

## **Section-by-Section Analysis of the NASA Flexibility Act of 2003 (Boehlert Amendment)<sup>a</sup>**

### **Section 1. Short Title.**

“The NASA Flexibility Act of 2003.”

### **Section 2. Compensation for Certain Excepted Personnel.**

Amends section 203(c) of the National Aeronautics and Space Act of 1958 to tie the pay scale for NASA Excepted (NEX) Employees to level III of the Executive Schedule rather than the obsolete pay scale of grade 18 of the General Schedule. Directs that this amendment takes effect on the first day of the first pay period beginning on or after the date of enactment of this Act.

### **Section 3. Workforce Authorities.**

Amends title 5, United States Code, on Government Organizations and Employees by inserting a new chapter 98 for the National Aeronautics and Space Administration with the following sections:

- Sec. 9801. Definitions.
- Sec. 9802. Planning, notification, and reporting requirements.
- Sec. 9803. Restrictions.
- Sec. 9804. Recruitment, redesignation, and relocation bonuses.
- Sec. 9805. Retention bonuses.
- Sec. 9806. Term appointments.
- Sec. 9807. Pay authority for critical positions.
- Sec. 9808. Assignments of intergovernmental personnel.
- Sec. 9809. Enhanced demonstration project authority.
- Sec. 9810. Voluntary separation incentive payments.
- Sec. 9811. Science and technology scholarship program.
- Sec. 9812. Distinguished scholar appointment authority.
- Sec. 9813. Travel and transportation expenses of certain new appointees.
- Sec. 9814. Annual leave enhancements.
- Sec. 9815. Limited appointments to Senior Executive Service positions.
- Sec. 9816. Qualifications pay.
- Sec. 9817. Reporting requirement.

### **Section 9801. Definitions.**

Defines the term “critical need” as a specific and important requirement of NASA’s mission that the agency is unable to fulfill because NASA lacks the appropriate employees either because of

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the inability to fill positions or because employees lack the requisite skills. Defines the term “redesignation bonus” as a bonus which could be paid to an employee moving from one government job to another, including within NASA, without relocating to a different geographic region.

### **Section 9802. Planning, Notification, and Reporting Requirements.**

Requires the NASA Administrator to submit a Workforce Plan to Congress not later than 90 days before exercising any of the authorities under this chapter. The Workforce Plan shall be developed in consultation with the Office of Personnel Management. Requires that this Workforce Plan describe: (1) each of NASA’s critical needs and the criteria used in its identification; (2) the functions, approximate number, and classes or other categories of positions or employees that address critical needs and that would be eligible for each workforce authority provided in this chapter and proposed to be exercised, and how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified; (3) any critical need which would not be addressed by the workforce authorities provided in this chapter and the reasons why those needs would not be so addressed; (4) the specific criteria to be used in determining which individuals may receive the benefits described in sections 9804, 9805 (including the criteria for granting bonuses in the absence of a critical need), and 9810, and how the level of those benefits will be determined; (5) the safeguards or other measures that will be applied to ensure that this chapter is carried out in a manner consistent with merit system principles; (6) the means by which NASA employees will be afforded the notification required for the Workforce Plan or any modifications thereof; (7) the methods that will be used to determine if the workforce authorities provided in this chapter have successfully addressed each critical need identified; and (8) NASA’s recruitment methods and plans to improve recruitment of highly qualified individuals. Requires that NASA provide the Workforce Plan to all employees 60 days before exercising any of the workforce authorities provided in this chapter. Authorizes the NASA Administrator to modify the Workforce Plan, provided that not later than 90 days before implementing any such modifications the Administrator submit a description of proposed modifications to Congress and submit such description not later than 60 days beforehand to all employees. Requires the NASA Administrator to provide each employee representative representing any employee who might be affected with a copy of the proposed plan (or modification), to give each representative 30 calendar days to review and make recommendations to the proposed plan (or modification) to NASA, and for NASA to give such recommendations full and fair consideration in deciding how to proceed with the proposed plan. Requires that none of the workforce authorities provided in this chapter be exercised in a manner inconsistent with the Workforce Plan. Directs NASA to submit the annual performance plan that it submits to OMB under current law to the Congress. Requires the NASA Administrator to submit to Congress an evaluation and analysis of the actions taken under this chapter not later than six years after its enactment. Requires that this evaluation and analysis include: (1) an evaluation of whether the authorities exercised under this chapter successfully addressed each critical need identified; (2) to the extent that they did not, an explanation of the reasons why any critical need 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. Requires that NASA's annual budget request include a statement of the total amount of appropriations requested for the fiscal year to carry out this chapter.

### **Section 9803. Restrictions.**

Prohibits Senate-confirmed Presidential appointees at NASA from being eligible to benefit from the authorities under this chapter. Requires that the total amount for all salaries, bonuses, and other benefits that an employee might receive under the workforce authorities provided in this chapter be limited according to current law.

### **Section 9804. Recruitment, Resignation, and Relocation Bonuses.**

Authorizes the NASA Administrator to pay recruitment, resignation, and relocation bonuses to an individual in accordance with the authority provided in this section and consistent with the Workforce Plan if the individual is: (1) newly appointed as an employee of the Federal Government; (2) currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or (3) currently employed by the Federal Government and must relocate to a different geographic area to accept a position with the Administration.

Authorizes recruitment, resignation, and relocation bonuses under the following formula: (1) If the position addresses a critical need, the amount of a bonus may not exceed 50 percent of an employee's annual salary (including comparability payments) multiplied by an agreed-upon service period; (2) If the position does not address a critical need, the amount of a bonus may not exceed 25 percent of an employee's annual salary (including comparability payments) multiplied by an agreed-upon service period; and (3) In either case, the total bonus may not exceed the employee's annual salary (including comparability payments) at the beginning of the employee's period of service.

Requires that payment of a bonus be contingent on the employee entering into a service agreement with NASA. Requires that the service agreement, at a minimum, establish: (1) the required service period; (2) the payment schedule and method of payment which may include a lump-sum payment, installment payments, or a combination thereof; (3) the amount of the bonus and the basis for calculating such amount; and (4) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination. Requires that an employee's service period not be less than six months and not exceed four years. Requires NASA to establish a plan for paying such bonuses, subject to OPM approval, before paying a bonus under this section. Restricts supervisors and management officials from receiving more than 25 percent of the total amount in bonuses awarded in any year.

### **Section 9805. Retention Bonuses.**

Authorizes the NASA Administrator to pay higher retention bonuses than is provided under current law and in accordance with the authority provided in this section and consistent with the Workforce Plan if the Administrator determines that the unusually high or unique qualifications of an employee or a special need of NASA makes it essential to retain the employee and the employee would be likely to leave in the absence of a retention bonus. Authorizes retention bonuses under the following formula: (1) If the position addresses a critical need, the amount of a bonus may not exceed 50 percent of an employee's annual salary (including comparability payments); or (2) If the position does not address a critical need, the amount of a bonus may not exceed 25 percent of an employee's annual salary (including comparability payments). Requires that payment of a bonus be contingent on the employee entering into a service agreement with NASA unless NASA pays a retention bonus in biweekly installments to the employee. Requires that the service agreement, at a minimum, establish: (1) the required service period; (2) the payment schedule and method of payment which may include a lump-sum payment, installment payments, or a combination thereof; (3) the amount of the bonus and the basis for calculating such amount; and (4) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination. Requires that the service period may not be less than six months and may not exceed four years. Prohibits an employee from receiving a retention bonus under this section during a service period for which other bonuses were previously provided to the employee. Requires NASA to establish a plan for paying retention bonuses, subject to OPM approval, before paying a retention bonus under this section. Restricts supervisors and management officials from receiving more than 25 percent of the total amount in bonuses awarded in any year.

### **Section 9806. Term Appointments.**

Authorizes the NASA Administrator to make term appointments within NASA for not less than one year and not more than six years. Authorizes the NASA Administrator to convert a term appointment to a permanent appointment in the competitive service within NASA without further competition if: (1) the individual was hired under the open, competitive examining procedures under current law; (2) the original announcement stated the appointment may be converted from term to career-conditional or career appointment; (3) the individual has completed at least two years of the term appointment; (4) the employee's performance was at least fully successful or equivalent; and (5) the position is in the same occupational series and geographic location and provides no greater promotion potential than the term appointment. Authorizes the NASA Administrator to convert a term appointment to a permanent appointment in the competitive service within NASA through internal competitive procedures if conditions (1) through (4) above are met. Directs that an employee converted under this section becomes a career-conditional employee unless the employee has otherwise completed the service requirements for career tenure. Directs that an employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

**Section 9807. Pay Authority for Critical Positions.**

Authorizes the NASA Administrator to fix the salary for up to 10 administrative, technical and professional positions described in the section to the salary level of the Vice-President if the position addresses a critical need identified in the Workforce Plan and the position requires expertise of an extremely high level in scientific, technical, professional, or administrative fields. Directs that the NASA Administrator may not delegate this authority. Requires that an employee receiving pay at a rate fixed under this section not be paid an allowance, differential, bonus, award, or similar cash payment during any calendar year that would cause the employee's salary total to exceed the annual rate of salary prescribed for the Vice-President.

**Section 9808. Assignments Under the Intergovernmental Personnel Act.**

Authorizes the NASA Administrator to extend the period of an employee's Intergovernmental Personnel Act (IPA) assignment up to four years, rather than two years provided under current law.

**Section 9809. Enhanced Demonstration Project.**

Authorizes NASA when conducting a demonstration project to apply that project to 8,000 individuals rather than 5,000 individuals as specified under current law.

**Section 9810. Voluntary Separation Incentives.**

Authorizes the NASA Administrator to pay Voluntary Separation Incentive (VSI) payments up to 50 percent of an employee's annual salary if the employee is in a position that fills a critical need. Requires that VSI payments under this section are limited to only 10 employees in any calendar year, unless OMB approves a greater number of employees and Congress is notified. Prohibits a NASA employee from receiving a VSI payment authorized under this section if the employee received certain other bonuses in the previous twelve months. Requires the proposed use of workforce authorities in this section be included in the agency's plans to OPM on the intended use VSI payments required under current law. Directs NASA to submit a copy of its plan on the use of incentive payments to Congress within 15 days after OPM's approval of the plan.

**Section 9811. Science and Technology Scholarship Program.**

Authorizes the NASA Administrator to establish a NASA Science and Technology Scholarship Program to award scholarships to individuals who agree to serve as full-time NASA employees in exchange for receiving this scholarship. Requires that individuals be selected for this scholarship through a competitive application process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals under the Science and Engineering Equal Opportunities Act. Requires that individuals eligible for this scholarship must be full-time students, U.S. citizens, and not be

federal employees. Directs NASA to advertise and update periodically a list of academic programs and fields of study for which scholarships may be used. Prohibits an individual from receiving this scholarship for more than four academic years, unless the NASA Administrator grants a waiver. Requires that the scholarship pay for tuition, fees, and other authorized expenses established by the NASA Administrator by regulation. Directs that scholarships not exceed the cost of attendance. Authorizes the NASA Administrator to enter into contractual agreement with an institution of higher education to provide payment for this scholarship. Requires two years of service for each year of scholarship. Requires that obligated service begin not later than 60 days after the individual receives the educational degree for which the scholarship was provided unless the NASA Administrator allows the individual to defer the obligated service under prescribed terms and conditions. Requires that students who fail to maintain a high level of academic standing as defined in NASA regulation, who are dismissed from their college or university for disciplinary reasons, or who do not complete their program of study be required to repay NASA for funds received under the scholarship program. Directs that in the event a scholarship recipient fails to complete the service obligation to NASA, the individual be responsible to repay three times the amount of scholarship received plus interest on that amount at a determined, prevailing loan-rate. Authorizes the NASA Administrator to waive a service obligation for an individual who received a scholarship when completion of service would be impossible or would involve extreme hardship to the individual or if enforcement would be contrary to the best interests of the government. Authorizes appropriation of \$10,000,000 for each fiscal year for the NASA Science and Technology Scholarship Program established under this section.

#### **Section 9812. Distinguished Scholar Appointment Authority.**

Authorizes NASA to appoint candidates directly to General Schedule professional, competitive service positions in grades GS-7 through GS-12 who meet specified education and grade point average requirements and for which public notice for the position has been given in accordance with OPM regulations. Requires that the candidates receive their degree within two years before the effective date of the appointment. Requires that in selecting these individuals for this appointment, NASA shall consider preference eligibles who meet the criteria for distinguished scholar appointment ahead of non-preference eligibles. Directs that an appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

#### **Section 9813. Travel and Transportation Expenses of Certain New Appointees.**

Authorizes the NASA Administrator to pay the travel, transportation, and relocation expenses for a new appointee to NASA to the same extent, in the same manner, and subject to the same conditions as payment of such expenses to an employee transferred in the interests of the United States Government.

#### **Section 9814. Annual Leave Enhancements.**

Authorizes the NASA Administrator to deem a period of qualified non-Federal service

performed by a newly appointed employee to be a period of service of equal length performed as a NASA employee for the purposes of establishing leave accrual at the rate equal to the rate for a Federal employee of similar level and experience. Requires that this authority only continues to apply as long as the individual serves in or under NASA. Authorizes the annual leave accrual rate for NASA employees serving in senior level or senior executive pay positions or in an equivalent category whose rate of basic pay is greater than GS-15, step 10 to be 1 day for each full biweekly period as long as the employee serves in or under NASA.

#### **Section 9815. Limited Appointments to Senior Executive Service Positions.**

Authorizes the NASA Administrator to fill career reserved SES positions on a temporary basis when a vacancy in such a position occurs as a result of separation of the incumbent, temporary absence of the incumbent due to illness, training, or reassignment, or if such a position would be difficult to fill in any other manner because the position is likely to be eliminated within the next two years. Restricts such appointments from exceeding two years, but allows the Administrator to extend such an appointment up to an additional year provided the reason for the original appointment was not that the position was likely to be eliminated within two years. Restricts the number of such appointments from exceeding 10 percent of the total number of SES positions within NASA at any time. Authorizes an individual appointed to such a career reserved position on a temporary basis to be reemployed to the position (or an equivalent position) from which the individual was so appointed in accordance with OPM regulations. Requires OPM approval if the individual appointed to such a career reserved position under this section is to be appointed (1) from outside the Federal Government; or (2) from a civil service position that is not a career or career-conditional appointment; or (3) or is a senior executive, but not a career appointee. Authorizes an individual appointed under this authority to be treated as a career appointee for purposes of performance awards.

#### **Section 9816. Qualifications Pay.**

Authorizes the NASA Administrator to determine the pay for a General Schedule (GS) employee at any step within the pay range under the General Schedule if the employee possesses unusually high or unique qualifications and the employee is assigned new duties or to a new position. Authorizes that if an employee serves at least one year in the position under the GS step determined by the authority under this section, then succeeding actions to set pay under current law for the employee may take the pay determination under this section into account. Requires the NASA Administrator to submit a plan to OPM and the Congress that describes the implementation and process for evaluating the effectiveness of this authority before exercising this authority.

#### **Section 9817. Reporting Requirement.**

Requires the NASA Administrator to submit annual reports to the Congress not later than February 28 for each of the next 10 years after enactment of this chapter to provide specific information listed in this section about the use of the workforce authorities provided in this

chapter for the preceding fiscal year.

**Section 3. Clerical Amendment.**

Amends the table of chapters in title 5, United States Code by adding chapter 98 for NASA.