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MAY 4 2000

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

The Department of Defense proposes the enclosed legislation relating to our civilian personnel and Mentor-Protégé Programs. These proposals are part of the departmental legislative program for the Second Session of the 106th Congress and we urge their enactment. The purpose of each proposal is stated more fully in its accompanying sectional analysis.

We suggest that our nonappropriated fund retirement plans be granted permanent exemption from nondiscrimination standards and required tests under section 401 of the Internal Revenue Code of 1986. There is a current moratorium regarding such plans that expires January 1, 2001. We also would amend title 5 relating to special pay rates and the Federal Employees Pay Comparability Act of 1990 concerning special statutory pay rates for law enforcement officers. We would eliminate possible windfalls or reductions in pay by correcting inconsistencies between the rules for special rates and locality rates. Our provision makes other clarifying and technical changes to special pays and pay retention. We would solve a problem related to the pay of mariners so that the difference in the value between leave accrued by civil service mariners at temporary promotion rates and permanent leave rates would be paid in a lump sum. We propose a new authority in title 5 to enable agencies the flexibility to hire and pay individuals under a streamlined process to work in temporary organizations that are established for a period not to exceed three years. We also propose extending the authority for civilian employees of the Department of Defense to participate voluntarily in reductions in force.

We also would expand the Department of Defense Mentor-Protégé Program so that small business firms owned and controlled by women, historically Black colleges and universities, and certain minority institutions could participate as protégés.

The Office of Management and Budget advises that there is no objection, from the standpoint of the Administration's program, to the presentation of these initiatives for your consideration and the consideration of the Congress.

Sincerely,

Douglas A. Dworkin
Acting General Counsel

Enclosures
As Stated





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The Honorable Al Gore
President of the Senate
Washington, D.C. 20510

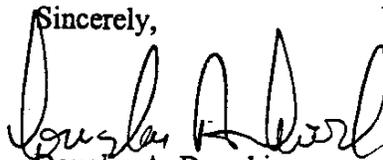
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**SEC. ____ . EXTENSION OF MORATORIUM ON APPLICATION OF CERTAIN
NONDISCRIMINATION RULES TO DEPARTMENT OF DEFENSE
NONAPPROPRIATED FUND INSTRUMENTALITIES.**

(a) NONDISCRIMINATION REQUIREMENTS.—Section 401(a) of the Internal Revenue Code of 1986 (as amended by the Taxpayer Relief Act of 1997 (Public Law 105-34; 111 Stat. 1063)) is amended—

(1) by adding at the end of paragraph (5) the following:

"(H) DEPARTMENT OF DEFENSE NONAPPROPRIATED FUND INSTRUMENTALITY PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a Department of Defense or Coast Guard Nonappropriated Fund Instrumentality.";

(2) by adding at the end of paragraph (26) the following:

"(I) EXCEPTION FOR DEPARTMENT OF DEFENSE NONAPPROPRIATED FUND INSTRUMENTALITY PLANS.—This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a Department of Defense or Coast Guard Nonappropriated Fund Instrumentality.";

(3) in section 401(k) of such Internal Revenue Code of 1986 by adding at the end the following:

"(H) A governmental plan (within the meaning of section 414(d)) maintained by a Department of Defense or Coast Guard Nonappropriated Fund Instrumentality shall be treated as meeting the requirements of this paragraph.";

(4) in section 403(b)(12) of such Internal Revenue Code of 1986 by adding at the end the following:

"(D) DEPARTMENT OF DEFENSE NONAPPROPRIATED FUND INSTRUMENTALITY PLANS.—For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401 (a)(17)) shall not apply to a Department of Defense Nonappropriated Fund Instrumentality."

(b) EFFECTIVE DATE INCLUSION.—Section 1505(d)(2) of the Taxpayer Relief Act of 1997 (Public Law 105-34; 111 Stat. 1064) is amended by inserting ", or Department of Defense or Coast Guard Nonappropriated Fund Instrumentality," after "(or agency or instrumentality thereof)".

Sectional Analysis

This section would exempt nonappropriated fund retirement plans from general nondiscrimination and participation rules. The Taxpayer Relief Act of 1997 granted permanent exemption to state and local governmental pension plans from nondiscrimination standards and required tests under section 401 of the Internal Revenue Code. This exclusion was not granted to federal plans or instrumentalities of the Federal government. For years, the Internal Revenue Service excluded Federal plans alongside state and local plans from application of nondiscrimination standards. This moratorium is currently set to expire January 1, 2001. This proposal will extend the permanent exemption to nonappropriated fund retirement plans and eliminate unnecessary testing requirements for nonappropriated fund Federal employers.

If enacted, this proposal will not increase the budgetary requirements of the Department of Defense.

SEC. ____ . CHANGES TO PAY RATES AND SYSTEMS TO CORRECT PAY

**ADMINISTRATION PROBLEMS ASSOCIATED WITH SPECIAL PAY
RATES AND PAY RETENTION.**

1 (a) REDEFINITION OF RATES OF PAY.—Section 5302(8) of title 5, United States Code, is
2 amended to read as follows:

3 “(8) the terms ‘rates of pay under the General Schedule’, ‘rates of pay for the General
4 Schedule’, or ‘scheduled rates of basic pay’ mean the unadjusted rates of basic pay in the General
5 Schedule as established by section 5332, excluding additional pay of any kind; and”.

6 (b) REVISION OF SPECIAL PAY AUTHORITY.—Section 5305 of title 5, United States Code,
7 is amended—

8 (1) in subsection (a), by striking “basic pay” the first time it appears and inserting “pay”;

9 (2) in subsection (e), by striking “basic pay” and inserting “pay”;

10 (3) by amending subsection (f) to read as follows:

11 “(f) When a schedule of special rates established under this section is adjusted under
12 subsection (d), a covered employee’s special rate will be adjusted in accordance with conversion
13 rules prescribed by the President or by the President’s designee.”;

14 (4) in subsection (g)(1), by striking “basic pay” and inserting “pay”;

15 (5) in subsection (h), by striking “basic pay” and inserting “pay”; and

16 (6) by adding at the end the following new subsections:

17 “(i) An employee’s entitlement to a rate of pay established under this section terminates
18 when the employee is entitled to a higher rate of pay (including basic pay as adjusted to include
19 any locality-based comparability payment under section 5304 or similar provision of law).

20 “(j) When an employee who is receiving a rate of pay established under this section

1 moves to a new official duty station at which different pay schedules apply, the employee shall
2 be entitled to the rates of pay applicable to the employee's grade and step (or relative position in
3 the rate range) in the new pay area. Such pay conversion upon geographic movement shall be
4 effected before processing any other simultaneous pay action (other than a general pay
5 adjustment).

6 “(k) A rate established under this section shall be considered to be part of basic pay for
7 purposes of subchapter III of chapter 83, chapter 84, chapter 87, subchapter V of chapter 55,
8 section 5541, and for such other purposes as may be expressly provided for by law or as the
9 Office of Personnel Management may by regulation prescribe.”.

10 (c) REVISION OF THE TWO-STEP PROMOTION RULE.—Section 5334 of title 5, United States
11 Code, is amended—

12 (1) in subsection (b) by adding at the end the following two new sentences:

13 “If an employee's rate after promotion or transfer is greater than the maximum rate of basic pay
14 for the employee's grade, that rate shall be treated as a retained rate under section 5363. The
15 Office of Personnel Management shall prescribe by regulation the circumstances under which
16 and the extent to which special rates under section 5305 (or similar provision of law) or locality-
17 adjusted rates under section 5304 (or similar provision of law) are considered to be basic pay in
18 applying the provisions of this subsection.”; and

19 (2) by adding at the end the following new subsection:

20 “(g) When an employee moves to a new official duty station at which different pay
21 schedules apply, the employee shall be entitled to the rates of pay applicable to the employee's
22 grade and step (or relative position in the rate range) in the new pay area. Such pay conversion
23 upon geographic movement shall be effected before processing any other simultaneous pay

1 action (other than a general pay adjustment).”.

2 (d) REDEFINITION OF TERMS RELATING TO PAY RETENTION. Section 5361 of title 5,
3 United States Code, is amended—

4 (1) by striking paragraphs (3) and (4);

5 (2) by redesignating paragraphs (5) - (7) as paragraphs (3) - (5), respectively;

6 (3) in paragraph (4), as redesignated by subsection (d)(1) of this section, by striking “and”
7 at the end of such paragraph (4);

8 (4) in paragraph (5), as redesignated by subsection (d)(1) of this section, by striking the
9 period and inserting a semicolon; and

10 (5) by adding at the end, the following new paragraphs:

11 “(6) ‘rate of basic pay’ means—

12 “(A) the rate of pay prescribed by law or regulation for the position held by an
13 employee before any deductions or additions of any kind, but including any applicable
14 locality-based payment under section 5304 or similar provision of law, any applicable
15 special rate under section 5305 or similar provision of law, and any applicable existing
16 retained rate of pay established under section 5363 or similar provision of law; and

17 “(B) in the case of a prevailing rate employee, the scheduled rate of pay determined
18 under section 5343;

19 “(7) ‘former highest applicable rate of basic pay’ means the highest applicable rate of
20 basic pay payable to the employee immediately before the action that triggers pay retention under
21 section 5363; and

22 “(8) ‘highest applicable basic pay rate range’ means the range of rates of basic pay for the
23 grade or level of the employee’s current position with the highest maximum rate, except as

1 otherwise provided in regulations prescribed by the Office of Personnel Management in cases
2 where another rate range provides higher rates only in the lower portion of the range.”.

3 (e) REVISION OF RULES ON RECOMPUTATION OF PAY ON CERTAIN GEOGRAPHIC
4 MOVES.—Section 5363 of title 5, United States Code, is amended—

5 (1) in subsection (a), by amending paragraph (4) and the matter that follows it to the end
6 of the subsection to read as follows:

7 “(4) who is in a position subject to this subchapter and who is subject to a
8 reduction or termination of a rate of pay established under subchapter IX of chapter 53;
9 is entitled to pay retention under the conditions set forth in this section. Notwithstanding any
10 other provision, this section may not be applied to employees whose rate of basic pay is reduced
11 solely because of the recomputation of pay upon movement to a new official duty station at
12 which different pay schedules apply. When a geographic move is accompanied by a
13 simultaneous pay action that reduces the employee’s rate of basic pay after the employee’s pay
14 has been recomputed to reflect the geographic move, this section shall be applied, if otherwise
15 applicable.”;

16 (2) by amending subsections (b) and (c) to read as follows::

17 “(b) If an employee is entitled to pay retention under subsection (a), the following rules
18 apply in determining the employee’s rate of pay:

19 “(1) If the employee’s former highest applicable rate of basic pay is less than or equal
20 to the maximum rate of the highest applicable basic pay rate range for the employee’s current
21 position, the employee is entitled to the lowest payable rate of basic pay in that rate range that
22 equals or exceeds the former rate, and pay retention ceases to apply; and

23 “(2) If the employee’s former highest applicable rate of basic pay exceeds the

1 maximum rate of the highest applicable basic pay rate range for the employee's current position,
2 the employee is entitled to a retained rate equal to the lesser of—

3 “(A) the employee's former highest applicable rate of basic pay; or

4 “(B) 150 percent of the maximum rate of the highest applicable basic pay rate
5 range for the employee's position.

6 “(c) An employee's retained rate shall be increased at the time of any increase in the
7 maximum rate of the highest applicable basic pay rate range for the employee's position by 50
8 percent of the dollar increase in that maximum rate.”; and

9 (3) by adding at the end the following new subsections:

10 “(d) The rate of pay for an employee who is receiving a retained rate under this section
11 and who is moved to a new official duty station at which different pay schedules apply shall be
12 determined under regulations prescribed by the Office of Personnel Management consistent with
13 the purposes of this section.

14 “(e) A retained rate shall be considered part of basic pay for purposes of this subchapter
15 and for purposes of subchapter III of chapter 83, chapters 84 and 87, subchapter V of chapter 55,
16 section 5541, and for such other purposes as may be expressly provided for by law or as
17 the Office of Personnel Management may by regulation prescribe. For other purposes, the Office
18 shall prescribe by regulation what constitutes basic pay for employees receiving a retained rate.

19 “(f) The preceding provisions of this section do not apply (or shall cease to apply) to an
20 employee who—

21 “(1) has a break in service of one workday or more;

22 “(2) is entitled by operation of this subchapter or chapter 51 or 53 to a rate of basic
23 pay which is equal to or higher than, or declines a reasonable offer of a position the rate of basic

1 pay for which is equal to or higher than, the rate to which the employee is entitled under this
2 section; or

3 “(3) is demoted for personal cause or at the employee’s request.”.

4 (f) **AUTHORITY TO ESTABLISH ADDITIONAL LIMITATIONS AND CONDITIONS ON PAY**

5 **RETENTION.**—Section 5365(b) of title 5, United States Code, is amended by inserting “(subject to
6 any conditions or limitations the Office may establish)” after “this subchapter” the first time it
7 appears in the subsection.

8 (g) **IMPLEMENTING PROVISIONS REGARDING CONVERSION OF PAY RATES.**—Subject to

9 regulations that the Office of Personnel Management may prescribe, any employee in a covered
10 pay schedule who is receiving a retained rate under section 5363 of title 5, United States Code, or
11 similar authority on the effective date of this section shall have his or her pay converted on such
12 date. The newly applicable retained rate shall equal the formerly applicable retained rate as
13 adjusted to include any applicable locality-based payment under section 5304 of title 5, United
14 States Code, or similar provision of law. Any employee in a covered pay system receiving a rate
15 that exceeds the maximum rate of the highest applicable basic pay rate range for the employee’s
16 position (as defined in section 5361(8) of such title 5, as amended by this Act) under any
17 authority shall be considered to be receiving a retained rate under section 5363 of such title 5.

18 (h) **CLARIFICATION OF CERTAIN SPECIAL PAY RATES FOR LAW ENFORCEMENT**

19 **OFFICERS.**—Section 403(c) of the Federal Employees Pay Comparability Act of 1990 (Public
20 Law 101-509; 104 Stat. 1465) is amended by striking “in the same manner as rates established
21 under section 5305” and all that follows to the end of the subsection, and inserting “and shall be
22 basic pay for all purposes. The rates shall be adjusted at the time of adjustments in the General
23 Schedule to maintain the step linkage set forth in subsection (b)(2).”.

1 (i). EFFECTIVE DATE.—The amendments made by this section shall take effect on the first
2 day of the first pay period beginning on or after the 180th day following the date of the enactment
3 of this Act.

Sectional Analysis

This proposal would amend chapter 53 of title 5, United States Code, relating to special pay rates, and section 403(c) of the Federal Employees Pay Comparability Act of 1990 (FEPCA), concerning special statutory pay rates for law enforcement officers.

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

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

Paragraphs (1), (2), (4), and (5) of subsection (b) make conforming amendments to clarify that special rates under this section are not necessarily “basic pay” for all purposes.

Paragraph (3) of subsection (b) amends 5 U.S.C. 5305(f), which currently refers to “conversion rules” prescribed by the President or his designee for adjusting an employee’s special pay rate at the time of a statutory pay increase. The proposed amendment clarifies that this confusing reference to conversion rules applies to the conversion of an employee’s pay to a new special rates schedule and not to the adjustment of the special rate schedule itself. (The latter is addressed in subsection (d) of 5 U.S.C. 5305.) This amendment makes clear that the Government has full authority to adjust or not to adjust special rate schedules based on staffing needs. It also allows the Government to discontinue mandatory annual reviews of all special rate schedules (currently over 400), which pose an unnecessary administrative burden. Instead, the Government would be free to pursue a targeted approach that is more effective and efficient.

Paragraph (6) of subsection (b) adds three new subsections to 5 U.S.C. 5305. The new subsection (i) provides that an employee’s entitlement to a special rate is eliminated if that employee is entitled to a higher locality rate. Under current law, an employee’s special rate is not automatically terminated when surpassed by a locality rate, but remains as an underlying rate of basic pay that is used for certain pay administration purposes. Thus, different pay rules may

apply to two employees being paid the same rate of pay.

Current law also provides that the underlying special rate cannot be terminated without triggering pay retention and a windfall pay increase. The new subsection (i), in combination with other changes in the bill, will prevent such illogical and inequitable results in the future.

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

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

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

In addition to this problem, some employees can experience an unwarranted pay reduction. This happens when an employee who is entitled to pay retention is receiving a locality pay adjustment in addition to his or her retained rate of pay and is promoted to a grade at which special rates apply, causing the employee to lose the locality adjustment. The proposed

amendments to 5 U.S.C. 5334(b) would allow OPM to remedy these problems.

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

Section 5334 is further amended by adding a new subsection (g), which is similar to the new 5 U.S.C. 5305(j) described above. This amendment provides that a General Schedule employee who is assigned to a new geographic location will have his or her pay adjusted upward or downward to reflect the pay entitlement of the area to which the employee is reassigned, before any simultaneous pay action, such as a promotion, is processed.

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

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

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

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

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

Subsection (h) amends section 403(c) of the Federal Employees Pay Comparability Act of 1990 (FEPCA), concerning special statutory pay rates for law enforcement officers. Section 403(c) currently provides that these rates are payable "in the same manner as rates established under section 5305" of title 5, U.S. Code. This language fails to take into account the differences between the special rates for law enforcement officers and special rates payable under section 5305. For instance, the former are used as base pay for purposes of determining locality and geographic adjustments. The amendment removes this language so that it is clear that the pay administration rules for law enforcement officer special rates will necessarily differ from the rules for section 5305 special rates.

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

Subsection (i) provides that the amendments made by this section shall take effect on the first day of the first pay period beginning 180 days after enactment.

SEC. ____ . LEAVE FOR CREWS OF CERTAIN VESSELS.

Section 6305 (c)(2) of title 5, United States Code, is amended to read as follows:

"(2) may not be made the basis for a lump-sum payment, except that Military Sealift Command civil service mariners on temporary promotion aboard ship may be paid the difference between their temporary and permanent rates of pay for leave accrued and not otherwise used during the temporary promotion upon expiration or termination of the temporary promotion; and".

Sectional Analysis

Section 5348(a) of title 5, United States Code, requires the Military Sealift Command (MSC) to fix and adjust the pay of its 3,200 civil service mariners as nearly as is consistent with the public interest, in accordance with prevailing rates and practices in the maritime industry. Under one of these practices, the pay for an MSC civil service mariner varies according to the type of ship aboard which he or she is working. In general, the permanent pay rates for MSC mariners are maintained at the lowest pay rate for a given job rating. Temporary promotions are used to adjust the salaries to the appropriate rate for vessels during the deployment period.

A mariner must serve a minimum shipboard tour of six months before becoming eligible to take leave. A mariner on temporary promotion who requests leave is relieved by a replacement who will, in turn, remain for at least six months. The mariner who took leave is reassigned to an employment pool ashore for training until the next ship assignment.

For several decades those MSC mariners departing on leave following a ship assignment that involved a temporary promotion have had their termination of temporary promotion and change to lower grade date calculated to include the number of leave days earned at the higher rate of pay. Their temporary promotions are extended beyond the termination date by the number of days earned at the higher rates to enable them to use the leave earned at the higher rates before the change to the lower, permanent rate. This practice has been used since 1959 and was developed as a response to the prevailing private sector maritime practice of paying mariners for their leave upon completion of the voyage, while respecting Federal sector prohibitions on advance pay and lump sum payments for leave.

This proposal would allow the difference in value between the leave accrued by civil service mariners at temporary promotion rates and permanent leave rates to be paid in a lump sum.

**SEC. ____ . EMPLOYMENT AND COMPENSATION PROVISIONS FOR EMPLOYEES
OF TEMPORARY ORGANIZATIONS ESTABLISHED BY LAW OR
EXECUTIVE ORDER.**

1 (a) IN GENERAL.—Chapter 31 of title 5, United States Code, is amended by adding at the
2 end the following new subchapter:

3 “SUBCHAPTER IV— EMPLOYMENT AND COMPENSATION FOR EMPLOYEES OF
4 TEMPORARY ORGANIZATIONS IN THE EXECUTIVE BRANCH ESTABLISHED BY
5 LAW OR EXECUTIVE ORDER

6 **“§3161. Temporary organizations established by law or Executive order**

7 “(a) DEFINITION OF TEMPORARY ORGANIZATION.—For the purposes of this subchapter,
8 the term “temporary organization” means such organizations as commissions, committees, and
9 boards that are established by law or Executive order in the Executive Branch for specific periods
10 not to exceed four years to perform specific projects or studies.

11 “(b) HIRING AUTHORITY.—Notwithstanding the provisions of chapter 51, the head of an
12 Executive agency may employ such numbers and types of employees as required to perform the
13 functions required of the temporary organization. Employees may not be appointed for more
14 than four years, except that the Office of Personnel Management may prescribe regulations for
15 obtaining approval to extend the appointment for up to an additional two years.

16 “(c) STATUS OF POSITIONS AND APPOINTMENTS.—“(1) Positions of employment under a
17 temporary organization are excepted from the competitive service.

18 “(2) Upon request of the Chairman of the Commission or Board, the head of any
19 department or agency of the Government may detail, on a non-reimbursable basis, any

1 personnel of the department or agency to the Commission or Board to assist in carrying
2 out its duties.

3 “(d) COMPENSATION.—(1) Basic pay may be set without regard to the provisions of
4 chapter 51 and subchapter III of chapter 53, except that—

5 “(A) basic pay for executive level positions such as chairperson, members,
6 and executive/staff director, and, in exceptional cases, senior staff shall not exceed
7 the maximum rate of basic pay established for the Senior Executive Service under
8 subchapter VIII of chapter 53; and

9 “(B) basic pay for other staff may not exceed the maximum rate of basic
10 pay for GS-15 of the General Schedule.

11 “(2) Employees whose rates of basic pay are set under subsection (d)(1) shall be entitled
12 to locality-based comparability payments, as provided under section 5304 of this title.

13 “(e) TRAVEL EXPENSES.—Employees of the temporary organization, whether employed
14 on a full- or part-time basis may be entitled to travel and transportation allowances, including per
15 diem, authorized for employees under subchapter I of chapter 57, while traveling away from their
16 regular places of business in the performance of services for the temporary organization.

17 “(f) RETURN RIGHTS.—An employee serving under a career or career conditional
18 appointment or equivalent who transfers to or converts to an appointment in a temporary
19 organization with the consent of the agency head, or designee, is entitled to be returned to his or
20 her former position or a position of like seniority, status, and pay without grade or pay retention,
21 in the agency from which employed immediately preceding the employment on the temporary
22 organization if—

1 “(1) he or she is being separated from the temporary organization for reasons
2 other than misconduct, neglect of duty, or malfeasance; and

3 “(2) he or she applies for return rights not later 30 days before the end of the
4 employment in the temporary organization or the termination of the temporary
5 organization, whichever is earlier.

6 “(g) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the
7 Commission or Board may procure temporary and intermittent services under section 3109(b).

8 “(h) ACCEPTANCE OF VOLUNTEER SERVICES.—(1) The Chairman may accept volunteer
9 services appropriate to the duties of the Commission or Board without regard to section 1342 of
10 title 31, including individuals accepted as advisors, experts, Commission or Board members, or
11 in other capacities deemed appropriate by the Chairman. The Chairman of the Board or
12 Commission—

13 “(1) shall assure that all persons accepted as volunteers are notified of the scope of
14 the voluntary services accepted;

15 “(2) supervise volunteers to the same extent as employees receiving compensation
16 for similar services; and

17 “(3) ensure that volunteers have appropriate credentials or are otherwise qualified
18 to perform in the capacities for which they are accepted.

19 “A person providing volunteer services under this subsection is considered an employee
20 of the Federal government for the purposes of—

21 “Chapter 81, relating to compensation for work-related injuries;

22 “Chapter 171 of title 28, relating to tort claims;

23 “Chapter 11 of title 18, relating to conflicts of interest;

1 "Chapter 73 of title 5, relating to the acceptance of gifts and political activity; and
2 "Part 2635 of title 5, Code of Federal Regulations."; and
3 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 31 of such
4 title 5 is amended by inserting after the items relating to Subchapter III the following:

"SUBCHAPTER IV – EMPLOYMENT AND COMPENSATION FOR EMPLOYEES OF
TEMPORARY ORGANIZATIONS ESTABLISHED BY LAW OR EXECUTIVE ORDER
"3161. Temporary organizations established by law or Executive order."

Sectional Analysis

This proposal would modify chapter 31 of title 5, United States Code (U.S.C.), to enable agencies the flexibility to hire and pay individuals under a streamlined process to work in temporary organizations (commissions, boards, etc.) that have been established for a period not to exceed three years. This flexibility is needed to allow agencies to bring employees on board in a timely manner so they can meet the deadlines imposed by the President and Congress. Employees hired under this section could be employed for no more than three years with a single two-year extension if the temporary organization is extended beyond its original charter.

Typically, personnel administration, including appointments and pay for temporary organizations, falls within the confines of title 5, United States Code. That is, based upon roles and functions of the varied positions to be established, the appropriate appointing, position, and pay authorities and procedures must be identified and used. This frequently results in a delay in appointing individuals because position descriptions must be prepared, authenticated, and classified, and sometimes varied approval (e.g., appointing authorities, executive level resources, and dual compensation waivers) must be obtained from the Office of Personnel Management. These delays are often significant because temporary organizations are created for a very limited time period.

Compensation would be consistent with that established for other temporary organizations pursuing objectives identified by the President or Congress as national priorities.

Life and health insurance benefits would be extended to employees of temporary organizations. Employees who transferred from career civil service positions would have return rights to their former positions (or a position with the same status) at the end of their employment with the temporary organization.

Temporary organizations may hire employees on a temporary or intermittent basis and may accept volunteer services.

SEC. ____ . MENTOR PROTEGE PROGRAM IMPROVEMENTS.

1 (a) EXPANSION OF PURPOSE. Section 831(b) of the National Defense Authorization Act
2 for Fiscal Year 1991 (Public Law 101-510; 10 U.S.C. 2302 note) is amended by inserting “and
3 other eligible entities” after “disadvantaged small business concerns” each time such phrase
4 occurs in the subsection.

5 (b) EXPANSION OF PROGRAM PARTICIPANTS.—Subsection (c) of such section 831 is
6 amended—

7 (1) in paragraph (1), by inserting “and other eligible entities” after “disadvantaged
8 small business concerns” each time such phrase occurs in the paragraph;

9 (2) in paragraph (2), by inserting “and other eligible entities” after “disadvantaged
10 small business concerns” each time such phrase occurs in the paragraph; and

11 (3) in paragraph (3), by inserting “or women-owned small business concern” after
12 “disadvantaged small business concern” each time such phrase occurs in the paragraph.

13 (c) EXPANSION OF INCENTIVES FOR MENTOR FIRMS.—Subsection (g) of such section 831
14 is amended—

15 (1) in subparagraph (3)(C), by inserting “women-owned small business concerns,
16 historically Black colleges and universities or minority institutions” after “disadvantaged
17 small business concerns”; and

18 (2) in paragraph (4), by striking “a small business concern owned and controlled
19 by socially and economically disadvantaged individuals” and inserting “a disadvantaged
20 small business concern or other eligible entity under its respective subcontracting
21 participation goal”.

22 (d) REVISION OF PROVISION REGARDING THE RELATIONSHIP TO THE SMALL BUSINESS

1 ACT.—Paragraph (h)(2) of such section 831 is amended by striking “disadvantaged”.

2 (e) EXPANSION OF FIRMS THAT MAY RECEIVE CREDIT TOWARD ATTAINMENT OF GOALS
3 FOR SUBCONTRACT AWARDS.—Paragraph (j)(3) of such section 831 is amended by striking “to
4 disadvantaged small business concerns”;

5 (f) REVISION OF DEFINITIONS.—Subsection (m) of such section 831 is amended—

6 (1) in paragraph (6), by adding at the end “or the goal for the extent of
7 participation by women-owned small business concerns in the subcontracts awarded
8 under such contract, as established pursuant to section 7106 of Public Law 103-355”; and

9 (2) by adding at the end the following new paragraphs:

10 “(9) The term “other eligible entities” means women-owned small
11 business concerns, historically Black colleges and universities, and minority
12 institutions.

13 “(10) The term “women-owned small business concerns” has the meaning
14 given such term in section 8(d)(3)(D) of the Small Business Act (15 U.S.C.
15 637(d)(3)(D)).”.

Sectional Analysis

This proposal would amend the existing DoD Mentor-Protege Program to permit small business concerns owned and controlled by women, historically Black colleges and universities and minority institutions to participate as proteges. The Department has met with little success in increasing prime and subcontracting awards to these entities. Congress has mandated government-wide 5% prime and subcontracting goals in each of these areas. By expanding the Mentor-Protégé Program to include these entities the success the Department has achieved in meeting disadvantaged small business subcontracting goals could also be experienced in the Women-Owned Small Business and Historically Black Colleges and Universities and Minority Institutions Programs.

Historically Black colleges and universities and minority institutions possesses many of the technical capabilities to meet DoD requirements and to serve as providers of technical assistance via mentors. However, frequently difficulty has developed in accessing their

capabilities due to their lack of experience in government acquisition and accounting requirements. In addition, higher educational institutions and university affiliated and other research centers have expressed an interest in participating as mentors under the Mentor-Protege Program. They are uniquely positioned to assist historically Black colleges and universities and minority institutions to develop the business and financial capabilities to effectively perform DoD research requirements at both prime and subcontracting levels.

**SEC. ____ . EXTENSION OF AUTHORITY FOR CIVILIAN EMPLOYEES OF THE
DEPARTMENT OF DEFENSE TO PARTICIPATE VOLUNTARILY IN
REDUCTIONS IN FORCE.**

1 Section 3502 (f)(5) of title 5, United States Code, is amended by striking "September 30,
2 2001" and inserting in lieu thereof "September 30, 2005".

Sectional Analysis

This proposal would extend the authority for the Secretary of Defense to separate an employee of the Department who volunteers for such separated under reduction in force procedures even though that employee would not otherwise be subject to separation due to a reduction in force. The intent of the provision is to authorize an individual to volunteer to be separated in lieu of another employee who is scheduled for separation. The current authority expires on September 30, 2001.