 403 and 405 of the Federal Pay Comparability Act of 1990, as
12 contained in section 529 of Public Law 101-509.

13 (c) Except as otherwise provided by law, any reference in a provision of law to:

14 (1) employees covered by section 5376 of title 5, United States Code, shall be
15 considered a reference to employees identified by the Office of Personnel Management as
16 employees in senior-level or scientific or professional positions, as determined under
17 section 5216 of that title, as added by this Act;

18 (2) a minimum rate under such section 5376 shall be considered to be a reference
19 to the minimum rate for members of the Senior Executive Service under section 5382 of

1 is added to basic pay, the rate for level III of the Executive Schedule; and

2 (4) the maximum rate of basic pay for the General Schedule or for grade GS-15 of
3 the General Schedule shall be considered to be a reference to the rate that is 90 percent of
4 the rate for level V of the Executive Schedule or, if any locality or geographic payment is
5 added to basic pay, the rate for level IV of the Executive Schedule.

6 SEC. 503. EFFECTIVE DATE; TRANSITION; APPLICATION.

7 (a) Except as otherwise provided by this section, the amendments made by Titles I
8 through IV of this Act shall take effect 180 days after the date of enactment.

9 (b) The amendments made by section 203(6) and (7) shall take effect on the date of
10 enactment of this Act.

11 (c) The Office of Personnel Management may—

12 (1) provide, by regulation, for an orderly transition with respect to the movement
13 of employees from classification and pay systems under chapters 51 and 53 of title 5,
14 United States Code, to classification and pay systems under chapter 52 of that title,
15 including the modification of affected provisions of such chapters 51 and 53 as it deems
16 necessary, such as section 5304 concerning the establishment and adjustment of locality-
17 based comparability payments; and

18 (2) implement selected portions of chapter 52 in advance of full implementation of
19 such chapter subject to any necessary regulations prescribed by the Office for the

1 (d)(1) Notwithstanding any other provision of this Act, the head of each covered agency
2 shall apply chapter 52 of title 5, United States Code, as established in section 202 of this Act, to
3 all eligible employees no later than the first day of the first pay period beginning on or after
4 January 1, 2010, or, in the event of an emergency declared by the President, by such date as the
5 Office of Personnel Management shall determine.

6 (2) Each agency with eligible employees who are not covered by such chapter 52 as of
7 January 31, 2008, shall submit to the Office of Personnel Management no later than March 31,
8 2008, a plan for applying that chapter to all such employees prior to the deadline established in
9 paragraph (1).

10 (3) Until an agency makes a determination under this subsection regarding a category of
11 employees, employees in such category shall continue to be covered by the Federal laws and
12 regulations that would apply to them in the absence of chapter 52.

13 (e) After a category of employees has been covered by chapter 52 in accordance with
14 subsection (d), coverage of such category may not be rescinded.