



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

March 28, 2018

The Honorable Paul D. Ryan
Speaker
United States House of Representatives
H-232 Capitol
Washington, DC 20515

Dear Mr. Speaker:

I have enclosed draft legislative proposals for consideration of the Congress. These legislative proposals would improve, expand, and harmonize the Federal Government's efforts to restructure and reshape its workforce and advance the President's efforts outlined in Executive Order 13781, *Comprehensive Plan for Reorganizing the Executive Branch*. The Office of Personnel Management (OPM) recognizes that Federal agencies may need additional tools and flexibilities as they seek to improve efficiency, effectiveness, and accountability. Further, OPM believes the Federal Government will benefit from providing additional authorities to agencies in recruiting, retaining, and developing top talent in their ranks. The proposals included in this transmission seek to address these important needs.

The legislative proposals included in this transmittal are as follows:

- **Employment of Recent Graduates and Students**

Students and recent college graduates are an important talent pool, but the current recruitment framework can sometimes make it difficult for these individuals to compete for jobs and internships.

The proposal would enable Federal agencies to be more agile in recruiting recent graduates and student talent on college campuses by modifying the recruitment and hiring process for recent college graduates and students. Agencies would be able to determine where and how students and recent graduates are recruited and would be able to make a conditional job offer "on the spot" to individuals who meet eligibility requirements, reducing some of the administrative burdens agencies face in hiring applicants from these candidate pools. This authority would not replace the regular hiring process for every entry-level position. Rather, it would be limited to specific kinds of jobs/occupations and OPM would establish caps on the number of hires that could be made under this authority, so as to facilitate open competition for most job openings.

A version of this legislation was included in the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. No. 114-328, Sec. 1106) and was applicable to the Department of Defense

(DoD) only. The proposal would expand the authority government-wide.

- **Expanded Flexibility in Selecting Candidates from Referral Lists**

Under current law, applicants for positions in the competitive service must go through a competitive examining process to be appointed into Federal service. This process may consist of a written test, an evaluation of the individual's education and experience, and/or an evaluation of other attributes necessary for successful performance in the position to be filled. Applicants are then assessed and ranked in one of two ways: category rating, whereby the agency places applicants into two or more quality categories and selections are made from the best qualified group, or the "Rule of Three," which requires the agency to select from among the three top-scoring candidates.

This proposal would eliminate the "Rule of Three" and give agencies authority to define the number of candidates to be considered. By using a cut-off score or similar mechanism, the proposal would increase agencies' flexibility when narrowing the qualified applicant pool for a Federal position(s) in order to determine the most qualified "top candidates." This flexibility would preserve merit-based hiring and veterans' preference, while giving hiring managers access to a larger pool of well-qualified candidates and providing greater choice to select from well-qualified candidates based on numerical ranking/assessment scores. The proposal would not change veterans' preference - veterans would still be granted preference points and would continue to be entitled to selection preference over a non-veteran candidate with the same or lower score.

- **Noncompetitive Term/Temporary Appointments**

This proposal would grant agencies more flexibility and enhance efficiency when hiring short-term employees for certain jobs or projects. This proposal recognizes that there are many areas where it makes more sense for agencies to hire individuals for shorter-term projects, to bring in specialized technical talent in fields where the skill sets are rapidly evolving, or to meet other critical hiring needs. For example, this could include quickly bringing on talent to meet an emerging public health crisis, or hiring cyber talent for a project to protect a government IT or information asset.

The proposal would expand agencies' authority to hire non-permanent workers. This proposal would allow agencies to hire critical non-permanent employees for terms of up to 18 months, in order to meet critical hiring needs.

- **Increase the Voluntary Separation Incentive Payments (VSIP) cap to \$40,000**

The proposal would increase the cap on Voluntary Separation Incentive Payments (VSIP) to \$40,000 from the current \$25,000.

Under current law, with specific approval from OPM, an agency can use buyouts (capped in law at \$25,000 since 1992) as a tool to help minimize or avoid costly and disruptive reductions in

force (RIFs). The buyout acceptance rate (i.e., the number of people who are willing to leave Federal employment in exchange for a buyout) has declined significantly over the past 25 years, in part we believe, due to the diminished purchasing power of \$25,000. The Department of Labor's Bureau of Labor Statistics calculates that the purchasing power of \$25,000 in 1992 would equate to a payment of just under \$45,000 in 2018.

To improve the attractiveness of buyouts as a workforce reshaping tool, the proposal would therefore increase the maximum amount of a buyout from \$25,000 to \$40,000, adjusted each year based on changes to the Consumer Price Index.

A version of this legislation was included in the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. No. 114-328, Sec. 1107) and was applicable to DoD only.

- **Public/Private Sector Exchange**

The proposal would establish the statutory authority for a private industry exchange program similar to the information technology exchange program that is authorized in chapter 37 of title 5.

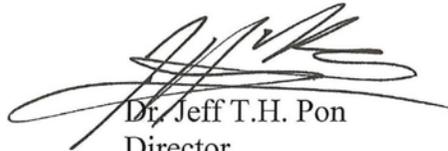
The proposal would allow for the exchange of ideas and talent between the Federal Government and private industry through the creation of a new authority for a private industry exchange program, which is not allowed under current law. The program would allow individuals to serve for up to 4 years (in 2-year increments) in work assignments or projects involving science, technology, engineering, or mathematics (STEM) that are of mutual concern, and where an exchange of ideas and talent would benefit both the external organization and the Federal agency. Many agencies increasingly need specialized talent that is not commonly found in the Federal Government to work on specific projects or initiatives. This is particularly the case in science, technology, and other fields where rapidly evolving skill sets present challenges. While programs exist that provide for the exchange of ideas and talent between the Federal Government, state and local governments and academia, the programs do not include the private sector.

A version of this legislation was included in the National Defense Authorization Act for Fiscal Year 2017(Pub. L. No. 114-328, Sec. 1104) and was applicable to DoD only.

In summary, the Federal Government needs additional authorities and flexibilities to ensure agility in recruiting, hiring, and managing its workforce. The legislative proposals being transmitted represent active steps towards government at its best and will help further the goals of Executive Order 13781 by further improving the efficiency, effectiveness, and accountability of Federal agencies. I urge the Congress to give prompt and favorable consideration to these legislative proposals.

The Office of Management and Budget has advised there is no objection to the transmittal of these draft legislative proposals to the Congress and that their enactment would be in accord with the program of the President.

Sincerely,



Dr. Jeff T.H. Pon
Director

Enclosures



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

March 28, 2018

The Honorable Michael R. Pence
President of the Senate
United States Senate
S-212 Capitol
Washington, DC 20510

Dear Mr. President:

I have enclosed draft legislative proposals for consideration of the Congress. These legislative proposals would improve, expand, and harmonize the Federal Government's efforts to restructure and reshape its workforce and advance the President's efforts outlined in Executive Order 13781, *Comprehensive Plan for Reorganizing the Executive Branch*. The Office of Personnel Management (OPM) recognizes that Federal agencies may need additional tools and flexibilities as they seek to improve efficiency, effectiveness, and accountability. Further, OPM believes the Federal Government will benefit from providing additional authorities to agencies in recruiting, retaining, and developing top talent in their ranks. The proposals included in this transmission seek to address these important needs.

The legislative proposals included in this transmittal are as follows:

- **Employment of Recent Graduates and Students**

Students and recent college graduates are an important talent pool, but the current recruitment framework can sometimes make it difficult for these individuals to compete for jobs and internships.

The proposal would enable Federal agencies to be more agile in recruiting recent graduates and student talent on college campuses by modifying the recruitment and hiring process for recent college graduates and students. Agencies would be able to determine where and how students and recent graduates are recruited and would be able to make a conditional job offer "on the spot" to individuals who meet eligibility requirements, reducing some of the administrative burdens agencies face in hiring applicants from these candidate pools. This authority would not replace the regular hiring process for every entry-level position. Rather, it would be limited to specific kinds of jobs/occupations and OPM would establish caps on the number of hires that could be made under this authority, so as to facilitate open competition for most job openings.

A version of this legislation was included in the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. No. 114-328, Sec. 1106) and was applicable to the Department of Defense

(DoD) only. The proposal would expand the authority government-wide.

- **Expanded Flexibility in Selecting Candidates from Referral Lists**

Under current law, applicants for positions in the competitive service must go through a competitive examining process to be appointed into Federal service. This process may consist of a written test, an evaluation of the individual's education and experience, and/or an evaluation of other attributes necessary for successful performance in the position to be filled. Applicants are then assessed and ranked in one of two ways: category rating, whereby the agency places applicants into two or more quality categories and selections are made from the best qualified group, or the "Rule of Three," which requires the agency to select from among the three top-scoring candidates.

This proposal would eliminate the "Rule of Three" and give agencies authority to define the number of candidates to be considered. By using a cut-off score or similar mechanism, the proposal would increase agencies' flexibility when narrowing the qualified applicant pool for a Federal position(s) in order to determine the most qualified "top candidates." This flexibility would preserve merit-based hiring and veterans' preference, while giving hiring managers access to a larger pool of well-qualified candidates and providing greater choice to select from well-qualified candidates based on numerical ranking/assessment scores. The proposal would not change veterans' preference - veterans would still be granted preference points and would continue to be entitled to selection preference over a non-veteran candidate with the same or lower score.

- **Noncompetitive Term/Temporary Appointments**

This proposal would grant agencies more flexibility and enhance efficiency when hiring short-term employees for certain jobs or projects. This proposal recognizes that there are many areas where it makes more sense for agencies to hire individuals for shorter-term projects, to bring in specialized technical talent in fields where the skill sets are rapidly evolving, or to meet other critical hiring needs. For example, this could include quickly bringing on talent to meet an emerging public health crisis, or hiring cyber talent for a project to protect a government IT or information asset.

The proposal would expand agencies' authority to hire non-permanent workers. This proposal would allow agencies to hire critical non-permanent employees for terms of up to 18 months, in order to meet critical hiring needs.

- **Increase the Voluntary Separation Incentive Payments (VSIP) cap to \$40,000**

The proposal would increase the cap on Voluntary Separation Incentive Payments (VSIP) to \$40,000 from the current \$25,000.

Under current law, with specific approval from OPM, an agency can use buyouts (capped in law at \$25,000 since 1992) as a tool to help minimize or avoid costly and disruptive reductions in

force (RIFs). The buyout acceptance rate (i.e., the number of people who are willing to leave Federal employment in exchange for a buyout) has declined significantly over the past 25 years, in part we believe, due to the diminished purchasing power of \$25,000. The Department of Labor's Bureau of Labor Statistics calculates that the purchasing power of \$25,000 in 1992 would equate to a payment of just under \$45,000 in 2018.

To improve the attractiveness of buyouts as a workforce reshaping tool, the proposal would therefore increase the maximum amount of a buyout from \$25,000 to \$40,000, adjusted each year based on changes to the Consumer Price Index.

A version of this legislation was included in the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. No. 114-328, Sec. 1107) and was applicable to DoD only.

- **Public/Private Sector Exchange**

The proposal would establish the statutory authority for a private industry exchange program similar to the information technology exchange program that is authorized in chapter 37 of title 5.

The proposal would allow for the exchange of ideas and talent between the Federal Government and private industry through the creation of a new authority for a private industry exchange program, which is not allowed under current law. The program would allow individuals to serve for up to 4 years (in 2-year increments) in work assignments or projects involving science, technology, engineering, or mathematics (STEM) that are of mutual concern, and where an exchange of ideas and talent would benefit both the external organization and the Federal agency. Many agencies increasingly need specialized talent that is not commonly found in the Federal Government to work on specific projects or initiatives. This is particularly the case in science, technology, and other fields where rapidly evolving skill sets present challenges. While programs exist that provide for the exchange of ideas and talent between the Federal Government, state and local governments and academia, the programs do not include the private sector.

A version of this legislation was included in the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. No. 114-328, Sec. 1104) and was applicable to DoD only.

In summary, the Federal Government needs additional authorities and flexibilities to ensure agility in recruiting, hiring, and managing its workforce. The legislative proposals being transmitted represent active steps towards government at its best and will help further the goals of Executive Order 13781 by further improving the efficiency, effectiveness, and accountability of Federal agencies. I urge the Congress to give prompt and favorable consideration to these legislative proposals.

The Office of Management and Budget has advised there is no objection to the transmittal of these draft legislative proposals to the Congress and that their enactment would be in accord with the program of the President.

Sincerely,



Dr. Jeff T.H. Pon
Director

Enclosures

Enclosure (1)

1 **SEC. __. EXPEDITED HIRING AUTHORITY FOR COLLEGE GRADUATES AND**
2 **POST SECONDARY STUDENTS.**

3 (a) COLLEGE GRADUATES.—Subchapter I of chapter 31 of title 5, United States Code,
4 is amended by adding at the end the following new section:

5 **“§3115. Expedited hiring authority for college graduates; competitive service**

6 “(a) APPOINTMENT.—In accordance with regulations prescribed by the Director of
7 the Office of Personnel Management (in this section referred to as the ‘Director’), and
8 subject to subsection (b), the head of an agency may appoint, without regard to the
9 provisions of sections 3309 through 3319 and 3330, a qualified college graduate to a
10 position in the competitive service classified in a professional or administrative
11 occupational category in accordance with the standards prescribed by the Director, at the
12 GS-11 level or below (or equivalent).

13 “(b) REQUIREMENTS FOR APPOINTMENT.—An appointment under subsection (a) may
14 be made only if the individual so appointed—

15 “(1)(A) except as provided in subparagraph (B), applied for the position not
16 more than 2 years after the date the individual received a baccalaureate or graduate
17 degree from an institution of higher education (as defined in section 101(a) of the
18 Higher Education Act of 1965 (20 U.S.C. 1001(a))); or

19 “(B) in the case of an individual who has completed a period of obligated
20 service in a uniformed service of 4 years or more, applied for the position not more
21 than 2 years after the date of the discharge or release of such individual from such
22 service; and

1 “(2) meets the minimum qualification standards as prescribed by the Director
2 for the position to which the individual is being appointed.

3 “(c) PUBLIC NOTIFICATION.—In accordance with the regulations prescribed by the
4 Director under subsection (e), the head of an agency making an appointment under
5 subsection (a) shall determine to what extent, and in what manner, notification shall be
6 provided of opportunities to apply for positions being filled under this section.

7 “(d) LIMITATION ON APPOINTMENTS.—The total number of employees that an agency
8 may appoint under this section during a fiscal year shall not exceed the number equal to 15
9 percent of the number of hires that such agency made during the previous fiscal year into
10 professional and administrative occupations, at the GS-11 level or below (or equivalent),
11 under competitive examining procedures. Under regulations prescribed under subsection (e),
12 the Director may adjust the limit on the number of individuals appointable under subsection
13 (a) during a fiscal year that is otherwise applicable under this subsection based on such
14 factors as the Director considers appropriate.

15 “(e) REGULATIONS.—Not later than 180 days after the date of enactment of this
16 section, the Director shall issue interim final regulations, with an opportunity for comment,
17 for the administration of this section.

18 “(f) SPECIAL PROVISION REGARDING THE DEPARTMENT OF DEFENSE.—Nothing in this
19 section shall preclude the Secretary of Defense from exercising authorities to appoint recent
20 graduates pursuant section 1106 of the National Defense Authorization Act for Fiscal Year
21 2017 (10 U.S.C. 1580 note prec.), and any regulations prescribed by the Director for the
22 administration of this section shall not apply to the Department of Defense until such time

1 that the Department ceases to retain the authority under such section 1106 or any applicable
2 successor provision of law.”.

3 (b) STUDENTS.—Such subchapter is further amended by adding at the end the
4 following new section:

5 **“§3116. Expedited hiring authority for post-secondary students; competitive service**

6 “(a) APPOINTMENT.—In accordance with regulations prescribed by the Director of
7 the Office of Personnel Management (in this section referred to as the ‘Director’), the head
8 of an agency may make a time-limited appointment of a student, without regard to the
9 provisions of sections 3309 through 3319 and 3330, to any position in the competitive
10 service at the GS-11 level or below (or equivalent) for which the student is qualified.

11 “(b) LIMITATION ON APPOINTMENTS.—The total number of students that an agency
12 may appoint under this section during a fiscal year shall not exceed the number equal to 15
13 percent of the number of student hires that such agency made during the previous fiscal
14 year. Under regulations prescribed under subsection (f), the Director may adjust the limit on
15 the number of individuals appointable under subsection (a) during a fiscal year that is
16 otherwise applicable under this subsection based on such factors as the Director considers
17 appropriate.

18 “(c) PUBLIC NOTIFICATION.—In accordance with the regulations prescribed by the
19 Director under subsection (f), each agency making an appointment under subsection (a)
20 shall determine to what extent, and in what manner, notification shall be provided of
21 opportunities to apply for positions being filled under this section.

22 “(d) CONVERSION.—The head of an agency may, without regard to provisions of
23 chapter 33 or any other provision of law relating to the examination, certification, and

1 appointment of individuals in the competitive service, convert a student serving on an
2 appointment under subsection (a) to a permanent appointment in the competitive service
3 within that same agency without further competition if the student—

4 “(1) has completed the course of study leading to a baccalaureate or graduate
5 degree;

6 “(2) has completed at least 640 hours of current continuous employment
7 under subsection (a); and

8 “(3) meets the qualification standards for the position to which the student
9 will be converted.

10 “(e) TERMINATION.—The head of an agency shall, without regard to the provisions of
11 chapters 35 and 75, terminate the appointment of an individual appointed under subsection
12 (a) upon completion of the designated academic course of study unless the individual is
13 selected for conversion under subsection (d).

14 “(f) REGULATIONS.—Not later than 180 days after the date of enactment of this
15 section, the Director shall issue interim final regulations, with an opportunity for comment,
16 for the administration of this section.

17 “(g) SPECIAL PROVISION REGARDING THE DEPARTMENT OF DEFENSE.—Nothing in this
18 section shall preclude the Secretary of Defense from exercising authorities to appoint post-
19 secondary students pursuant section 1106 of the National Defense Authorization Act for
20 Fiscal Year 2017 (10 U.S.C. 1580 note prec.), and any regulations prescribed by the
21 Director for the administration of this section shall not apply to the Department of Defense
22 until such time that the Department ceases to retain the authority under such section 1106 or
23 any applicable successor provision of law.

1 “(h) DEFINITIONS.—In this section:

2 “(1) INSTITUTION OF HIGHER EDUCATION.—The term ‘institution of higher
3 education’ has the meaning given the term in section 101(a) of the Higher Education
4 Act of 1965 (20 U.S.C. 1001(a)).

5 “(2) STUDENT.—The term ‘student’ means a person enrolled or accepted for
6 enrollment in a post-secondary institution of higher education who is pursuing a
7 baccalaureate or graduate degree on at least a part-time basis, as determined by the
8 institution of higher education.”.

9 (c) CLERICAL AMENDMENTS.—The table of sections at the beginning of such chapter is
10 amended by inserting after the item relating to section 3114 the following new items:

“3115. Expedited hiring authority for college graduates; competitive service.

“3116. Appointment of post-secondary students; competitive service.”.

Section-by-Section Analysis

This proposal would modify the recruitment and hiring process to provide additional flexibility in how college graduates and students are hired. Under this proposal, Federal agencies would determine recruitment sources and processes for the solicitation of applications, and would be held responsible for merit-based selections. Because this recent graduate authority is not intended to replace competitive hiring and other entry-level hiring programs, the Director of the Office of Personnel Management (OPM) would have the authority to cap the number of hires made under this authority.

Budget Implications: OPM does not believe this proposal has any significant government-wide cost implications. A budget table is inapplicable and has not been provided.

Changes to Existing Law: This proposal would add sections 3115 and 3116 to title 5, United States Code, shown in full in the legislative text above.

Enclosure (2)

1 **SEC. ____. EXPANDED FLEXIBILITY IN SELECTING CANDIDATES FROM**
2 **REFERRAL LISTS.**

3 (a) EXPANDED FLEXIBILITY.—Subchapter I of chapter 33 of title 5, United States
4 Code, is amended by striking sections 3317 and 3318 and inserting the following:

5 **“§3317. Competitive service; certification using numerical ratings**

6 “(a) CERTIFICATION.—

7 “(1) IN GENERAL.—The Director of the Office of Personnel Management (in
8 this section referred to as the ‘Director’), or the head of an agency to which the
9 Director has delegated examining authority under section 1104(a)(2), shall certify a
10 sufficient number of names from the top of the appropriate register or list of
11 eligibles, as determined pursuant to regulations prescribed under subsection (c), and
12 provide a certificate with such names to an appointing authority that has requested a
13 certificate of eligibles to consider when filling a job in the competitive service.

14 “(2) MINIMUM NUMBER OF NAMES CERTIFIED.—Unless otherwise provided for
15 in regulations prescribed under subsection (c), the number of names certified under
16 paragraph (1) shall be not less than three.

17 “(b) DISCONTINUANCE OF CERTIFICATION.—When an appointing authority, for
18 reasons considered sufficient by the Director or head of an agency, has three times
19 considered and passed over a preference eligible who was certified from a register, the
20 Director or head of any agency may discontinue certifying the preference eligible for
21 appointment. The Director or the head of an agency shall provide to such preference eligible
22 notice of the intent to discontinue certifying such preference eligible prior to the
23 discontinuance of certification.

1 “(c) REGULATIONS.—The Director shall prescribe regulations for the administration
2 of this section. Such regulations shall include the establishment of mechanisms for
3 identifying the eligibles who will be considered for each vacancy. Such mechanisms may
4 include cut-off scores.

5 **“§3318. Competitive service; selections using numerical ratings**

6 “(a) IN GENERAL.—An appointing authority shall select for appointment from the
7 eligibles certified for appointment on a certificate furnished under section 3317(a), unless
8 objection to one or more of the individuals certified is made to, and sustained by, the
9 Director of the Office of Personnel Management (in this section referred to as the
10 ‘Director’) or the head of an agency to which the Director has delegated examining
11 authority under section 1104(a)(2), for proper and adequate reason under regulations
12 prescribed by the Director.

13 “(b) OTHER APPOINTING AUTHORITIES.—

14 “(1) IN GENERAL.—During the 240-day period beginning on the date of
15 issuance of a certificate of eligibles under section 3317(a), an appointing authority
16 other than the appointing authority requesting the certificate (in this subsection
17 referred to as the ‘other appointing authority’) may select an individual from that
18 certificate in accordance with this subsection for an appointment to a position that
19 is—

20 “(A) in the same occupational series as the position for which the
21 certification of eligibles was issued (in this subsection referred to as the
22 ‘original position’); and

23 “(B) at a similar grade level as the original position.

1 “(2) APPLICABILITY.—An appointing authority requesting a certificate of
2 eligibles may share the certificate with another appointing authority only if the
3 announcement of the original position provided notice that the resulting list of
4 eligible candidates may be used by another appointing authority.

5 “(3) REQUIREMENTS.—The selection of an individual under paragraph (1)—

6 “(A) shall be made in accordance with subsection (a); and

7 “(B) subject to paragraph (4), may be made without any additional
8 posting under section 3327.

9 “(4) INTERNAL NOTICE.—Before selecting an individual under paragraph (1),
10 and subject to the requirements of any collective bargaining obligation of the other
11 appointing authority, the other appointing authority shall—

12 “(A) provide notice of the available position to employees of the other
13 appointing authority;

14 “(B) provide up to 10 business days for employees of the other
15 appointing authority to apply for the position; and

16 “(C) review the qualifications of employees submitting an application.

17 “(5) COLLECTIVE BARGAINING OBLIGATIONS.—Nothing in this subsection
18 limits any collective bargaining obligation of an agency under chapter 71.

19 “(c) PASS OVER.—

20 “(1) IN GENERAL.—Subject to subparagraph (2), if an appointing authority
21 proposes to pass over a preference eligible certified for appointment under
22 subsection (a) and select an individual who is not a preference eligible, the
23 appointing authority shall file written reasons with the Director or the head of the

1 agency for passing over the preference eligible. The Director or the head of the
2 agency shall make the reasons presented by the appointing authority part of the
3 record of the preference eligible and may require the submission of more detailed
4 information from the appointing authority in support of the passing over of the
5 preference eligible. The Director or the head of the agency shall determine the
6 sufficiency or insufficiency of the reasons submitted by the appointing authority,
7 taking into account any response received from the preference eligible under
8 paragraph (2). When the Director or the head of the agency has completed review of
9 the proposed pass-over of the preference eligible, the Director or the head of the
10 agency shall send its findings to the appointing authority and to the preference
11 eligible. The appointing authority shall comply with the findings.

12 “(2) PREFERENCE ELIGIBLE INDIVIDUALS WHO HAVE A COMPENSABLE SERVICE-
13 CONNECTED DISABILITY.—In the case of a preference eligible described in section
14 2108(3)(C) who has a compensable service-connected disability of 30 percent or
15 more, the appointing authority shall notify the Director under paragraph (1) and, at
16 the same time, notify the preference eligible of the proposed pass-over, of the
17 reasons for the proposed pass-over, and of the individual’s right to respond to those
18 reasons to the Director within 15 days of the date of the notification. The Director
19 shall, before completing the review under paragraph (1), require a demonstration by
20 the appointing authority that the notification was timely sent to the preference
21 eligible’s last known address.

22 “(3) FURTHER CONSIDERATION NOT REQUIRED.—When a preference eligible,
23 for reasons considered sufficient by the Director, or in the case of a preference

1 eligible described in paragraph (1), by the head of an agency, has been passed over in
2 accordance with this subsection for the same position, the appointing authority is not
3 required to give further consideration to that preference eligible while selecting from
4 the same list for a subsequent appointment to such position.

5 “(4) DELEGATION PROHIBITION.—In the case of a preference eligible described
6 in paragraph (2), the functions of the Director under this subsection may not be
7 delegated to an individual who is not an officer or employee of the Office of
8 Personnel Management.

9 “(d) SPECIAL RULE REGARDING REEMPLOYMENT LISTS.—When the names of
10 preference eligibles are on a reemployment list appropriate for the position to be filled, an
11 appointing authority may appoint from a register of eligibles established after examination
12 only an individual who qualifies as a preference eligible under subparagraph (C), (D), (E),
13 (F), or (G) of section 2108(3).

14 “(e) CONSIDERATION NOT REQUIRED.—In accordance with regulations prescribed by
15 the Director, an appointing officer is not required to consider an eligible who has been
16 considered by the appointing officer for three separate appointments from the same or
17 different certificates for the same position.

18 “(f) REGULATIONS.—The Director shall prescribe regulations for the administration
19 of this section.”.

20 (b) CONFORMING AMENDMENTS.—Such subchapter is further amended—

21 (1) in section 3319—

22 (A) by amending the section heading to read as follows:

23 “§3319. **Competitive service; selection using category rating**”;

1 (B) in subsection (c), by amending paragraph (7) to read as follows:

2 “(7) PREFERENCE ELIGIBLES.—

3 “(A) SATISFACTION OF CERTAIN REQUIREMENTS.—Notwithstanding
4 paragraphs (1) and (2), an appointing official may not pass over a preference
5 eligible in the same category from which selection is made, unless the
6 requirements of sections 3317(b) and 3318(c), as applicable, are satisfied.

7 “(B) FURTHER CONSIDERATION NOT REQUIRED.—When a preference
8 eligible, for reasons considered sufficient by the Director, or in the case of a
9 preference eligible described in section 3318(c)(1), by the head of an agency, has
10 been passed over in accordance with section 3318(c) for the same position, the
11 appointing authority is not required to give further consideration to that
12 preference eligible while selecting from the same list for a subsequent
13 appointment to such position.

14 “(C) LIST OF ELIGIBLES ISSUED FROM A STANDING REGISTER;
15 DISCONTINUATION OF CERTIFICATION.—In the case of lists of eligibles issued
16 from a standing register, when an appointing authority, for reasons considered
17 sufficient by the Director or the head of an agency, has three times considered
18 and passed over a preference eligible who was certified from a register,
19 certification of the preference eligible for appointment may be discontinued.
20 However, the preference eligible is entitled to advance notice of
21 discontinuance of certification in accordance with regulations prescribed by
22 the Director.”; and

1 (2) in the first sentence of section 3320, by striking “sections 3308-3318” and
2 inserting “sections 3308 through 3319”.

3 (c) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter
4 is amended by striking the items relating to sections 3317, 3318, and 3319 and inserting the
5 following:

“3317. Competitive service; certification using numerical ratings.

“3318. Competitive service; selection using numerical ratings.

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

6 (d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the
7 date on which the Director issues final regulations to implement sections 3317, 3318, and
8 3319 of title 5, United States Code, as amended or added by this section.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how
the legislative text would amend existing law.]**

Section-by-Section Analysis

This proposal eliminates the “Rule of Three” and, by regulation, gives agencies authority to define the number of candidates to be considered, using a cut-off score or similar mechanism. The revision would not change the application of veteran’s preference – veterans would still be granted preference points. Agencies would also continue to be authorized to use “Category Rating” at their discretion, instead of straight numerically based scoring.

We are also codifying the concept of the “three-consideration rule” which appears to have derived from the civil service rules contained in the First Annual Report of the Civil Service Commission, revised in 1886, and perpetuated thereafter in its current form. Its existence was perpetuated following enactment of the Civil Service Reform Act through that Act’s savings clause and is currently found in 5 CFR 332.405. We have modified the rule in light of the elimination of the “Rule of Three.”

Budget Implications: OPM does not believe this proposal has any significant government-wide cost implications. A budget table is inapplicable and has not been provided.

Changes to Existing Law: This proposal would make the following changes to title 5, United States Code:

~~§3317. Competitive service; certification from registers~~

~~(a) The Office of Personnel Management shall certify enough names from the top of the appropriate register to permit a nominating or appointing authority who has requested a certificate of eligibles to consider at least three names for appointment to each vacancy in the competitive service.~~

~~(b) When an appointing authority, for reasons considered sufficient by the Office, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification.~~

~~§3318. Competitive service; selection from certificates~~

~~(a) The nominating or appointing authority shall select for appointment to each vacancy from the highest three eligibles available for appointment on the certificate furnished under section 3317(a) of this title, unless objection to one or more of the individuals certified is made to, and sustained by, the Office of Personnel Management for proper and adequate reason under regulations prescribed by the Office.~~

~~(b) OTHER APPOINTING AUTHORITIES.—~~

~~(1) IN GENERAL.— During the 240-day period beginning on the date of issuance of a certificate of eligibles under section 3317(a), an appointing authority other than the appointing authority requesting the certificate (in this subsection referred to as the "other appointing authority") may select an individual from that certificate in accordance with this subsection for an appointment to a position that is—~~

~~(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the "original position"); and~~

~~(B) at a similar grade level as the original position.~~

~~(2) APPLICABILITY.— An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.~~

~~(3) REQUIREMENTS.— The selection of an individual under paragraph (1)—~~

~~(A) shall be made in accordance with subsection (a); and~~

~~(B) subject to paragraph (4), may be made without any additional posting under section 3327.~~

~~(4) INTERNAL NOTICE.— Before selecting an individual under paragraph (1), and subject to the requirements of any collective bargaining obligation of the other appointing authority, the other appointing authority shall—~~

~~(A) provide notice of the available position to employees of the other appointing authority;~~

~~(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and~~

~~(C) review the qualifications of employees submitting an application.~~

~~(5) COLLECTIVE BARGAINING OBLIGATIONS.— Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.~~

~~(c)(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, such authority shall file written reasons with the Office 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 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) of this subsection. When the Office 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 of the Office.~~

~~(2) In the case of a preference eligible described in section 2108(3)(C) of this title who has a compensable service-connected disability of 30 percent or more, the appointing authority shall at the same time it notifies the Office under paragraph (1) of this subsection, notify the preference eligible of the proposed passover, of the reasons therefor, and of his right to respond to such reasons to the Office within 15 days of the date of such notification. The Office shall, before completing its review under paragraph (1) of this subsection, 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) of this subsection, or his 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.~~

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

~~(d) When three or more names of preference eligibles are on a reemployment list appropriate for the position to be filled, a nominating or 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) of this title.~~

§3317. Competitive service; certification using numerical ratings

(a) CERTIFICATION.—

(1) IN GENERAL.—The Director of the Office of Personnel Management (in this section referred to as the ‘Director’), or the head of an agency to which the Director 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 (c), and provide a certificate with such names to an appointing authority that has requested a certificate of eligibles to consider when filling a job in the competitive service.

(2) MINIMUM NUMBER OF NAMES CERTIFIED.—Unless otherwise provided for in regulations prescribed under subsection (c), the number of names certified under paragraph (1) shall be not less than three.

(b) DISCONTINUANCE OF CERTIFICATION.—When an appointing authority, for reasons considered sufficient by the Director or head of an agency, has three times considered and passed over a

preference eligible who was certified from a register, the Director or head of any agency may discontinue certifying the preference eligible for appointment. The Director or the head of an agency shall provide to such preference eligible notice of the intent to discontinue certifying such preference eligible prior to the discontinuance of certification.

(c) REGULATIONS.—The Director shall prescribe regulations for the administration of this section. Such regulations shall include the establishment of mechanisms for identifying the eligibles who will be considered for each vacancy. Such mechanisms may include cut-off scores.

§3318. Competitive service; selections using numerical ratings

(a) IN GENERAL.—An appointing authority shall select for appointment from the eligibles certified for appointment on a certificate furnished under section 3317(a), unless objection to one or more of the individuals certified is made to, and sustained by, the Director of the Office of Personnel Management (in this section referred to as the ‘Director’) or the head of an agency to which the Director has delegated examining authority under section 1104(a)(2), for proper and adequate reason under regulations prescribed by the Director.

(b) OTHER APPOINTING AUTHORITIES.—

(1) IN GENERAL.—During the 240-day period beginning on the date of issuance of a certificate of eligibles under section 3317(a), an appointing authority other than the appointing authority requesting the certificate (in this subsection referred to as the ‘other appointing authority’) may select an individual from that certificate in accordance with this subsection for an appointment to a position that is—

(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the ‘original position’); and

(B) at a similar grade level as the original position.

(2) APPLICABILITY.—An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.

(3) REQUIREMENTS.—The selection of an individual under paragraph (1)—

(A) shall be made in accordance with subsection (a); and

(B) subject to paragraph (4), may be made without any additional posting under section 3327.

(4) INTERNAL NOTICE.—Before selecting an individual under paragraph (1), and subject to the requirements of any collective bargaining obligation of the other appointing authority, the other appointing authority shall—

(A) provide notice of the available position to employees of the other appointing authority;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(5) COLLECTIVE BARGAINING OBLIGATIONS.—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

(c) PASS OVER.—

(1) IN GENERAL.—Subject to subparagraph (2), if an appointing authority proposes to pass over a

preference eligible certified for appointment under subsection (a) and select an individual who is not a preference eligible, the appointing authority shall file written reasons with the Director or the head of the agency for passing over the preference eligible. The Director or the head of the agency 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 Director or the head of 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 Director or the head of the agency has completed review of the proposed pass-over of the preference eligible, the Director or the head of the agency shall send its findings to the appointing authority and to the preference eligible. The appointing authority shall comply with the findings.

(2) PREFERENCE ELIGIBLE INDIVIDUALS WHO HAVE A COMPENSABLE SERVICE-CONNECTED DISABILITY.—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 notify the Director under paragraph (1) and, at the same time, notify the preference eligible of the proposed pass-over, of the reasons for the proposed pass-over, and of the individual’s right to respond to those reasons to the Director within 15 days of the date of the notification. The Director shall, before completing the review under paragraph (1), require a demonstration by the appointing authority that the notification was timely sent to the preference eligible’s last known address.

(3) FURTHER CONSIDERATION NOT REQUIRED.—When a preference eligible, for reasons considered sufficient by the Director, or in the case of a preference eligible described in paragraph (1), by the head of an agency, has been passed over in accordance with this subsection for the same position, the appointing authority is not required to give further consideration to that preference eligible while selecting from the same list for a subsequent appointment to such position.

(4) DELEGATION PROHIBITION.—In the case of a preference eligible described in paragraph (2), the functions of the Director under this subsection may not be delegated to an individual who is not an officer or employee of the Office of Personnel Management.

(d) SPECIAL RULE REGARDING REEMPLOYMENT LISTS.—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 subparagraph (C), (D), (E), (F), or (G) of section 2108(3).

(e) CONSIDERATION NOT REQUIRED.—In accordance with regulations prescribed by the Director, an appointing officer is not required to consider an eligible who has been considered by the appointing officer for three separate appointments from the same or different certificates for the same position.

(f) REGULATIONS.—The Director shall prescribe regulations for the administration of this section.

~~§3319. Alternative ranking and selection procedures~~ **§3319. Competitive service; selection using category rating**

(c) SELECTION.—

(1) IN GENERAL.—An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

(2) USE BY OTHER APPOINTING OFFICIALS.—Under regulations prescribed by the Office of Personnel Management, appointing officials other than the appointing official described in paragraph (1) (in this subsection referred to as the "other appointing official") may select an applicant for an appointment to a position that is-

(A) in the same occupational series as the position for which the certification of eligibles was issued (in this subsection referred to as the "original position"); and

(B) at a similar grade level as the original position.

(3) APPLICABILITY.—An appointing authority requesting a certificate of eligibles may share the certificate with another appointing authority only if the announcement of the original position provided notice that the resulting list of eligible candidates may be used by another appointing authority.

(4) REQUIREMENTS.—The selection of an individual under paragraph (2)-

(A) shall be made in accordance with this subsection; and

(B) subject to paragraph (5), may be made without any additional posting under section 3327.

(5) INTERNAL NOTICE.—Before selecting an individual under paragraph (2), and subject to the requirements of any collective bargaining obligation of the other appointing authority (within the meaning given that term in section 3318(b)(1)), the other appointing official shall-

(A) provide notice of the available position to employees of the appointing authority employing the other appointing official;

(B) provide up to 10 business days for employees of the other appointing authority to apply for the position; and

(C) review the qualifications of employees submitting an application.

(6) COLLECTIVE BARGAINING OBLIGATIONS.—Nothing in this subsection limits any collective bargaining obligation of an agency under chapter 71.

~~(7) PREFERENCE ELIGIBLES.—Notwithstanding paragraphs (1) and (2), an appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of section 3317(b) and 3318(c), as applicable, are satisfied.~~

(7) PREFERENCE ELIGIBLES.—

(A) SATISFACTION OF CERTAIN REQUIREMENTS.—Notwithstanding paragraphs (1) and (2), an appointing official may not pass over a preference eligible in the same category from which selection is made, unless the requirements of sections 3317(b) and 3318(c), as applicable, are satisfied.

(B) FURTHER CONSIDERATION NOT REQUIRED.—When a preference eligible, for reasons considered sufficient by the Director, or in the case of a preference eligible described in section 3318(c)(1), by the head of an agency, has been passed over in accordance with section 3318(c) for the same position, the appointing authority is not required to give further consideration to that preference eligible while selecting from the same list for a subsequent appointment to such position.

(C) LIST OF ELIGIBLES ISSUED FROM A STANDING REGISTER; DISCONTINUATION OF

CERTIFICATION.—In the case of lists of eligibles issued from a standing register, when an

appointing authority, for reasons considered sufficient by the Director or the head of an agency, has three times considered and passed over a preference eligible who was certified from a register, certification of the preference eligible for appointment may be discontinued. However, the preference eligible is entitled to advance notice of discontinuance of certification in accordance with regulations prescribed by the Director.

§3320. Excepted service; government of the District of Columbia; selection

The nominating or appointing authority shall select for appointment to each vacancy in the excepted service in the executive branch and in the government of the District of Columbia from the qualified applicants in the same manner and under the same conditions required for the competitive service by sections ~~3308–3318~~ sections 3308 through 3319 of this title. This section does not apply to an appointment required by Congress to be confirmed by, or made with the advice and consent of, the Senate.

Enclosure (3)

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

3 (a) TEMPORARY AND TERM APPOINTMENTS.—Subchapter I of chapter 31 of title 5,
4 United States Code, is amended by adding at the end the following new section:

5 **“§3115. Temporary and term appointments**

6 “(a) DEFINITIONS.—In this section:

7 “(1) DIRECTOR.—The term “Director” means the Director of the Office of
8 Personnel Management.

9 “(2) TEMPORARY APPOINTMENT.—The term ‘temporary appointment’ means
10 an appointment in the competitive service for a period of not more than 1 year.

11 “(3) TERM APPOINTMENT.—The term ‘term appointment’ means an
12 appointment in the competitive service for a period of more than 1 year but not more
13 than 5 years, unless a longer period is authorized by the Director prior to
14 appointment.

15 “(b) APPOINTMENT.—

16 “(1) IN GENERAL.—The head of an agency may make a temporary
17 appointment or term appointment to a position in the competitive service when the
18 need for an employee’s services is not permanent.

19 “(2) EXTENSION.—Under conditions prescribed by the Director, the head of an
20 agency may extend a temporary appointment or term appointment made under
21 paragraph (1).

22 “(c) APPOINTMENTS FOR CRITICAL HIRING NEEDS.—Under conditions prescribed by
23 the Director, the head of an agency may make a noncompetitive temporary appointment, or

1 a noncompetitive term appointment for a period of not more than 18 months, to a position in
2 the competitive service for which a critical hiring need exists, without regard to the
3 requirements of sections 3327 and 3330. An appointment made under this subsection may
4 not be extended.

5 “(d) REGULATIONS.—The Director may prescribe regulations to carry out this
6 section, but is not required to promulgate regulations prior to implementation.

7 “(e) SPECIAL PROVISION REGARDING THE DEPARTMENT OF DEFENSE.—Nothing in this
8 section shall preclude the Secretary of Defense from making temporary and term
9 appointments in the competitive service pursuant to section 1105 of the National Defense
10 Authorization Act for Fiscal Year 2017 (10 U.S.C. 1580 note prec.), and any regulations
11 prescribed by the Director for the administration of this section shall not apply to the
12 Department of Defense in its exercise of the authorities granted to the Secretary under such
13 section 1105.”.

14 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter
15 is amended by inserting after the item relating to section 3114 the following new item:

“3115. Temporary and term appointments.”.

Section-by-Section Analysis

This proposal would modify statutory provisions to exempt certain “non-permanent/non-career” appointments from public notice requirements. This proposal would allow Federal agencies to develop more strategic outreach efforts to recruit the talent needed to address a critical hiring need. Agencies would determine recruitment sources, including processes for the solicitation of applications, and agencies would still be held responsible for merit-based hiring decisions, consistent with other employment requirements.

Budget Implications: The Office of Personnel Management does not believe this proposal has any significant Government-wide cost implications. A budget table is inapplicable and has not been provided.

Changes to Existing Law: This proposal would add a new section to title 5, United States Code, shown in full in the legislative text above.

Enclosure (4)

1 **SEC. ____ . INCREASE IN MAXIMUM AMOUNT OF VOLUNTARY SEPARATION**
2 **INCENTIVE PAY AUTHORIZED FOR CIVILIAN EMPLOYEES.**

3 (a) IN GENERAL.—Section 3523 of title 5, United States Code, is amended—

4 (1) in subsection (b)(3)(B), by striking “\$25,000” and inserting “\$40,000 (as
5 adjusted in accordance with subsection (c))”; and

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

7 “(c) CONSUMER PRICE INDEX ADJUSTMENT.—(1) On March 1 of each year, the dollar
8 amount specified in subsection (b)(3)(B) shall be adjusted by the amount determined by the
9 Secretary of Labor to represent the percentage increase, if any, between the Consumer Price
10 Index (all items; United States city average) published for December of the preceding year and
11 that price index published for the December of the year before the preceding year.

12 “(2) A percentage increase under paragraph (1) shall be adjusted to the nearest one-tenth
13 of one percent, and an amount determined under paragraph (1) shall be rounded to the nearest
14 multiple of \$1,000 (or, if midway between multiples of \$1,000, to the next higher multiple of
15 \$1,000).”.

16 (b) DEPARTMENT OF DEFENSE EMPLOYEES.—Section 9902(f)(5) of such title is
17 amended—

18 (1) in subparagraph (A)(ii), by striking “\$25,000” and inserting “an amount determined
19 by the Secretary, not to exceed \$40,000 (as adjusted under subparagraph (D))”; and

20 (2) by adding at the end the following:

21 “(D)(i) On March 1 of each year, the dollar amount specified in subparagraph (A)(ii)
22 shall be adjusted by the amount determined by the Secretary of Labor to represent the percentage
23 increase, if any, between the Consumer Price Index (all items; United States city average)

24 published for December of the preceding year and that price index published for the December
25 of the year before the preceding year.

26 “(ii) A percentage increase under clause (i) shall be adjusted to the nearest one-tenth of
27 one percent, and an amount determined under clause (i) shall be rounded to the nearest multiple
28 of \$1,000 (or, if midway between multiples of \$1,000, to the next higher multiple of \$1,000).”.

[Please note: The “Changes to Existing Law” section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This proposal would amend sections 3523 and 9902 of title 5, United States Code (U.S.C.), by increasing the maximum amount of separation pay authorized for Voluntary Separation Incentive Pay (VSIP) from the current ceiling of \$25,000 to \$40,000, and includes an annual adjustment in accordance with the Consumer Price Index. The maximum payable amount has not been adjusted since VSIP was first authorized by the Chief Human Capital Officers Act of 2002 (title XIII of Public Law 107-296).

The Government-wide VSIP authority under 5 U.S.C. 3521-3525 allows agencies to seek approval from the Office of Personnel Management to offer lump-sum payments to employees who are in surplus positions or have skills that are no longer needed in the workforce, as an incentive to separate. Under this authority, agencies may pay up to \$25,000, or an amount equal to the amount of severance pay an employee would be entitled to receive, whichever is less. Employees may separate to accept VSIP by resignation, optional retirement, or by voluntary early retirement, if authorized. VSIP is an option for increasing voluntary attrition in agencies that are downsizing or restructuring.

Budget Implications: Adoption of the proposal would initially increase the maximum VSIP amount from \$25,000 to \$40,000 for buyouts paid to avoid involuntary separations during periods of personnel reductions. For each year thereafter, the \$40,000 cap would be adjusted according to the Consumer Price Index. It will not change the severance pay formulas used to calculate the actual VSIP amount. The VSIP amounts, including any increase, are paid from the same source as the employees’ salaries, which are largely derived from annual appropriations.

Changes to Existing Law: This proposal would make the following changes to title 5, United States Code:

§3523. Authority to provide voluntary separation incentive payments

(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

(b) A voluntary incentive payment-

- (1) shall be offered to agency employees on the basis of-
 - (A) 1 or more organizational units;
 - (B) 1 or more occupational series or levels;
 - (C) 1 or more geographical locations;
 - (D) skills, knowledge, or other factors related to a position;
 - (E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or
 - (F) any appropriate combination of such factors;
- (2) shall be paid in a lump sum after the employee's separation;
- (3) shall be equal to the lesser of-
 - (A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or
 - (B) an amount determined by the agency head, not to exceed ~~\$25,000~~ \$40,000 (as adjusted in accordance with subsection (c));
- (4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;
- (5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;
- (6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other ¹ separation; and
- (7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

(c) CONSUMER PRICE INDEX ADJUSTMENT.—(1) On March 1 of each year, the dollar amount specified in subsection (b)(3)(B) shall be adjusted by the amount determined by the Secretary of Labor to represent the percentage increase, if any, between the Consumer Price Index (all items; United States city average) published for December of the preceding year and that price index published for the December of the year before the preceding year.

(2) A percentage increase under paragraph (1) shall be adjusted to the nearest one-tenth of one percent, and an amount determined under paragraph (1) shall be rounded to the nearest multiple of \$1,000 (or, if midway between multiples of \$1,000, to the next higher multiple of \$1,000).

§9902. Department of Defense personnel authorities

(f) PROVISIONS RELATED TO SEPARATION AND RETIREMENT INCENTIVES.—

(1) The Secretary may establish a program within the Department of Defense under which employees may be eligible for early retirement, offered separation incentive pay to separate from service voluntarily, or both. This authority may be used to reduce the number of personnel employed by the Department of Defense or to restructure the workforce to meet mission objectives without reducing the overall number of personnel. This authority is in addition to, and notwithstanding, any other authorities established by law or regulation for such programs.

(2)(A) The Secretary may not authorize the payment of voluntary separation incentive pay under paragraph (1) to more than 25,000 employees in any fiscal year, except that employees who

receive voluntary separation incentive pay as a result of a closure or realignment of a military installation under the Defense Base Closure and Realignment Act of 1990 (title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) shall not be included in that number.

(B) The Secretary shall prepare a report each fiscal year setting forth the number of employees who received such pay as a result of a closure or realignment of a military base as described under subparagraph (A).

(C) The Secretary shall submit the report under subparagraph (B) to the Committee on Armed Services and the Committee on Governmental Affairs of the Senate, and the Committee on Armed Services and the Committee on Government Reform of the House of Representatives.

(3) For purposes of this section, the term "employee" means an employee of the Department of Defense, serving under an appointment without time limitation, except that such term does not include-

(A) a reemployed annuitant under subchapter III of chapter 83 or chapter 84, or another retirement system for employees of the Federal Government;

(B) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under any of the retirement systems referred to in subparagraph (A); or

(C) for purposes of eligibility for separation incentives under this section, an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance.

(4) An employee who is at least 50 years of age and has completed 20 years of service, or has at least 25 years of service, may, pursuant to regulations promulgated under this section, apply and be retired from the Department of Defense and receive benefits in accordance with chapter 83 or 84 if the employee has been employed continuously within the Department of Defense for more than 30 days before the date on which the determination to conduct a reduction or restructuring within 1 or more Department of Defense components is approved.

(5)(A) Separation pay shall be paid in a lump sum or in installments and shall be equal to the lesser of-

(i) an amount equal to the amount the employee would be entitled to receive under section 5595(c), if the employee were entitled to payment under such section; or

(ii) \$25,000 an amount determined by the Secretary, not to exceed \$40,000 (as adjusted under subparagraph (D)).

(B) Separation pay shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit. Separation pay shall not be taken into account for the purpose of determining the amount of any severance pay to which an individual may be entitled under section 5595, based on any other separation.

(C) Separation pay, if paid in installments, shall cease to be paid upon the recipient's acceptance of employment by the Federal Government, or commencement of work under a personal services contract as described in paragraph (6).

(D)(i) On March 1 of each year, the dollar amount specified in subparagraph (A)(ii) shall be adjusted by the amount determined by the Secretary of Labor to represent the percentage increase, if any, between the Consumer Price Index (all items; United States city average) published for December of the preceding year and that price index published for the December of the year before the preceding year.

(ii) A percentage increase under clause (i) shall be adjusted to the nearest one-tenth of one percent, and an amount determined under clause (i) shall be rounded to the nearest multiple of \$1,000 (or, if midway between multiples of \$1,000, to the next higher multiple of \$1,000).

(6)(A) An employee who receives separation pay under such program may not be reemployed by the Department of Defense for a 12-month period beginning on the effective date of the employee's separation, unless this prohibition is waived by the Secretary on a case-by-case basis.

(B) An employee who receives separation pay under this section on the basis of a separation occurring on or after the date of the enactment of the Federal Workforce Restructuring Act of 1994 (Public Law 103–226; 108 Stat. 111) and accepts employment with the Government of the United States, or who commences work through a personal services contract with the United States within 5 years after the date of the separation on which payment of the separation pay is based, shall be required to repay the entire amount of the separation pay to the Department of Defense. If the employment is with an Executive agency (as defined by section 105) other than the Department of Defense, the Director may, at the request of the head of that agency, waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is within the Department of Defense, the Secretary may waive the repayment if the individual involved is the only qualified applicant available for the position. If the employment is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position. If the employment is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

(7) Under this program, early retirement and separation pay may be offered only pursuant to regulations established by the Secretary, subject to such limitations or conditions as the Secretary may require.

1 “(1) IN GENERAL.—The head of a Federal agency, on request from or with the
2 concurrence of an external organization, and with the consent of the employee concerned,
3 may arrange for the assignment of—

4 “(A) an employee of the Federal agency, other than a noncareer appointee,
5 a limited term appointee, or a limited emergency appointee (as such terms are
6 defined in section 3132(a)) in the Senior Executive Service or an employee in a
7 position that has been excepted from the competitive service by reason of the
8 position’s confidential, policy-determining, policy-making, or policy-advocating
9 character, to an external organization; and

10 “(B) an employee of an external organization to the Federal agency.

11 “(2) TYPE OF WORK.—An assignment described in paragraph (1) shall be for work
12 involving science, technology, engineering, or mathematics that—

13 “(A) is of mutual concern to the Federal agency and the external
14 organization; and

15 “(B) the head of the Federal agency determines will be beneficial to the
16 Federal agency and the external organization.

17 “(3) PERIOD OF ASSIGNMENT.—A period of the assignment under this chapter may
18 not exceed two years, except that the head of a Federal agency may extend a period of
19 assignment for not more than two additional years.

20 “(b) AUTHORITY AND APPLICABILITY.—This chapter is authority for and applies to the
21 assignment of—

22 “(1) an employee of a Federal agency to an external organization; and

23 “(2) an employee of an external organization to a Federal agency.

1 “(c) AGREEMENT TO SERVE IN THE CIVIL SERVICE.—

2 “(1) IN GENERAL.—An employee of a Federal agency may be assigned under this
3 chapter only if the employee agrees, as a condition of accepting an assignment under this
4 chapter, to serve in the Federal agency upon the completion of the assignment for a
5 period equal to the length of the assignment.

6 “(2) FAILURE TO CARRY OUT THE AGREEMENT.—Each agreement required under
7 paragraph (1) shall provide that, in the event the employee fails to carry out the
8 agreement (except for good and sufficient reason, as determined by the head of the
9 Federal agency from which the employee is assigned), the employee shall be liable to the
10 United States for payment of all expenses (excluding salary) of the assignment. The
11 amount shall be treated as a debt due the United States.

12 “(d) TERMINATION.—An assignment under this chapter may be terminated by the Federal
13 agency or external organization concerned for any reason at any time.

14 **“§3803. Assignment of employees to external organizations**

15 “(a) IN GENERAL.—An employee of a Federal agency assigned to an external
16 organization under this chapter is deemed, during the assignment, to be either—

17 “(1) on detail to a regular work assignment in the employee’s Federal agency; or

18 “(2) on leave without pay from the employee’s position in the Federal agency.

19 “(b) REQUIREMENTS.—An employee assigned either on detail or on leave without pay
20 under this chapter remains an employee of the Federal agency from which the employee is
21 assigned.

22 “(c) TORTS.—The Federal Tort Claims Act and any other Federal tort liability statute
23 apply to an employee so assigned.

1 “(d) SUPERVISION.—The supervision of the duties of an employee on detail may be
2 governed by the agreement between the Federal agency and the external organization concerned.

3 “(e) REIMBURSEMENT.—The assignment of an employee of a Federal agency either on
4 detail or on leave without pay to an external organization under this chapter may be made with or
5 without reimbursement by the external organization for the travel and transportation expenses to
6 or from the place of assignment and for the pay, or for supplemental pay, or a part thereof, of the
7 employee during assignment. Any reimbursements shall be credited to the appropriation of the
8 Federal agency used for paying the travel and transportation expenses or pay.

9 “(f) EMPLOYEES ON LEAVE WITHOUT PAY.—

10 “(1) IN GENERAL.—For any employee so assigned and on leave without pay from
11 the employee’s Federal agency, notwithstanding section 209 of title 18—

12 “(A) the rate of pay for employment by an external organization may not
13 exceed the rate of pay that the employee would be paid for continued service in
14 the position in the Federal agency from which the employee is assigned;

15 “(B) if the rate of pay for employment by an external organization is less
16 than the rate of basic pay (including any applicable locality-based comparability
17 payment under section 5304 or similar provision of law, or any applicable special
18 rate supplement under section 5305 or similar provision of law) the employee
19 would have received for continued service in the employee’s regular assignment
20 in the Federal agency, the employee is entitled to receive supplemental pay from
21 the Federal agency in an amount equal to the difference between the external
22 organization rate and the Federal agency rate;

1 “(C) the employee is entitled to annual and sick leave to the same extent as
2 if the employee had continued in the regular assignment in the Federal agency;
3 and

4 “(D) except as provided in paragraph (2), the employee is entitled,
5 notwithstanding any other provision of law—

6 “(i) to continuation of the employee’s insurance under chapter 87,
7 and coverage under chapter 89 or other applicable authority, so long as the
8 employee pays currently into the Employee’s Life Insurance Fund and the
9 Employee’s Health Benefits Fund or other applicable health benefits
10 system (through the employing Federal agency) the amount of the
11 employee contributions;

12 “(ii) to credit the period of assignment under this chapter as
13 creditable service for purposes of periodic step-increases, retention, and
14 leave accrual and on payment into the Civil Service Retirement and
15 Disability Fund or other applicable retirement system of the percentage of
16 pay from the external organization, and of any supplemental pay that
17 would have been deducted from a like Federal agency pay for the period
18 of the assignment and payment by the Federal agency into the fund or
19 system of the amount that would have been payable by the Federal agency
20 during the period of the assignment with respect to a like Federal agency
21 pay, to treat the employee’s service during that period as service of the
22 type performed in the Federal agency immediately before the employee’s
23 assignment; and

1 “(iii) for the purpose of subchapter I of chapter 85, to credit the
2 service performed during the period of the employee’s assignment under
3 this chapter as Federal service, and to consider external organization pay
4 (and any supplemental pay) as Federal wages, and to the extent that the
5 service could also be the basis for entitlement to unemployment
6 compensation under a State law, to elect to claim unemployment
7 compensation on the basis of the service under either the State law or
8 subchapter I of chapter 85.

9 “(2) SPECIAL RULE.—An employee or the employee’s beneficiary may not receive
10 benefits referred to in clauses (i) and (ii) of paragraph (1)(D), based on service during an
11 assignment under this chapter for which the employee or, if the employee dies without
12 making such an election, the employee’s beneficiary elects to receive benefits, under any
13 external organization retirement or insurance law or program, which the Office
14 determines to be similar. The Federal agency shall deposit currently in the Employee’s
15 Life Insurance Fund, the Employee’s Health Benefits Fund, or other applicable health
16 benefits system, respectively, the amount of the Federal Government’s contributions on
17 account of service with respect to which employee contributions are collected as provided
18 in clauses (i) and (ii) of paragraph (1)(D).

19 “(d) DEATH OR DISABILITY.—

20 “(1) IN GENERAL.—An employee so assigned and on leave without pay who dies
21 or suffers disability as a result of personal injury sustained while in the performance of
22 duty during an assignment under this chapter shall be treated, for the purpose of
23 subchapter I of chapter 81, as though such employee were an employee as defined by

1 section 8101 who had sustained the injury in the performance of duty. When an employee
2 (or the employee’s dependents in case of death) who is entitled by reason of injury or
3 death to benefits under subchapter I of chapter 81 is also entitled to benefits from an
4 external organization for the same injury or death, the employee (or the employee’s
5 dependents in case of death) shall elect which benefits to receive. The election shall be
6 made within 1 year after the injury or death, or such later time as the Secretary of Labor
7 may allow for reasonable cause shown. When made, the election is irrevocable unless
8 otherwise provided by law.

9 “(2) BENEFITS RULE.—An employee so assigned who elects to receive benefits
10 from an external organization may not receive an annuity from a Federal employee
11 retirement system and benefits from the external organization for personal injury or
12 disability covering the same period of time. Nothing in this paragraph shall be
13 construed—

14 “(A) to bar the right of a claimant to the greater benefit conferred by either
15 the external organization or a Federal employee retirement system for any part of
16 the same period of time;

17 “(B) to deny to an employee an annuity accruing under a Federal
18 employee retirement system on account of service performed by the employee; or

19 “(C) to deny any concurrent benefit to the employee from the external
20 organization on account of the death of another individual.

21 **“§3804. Assignment of employees from external organizations**

22 “(a) IN GENERAL.—An employee of an external organization who is assigned to a Federal
23 agency under an arrangement under this chapter shall, prior to the commencement of the

1 assignment, successfully undergo the same level of background investigation and security
2 clearance and the same type of adjudication to which an incumbent of the position would
3 normally be subject, and may—

4 “(1) be appointed in the Federal agency without regard to the provisions of this
5 title governing appointment in the competitive service for the agreed period of the
6 assignment; or

7 “(2) be deemed to be on detail to the Federal agency.

8 “(b) PAY AND FEDERAL STATUS.—

9 “(1) IN GENERAL.—An employee so assigned is entitled to pay in accordance with
10 chapter 51 and subchapter III of chapter 53 or other applicable law, and is deemed an
11 employee of the Federal agency for all purposes except—

12 “(A) subchapter III of chapter 83 or other applicable Federal employee
13 retirement system;

14 “(B) chapter 87; and

15 “(C) chapter 89 or other applicable health benefits system unless the
16 employee’s appointment results in the loss of coverage in a group health benefits
17 plan the premium of which has been paid in whole or in part by an external
18 organization contribution.

19 “(2) SPECIAL RULE FOR CERTAIN NON-FEDERAL EMPLOYEES.—The exceptions
20 described in subparagraphs (A) through (C) of paragraph (1) shall not apply to a non-
21 Federal employee who is covered by chapters 83, 87, and 89 by virtue of the employee’s
22 non-Federal employment immediately before assignment and appointment under this
23 section.

1 “(c) EXTERNAL ORGANIZATION EMPLOYEE ON DETAIL.—

2 “(1) IN GENERAL.—During the period of assignment, an external organization
3 employee on detail to a Federal agency—

4 “(A) is not entitled to pay from the Federal agency, except to the extent
5 that the pay received from the external organization is less than the appropriate
6 rate of pay that the duties would warrant under the applicable pay provisions of
7 this title or other applicable authority;

8 “(B) is deemed an employee of the Federal agency for the purpose of—

9 “(i) chapter 73;

10 “(ii) the Ethics in Government Act of 1978;

11 “(iii) chapter 21 of title 41;

12 “(iv) sections 203, 205, 207, 208, 209, 602, 603, 606, 607, 643,
13 654, 1905, and 1913 of title 18;

14 “(v) sections 1343, 1344, and 1349(b) of title 31; and

15 “(vi) chapter 171 of title 28 (commonly known as the Federal Tort
16 Claims Act) and any other Federal tort liability statute;

17 “(C) may not have access to any trade secrets or to any other nonpublic
18 information which is of commercial value to the private sector organization from
19 which he is assigned; and

20 “(D) is subject to such regulations as the Director may prescribe.

21 “(2) SUPERVISION OF DUTIES.—The supervision of the duties of such an employee
22 may be governed by agreement between the Federal agency and the external organization
23 concerned. A detail of an external organization employee to a Federal agency may be

1 made with or without reimbursement by the Federal agency for the pay, or a part thereof,
2 of the employee during the period of assignment, or for the contribution of the external
3 organization, or a part thereof, to employee benefit systems.

4 “(d) DISABILITY OR DEATH.—

5 “(1) IN GENERAL.—An external organization employee who is given an
6 appointment in a Federal agency for the period of the assignment or who is on detail to a
7 Federal agency and who suffers disability or dies as a result of personal injury sustained
8 while in the performance of duty during the assignment shall be treated, for the purpose
9 of subchapter I of chapter 81, as though the employee were an employee as defined by
10 section 8101 who had sustained the injury in the performance of duty.

11 “(2) ELECTION OF BENEFITS.—When an employee (or the employee’s dependents
12 in case of death) entitled by reason of injury or death to benefits under subchapter I of
13 chapter 81 is also entitled to benefits from an external organization for the same injury or
14 death, the employee (or the employee’s dependents in case of death) shall elect which
15 benefits to receive.

16 “(3) TIMING OF ELECTION.—The election shall be made within one year after the
17 injury or death, or such later time as the Secretary of Labor may allow for reasonable
18 cause shown.

19 “(4) IRREVOCABILITY OF ELECTION.—When made, the election is irrevocable
20 unless otherwise provided by law.

21 “(e) EXTERNAL ORGANIZATION FAILURE TO CONTINUE CERTAIN EMPLOYER
22 CONTRIBUTIONS.—If an external organization fails to continue the employer’s contribution to the
23 external organization retirement, life insurance, and health benefit plans for an external

1 organization employee who is given an appointment in a Federal agency under this chapter, the
2 employer's contributions covering the external organization employee's period of assignment, or
3 any part thereof, may be made from the appropriations of the Federal agency concerned.

4 **“§3805. Travel expenses**

5 “(a) IN GENERAL.—Appropriations of a Federal agency are available to pay, or
6 reimburse, a Federal or external organization employee assigned under this chapter in
7 accordance with—

8 “(1) subchapter I of chapter 57, for the expenses of—

9 “(A) travel, including a per diem allowance, to and from the assignment
10 location;

11 “(B) a per diem allowance at the assignment location during the period of
12 the assignment; and

13 “(C) travel, including a per diem allowance, while traveling on official
14 business away from the employee's designated post of duty during the assignment
15 when the head of the Federal agency considers the travel in the interest of the
16 United States;

17 “(2) section 5724, for the expenses of transportation of the employee's immediate
18 family and household goods and personal effects to and from the assignment location;

19 “(3) section 5724a(a), for the expenses of per diem allowances for the immediate
20 family of the employee to and from the assignment location;

21 “(4) section 5724a(c), for subsistence expenses of the employee and the
22 employee's immediate family while occupying temporary quarters at the assignment
23 location and on return to the employee's former post of duty;

1 “(5) section 5724a(f), to be used by the employee for miscellaneous expenses
2 related to change of station where movement or storage of household goods is involved;
3 and

4 “(6) section 5726(c), for the expenses of nontemporary storage of household
5 goods and personal effects in connection with assignment at an isolated location.

6 “(b) PAYMENT OF EXPENSES CONDITIONED ON A WRITTEN AGREEMENT.—Expenses
7 specified in subsection (a), other than those in paragraph (1)(C), may not be allowed in
8 connection with the assignment of a Federal or external organization employee under this
9 chapter, unless and until the employee agrees in writing to complete the entire period of
10 assignment or one year, whichever is shorter, unless the employee is separated or reassigned for
11 reasons beyond the employee’s control that are acceptable to the Federal agency concerned.

12 “(c) RECOVERY OF EXPENSES AS A DEBT DUE THE UNITED STATES.—If the employee
13 violates the agreement, the money spent by the United States for these expenses is recoverable
14 from the employee as a debt due the United States.

15 “(d) WAIVER OF RECOVERY OF EXPENSES AS A DEBT DUE THE UNITED STATES.—The
16 head of the Federal agency concerned may waive in whole or in part a right of recovery under
17 this subsection with respect to an external organization employee on assignment with the agency
18 if it is shown that the recovery would be against equity and good conscience or against the public
19 interest.

20 “(e) EXPENSES UNDER SECTION 5742.—Appropriations of a Federal agency are available
21 to pay expenses under section 5742 with respect to a Federal or external organization employee
22 assigned under this chapter.

23 **“§3806. Reporting and evaluation**

1 “(a) REPORTING.—

2 “(1) IN GENERAL.—Each Federal agency that makes an assignment under this
3 chapter shall submit to Congress two reports assessing the impact of the Federal agency’s
4 use of the authority provided under this chapter.

5 “(2) CONTENT OF REPORTS.—Each such report shall include—

6 “(A) the total number of individuals assigned to, and the total number of
7 individuals assigned from, the Federal agency during the reporting period;

8 “(B) a description of situations—

9 (i) in which the Federal agency was unable to resolve potential
10 conflicts of interest; and

11 (ii) that prevented a desired assignment under this chapter;

12 “(C) the respective positions to and from which an individual was
13 assigned, including the duties and responsibilities and the pay level associated
14 with each position; and

15 “(D) any additional data and analysis specified by the Director.

16 “(3) SUBMISSION OF REPORTS.—Each agency that makes an assignment under this
17 chapter shall submit a report described in this subsection—

18 “(A) not later than December 31, 2021; and

19 “(B) not later than December 31, 2025.

20 “(4) FEDERAL AGENCY COOPERATION.—Upon request, each Federal agency that
21 submits a report under this section shall forward a copy of such report to the Director.

22 “(b) EVALUATION AND PROGRAM CONTINUATION DETERMINATION.—

1 “(1) IN GENERAL.—After Federal agency reports are provided to Congress on
2 December 31, 2021, and December 31, 2025, respectively, the Office shall—

3 “(A) evaluate the efficiency and effectiveness of the Industry Exchange
4 Programs established under this chapter; and

5 “(B) determine whether to continue the authority to make assignments
6 under this chapter.

7 “(2) CONGRESSIONAL NOTIFICATION.—The Office shall notify the Congress of the
8 Office’s determination under paragraph (1)(B).

9 **“§3807. Regulations**

10 “The Director may, in consultation with the Director of the Office of Government Ethics,
11 prescribe regulations for the administration of this chapter but is not required to promulgate
12 regulations prior to implementation.”.

 (b) CONFORMING AMENDMENT.—Section 209(g)(1) of title 18, United States Code, is
amended by striking “chapter 37” and inserting “chapters 37 and 38”.

13 (c) CLERICAL AMENDMENT.—The table of chapters at the beginning of part III of title 5,
14 United States Code, is amended by inserting after the item relating to chapter 37 the following:
“38. Assignments to and From External Organizations.....2941”.

Section-by-Section Analysis

 This proposal would create a mechanism to provide for the exchange of ideas and expertise between the Federal Government and the private sector through the creation of a new chapter 38 in title 5 of the United States Code. Many agencies increasingly need specialized talent that is not commonly found in the Federal Government to work on specific projects or initiatives. This is particularly the case in science, technology, and other fields where rapidly evolving skill-sets present challenges. While programs exist that provide for the exchange of ideas and talent among the Federal Government, State and local governments and academia, the programs do not include the private sector. This proposal would re-establish the statutory authority for a private industry exchange program similar to the information technology exchange program that is authorized in chapter 37 of title 5, United States Code.

Budget Implications: OPM does not believe this proposal has any significant Government-wide cost implications. A budget table is inapplicable and has not been provided.

Resubmission Justification: This proposal is being submitted for the first time.

Changes to Existing Law: This proposal would establish a new chapter 38 of title 5, United States Code, shown in full in the legislative language above.