

The Honorable Nancy Pelosi
Speaker of the House of Representatives
235 Cannon House Office Building
Washington, D.C. 20515

Dear Madam Speaker:

The U.S. Office of Personnel Management (OPM) is submitting the enclosed legislative proposal entitled the “Federal Hiring Modernization Act of 2010.” We request that it be referred to the appropriate committee for prompt and favorable consideration.

The enclosed draft bill is part of a comprehensive effort that OPM, in partnership with the Office of Management and Budget (OMB), has been leading for many months with the aim of improving the Federal hiring process. We launched an exhaustive effort to evaluate the current approach to Federal recruitment and hiring and to develop proposals for reform. We have undertaken an initiative aimed at (1) creating a hiring process that is easy to understand and use, (2) ensuring the right person is in the right job, and (3) hiring applicants as efficiently as possible. Our plan provides for a vigorous Governmentwide recruiting effort, makes it easier for members of the public to apply for Federal jobs, raises the bar on the quality of the candidates who are ultimately selected for a Federal position, and provides a commonsense approach to the overall hiring process.

The draft bill would accomplish the following objectives:

- Facilitate faster hiring and sharing of top talent across the Government by permitting agencies to share resumes and select from among candidates who have competed for similar positions at another agency, were assessed, and were determined by the other agency to be among the best qualified candidates for the job. By allowing agencies to make selections from among the thousands of best qualified applicants readily available, applicants will have to apply only once for an occupation, and agencies will be able to eliminate 30-90 days from the hiring timeline.
- Give hiring managers a bigger talent pool from which to choose by eliminating the “rule of three” (which requires numerical ranking and selection from among the top three candidates) and replacing it with an approach in which agencies may establish a mechanism such as a cut-off score to refer candidates for selection.
- Improve our ability to address short-term hiring surges without relying on costly contractors by providing an 18-month noncompetitive appointment – without the ability to convert to a permanent, competitive service position – to meet the urgent needs of agencies.
- Enhance the student loan repayment authority by making it a more flexible and effective recruitment and retention tool.

- Improve our capacity to retain and share institutional knowledge by providing employees the opportunity, subject to certain limitations, to work part-time at the end of their careers and also receive a partial annuity.

Along with the other administrative actions we have already taken, this draft bill will improve the recruitment and hiring process, thereby building a strong foundation for a more efficient and effective Federal Government. We must not delay in addressing the systemic issues that have undermined the Government’s recruitment and hiring processes. If we can act now to address the underlying causes of Federal recruitment and hiring problems, we will see immediate dividends in the form of a stronger Federal workforce. We urge Congress to help make this vision a reality by enacting the enclosed legislative proposal.

The effect of this draft bill on the deficit is:

Fiscal Years (dollars in millions, does not add due to rounding)

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	Total
Outlays	0	-11	-32	-55	-78	-102	-77	-68	-59	-49	-39	-569
Net Deficit impact	0	-11	-32	-55	-78	-102	-77	-68	-59	-49	-39	-569

The Statutory Pay-As-You-Go Act of 2010 requires that the cumulative effects of revenue and direct spending legislation meet a pay-as-you-go (PAYGO) requirement. In total, such legislation should not increase the on-budget deficit. Because this proposal would decrease direct spending, it is consistent with the PAYGO requirement.

OMB advises that the submission of this proposal is in accord with the Administration’s program.

A similar letter is being sent to the President of the Senate.

Sincerely,

John Berry
Director

Enclosures

SECTION-BY-SECTION ANALYSIS

To accompany a draft bill

“To provide for improvements in the Federal hiring process, and for other purposes.”

The first section provides a short title for the draft bill, the “Federal Hiring Modernization Act of 2010.”

Section 2 of the draft bill would amend chapter 31 of title 5, United States Code, by adding a new section 3115 to subchapter I, regarding temporary and term appointments. The new section authorizes certain noncompetitive temporary and term appointments in the competitive service.

Subsection (a) of the *new 5 U.S.C. 3115* would insert definitions of “temporary appointment” and “term appointment” in title 5. Temporary appointments are limited to 1 year or less. Term appointments are for more than a year but not more than 5 years.

Subsection (b) of *new section 3115* permits an agency to make a temporary or term appointment in the competitive service when the need for an employee’s services is not expected to be permanent.

Subsection (c) of *section 3115* would permit noncompetitive temporary or term appointments into the competitive service, but such an appointment could under no circumstances last longer than 18 months. This would ***allow agencies to quickly increase their hiring to meet an urgent, unexpected need***, such as arose during the recent financial crisis. Employees hired using this noncompetitive process could not be selected for permanent appointments without further competition.

Subsection (d) of the *new 5 U.S.C. 3115* provides the Director of the Office of Personnel Management (OPM) authority to issue regulations regarding these appointments, including conditions for making such appointments noncompetitively under subsection (c). The regulations could also set forth circumstances under which a competitive service temporary or term appointment could be extended beyond its original expiration date.

Section 3 of the draft bill would make several amendments to chapter 33 of title 5, United States Code, to provide Federal agencies with more flexibility in hiring.

Subsection (a) would ***eliminate the so-called “rule of three,”*** which currently requires agencies using numerical rating to select from among the top three candidates for the position they are filling. Section 3317 of title 5, United States Code, currently requires that enough candidates must be certified for consideration for a position so that the hiring agency will be able to consider at least three names for each competitive service job. Section 3318 of title 5 requires a selection to be made from among the top three

candidates. It also contains, in subsection (b), requirements that apply when an agency proposes to pass over a candidate who has veterans' preference eligibility.

Section 3(a) of the draft bill, in paragraphs (1) and (2), respectively, would eliminate the "rule of three" by removing the requirement in 5 U.S.C. 3317 for at least three names to be certified and by repealing 5 U.S.C. 3318. The provisions that are currently in section 3318(b) regarding passing over preference eligibles would be moved to the amended section 3317, as subsection (d) of that section. The veterans' preference provisions currently in sections 3317 and 3318 of title 5 will remain intact; preference eligibles would retain their preference in referral and selection.

The catchline (heading) for section 3317 would be changed to reflect the broadened scope of the section, clarifying that it deals with both certification of candidates for consideration and selection using numerical ratings, in contrast to section 3319 of title 5, which deals with the category rating method and does not use numerical ratings. Subsection (a) of the amended 5 U.S.C. 3317 would no longer specify a minimum number of candidates to be certified for consideration.

Subsection (b) of the amended 5 U.S.C. 3317 would require the Director of OPM to prescribe regulations to implement the section. It would allow the regulations to permit agencies to define those candidates who would be considered by establishing a cut-off score for that purpose or by using a similar mechanism such as specifying a certain percentile within which applicants must place in order to be considered.

Subsection (c) of section 3317, in addition to removing the requirement currently in subsection (a) of that section that selection be made from among the highest three eligibles, would *permit agencies to share with each other the names and scores of candidates who have been assessed and found to be qualified*. Other appointing authorities, whether in the same agency or in different agencies, could make selections from the same certificate for similar jobs for a period of 240 days, without having to post a new job announcement. This would reduce some of the time it takes agencies to fill jobs and would eliminate the need for applicants to submit multiple applications for the same types of jobs.

Subsection (e) of section 3317 would incorporate a conforming change in language currently found in subsection (c) of section 3318.

Paragraph (2) of section 3(a) of the draft bill would repeal 5 U.S.C. 3318.

Paragraph (3) of section 3(a) would amend section 3319 of title 5, relating to hiring by the category rating method, to change the catchline (heading) so that it more clearly identifies the section as pertaining to category rating, and to add a new subsection (d) that would allow multiple appointing authorities to select from the same certificate for similar jobs for a period of 240 days, without having to post a new job announcement.

Paragraph (4) of section 3(a) would make a conforming technical amendment to 5 U.S.C. 3320.

Paragraph (5) of section 3(a) of the draft bill would amend 5 U.S.C. 3327 to combine provisions that are currently in sections 3327 and 3330 of title 5, regarding the reporting and posting of information on job opportunities in the competitive service and the Senior Executive Service. Generally, posting of job information is done through USAJOBS. However, the amended section 3327 would clarify that the Director of OPM, in regulations, may provide for more limited public notice in certain circumstances. Currently, if an agency advertises a competitive service position and accepts applications from all candidates who are interested in the position, the agency must consider simultaneously all the individuals who applied for the position. In this technological age, this can be a daunting task for agencies, because thousands of applications may be submitted on-line for a very small number of positions. The draft bill would amend section 3327 to enable agencies to make the hiring process more efficient by limiting the distribution of the job opportunity announcement, where appropriate, subject to criteria prescribed by OPM.

Paragraph (6) of section 3(a) would repeal 5 U.S.C. 3330.

Subsection (b) of section 3 would amend the table of sections for chapter 33 of title 5 to reflect the amendments described above.

Section 4 of the draft bill would amend section 5379 of title 5, United States Code, to ***make the student loan repayment program a more flexible and effective recruitment and retention tool for Federal agencies.***

First, section 4, in paragraph (1), would broaden the definition of “student loan” in subsection (a)(1)(B) of section 5379 of title 5 to include loans made from State and local government tuition assistance programs. The Director of OPM also could, by regulation, include loans made for similar purposes from the Federal Thrift Savings Plan and loans made by private educational lenders as defined in subsection (a)(6) of section 1650 of title 15.

Second, paragraph (2) of section 4 of the draft bill would amend 5 U.S.C. 5379(b) to include an explicit authority for a student loan repayment benefit to be paid in installments rather than in a lump sum.

The third paragraph of section 4 of the draft bill would amend subsection (c) of 5 U.S.C. 5379, which requires an employee receiving a student loan repayment benefit to enter into a service agreement with his or her employing agency. These amendments would—

- eliminate the 3-year minimum period of a service agreement in statute (OPM would prescribe a minimum period by regulation); and
- allow a service agreement to provide for linking specific benefit amounts to specific periods of service, to the extent permitted by OPM’s regulations.

Section 4 of the draft bill, in the fourth paragraph, would amend subsection (d) of 5 U.S.C. 5379, which sets forth the circumstances under which an employee's eligibility for student loan repayment benefits terminates. That paragraph would provide explicitly that eligibility ends if the employee is removed for misconduct or because of a negative suitability determination.

Finally, the fifth paragraph of section 4 would amend OPM's regulatory authority in subsection (g) of section 5379 to remove the explicit requirement for consultation with a representative number and variety of agencies and to permit the Director of OPM to prescribe whatever regulations he considers to be needed to carry out the purposes of the student loan repayment authority. In addition to providing for reasonable uniformity among agency programs, OPM's regulations, at a minimum, would include basic requirements for service agreements and prescribe a minimum term for a service agreement.

Section 5 would *allow Federal employees covered by the Civil Service Retirement System or the Federal Employees' Retirement System to enter a gradual, or phased, retirement status at the end of their careers*, under certain circumstances. This authority, in essence, would permit an individual to reduce his or her work schedule as the employee approaches retirement and receive income from a combination of salary and retirement benefits. This would enable agencies to retain the services of highly-valued and experienced employees for longer periods than they would otherwise be able to. This new authority would be subject to a requirement that part of the individual's time would have to be spent mentoring other employees, although the Director of OPM could, by regulation, provide for exceptions from this requirement.

Subsection (a) of section 5 would make the amendments to subchapter III of chapter 83 of title 5, United States Code, that are needed in order to authorize phased retirement under the Civil Service Retirement System.

Paragraph (1) of subsection (a) would amend 5 U.S.C. 8331 to add "Director" as a defined term, meaning the Director of OPM.

Paragraph (2) of subsection (a) would insert a new section 8336a, entitled "Phased retirement", in subchapter III of chapter 83 of title 5, United States Code.

Subsection (a) of 5 U.S.C. 8336a defines terms that are used in the new section.

Subsection (b) of the new section 8336a permits an employee who is eligible to retire and who has worked full-time for the preceding three years to elect phased retirement, subject to OPM regulations, if his or her agency agrees. The individual would begin phased retirement by working on a half-time tour of duty (referred to as a "working percentage" of 50 percent), although OPM's regulations could permit alternative "working percentages" ranging from one-fifth to four-fifths. The individual's working percentage could not change during the phased retirement period, even if he or she transferred to

another Federal job. In general, individuals in phased retirement status would have to spend at least 20 percent of their time at work in mentoring activities; however, the OPM Director could provide for exceptions to this requirement, by regulation. An employee could not go in and out of phased retirement status; only one such election would be permitted. Law enforcement officers, firefighters, nuclear materials couriers, air traffic controllers, customs and border protection officers, and members of the Capitol Police and the Supreme Court Police could not elect phased retirement.

Subsection (c) of 5 U.S.C. 8336a deals with the computation of a phased retirement annuity. Such an annuity is the product of (1) the amount of annuity the individual would have been entitled to had he or she fully retired on the date phased retirement began, and (2) the “phased retirement percentage,” which is the number that, when added to the working percentage, produces a sum of one. This phased annuity amount would be paid to the individual, along with his or her salary, during the phased retirement period, and would be increased by any cost-of-living adjustments under 5 U.S.C. 8340. A phased annuity could not be reduced to provide a survivor annuity or be affected by any court order requiring a survivor annuity to be provided. However, it would be subject to any court order providing for actions such as division, allotment, assignment, execution, levy, attachment, or garnishment. Any deposit for military service credit or redeposit of a refund would have to be made either at the time phased retirement begins, or earlier. If the individual died before entering full retirement status, without having made such a deposit, any survivor would have the same right to elect to make the deposit as in any other case of a death in service. Finally, the computation of a phased retirement annuity will not include credit for unused sick leave.

Subsection (d) of section 8336a provides that, for an individual in phased retirement status, retirement contributions and deposits under 5 U.S.C. 8334 are calculated based on all of the individual’s basic pay not exceeding the full-time salary of the position occupied.

Subsections (e) and (f) of section 8336a address what happens when an individual in phased retirement status elects to enter full retirement status. He or she becomes entitled at that point to a composite annuity consisting of the sum of (1) the amount of the phased retirement annuity on the date the individual fully retires, before any reduction for an unpaid redeposit; and (2) the working percentage (i.e., the percentage of a full-time work schedule the employee actually worked during phased retirement), multiplied by the amount of annuity that would have been payable if the individual had remained employed full-time instead of entering phased retirement, before any reduction for survivor annuity or unpaid redeposit. The sum of these two amounts would be adjusted for any required reductions for survivor annuity and unpaid redeposit under 5 U.S.C. 8334(d)(2).

In other words, when the employee in phased retirement fully retires, there would be a computation of the annuity that would be payable as if the employee had been employed full time, and then divided by two prior to adjustment for survivor benefits. That amount would then be added to the original phased retirement annuity, and that combined amount would then provide the basis for survivor annuity adjustment and benefits.

Subsection (g) of the new 5 U.S.C. 8336a permits an employee in phased retirement to elect to return to a full-time work schedule, if his or her agency agrees, and subject to any conditions and procedures OPM prescribes. The phased retirement annuity would terminate, and the individual's retirement rights would be determined under the law in effect at the time he or she subsequently retires; the phased retirement period would be treated as a period of part-time employment.

Subsection (h) of section 8336a states that, for purposes of survivor annuity benefits, the death of an employee in phased retirement status will be treated the same as an employee's death in service, and the phased retirement period will be treated as a period of part-time employment.

Subsection (i) of 5 U.S.C. 8336a specifies that the period of employment of a person in phased retirement status is not considered to be "part-time career employment" under section 3401 of title 5, which sets forth certain provisions designed to promote part-time career employment and establishes certain requirements relating to such employment.

Subsection (j) of section 8336a bars a person in phased retirement status from applying for disability retirement.

Subsection (k) of section 8336a provides that, for purposes of 5 U.S.C. 8341(h)(4), regarding modification of a court order or election providing a survivor annuity to a former spouse of an employee or annuitant, the employee's retirement is deemed to occur when the employee enters full retirement status.

Subsection (l) of section 8336a provides that a person in phased retirement status is considered to be an employee for purposes of the Thrift Savings Plan and voluntary retirement contributions under the Civil Service Retirement System.

Subsection (m) of section 8336a provides that 5 U.S.C. 8344, which bars an individual from receiving salary and annuity concurrently, does not apply to a person in phased retirement status.

Subsection (n) of 5 U.S.C. 8336a provides that, for purposes of the Federal Employees' Group Life Insurance Program, an individual in phased retirement status is deemed to be receiving the full-time pay of the position occupied.

Paragraph (3) of section 5(a) of the draft bill would amend the table of sections for chapter 83 of title 5 to include a reference to the new section 8336a.

Subsection (b) of section 5 of the draft bill would make the amendments to chapter 84 of title 5, United States Code, that are needed in order to authorize phased retirement under the Federal Employees' Retirement System, in the form of a new section 8412a of title 5, containing provisions that parallel the provisions of the new 5 U.S.C. 8336a with respect to the Civil Service Retirement System.

A BILL

To provide for improvements in the Federal hiring process, 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.

This Act may be cited as the “Federal Hiring Modernization Act of 2010”.

SEC. 2. NONCOMPETITIVE TEMPORARY AND TERM APPOINTMENTS IN THE COMPETITIVE SERVICE

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

(1) in subchapter I, by adding at the end the following new section:

“§ 3115. Temporary and term appointments

“(a) For purposes of this section—

“(1) ‘temporary appointment’ means an appointment in the competitive service for a period of not more than 1 year; and

“(2) ‘term appointment’ means an appointment in the competitive service for a period of more than 1 year but not more than 5 years.

“(b) An agency may make a temporary or term appointment to a position in the competitive service when the need for an employee’s services is not permanent.

Regulations under subsection (d) may prescribe conditions under which an appointment under this subsection may be extended.

“(c) Under conditions prescribed by the Director of the Office of Personnel Management, an agency may make a noncompetitive temporary appointment, or a noncompetitive term appointment for a period of more than 1 year but not more than 18

months, to a position in the competitive service. Notwithstanding any other provision of this section, an appointment made under this subsection may not be extended.”

“(d) The Director of the Office of Personnel Management may prescribe regulations to carry out the purposes of this section.”; and

(2) in the table of sections by inserting the following after the item relating to section 3114:

“3115. Temporary and term appointments.”.

SEC. 3. ELIMINATION OF THE RULE OF THREE; MULTIPLE SELECTIONS FROM ONE CERTIFICATE

(a) Subchapter I of chapter 33 of title 5, United States Code, is amended—

(1) by amending section 3317 to read as follows:

“§ 3317. Competitive service; certification and selection using numerical ratings

“(a) The Office of Personnel Management, or an agency to which the Office has delegated examining authority under section 1104(a)(2), shall certify a sufficient number of names from the top of the appropriate register or list of eligibles, as determined pursuant to regulations prescribed under subsection (b), for an appointing authority who has requested a certificate of eligibles to consider when filling a job in the competitive service.

“(b) The Director of the Office shall prescribe regulations to carry out the provisions of this section. Such regulations shall provide for the establishment of mechanisms, such as cut-off scores, for identifying the eligibles who will be considered for appointment.

“(c)(1) An appointing authority shall select for appointment from the eligibles available for appointment on the certificate furnished under subsection (a), unless

objection to one or more of the individuals certified is made to, and sustained by, the Office or the agency for proper and adequate reason under regulations prescribed by the Director of the Office.

“(2) Within 240 days from the date of issuance of a certificate under subsection (a), other appointing authorities may select from that certificate for similar jobs in the same occupational series and at the same grade level without any additional posting under section 3327.

”(d)(1) If an appointing authority proposes to pass over a preference eligible on a certificate in order to select an individual who is not a preference eligible, the appointing authority shall file written reasons with the Office or the agency for passing over the preference eligible. The Office shall make the reasons presented by the appointing authority part of the record of the preference eligible and may require the submission of more detailed information from the appointing authority in support of the passing over of the preference eligible. The Office or the agency shall determine the sufficiency or insufficiency of the reasons submitted by the appointing authority, taking into account any response received from the preference eligible under paragraph (2). When the Office or the agency has completed its review of the proposed passover, it shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings.

“(2) In the case of a preference eligible described in section 2108(3)(C) who has a compensable service-connected disability of 30 percent or more, the appointing authority shall, at the same time it notifies the Office or the agency under paragraph (1), notify the preference eligible of the proposed passover, of the reasons therefor, and of the

individual's right to respond to those reasons to the Office or the agency within 15 days of the date of the notification. The Office shall, before completing its review under paragraph (1), require a demonstration by the appointing authority that the passover notification was timely sent to the preference eligible's last known address.

“(3) A preference eligible not described in paragraph (2), or his or her representative, shall be entitled, on request, to a copy of—

“(A) the reasons submitted by the appointing authority in support of the proposed passover; and

“(B) the findings of the Office or the agency.

“(4) In the case of a preference eligible described in paragraph (2), the functions of the Office under this subsection may not be delegated.

“(e) When the names of preference eligibles are on a reemployment list appropriate for the position to be filled, an appointing authority may appoint from a register of eligibles established after examination only an individual who qualifies as a preference eligible under section 2108(3)(C)-(G).”;

(2) by repealing section 3318;

(3) in section 3319—

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

“§ 3319. Competitive service; selection using category rating”;

(B) in subsection (c)(2) by striking “section 3317(b) or 3318(b)” and inserting “section 3317(d)”;

(C) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

(D) by inserting after subsection (c) the following new subsection:

“(d) Within 240 days from the date a certificate under this section is issued, other appointing authorities may select from that certificate for similar jobs in the same occupational series and at the same grade level in accordance with subsection (c) without any additional posting under section 3327.”;

(4) in section 3320 by striking “sections 3308-3318” and inserting “sections 3308-3319”;

(5) by amending section 3327 to read as follows:

“§ 3327. Civil service jobs list; public notice

“(a) For purposes of this section—

“(1) ‘agency’ means an Executive agency as defined in section 105 and the Government Printing Office; and

“(2) ‘vacant position’ means a position in the competitive service (other than a position established for a period not exceeding 18 months) and a position in the Senior Executive Service.

“(b) Subject to regulations prescribed under subsection (d), each agency shall promptly notify the Office of Personnel Management of vacant positions in the agency, for which the agency seeks applications from persons outside its workforce. This requirement shall be implemented so as to avoid any duplication of information otherwise required to be furnished under this section or other provision of law.

“(c)(1) The Office of Personnel Management shall establish and keep current a comprehensive list of vacant positions within each agency for which applications are being, or will soon be, accepted.

“(2) The list established and maintained under this subsection shall include—

“(A) a brief description of each position, including its title, expected duration, location, and rate of pay;

“(B) the period during which applications will be accepted;

“(C) application procedures, including who may apply, and procedures for obtaining additional information;

“(D) the conditions under which applicants may be considered; and

“(E) any other information the Office considers appropriate.

“(3) The list shall be made available to the public, in such form as the Director of the Office requires in regulations prescribed under subsection (d).

“(d) The Director of the Office of Personnel Management shall prescribe regulations to carry out the purpose of this section. The regulations may include—

“(1) any exceptions from the requirements of subsections (b) and (c) the Director determines to be necessary and appropriate; and

“(2) conditions under which the scope of the public notice under subsection (c)(3) may be limited.

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

(6) by repealing section 3330.

(b) The table of sections for chapter 33 of title 5, United States Code, is amended by amending the items relating to sections 3317, 3318, 3319, 3327, and 3330 to read as follows:

“3317. Competitive service; certification and selection using numerical ratings.

“[3318. Repealed.]

“3319. Competitive service; selection using category rating.

“3327. Civil service jobs list; public notice.

“[3330. Repealed.]”.

SEC. 4. STUDENT LOAN REPAYMENT PROGRAM

Section 5379 of title 5, United States Code, is amended—

(1) in subsection (a)(1)(B)—

(A) in clause (ii) by striking “and” at the end; and

(B) by adding at the end the following new clauses:

“(iv) a loan made under a State or local government tuition assistance program;

“(v) to the extent authorized by regulations prescribed under subsection (g), a loan made from the Thrift Savings Plan under section 8433(g) that is used to pay a student's cost of attendance, as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 10871l); and

“(vi) to the extent authorized by regulations prescribed under subsection (g), a loan made by a private educational lender as defined under subparagraphs (A) and (B) of section 1650(a)(6)

of title 15, United States Code, other than those listed in the preceding clauses of this subparagraph, that is used to pay a student's cost of attendance, as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 108711)”;

(2) in subsection (b) by adding at the end a new paragraph (4) to read as follows:

“(4) Regulations prescribed under subsection (g) may permit a benefit under this section to be paid in installments after completion of specified periods of service or in a single lump sum at the end of the full period of service required by the service agreement described in subsection (c).”;

(3) in subsection (c) —

(A) in paragraph (1)(A) by striking “(not less than 3 years)”;

(B) by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(C) by inserting after paragraph (1) the following new paragraph to read as follows:

“(2) To the extent permitted by regulations prescribed under subsection (g), a service agreement under paragraph (1) may provide for linking specific periods of required service to specific benefit amounts under this section.”; and

(D) in paragraph (4) as redesignated, by striking “paragraph (2)” and inserting “paragraph (3)”;

(4) in subsection (d)—

(A) by redesignating paragraph (2) as paragraph (3); and

(B) by inserting after paragraph (1) the following:

“(2) is separated from the agency for misconduct or because of a negative suitability determination made under sections 1302, 3301, and 7301 and Executive Order 10577; or”; and

(5) by amending subsection (g) to read as follows:

“(g) The Director of the Office of Personnel Management shall prescribe such regulations as are necessary to carry out the purposes of this section. The regulations shall include—

“(1) such standards and requirements as the Director considers necessary to provide for reasonable uniformity among agency programs established under this section; and

“(2) basic requirements for service agreements under subsection (c), including a minimum term for such agreements.”.

SEC. 5. PHASED RETIREMENT AUTHORITY

(a) Chapter 83 of title 5, United States Code, is amended—

(1) in section 8331—

(A) in paragraph (30) by striking “and” at the end;

(B) in paragraph (31) by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following new paragraph:

“(32) ‘Director’ means the Director of the Office of Personnel Management.”;

(2) by inserting after section 8336 the following new section:

“§ 8336a. Phased retirement

“(a) For the purposes of this section–

“(1) ‘composite retirement annuity’ means the annuity computed when an individual who has made an election under subsection (b) attains full retirement status;

“(2) ‘full retirement status’ means the status attained when a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity;

“(3) ‘phased employment’ means the less-than-full-time employment of an individual who has made an election under subsection (b);

“(4) ‘phased retiree’ means an individual who has made an election under subsection (b);

“(5) ‘phased retirement annuity’ means the annuity payable under this section prior to full retirement;

“(6) ‘phased retirement percentage’ is the number which, when added to the working percentage, produces a sum of one;

“(7) ‘phased retirement period’ means the period beginning on the date an individual becomes entitled to receive a phased retirement annuity and ending on the date of death or on the date the individual separates from phased employment;

“(8) ‘phased retirement status’ means the status attained when a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity;

“(9) ‘retirement-eligible employee’ means an individual who meets the

requirements for retirement under subsection (a) or (b) of section 8336, but who does not meet the requirements for retirement under subsection (c), (e), (m), or (n) of that section; and

“(10) ‘working percentage’ means the percentage of full-time employment equal to—

“(A) the number of hours per pay period to be worked as scheduled in accordance with subsection (b)(2), divided by—

“(B) the number of hours in the pay period of a full-time employee.

“(b)(1) With the concurrence of the employing agency, and under regulations promulgated by the Director, a retirement-eligible employee who has been employed with a full-time work schedule for the preceding three years of covered employment may elect to enter phased retirement status.

“(2)(A) At the time of entering phased retirement status, the phased retiree shall be appointed with a tour of duty in which the working percentage is 50 percent.

“(B) The Director of the Office may, by regulation, provide for other acceptable working percentages which shall be no smaller than 20 percent nor greater than 80 percent.

“(C) The phased retiree shall remain employed with an appointment providing a work schedule with a working percentage that may not change during the phased retiree’s phased retirement period.

“(D)(i) At least 20 percent of the work schedule of a phased retiree shall consist of mentoring.

“(ii) The Director may, by regulation, provide for exceptions to the requirement in clause (i).

“(3) A phased retiree may not be employed in more than one position at any time, but may transfer to another position in the same or a different agency, so long as the transfer does not result in a change in the working percentage.

“(4) An individual may make only one election under this subsection during his or her lifetime.

“(5) An individual who has made an election under this subsection is not entitled to make an election under section 8343a.

“(6) A law enforcement officer, firefighter, nuclear materials courier, air traffic controller, customs and border protection officer, or member of the Capitol Police or Supreme Court Police may not make an election under this subsection.

“(c)(1) Except as otherwise provided by this subsection, the phased retirement annuity is the product of—

“(A) the amount of an annuity computed under section 8339 that would have been payable if, on the date of entry into phased retirement status, the phased retiree had instead separated from service and retired under section 8336(a) or (b); and

“(B) the phased retirement percentage.

“(2) The phased retirement annuity shall be paid in addition to the salary for the position occupied during phased employment.

“(3) The phased retirement annuity shall be adjusted as provided in section 8340.

“(4) The phased retirement annuity shall not be subject to reduction for any form

of survivor annuity, shall not serve as the basis of the computation of any survivor annuity, and shall not be subject to any court order requiring a survivor annuity to be provided to any individual. However, the phased retirement annuity shall be subject to a court order providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

“(5) Any annuity reduction based on an election under section 8334(d)(2) shall be applied to the annuity after computation under paragraph (1).

“(6)(A) Any deposit, or election of an actuarial annuity reduction in lieu of such a deposit, for military service or for creditable civilian service for which retirement deductions were either not made or refunded, shall be made by the employee at or before the time of entering phased retirement status. No such deposit may be made, or actuarial adjustment in lieu thereof elected, at the time of converting to full retirement status.

“(B) Notwithstanding subparagraph (A), if such a deposit is not made by the phased retiree, and such phased retiree subsequently dies in service as a phased retiree, any survivor shall have the same right to make such deposit as would have been available had the employee not entered phased retirement status and died in service.

“(C) In the event that a phased retiree made an election for an actuarial annuity reduction under section 8334(d)(2) and subsequently dies in service as a phased retiree, the amount of any deposit upon which such actuarial reduction shall have been based shall be deemed to have been fully paid.

“(7) The phased retirement annuity shall commence on the date the phased retiree enters phased employment.

“(8) No unused sick leave credit may be used in the computation of the phased

retirement annuity.

“(d) All basic pay not in excess of the full-time rate of pay for the position occupied shall be deemed to be basic pay for purposes of section 8334.

“(e) Under such procedures as the Director may prescribe, a phased retiree may elect to enter full retirement status at any time. At that time, the individual shall be entitled to a composite retirement annuity.

“(f)(1) The composite retirement annuity is a single annuity computed under regulations prescribed by the Director, equal to—

“(A)(i) the amount of the phased retirement annuity as of the date of full retirement, prior to any reduction based on an election under section 8334(d)(2), including any adjustments made under section 8340; plus

“(ii) the product of—

“(I) the amount of an annuity computed under section 8339 that would have been payable at the time of full retirement if the individual had not elected a phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and prior to any reduction for survivor annuity or reduction based on an election under section 8334(d)(2); and

“(II) the working percentage;

“(B) adjusted for applicable reductions for survivor annuity and including any previously elected actuarial reduction under section 8334(d)(2).

“(2) The composite annuity computed under paragraph (1) shall be adjusted as provided in section 8340, except that subsection (c)(1) of that section shall not apply.

“(3) In computing the annuity under paragraph (1)(A)(ii)(I), the unused sick leave to the individual’s credit at the time of entry into full retirement status shall be adjusted by dividing it by the working percentage.

“(g)(1) Under such procedures and conditions as the Director may provide, and with the concurrence of the employing agency, a phased retiree may elect to terminate phased retirement status and return to a full-time work schedule.

“(2) Upon entering a full-time work schedule based upon an election under paragraph (1), the phased retirement annuity shall terminate.

“(3) After termination of the phased retirement annuity under this subsection, the individual’s rights under this subchapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this subchapter or chapter 84, at that time the phased retirement period shall be treated as if it had been a period of part-time employment with the work schedule described in subsection (b)(2).

“(h) For purposes of section 8341–

“(1) the death of a phased retiree shall be deemed to be the death in service of an employee; and

“(2) the phased retirement period shall be deemed to have been a period of part-time employment with the work schedule described in subsection (b)(2).

“(i) Employment of a phased retiree shall not be deemed to be ‘part-time career employment,’ as defined in section 3401(2).

“(j) A phased retiree is not eligible to apply for an annuity under section 8337.

“(k) For purposes of section 8341(h)(4), retirement shall be deemed to occur upon entry into full retirement status.

“(l) For purposes of sections 8343 and 8351, and subchapter III of chapter 84, a phased retiree shall be deemed to be an employee.

“(m) A phased retiree is not subject to the provisions of section 8344.

“(n) For purposes of chapter 87, a phased retiree shall be deemed to be receiving basic pay at the rate of a full-time employee in the position occupied.”; and

(3) in the table of sections by inserting the following after the item relating to section 8336:

“8336a. Phased retirement.”.

(b) Chapter 84 of title 5, United States Code, is amended—

(1) by inserting after section 8412 the following new section:

“§ 8412a. Phased retirement

“(a) For the purposes of this section—

“(1) ‘composite retirement annuity’ means the annuity computed when an individual who has made an election under subsection (b) attains full retirement status;

“(2) ‘full retirement status’ means the status attained when a phased retiree has ceased employment and is entitled, upon application, to a composite retirement annuity;

“(3) ‘phased employment’ means the less-than-full-time employment of an individual who has made an election under subsection (b);

“(4) ‘phased retiree’ means an individual who has made an election under subsection (b);

“(5) ‘phased retirement annuity’ means the annuity payable under this

section prior to full retirement;

“(6) ‘phased retirement percentage’ is the number which, when added to the working percentage, produces a sum of one;

“(7) ‘phased retirement period’ means the period beginning on the date an individual becomes entitled to receive a phased retirement annuity and ending on the date of death or on the date the individual separates from phased employment;

“(8) ‘phased retirement status’ means the status attained when a phased retiree is concurrently employed in phased employment and eligible to receive a phased retirement annuity;

“(9) ‘retirement-eligible employee’ means an individual who meets the requirements for retirement under subsection (a) or (b) of section 8412, but who does not meet the requirements for retirement under subsection (d) or (e) of that section; and

“(10) ‘working percentage’ means the percentage of full-time employment equal to—

“(A) the number of hours per pay period to be worked as scheduled in accordance with subsection (b)(2), divided by—

“(B) the number of hours in the pay period of a full-time employee.

“(b)(1) With the concurrence of the employing agency, and under regulations promulgated by the Director, a retirement-eligible employee who has been employed with a full-time work schedule for the preceding three years of covered employment may elect to enter phased retirement status.

“(2)(A) At the time of entering phased retirement status, the phased retiree shall be appointed with a tour of duty in which the working percentage is 50 percent.

“(B) The Director may, by regulation, provide for other acceptable working percentages which shall be no smaller than 20 percent nor greater than 80 percent.

“(C) The phased retiree shall remain employed with an appointment providing a work schedule with a working percentage that may not change during the phased retiree’s phased retirement period.

“(D)(i) At least 20 percent of the work schedule of a phased retiree shall consist of mentoring.

“(ii) The Director may, by regulation, provide for exceptions to the requirement in clause (i).

“(3) A phased retiree may not be employed in more than one position at any time, but may transfer to another position in the same or a different agency, so long as the transfer does not result in a change in the working percentage.

“(4) An individual may make only one election under this subsection during his or her lifetime.

“(5) An individual who has made an election under this subsection is not entitled to make an election under section 8420a.

“(6) A law enforcement officer, firefighter, nuclear materials courier, air traffic controller, customs and border protection officer, or member of the Capitol Police or Supreme Court Police may not make an election under this subsection.

“(c)(1) Except as otherwise provided by this subsection, the phased retirement annuity is the product of—

“(A) the amount of an annuity computed under section 8415 that would have been payable if, on the date of entry into phased retirement status, the phased retiree had instead separated from service and retired under section 8412 (a) or (b); and

“(B) the phased retirement percentage.

“(2) The phased retirement annuity shall be paid in addition to the salary for the position occupied during the phased employment.

“(3) The phased retirement annuity shall be adjusted as provided in section 8462.

“(4) The phased retirement annuity shall not be subject to reduction for any form of survivor annuity, shall not serve as the basis of the computation of any survivor annuity, and shall not be subject to any court order requiring a survivor annuity to be provided to any individual. However, the phased retirement annuity shall be subject to a court order providing for division, allotment, assignment, execution, levy, attachment, garnishment, or other legal process on the same basis as other annuities.

“(5)(A) Any deposit, or election of an actuarial annuity reduction in lieu of such a deposit, for military service or for creditable civilian service for which retirement deductions were either not made or refunded, must be made by the employee at or before the time of entering phased retirement status. No such deposit may be made, or actuarial adjustment in lieu thereof elected, at the time of converting to full retirement status.

“(B) Notwithstanding subparagraph (A), if such a deposit is not made by the phased retiree, and such phased retiree subsequently dies in service as a phased retiree, any survivor shall have the same right to make such deposit as would have been available had the employee not entered phased retirement status and died in service.

“(6) The phased retirement annuity shall commence on the date the phased retiree enters phased employment.

“(7) No unused sick leave credit may be used in the computation of the phased retirement annuity.

“(d) All basic pay not in excess of the full-time rate of pay for the position occupied shall be deemed to be basic pay for purposes of section 8422 and 8423.

“(e) Under such procedures as the Director may prescribe, a phased retiree may elect to enter full retirement status at any time. At that time, the individual shall be entitled to a composite retirement annuity.

“(f)(1) The composite retirement annuity is a single annuity computed under regulations prescribed by the Director, equal to—

“(A)(i) the amount of the phased retirement annuity as of the date of full retirement, including any adjustments made under section 8462; plus

“(ii) the product of—

“(I) the amount of an annuity computed under section 8412 that would have been payable at the time of full retirement if the individual had not elected a phased retirement and as if the individual was employed on a full-time basis in the position occupied during the phased retirement period and prior to any adjustment to provide for a survivor annuity; and

“(II) the working percentage;

“(B) adjusted for applicable reductions for survivor annuity.

“(2) The composite annuity computed under paragraph (1) shall be adjusted as provided in section 8462, except that subsection (c)(1) of that section shall not apply.

“(3) In computing the annuity under paragraph (1)(A)(ii)(I), the unused sick leave to the individual’s credit at the time of entry into full retirement status shall be adjusted by dividing it by the working percentage.

“(g)(1) Under such procedures and conditions as the Director may provide, and with the concurrence of the employing agency, a phased retiree may elect to terminate phased retirement status and return to a full-time work schedule.

“(2) Upon entering a full-time work schedule based on an election under paragraph (1), the phased retirement annuity shall terminate.

“(3) After termination of the phased retirement annuity under this subsection, the individual’s rights under this chapter shall be determined based on the law in effect at the time of any subsequent separation from service. For purposes of this chapter, at that time the phased retirement period shall be treated as if it had been a period of part-time employment with the work schedule described in subsection (b)(2).

“(h) For purposes of subchapter IV–

“(1) the death of a phased retiree shall be deemed to be the death in service of an employee;

“(2) except for purposes of section 8442(b)(1)(A)(i), the phased retirement period shall be deemed to have been a period of part-time employment with the work schedule described in subsection (b)(2) of this section; and

“(3) for purposes of section 8442(b)(1)(A)(i), the phased retiree shall be deemed to have been at the full-time rate of pay for the position occupied.

“(i) Employment of a phased retiree shall not be deemed to be ‘part-time career employment,’ as defined in section 3401(2).

“(j) A phased retiree is not eligible to receive an annuity supplement under section 8421.

“(k) For purposes of subchapter III, a phased retiree shall be deemed to be an employee.

“(l) For purposes of section 8445(d), retirement shall be deemed to occur upon entry into full retirement status.

“(m) A phased retiree is not eligible to apply for an annuity under subchapter V.

“(n) A phased retiree is not subject to the provisions of section 8468.

“(o) For purposes of chapter 87, a phased retiree shall be deemed to be receiving basic pay at the rate of a full-time employee in the position occupied.”; and

(2) in the table of sections by inserting the following after the item

relating to section 8412:

“8412a. Phased retirement.”.