

ernmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

**§ 9802. Planning, notification, and reporting requirements**

(a) Not later than 90 days before exercising any of the workforce authorities made available under this chapter, the Administrator shall submit a written plan to the appropriate committees of Congress. Such plan shall be approved by the Office of Personnel Management.

(b) A workforce plan shall include a description of—

(1) each critical need of the Administration and the criteria used in the identification of that need;

(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

(i) address critical needs; and

(ii) would be eligible for each authority proposed to be exercised under this chapter; and

(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this chapter; and

(B) the reasons why those needs would not be so addressed;

(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;

(5) the safeguards or other measures that will be applied to ensure that this chapter is carried out in a manner consistent with merit system principles;

(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);

(7) the methods that will be used to determine if the authorities exercised under this chapter have successfully addressed each critical need identified under paragraph (1);

(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and

(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—

(i) nongovernmental recruitment or placement agencies; and

(ii) Internet technologies; and

(9) any workforce-related reforms required to resolve the findings and recommendations of the Columbia Accident Investigation Board, the extent to which those recommendations were accepted, and, if necessary, the reasons why any of those recommendations were not accepted.

(c) Not later than 60 days before first exercising any of the workforce authorities made available under this chapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

(d)(1)(A) The Administrator may from time to time modify the workforce plan. Any modification to the workforce plan shall be submitted to the Office of Personnel Management for approval by the Office before the modification may be implemented.

(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

(2) Any reference in this chapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

(f) None of the workforce authorities made available under this chapter may be exercised in a manner inconsistent with the workforce plan.

(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

(h) Not later than 6 years after the date of enactment of this chapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this chapter, including—

(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this chapter successfully addressed each critical need identified under subsection (b)(1);

(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

(i) The budget request for the Administration for the first fiscal year beginning after the date of enactment of this chapter and for each fiscal

year thereafter shall include a statement of the total amount of appropriations requested for such fiscal year to carry out this chapter.

(Added Pub. L. 108-201, §3(a), Feb. 24, 2004, 118 Stat. 462.)

#### REFERENCES IN TEXT

The date of enactment of this chapter, referred to in subsecs. (h) and (i), is the date of enactment of Pub. L. 108-201, which was approved Feb. 24, 2004.

### § 9803. Restrictions

(a) None of the workforce authorities made available under this chapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

(b) Unless specifically stated otherwise, all workforce authorities made available under this chapter shall be subject to section 5307.

(c)(1) None of the workforce authorities made available under section 9804, 9805, 9806, 9807, 9809, 9812, 9813, 9814, or 9815 may be exercised with respect to a political appointee.

(2) For purposes of this subsection, the term “political appointee” means an employee who holds—

(A) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in section 3132(a)).

(Added Pub. L. 108-201, §3(a), Feb. 24, 2004, 118 Stat. 464.)

### § 9804. Recruitment, redesignation, and relocation bonuses

(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

(2) the individual—

(A) is newly appointed as an employee of the Federal Government;

(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

(1) 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

(2) 100 percent of the employee’s annual rate of basic pay (including comparability pay-

ments under sections 5304 and 5304a) as of the beginning of the service period.

(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee’s annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

(B) At a minimum, the service agreement shall include—

(i) the required service period;

(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

(iii) the amount of the bonus and the basis for calculating that amount; and

(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee’s service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

(f) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

(Added Pub. L. 108-201, §3(a), Feb. 24, 2004, 118 Stat. 464.)

### § 9805. Retention bonuses

(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee’s services makes it essential to retain the employee; and

(2) the employee would be likely to leave in the absence of a retention bonus.

(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee’s annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

(c) If the position is not described as addressing a critical need in the workforce plan under