

CRS Report for Congress

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NASA Workforce Flexibilities: H.R. 1085 and S. 610, 108th Congress

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NASA Workforce Flexibilities: H.R. 1085 and S. 610, 108th Congress

Summary

Various personnel flexibilities would be provided to the National Aeronautics and Space Administration (NASA) under legislation currently pending in both the House of Representatives and the Senate. H.R. 1085, the NASA Flexibility Act of 2003, was introduced by Representative Sherwood Boehlert on March 5, 2003. S. 610, the NASA Flexibility Act of 2003, was introduced by Senator George Voinovich on March 13, 2003. H.R. 1836, the Civil Service and National Security Personnel Improvement Act, introduced by Representative Tom Davis on April 29, 2003, includes, in Title III, Subtitle B, provisions similar to those in S. 610, as introduced.

This report compares H.R. 1085, as reported to the House, and S. 610, as passed by the Senate, with current law. (See CRS Report RL31924 for H.R. 1836.) Both bills would provide enhanced flexibilities for human resources management at NASA by creating a new Chapter 98 on NASA in Title 5 of the *United States Code*.

H.R. 1085 and S. 610, among other provisions, would provide more remunerative amounts of, and greater flexibility in administering, recruitment, relocation, and retention bonuses; permit term appointments of up to six years; and authorize pay up to the Vice President's salary for critically needed scientific, technical, professional, or administrative personnel. Both bills also would allow the Administrator of NASA to place limited term and limited emergency appointees in career-reserved positions in the Senior Executive Service. Career-reserved positions are required by statute to be filled by career appointees. Unlike, S. 610, H.R. 1085 would allow a personnel management demonstration project at NASA to cover up to 8,000 employees, rather than the up to 5,000 employees permitted under current law.

This report will be updated as legislative actions occur.

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NASA Workforce Flexibilities: H.R. 1085 and S. 610, 108th Congress

Introduction and Background

Legislation is pending in both the House of Representatives and the Senate to provide various personnel flexibilities to the National Aeronautics and Space Administration (NASA).

Two bills were introduced in March 2003. In the House, Representative Sherwood Boehlert introduced H.R. 1085, the NASA Flexibility Act of 2003, on March 5, 2003, and it was referred to the House Committees on Government Reform and Science. The Science Committee conducted a hearing on H.R. 1085 on March 12, 2003, and its Subcommittee on Space and Aeronautics marked up the bill on June 26, 2003. The subcommittee forwarded H.R. 1085, as amended, to the full committee, by voice vote the same day. Representative Bart Gordon, Ranking Democrat on the subcommittee, opposed the bill. According to a Science Committee Democratic Membership news release, Representative Gordon said that he is “disappointed that we didn’t wait for the Columbia Accident Investigation Board to report before marking up NASA workforce legislation.” He explained his opposition as follows:

On May 13th of this year, all of the members of the Democratic caucus of the Science Committee sent a joint letter to Chairman Boehlert¹ In that letter, we asked him to delay the markup of any NASA workforce legislation until the Columbia Accident Investigation Board has reported and the Committee has had a chance to review its findings and recommendations. Admiral Gehman has said on several occasions that the accident investigation board is examining issues related to NASA’s personnel, contractors, and culture as it attempts to ascertain the root causes of the accident. Indeed, Admiral Gehman was quoted in yesterday’s *Washington Post* as saying a “goodly portion of the report, perhaps half,” will deal with issues of management at NASA. We should wait to hear what the board concludes before we adopt legislative provisions that might prove either counterproductive or insufficient to address the underlying problems identified by the board.²

Among Representative Gordon’s other concerns are these: that issues affecting all NASA employees be considered, questions why the demonstration project

¹ Letter to Representative Sherwood Boehlert, Chairman, House Committee on Science, May 13, 2003.

² House Science Committee, Democratic Membership, Ranking Democrat Gordon Opposes Passage of NASA Workforce Bill, June 26, 2003. Available on the Internet at [http://www.house.gov/science_democrats/welcome.htm].

authority is being requested by NASA and how it will be used, and wants to protect the rights of NASA's workers.³

On July 22, 2003, the House Committee on Science marked up the bill and ordered it to be reported, as amended, on a 21-14 vote. During mark up, the committee, by a 22-16 roll call vote, agreed to a manager's amendment offered by Representative Boehlert which removed the provision on voluntary separation incentives (commonly referred to as buyouts), would require NASA's workforce plan to address reforms recommended by the Columbia Accident Investigation Board (CAIB), and would require NASA to report any modifications to its workforce plan to Congress and employees 60 days before implementation. Other amendments agreed to by the committee by voice vote would establish eligibility requirements for the science and technology scholarship program, would require that NASA's workforce plan include safeguards for not compromising the safety or survival of any spacecraft or crew, would provide that certain workforce authorities authorized in the bill would not apply to political appointees, and would express the sense of Congress that NASA conduct a continuing program to recruit members of minority groups for positions in the agency.

Among other amendments considered by the committee were the following.

- To remove the provision which would have increased the number of employees that could be covered by a demonstration project. The amendment was defeated on a 20-20 roll call vote.
- To enhance NASA's independent safety office directing NASA to address Space Shuttle crew escape; put a moratorium on buyouts until the NASA Administrator certifies that critical safety skills will not be lost; and put a moratorium on additional contracting out until NASA has responded to Congress on the CAIB recommendations. The amendment was ruled non-germane to the bill and the motion to table the appeal of the ruling of the chair was adopted on a 22-19 roll call vote.
- To establish a requirement for a new strategic resource review for the human spaceflight program. The amendment was withdrawn after assurances from the committee chairman that the issue would be addressed in the committee report on the bill.⁴
- To establish goals for NASA's human spaceflight program. The amendment was defeated on a 12-18 roll call vote.

³ Ibid.

⁴ The House Committee on Science report accompanying H.R. 1085 (H.Rept. 108-244, Part 1) "directs NASA to conduct a strategic resources review of its human space flight programs" and "provide a report containing the results of the strategic resources review to the House Science Committee and the Senate Commerce, Science and Transportation Committee within one year of the enactment of this Act." (p. 27)

- To require the National Academy of Public Administration to conduct an independent assessment of NASA's use of existing workforce flexibilities. The amendment was defeated on a 9-13 roll call vote.
- To reinstate the Minority University and Research Education programs as a Division after it was demoted to program status by NASA. The amendment was defeated on a 12-18 roll call vote.
- To add a new section to the bill on crew safety. The amendment was ruled non-germane to the bill.⁵

H.R. 1085 was reported (H.Rept. 108-244 Part 1) on August 4, 2003. The House Committee on Government Reform was discharged from considering the bill the same day.

According to the Congressional Budget Office (CBO), H.R. 1085 would cost an estimated \$70 million dollars over the period FY2004 through FY2008. Specifically, CBO estimates the cost at \$5 million (FY2004), \$11 million (FY2005), \$16 million (FY2006), \$19 million (FY2007), and \$19 million (FY2008).⁶

Commenting on the bill approved by the committee, the chairman, Representative Boehlert said:

H.R. 1085 is a moderate, targeted, careful approach to enable NASA to overcome one of its fundamental, pressing problems. In the next few months, this Committee is going to spend a lot of time figuring out how to address a range of issues at NASA. Here's something we know how to do right now. It's time to act.⁷

A House Science Committee Democratic Caucus news release stated that the Democrats opposed committee passage of H.R. 1085. The Ranking Democratic Member, Representative Ralph Hall said:

The process by which we rushed to move this bill, and to defeat a series of amendments that any fair observer would say could only enhance the bill, disappointed and surprised me. I think we are doing too little, compared to what the CAIB may recommend, too soon, since we could wait five weeks and come

⁵ U.S. House Science Committee Democratic Caucus, *Committee Bill Fails to Deal With Safety and Vision at NASA*, July 22, 2003. Available on the Internet at [http://www.house.gov/science_democrats/releases/03jul22.htm]. U.S. Congress, House Committee on Science, *NASA Flexibility Act of 2003*, report to accompany H.R. 1085, 108th Cong., 1st sess., H.Rept. 108-244 Part 1 (Washington: GPO, 2003), pp. 219-220. Hereafter referred to as H.Rept. 108-244 Part 1.

⁶ H.Rept. 108-244 Part 1, p. 29.

⁷ U.S. House Committee on Science, *NASA Workforce Bill Approved by Committee*, July 22, 2003. Available on the Internet at [<http://www.house.gov/science/press/108/108-102.htm>].

back and do this with the Board report in hand. In any event, I am convinced that we will have to revisit all of these issues to build a safer NASA.⁸

In the Senate, Senator George Voinovich introduced S. 610, the NASA Workforce Flexibility Act of 2003, on March 13, 2003, and it was referred to the Senate Committee on Governmental Affairs. The committee's Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia conducted a hearing on human capital at NASA on March 6, 2003. The bill was marked-up by the full committee and ordered to be reported with an amendment in the nature of a substitute on June 17, 2003. The amendment in the nature of a substitute to the bill, offered by Senators Voinovich and Thomas Carper and further modified by an amendment by Senator Richard Durbin, and agreed to by the committee, included changes which would require NASA's workforce plan to discuss the CAIB's workforce recommendations; would remove the provision which would have lifted the cap on the number of employees who could participate in a demonstration project at NASA; would provide that no more than 25% of the total number of recruitment, redesignation, relocation, and retention bonuses awarded in any year could be awarded to supervisors or management officials; and would add language to restrict exchange assignments to individuals in scientific and technical positions. S. 610 was reported (S.Rept. 108-113) on July 28, 2003.⁹

The CBO estimates that S. 610 would cost \$80 million dollars over the period FY2004 through FY2008. Specifically, CBO estimates the cost at \$6 million (FY2004), \$13 million (FY2005), \$18 million (FY2006), \$21 million (FY2007), and \$22 million (FY2008).¹⁰ The estimate for S. 610 is higher than that for H.R. 1085 because the Senate bill, as reported, but not as passed, would have authorized an exchange program between NASA and the private sector that is not included in the House bill.

In the committee report accompanying S. 610, Senator Durbin expressed his view that the provision in the bill which would authorize exchange assignments between NASA and private sector employees "raises serious concerns about the potential for conflicts of interest."¹¹ He noted Senator Voinovich's commitment to address such concerns and said that he was confident of making further progress on the provision prior to consideration of the legislation by the Senate. Senator Daniel Akaka also presented his views in the committee report, stating that, "As Congress prepares to grant new personnel flexibilities to NASA, Congress must provide strong

⁸ U.S. House Science Committee Democratic Caucus, *Committee Bill Fails to Deal With Safety and Vision at NASA*, July 22, 2003. Available on the Internet at [http://www.house.gov/science_democrats/releases/03jul22.htm].

⁹ U.S. Congress, Senate Committee on Governmental Affairs, *NASA Workforce Flexibility Act of 2003*, report to accompany S. 610, 108th Cong., 1st sess., S.Rept. 108-113 (Washington: GPO, 2003).

¹⁰ *Ibid.*, pp. 8-9.

¹¹ *Ibid.*, p. 11.

oversight over the agency's operational, managerial, and safety challenges.”¹² Specifically, with regard to the provision on the exchange assignments, Mr. Akaka believes that

For the [exchange] program to be effective, there must be in place an adequate internal management structure that is transparent and accountable.

For the proposed exchange program to work there needs to be sufficient safeguards to make certain that the program does not result in workforce shortfalls. NASA should not lose more employees and talent than it gains from the private sector. As such, there should be controls over the proportion and number of private sector and NASA employees who participate in the program.

The provision would benefit from additional safeguards to ensure that contractors do not use the program to gain a competitive advantage in future contracts with NASA. One way to address that concern is to institute a cooling off period whereby contractors participating in the program would be restricted from contracting with NASA for an appropriate period of time. Moreover, there need to be assurances that minority owned and small businesses have the access to participate in the exchange program.

Although S. 610 does not specifically address contract management, I believe that with such heavy reliance on contract personnel, it is critical that there is effective and strong contract management at NASA.¹³

When the Senate proceeded to the consideration of S. 610 on November 24, 2003, Senator Voinovich, for himself and Senator Carper, offered a substitute amendment (No. 2214) that was agreed to by voice vote. The same day, the Senate agreed to the committee amendment, as amended, and passed the bill, as amended by voice vote and without debate. The substitute amendment dropped provisions in S. 610, as reported, that would have authorized exchange assignments for scientific and technical personnel between private-sector entities and NASA. It also reconciled differences between the H.R. 1085 and S. 610 provisions on distinguished scholar appointment authority, annual leave enhancements, and qualifications pay; and added reporting requirements that are similar to those in H.R. 1085.

On April 29, 2003, Representative Tom Davis introduced H.R. 1836, the Civil Service and National Security Personnel Improvement Act, and it was referred to the House Committees on Armed Services, Government Reform, Science, and Ways and Means.¹⁴ Title III, Subtitle B of the bill includes provisions on personnel flexibilities for NASA which are similar to those in S. 610, as introduced.¹⁵ The Government

¹² Ibid., p. 13.

¹³ Ibid.

¹⁴ H.R. 1836 was introduced pursuant to the Department of Defense's (DOD's) promulgating the proposal to transform the DOD civilian personnel system. See CRS Report RL31954, *Civil Service Reform: Analysis of the National Defense Authorization Act for FY2004*, by (name redacted).

¹⁵ See CRS Report RL31924, *Civil Service Reform — H.R. 1836, Homeland Security Act*, (continued...)

Reform Committee conducted a hearing on H.R. 1836 on May 6, 2003. The committee marked-up the bill and ordered it to be reported, amended, by voice vote on May 7, 2003. H.R. 1836 was reported to the House (H.Rept. 108-116 part 1) on May 19, 2003.¹⁶

This report compares H.R. 1085,¹⁷ as reported to the House, and S. 610, as passed by the Senate, with current law. Both bills would create a new Chapter 98 in Title 5 (Government Organization and Management) of the *United States Code* to provide enhanced flexibilities for human resources management at NASA.¹⁸ The side-by-side comparison follows the organization of H.R. 1085.

H.R. 1085 and S. 610 would, among other provisions, provide more remunerative amounts of, and greater flexibility in administering, recruitment, relocation, and retention bonuses; permit term appointments up to six years; and authorize pay up to the Vice President's salary (currently, \$201,600 in January 2004 until enactment of the omnibus appropriations bill, then expected to be \$203,000) for critically needed scientific, technical, professional, or administrative personnel. Unlike S. 610, H.R. 1085 would allow a personnel management demonstration project at NASA to cover up to 8,000 employees, rather than the up to 5,000 employees permitted under current law.

Both bills (H.R. 1085, Section 9814; S. 610, Section 9813) also would allow the Administrator of NASA to place limited term and limited emergency appointees in career-reserved positions in the Senior Executive Service (SES). Career-reserved positions are required by statute to be filled by career appointees and are designated as such if placing a career appointee in the position is necessary to ensure impartiality. As of June 30, 2002, NASA had 505 SES allocations; 330 of these were

¹⁵ (...continued)

and *Current Law*, by (name redacted) and (name redacted). The Title I (Department of Defense National Security Personnel System), Title II (Department of Defense Civilian Personnel), and Title IV (Human Capital Performance Fund) provisions of H.R. 1836 were inserted in H.R. 1588, the National Defense Authorization Act for FY2004, during mark-up of that bill and are in H.R. 1588, as passed by the House. The Title III, Subtitle A (Securities and Exchange Commission) provisions of H.R. 1836 were included in H.R. 658 which was enacted as P.L. 108-044 on July 3, 2003.

¹⁶ U.S. Congress, House Committee on Government Reform, *Civil Service and National Security Personnel Improvement Act*, report to accompany H.R. 1836, 108th Cong., 1st sess., H.Rept. 108-116 Part 1 (Washington: GPO, 2003).

¹⁷ As forwarded by the House Subcommittee on Space and Aeronautics to the Committee on Science, H.R. 1085 would have authorized voluntary separation incentive payments (VSIPs), commonly referred to as buyouts, of up to 50% of an employee's annual rate of basic pay for a limited number of employees. This provision is not included in H.R. 1085 as reported by the Committee on Science to the House of Representatives.

¹⁸ H.R. 1085, as introduced, would have added the chapter to Chapter 26 (National Space Program) of Title 42 (The Public Health and Welfare), *United States Code*. The House Space and Aeronautics Subcommittee amended H.R. 1085 during mark-up to add the chapter to Title 5 (Government Organization and Management).

career-reserved positions and the remaining were general positions which may be filled by a career, noncareer, or limited term appointees.¹⁹

If enacted, this provision would give the Administrator some additional flexibility in filling career reserved positions, but might also be seen as an encroachment upon the ranks of career appointments. On the one hand, it is likely that the head of NASA could fill a career-reserved position more quickly through the appointment of a limited appointee than through the hiring of a career appointee. However, the exercise of this authority would reduce the number of career-reserved positions within NASA available to career appointees. Finally, while this provision applies only to NASA, it is possible that, should this section be enacted, other agencies would view it as a precedent and request the same flexibility in filling career-reserved positions.

H.R. 1085 also would permit the Administrator to appoint individuals who are not career appointees in the SES to career-reserved positions. This provision, however, does not use the terms “limited term appointee” or “limited emergency appointee” to refer to an individual who would receive a temporary appointment. Apparently, H.R. 1085 would establish another category of SES appointee, one that is as yet unnamed and only for NASA. H.R. 1085 would be more restrictive than S. 610. Under the House bill, a career-reserved position would be vacant for someone other than a career appointee to be appointed to it, and it would be likely that the position would be eliminated within two years. A temporary appointment would be allowed for only two years, with possibility of a one-year extension. The Senate bill would provide the Administrator with broader authority, while H.R. 1085 perhaps would address a very specific need (i.e., filling career-reserved positions that might be eliminated within two years).

Other issues that may arise during consideration of the legislation include the following.

- With regard to the enhanced IPA authority extending assignments by four years instead of two years (H.R. 1085 and S. 610, 5 U.S.C. 9808): Should extensions of assignments continue to be reviewed in two-year increments if the proposed four year extension is adopted?
- With regard to the enhanced recruitment, relocation, and retention bonuses (H.R. 1085 and S. 610, 5 U.S.C. 9804, 9805) and the annual leave provisions (H.R. 1085, 5 U.S.C. 9813; S. 610, 5 U.S.C. 9812): what is unique about NASA that would require these more generous policies for NASA employees? According to the Office of Personnel Management, the existing recruitment, relocation, and retention bonus authorities are not being fully utilized by federal agencies. How fully has NASA used these?

¹⁹ Information provided electronically to CRS by the U.S. Office of Personnel Management, Office of Executive Resources Management, July 1, 2003.

During the March 6, 2003 Senate subcommittee hearing, Sean O’Keefe, Administrator of NASA, testified as to the reasons NASA is seeking the enhanced human resources management flexibilities. With regard to the various provisions of the legislation, he said that

[t]he NASA Industry Exchange Program ... introduces a means for NASA to engage in mutually beneficial, collaborate ventures with industry to infuse new ideas and perspectives into the Agency, develop new skills within the workforce, and strengthen mission capabilities. Without such authority, talented individuals from industry remain an untapped resource for the Agency since the salaries and benefits of the Federal sector are not competitive with the compensation packages offered to industry’s most talented workers.

Enhancing the Intergovernmental Personnel Act authority [which allows for exchanges between the federal government and state and local governments, universities, and non-profits] ... will allow individuals from academia or other institutions to continue working in support of long-term projects or programs when the need for continuity is critical.

Enhanced recruitment, relocation, and retention bonuses [authority] would base bonuses on the higher locality pay salaries, allow greater amounts when coupled with longer service agreements, and make more flexible payment options available ... [which] could be tailored to the situation at hand, and tie payment of the incentive to actual performance.

The enhanced annual leave provisions are targeted particularly to mid-career hires, who likely would give up attractive vacation packages to become first-time Federal employees These flexibilities help NASA to compete with the compensation packages available to private sector employers.

The bill’s provision to allow a limited number of term appointments to be extended up to six years, rather than four, will enhance its usefulness by accommodating the length of some NASA programs and projects. In addition, the bill provides that a term employee may be converted to a permanent position in the same line of work without further competition [provided requirements are met] Ultimately, it may make the concept of term appointments more attractive to potential applicants and thereby provide a more robust labor pool for NASA management to consider.

In order to attract world-class talent into NASA’s most essential positions [enhanced critical pay authority up to the Vice President’s salary is sought which] will help us to compete in an enormously competitive job market.

Separation incentives (buyouts) are a valuable tool to encourage voluntary attrition ... NASA needs the tools to encourage targeted attrition in areas in which the need for certain skills has diminished so that it can recruit and reshape a workforce that is aligned to current and future mission needs. [The authority to pay a higher amount as a buyout is requested because the current amount] is not always enough to entice highly paid NASA professionals to leave.

The [demonstration project] authority we are seeking would remove the coverage limit [of 5,000 employees] to allow widespread testing of new ideas.²⁰

The International Federation of Professional and Technical Engineers, AFL-CIO (IFPTE) represents more than 8,000 NASA employees nationwide. In a June 25, 2003 letter to Representative Sherwood Boehlert, Chairman of the House Committee on Science, IFPTE announced that the union was endorsing H.R. 1085 as amended by the Subcommittee on Space and Aeronautics at its June 26, 2003 mark-up. Union President Gregory J. Junemann wrote that

IFPTE is especially pleased with the rigorous notification, planning, and monitoring portions of the bill, with the inclusion of financial incentives reserved almost exclusively for the recruitment and retention of rank and file technical staff. In addition, IFPTE applauds you for ensuring that the proposed Industry Exchange Program not be included in your bill ... IFPTE believes that such a program, in any form, would seriously compromise the agency's independence from the very contractors it must oversee.

The letter stated that the union "will be looking for acknowledgment of those recommendations that come out of the final report of the Columbia Accident Investigation Board, especially those pertaining to rectifying management problems at NASA."²¹

The American Federation of Government Employees (AFGE) represents workers at NASA. At a March 12, 2003 House Science Committee hearing, Bobby Harnage, National President of AFGE, testified about the union's opposition to "most of the human resources proposals contained in this legislation." According to Mr. Harnage:

Many of the proposals contemplated in this legislation have been presented elsewhere as governmentwide changes or earlier in the form of legislation prepared by NASA's political leadership, and have been rejected largely on the grounds that they undermine merit system principles, that they would exacerbate the federal government's "human capital" crisis, and that they would create serious conflicts of interests between private sector interests and the public good. In addition, they fail to address the root causes of NASA's (and the other executive branch agencies') workforce problems: inadequate salaries, and mindless contracting out, privatization, and downsizing.²²

²⁰ Statement of Sean O'Keefe, Administrator, National Aeronautics and Space Administration, March 6, 2003. Available on the Senate Committee on Governmental Affairs Web site at [<http://govt-aff.senate.gov>].

²¹ Letter to Representative Sherwood Boehlert from IFPTE, June 25, 2003. Provided to CRS by IFPTE by electronic mail, June 26, 2003.

²² Statement of Bobby L. Harnage, National President, American Federation of Government Employees, June 12, 2003. Available on the Internet at [<http://www.house.gov/science/hearings/full03/mar12/harnage.htm>].

He stated that “AFGE strongly opposes the implied policy of seeking changes to civil service laws on an agency-by-agency basis.”²³

(name redacted) contributed information on the Senior Executive Service to the report.

²³ Ibid.

Table 1. H.R. 1085 and S. 610 Compared with Current Law

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
Compensation for Certain Excepted Personnel		
42 U.S.C. Chapter 26, Section 2473. Functions of Administration. Sec. 2473(c)(2)(A) Authorizes the Administrator to fix the compensation of scientific, engineering, and administrative personnel at a rate not in excess of GS-18.	<p>Sec. 2, Compensation for Certain Excepted Personnel</p> <p>Sec. 2(a) would amend 42 U.S.C. 2473(c)(2)(A) by striking GS-18 and inserting EX level III.</p> <p>Sec. 2(b) provides that the amendment would become effective on the first day of the first pay period beginning on or after the act's enactment date.</p>	<p>Sec. 2, Compensation for Certain Excepted Personnel</p> <p>Same as H.R. 1085</p>
Definitions		
<p>42 U.S.C. Chapter 26, Section 2451. Congressional Declaration of Policy and Purpose.</p> <p>42 U.S.C. 2472 - National Aeronautics and Space Administration (defined)</p> <p>42 U.S.C. 2466b - Administrator (defined)</p> <p>5 U.S.C. Part III, Subpart</p>	<p>Sec. 3, Workforce Authorities</p> <p>Sec. 3(a) would amend 5 U.S.C. Part III, Subpart I to create a new Chapter 98 in Title 5 on the National Aeronautics and Space Administration.</p> <p>5 U.S.C. 9801, Definitions</p> <p>(1) "Administration" means the National Aeronautics and Space Administration (NASA);</p> <p>(2) "Administrator" means the Administrator of NASA;</p> <p>(3) "Critical need" means a specific and important requirement of NASA's mission that NASA is unable to fulfill because it</p>	<p>Sec. 3, Workforce Authorities</p> <p>Sec. 3(a) would amend 5 U.S.C. Part III, Subpart I to create a new Chapter 98 in Title 5 on the National Aeronautics and Space Administration.</p> <p>5 U.S.C. 9801, Definitions</p> <p>Same as H.R. 1085, except as noted.</p> <p>(3) "Critical need" means a specific and important safety, management, engineering, science, research, or</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
<p>I, Miscellaneous No similar provision; related Title 5 sections are identified in the specific sections below.</p>	<p>lacks the appropriate employees because (A) of the inability to fill positions; or (B) employees do not possess the requisite skills; (4) “Employee” means an individual employed in or under NASA; (5) “Workforce plan” means the plan required under the proposed new section 9802(a); (6) “Appropriate committees of Congress” means the House Committees on Government Reform; Science; and Appropriations and the Senate Committees on Governmental Affairs; Commerce, Science, and Transportation; and Appropriations; (7) “Redesignation bonus” means a bonus paid under the proposed new Section 9804 to an individual described in section 9804(a)(2); (8) “Supervisor” has the meaning given such term by 5 U.S.C. 7103(a)(10); (9) “Management official” has the meaning given such term by 5 U.S.C. 7103(a)(11).</p>	<p>operations requirement ... (remainder of the text is the same as H.R. 1085.)</p>
Planning, Notification, and Reporting Requirements		
<p>5 U.S.C. Chapter 31 - Authority for employment</p>	<p>5 U.S.C. 9802, Planning, notification, and reporting requirements (a) Not later than 90 days before</p>	<p>5 U.S.C. 9802, Planning, notification, and reporting requirements (a) Same as H.R. 1085, except that OPM</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
<p>5 U.S.C. 3104 - Employment of specially qualified scientific and professional personnel Authorizes OPM director to establish scientific or professional positions which require services of specially qualified personnel and which may be established outside the General Schedule.</p>	<p>exercising any of the workforce authorities made available under the proposed new Chapter 98, the Administrator would submit a written plan to the appropriate congressional committees. The plan would be developed in consultation with the Office of Personnel Management (OPM). (b) The plan would include a description of (1) each critical need of NASA and the criteria used in its identification; (2)(A) the functions, approximate number, and classes or other categories of positions or employees that (i) address critical needs and (ii) would be eligible for each authority proposed to be exercised under the proposed new Chapter 98, and (B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under (1); (3)(A) any critical need identified under (1) which would not be addressed by the authorities made available under the proposed new Chapter 98; and (B) the reasons why those needs would not be so addressed; (4) the specific criteria to be used in determining which individuals may receive the benefits described under the</p>	<p>would have to approve the plan.</p> <p>Other text is the same as H.R. 1085, except as noted.</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>proposed new Sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and how the level of those benefits will be determined;</p> <p>(5) the safeguards or other measures that will be applied to ensure that the proposed new Chapter 98 is carried out in a manner consistent with merit system principles;</p> <p>(6) the means by which employees will be afforded the notification required under (c) and (d)(1)(B); (7) the methods that will be used to determine if the authorities exercised under the proposed new Chapter 98 have successfully addressed each critical need identified under (1); (8)(A) the recruitment methods used by NASA before the enactment of the proposed new Chapter 98 to recruit highly qualified individuals; and (B) the changes NASA will implement after the enactment of the proposed new Chapter 98 in order to improve its recruitment of highly qualified individuals, including how it intends to use (i) nongovernmental recruitment or placement agencies; and (ii) Internet technologies; (9) any reforms to NASA's workforce management practices recommended by the Columbia Accident Investigation Board, the extent to which those recommendations were accepted,</p>	<p>(9) any workforce-related reforms required to resolve the findings and recommendations of the Columbia Accident Investigation Board, ... (remainder of the text is the same as H.R.</p>

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>and, if necessary, the reasons why any of those recommendations were not accepted; and (10) the safeguards and other measures that will be applied to ensure that the proposed new Chapter 98 is carried out in a manner that does not compromise the safety or survival of any spacecraft or crew thereof.</p> <p>(c) Not later than 60 days before first exercising any of the workforce authorities made available under the proposed new Chapter 98, the Administrator would provide to all employees, the workforce plan and any additional information which the Administrator considers appropriate.</p> <p>(d)(1)(A) The Administrator could from time to time modify the workforce plan. Not later than 60 days before implementing any such modifications, the Administrator would submit a description of the proposed modifications to the appropriate congressional committees. (B) Not later than 60 days before implementing any such modifications, the Administrator would provide an appropriately modified plan to all NASA employees and to the appropriate congressional committees.</p> <p>(d)(2) Any reference in the proposed new Chapter 98 or any other provision of law to the workforce plan would be considered</p>	<p>1085.)</p> <p>(10) No similar provision</p> <p>(d)(1)(A) The Administrator could from time to time modify the workforce plan. Any modification would be submitted to OPM for approval before it could be implemented.</p>

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	<p>to include any modification made in accordance with (d).</p> <p>(e) Before submitting any written plan under (a) (or modification under (d)) to the appropriate congressional committees, the Administrator would (1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification); (2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and (3) give any recommendations received from any such representatives under (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).</p> <p>(f) None of the workforce authorities made available under the proposed new Chapter 98 could be exercised in a manner inconsistent with the workforce plan.</p> <p>(g) Whenever NASA submits its performance plan under 31 U.S.C. 1115 to the Office of Management and Budget (OMB) for any year, NASA would at the same time submit a copy of the plan to the appropriate congressional committees.</p> <p>(h) Not later than six years after enactment</p>	<p>(e) Same as H.R. 1085, except that any written plan or modification of it would be submitted to OPM.</p>

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>of the proposed new Chapter 98, the Administrator would submit to the appropriate congressional committees an evaluation and analysis of the actions taken by NASA under the proposed new Chapter 98, including (1) an evaluation, using the methods described in (b)(7), of whether the authorities exercised under the proposed new Chapter 98 successfully addressed each critical need identified under (b)(1); (2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under (b)(3)) was not successfully addressed; and (3) recommendations for how NASA could address any remaining critical need and could prevent those that have been addressed from recurring.</p> <p>(i) The budget request for NASA for the first fiscal year beginning after enactment of the proposed new Chapter 98 and for each fiscal year thereafter would include a statement of the total amount of appropriations requested for such fiscal year to carry out the proposed new Chapter 98.</p>	
Restrictions		
Relevant Title 5 sections are noted in the specific	5 U.S.C. 9803, Restrictions (a) None of the workforce authorities	5 U.S.C. 9803, Restrictions Same as H.R. 1085, except as noted.

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
sections below.	<p>made available under the proposed new Chapter 98 could be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.</p> <p>(b) Unless specifically stated otherwise, all workforce authorities made available under the proposed new Chapter 98 would be subject to 5 U.S.C. 5307 (limitation on certain payments).</p> <p>(c)(1) None of the workforce authorities made available under the proposed new Sections 9804, 9805, 9806, 9807, 9810, 9813, 9814, 9815, or 9816 could be exercised with respect to a political appointee.</p> <p>(c)(2) The term “political appointee” means an employee who holds (A) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or (B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in 5 U.S.C. 3132(a)).</p>	<p>Sections 9804, 9805, 9806, 9807, 9809, 9812, 9813, 9814, or 9815</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
Recruitment, Redesignation, and Relocation Bonuses		
<p>5 U.S.C. 5753 - Recruitment and relocation bonuses Authorizes bonuses of up to 25% of basic pay (excluding locality-based comparability payments) and requires service agreement.</p> <p>5 U.S.C. 9504 - Recruitment, retention, relocation incentives, and relocation expenses (Internal Revenue Service) Allows for IRS variations from the Title 5 authority for a 10-year period.</p>	<p>5 U.S.C. 9804, Recruitment, redesignation, and relocation bonuses (a) Notwithstanding 5 U.S.C. 5753, the Administrator could pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if (1) the Administrator determines that NASA would be likely, in the absence of a bonus, to encounter difficulty in filling a position, and (2) the individual is (A) newly appointed as a federal employee; (B) currently employed by the federal government and newly appointed to another position in the same geographic area; or (C) currently employed by the federal government and required to relocate to a different geographic area to accept a position with NASA. (b) If the position is described as addressing a critical need in the workforce plan, the bonus could not exceed (1) 50% of the employee's annual rate of basic pay (including locality-based comparability payments) as of the beginning of the service period multiplied by the service period specified under (d)(1)(B)(i) below; or (2) 100% of the employee's annual rate of basic pay (including locality-based</p>	<p>5 U.S.C. 9804, Recruitment, redesignation, and relocation bonuses Same as H.R. 1085, except as noted.</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>comparability payments) as of the beginning of the service period.</p> <p>(c) If the position is not described as addressing a critical need in the workforce plan, the bonus could not exceed (1) 25% of the employee's annual rate of basic pay (including locality-based comparability payments) as of the beginning of the service period multiplied by the service period specified under (d)(1)(B)(i) below; or (2) 100% of the employee's annual rate of basic pay (including locality-based comparability payments) as of the beginning of the service period.</p> <p>(d)(1)(A) Payment of a bonus would be contingent upon the individuals entering into a service agreement with NASA. (B) The service agreement would, at a minimum, include (i) the required service period; (ii) the method of payment, including a payment schedule, which could include a lump-sum payment, installment payments, or a combination thereof; (iii) the amount of the bonus and the basis for calculating that amount; and (iv) the conditions under which the agreement could be terminated before the agreed-upon service period has been completed, and the effect of the termination.</p> <p>(d)(2) For purposes of determinations</p>	<p>(c) If the position is not described as addressing a critical need in the workforce plan under the proposed new Section 9802(b)(2)(A), the amount of a bonus could not exceed 25% of the employee's annual basic pay rate (excluding locality-based comparability payments) as of the beginning of the service period.</p>

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
No similar provision	<p>under (b)(1) and (c)(1), the employee's service period would be expressed as the number equal to the full years and 12th parts thereof, rounding the fractional part of a month to the nearest 12th part of a year. The service period could not be less than six months and could not exceed four years.</p> <p>(d)(3) A bonus under this section could not be considered to be part of an employee's basic pay.</p> <p>(e) Before paying a bonus, NASA would establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to OPM approval.</p> <p>(f) No more than 25% of the total amount in bonuses awarded under (a) in any year could be awarded to supervisors or management officials.</p>	
Retention Bonuses		
<p>5 U.S.C. 5754 - Retention allowances Authorizes allowances of up to 25% of basic pay (excluding locality-based comparability payments).</p> <p>5 U.S.C. 9504 - Recruitment, retention, relocation incentives, and</p>	<p>5 U.S.C. 9805, Retention bonuses (a) Notwithstanding 5 U.S.C. 5754, the Administrator could pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that (1) the employee's unusually high or unique qualifications or a special need of NASA</p>	<p>5 U.S.C. 9805, Retention bonuses Same as H.R. 1085, except as noted.</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
<p>relocation expenses (Internal Revenue Service)</p> <p>Allows for IRS variations from the Title 5 authority for a 10-year period.</p>	<p>for the employee's services makes it essential to retain the employee; and (2) the employee would be likely to leave in the absence of a retention bonus.</p> <p>(b) If the position is described as addressing a critical need in the workforce plan, the bonus could not exceed 50% of the employee's annual rate of basic pay (including locality-based comparability payments).</p> <p>(c) If the position is not described as addressing a critical need in the workforce plan, the bonus could not exceed 25% of the employee's annual rate of basic pay (including locality-based comparability payments).</p> <p>(d)(1)(A) Payment of a bonus would be contingent upon the employee entering into a service agreement with NASA. (B) The service agreement would, at a minimum, include (i) the required service period; (ii) the method of payment, including a payment schedule which could include a lump-sum payment, installment payments, or a combination thereof; (iii) the amount of the bonus and the basis for calculating the amount; and (iv) the conditions under which the agreement could be terminated before the agreed-upon service period has been completed, and the effect of the termination.</p>	<p>(excluding locality-based comparability payments)</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
No similar provision	<p>(d)(2) The employee's service period would be expressed as the number equal to the full years and 12th parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period could not be less than six months and could not exceed four years.</p> <p>(d)(3) Notwithstanding (1), a service agreement would not be required if NASA pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, NASA would inform the employee in writing of any decision to change the retention bonus payments. The employee would continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.</p> <p>(e) A bonus under this section could not be considered to be part of an employee's basic pay.</p> <p>(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under 5 U.S.C. 5753, or the proposed new Section 9804.</p> <p>(g) No more than 25% of the total amount in bonuses awarded under (a) in any year could be awarded to supervisors or</p>	

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	management officials.	
Term Appointments		
<p>5 U.S.C. 3301 - Civil Service; generally</p> <p>5 U.S.C. 3302 - Competitive service; rules</p> <p>5 CFR Part 316 - Temporary and Term Employment</p> <p>Authorizes term appointments for more than one year, but not more than four years (beyond four years could be authorized with justification) where the need for an employee's services is not permanent.</p>	<p>5 U.S.C. 9806, Term appointments</p> <p>(a) The Administrator could authorize term appointments within NASA under 5 U.S.C. Chapter 33, Subchapter I, for a period of not less than one year and not more than six years.</p> <p>(b) Notwithstanding 5 U.S.C. Chapter 33, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator could convert an employee serving under a term appointment to a permanent appointment in the competitive service within NASA without further competition. These conditions would apply: (1) the individual was appointed to the term position under open, competitive examination under 5 U.S.C. Chapter 33, Subchapter I; (2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment; (3) the employee has completed at least two years of current continuous service under a term appointment in the competitive service; (4) the employee's</p>	<p>5 U.S.C. 9806, Term appointments</p> <p>Same as H.R. 1085.</p>

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>performance under the term appointment was at least fully successful or equivalent; and (5) the position to which such employee is being converted under this section is in the same occupational series, in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.</p> <p>(c) Notwithstanding 5 U.S.C. Chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator could convert an employee serving under a term appointment to a permanent appointment in the competitive service within NASA through internal competitive promotion procedures if the conditions under (b)(1) through (4) are met.</p> <p>(d) An employee converted under this section would become a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.</p> <p>(e) An employee converted to career or career-conditional employment under this section would acquire competitive status upon conversion.</p>	
Pay Authority for Critical Positions		

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
<p>5 U.S.C. 5377 - Pay authority for critical positions Authorizes OMB to establish critical pay positions for positions at an extremely high level and critical to agency missions; up to 800 may be established at any time. Compensation cannot exceed Executive Schedule level I without the President's approval.</p> <p>5 U.S.C. 9502 - Pay authority for critical positions (Internal Revenue Service) Authorizes critical pay positions. Compensation cannot exceed the Vice President's salary (\$198,600 as of January 2003).</p> <p>5 U.S.C. 9503 - Streamlined critical pay authority (Internal Revenue Service) Secretary of the Treasury may establish critical pay positions for positions at</p>	<p>5 U.S.C. 9807, Pay authority for critical positions (a) "Position" means (1) a position to which 5 U.S.C. Chapter 51 applies, including a Senior Executive Service position; (2) an Executive Schedule position; (3) a position established under 5 U.S.C. 3104; or (4) a senior-level position to which 5 U.S.C. 5376(a)(1) applies. (b) Authority under this section (1) could be exercised only with respect to a position that (A) is described as addressing a critical need in the workforce plan, and (B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field; (2) could be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and (3) could be exercised only in retaining NASA employees or in appointing individuals who were not employees of another federal agency as defined under 5 U.S.C. 5102(a)(1). (c)(1) Notwithstanding 5 U.S.C. 5377, the Administrator could fix the rate of basic pay for a position in NASA in accordance with this section. The Administrator could not delegate this authority. (c)(2) The number of positions with pay fixed under this section could not exceed</p>	<p>5 U.S.C. 9807, Pay authority for critical positions Same as H.R. 1085.</p>

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
<p>an extremely high level and critical to the IRS mission for a 10-year period. Appointments are limited to four years. Total compensation cannot exceed the Vice President's salary.</p>	<p>10 at any time.</p> <p>(d)(1) The rate of basic pay fixed under this section could not be less than the rate of basic pay (including locality-based comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.</p> <p>(d)(2) The annual rate of basic pay fixed under this section could not exceed the Vice President's annual salary rate.</p> <p>(d)(3) Notwithstanding any provision of 5 U.S.C. 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment could be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom 5 U.S.C. Chapter 51 applies), such payment would cause the total to exceed the Vice President's annual salary.</p>	

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
Assignments of Intergovernmental Personnel		
<p>5 U.S.C. Chapter 33, Subchapter VI - Assignments to and from States (5 U.S.C. 3371-3376)</p> <p>5 U.S.C. 3372(a) General Provisions</p> <p>third sentence: However, the federal agency head may extend the period of assignment for not more than two additional years.</p>	<p>5 U.S.C. 9808, Assignments of intergovernmental personnel</p> <p>For purposes of applying the third sentence of 5 U.S.C. 3372(a) (relating to the authority of the head of a federal agency to extend the period of an employee's assignment to or from a state or local government, institution of higher education, or other organization), the Administrator could, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking "two" and inserting "four."</p>	<p>5 U.S.C. 9808, Assignments of intergovernmental personnel</p> <p>Same as H.R. 1085.</p>
Enhanced Demonstration Project Authority		
<p>5 U.S.C. Chapter 47 - Personnel research programs and demonstration projects</p> <p>5 U.S.C. 4703(d)(1)(A) limits size of demonstration projects to not more than 5,000 individuals.</p> <p>5 U.S.C. 9507 - Streamlined</p>	<p>5 U.S.C. 9809, Enhanced demonstration project authority</p> <p>When conducting a demonstration project at NASA, 5 U.S.C. 4703(d)(1)(A), could be applied by substituting "8,000" for "5,000."</p>	<p>No similar provision</p>

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demonstration project authority (Internal Revenue Service) 5 U.S.C. 4703(d) does not apply to IRS demonstration projects.		
Science and Technology Scholarship Program		
50 U.S.C. Chapter 37, Section 1902. Scholarship, fellowship, and grant program Authorizes the Secretary of Defense to carry out a program for awarding scholarships, fellowships, and grants for studies in foreign languages, area studies, counterproliferation, and other international fields related to United States national security interests. Recipients agree to work in a national security position with the government or in the field of education in the area of study.	5 U.S.C. 9810, Science and technology scholarship program (a)(1) The Administrator would establish a NASA Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in NASA. (a)(2) Individuals would be selected to receive scholarships through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act. (a)(3) To carry out the program, the Administrator would enter into contractual agreements with individuals selected under which the individuals agree to serve as full-time employees of NASA, for the period described in (f)(1) below, in	5 U.S.C. 9809, Science and technology scholarship program Same as H.R. 1085, except as noted.

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>positions needed by NASA and for which the individuals are qualified in exchange for receiving a scholarship.</p> <p>(b) In order to be eligible to participate in the program, an individual must (1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education, as a junior or senior undergraduate or graduate student, in an academic field or discipline described in the list made available under (d) below; (2) be a United States citizen or permanent resident; and (3) at the time of the initial scholarship award, not be an employee (as defined in 5 U.S.C. 2105).</p> <p>(c) An individual seeking a scholarship would submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.</p> <p>(d) The Administrator would make publicly available a list of academic programs and fields of study for which scholarships under the program could be utilized and would update the list as necessary.</p> <p>(e)(1) The Administrator could provide a scholarship under the program for an academic year if the individual applying</p>	<p>(b) In order to be eligible to participate in the program, an individual must (1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under (d);</p>

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	<p>for the scholarship has submitted to the Administrator, as part of the application required under (c), a proposed academic program leading to a degree in a program or field of study on the list made available under (d).</p> <p>(e)(2) An individual could not receive a scholarship for more than four academic years, unless the Administrator grants a waiver.</p> <p>(e)(3) The dollar amount of a scholarship for an academic year would be determined under regulations issued by the Administrator, but would in no case exceed the cost of attendance.</p> <p>(e)(4) A scholarship provided could be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.</p> <p>(e)(5) The Administrator could enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.</p> <p>(f)(1) The period of service for which an individual would be obligated to serve as an employee of NASA is, except as</p>	<p>(f) Same as H.R. 1085, except also provides that under no circumstances would the total period of obligated service</p>

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	<p>provided in (h)(2) below, 24 months for each academic year for which a scholarship is provided.</p> <p>(f)(2)(A) Except as provided in 2(B) below, obligated service under (1) would begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.</p> <p>(f)(2)(B) The Administrator could defer the obligation of an individual to provide a period of service under (1) if the Administrator determines that such a deferral is appropriate. The Administrator would prescribe the terms and conditions under which a service obligation could be deferred through regulation.</p> <p>(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, would be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, would be liable to the United States for repayment within 1 year after the date of</p>	<p>be more than four years.</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in (h)(2). The repayment period could be extended by the Administrator when determined to be necessary, as established by regulation. (g)(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to (f)(2)(B), would be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient would be liable to the United States for an amount equal to (A) the total amount of scholarships received by such individual; plus (B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States, multiplied by 3.</p> <p>(h)(1) Any obligation of an individual incurred under the program (or a contractual agreement thereunder) for</p>	

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	<p>service or payment would be canceled upon the death of the individual.</p> <p>(h)(2) The Administrator would by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the government.</p> <p>(i) For purposes of this section (1) ‘cost of attendance’ has the meaning given that term in section 472 of the Higher Education Act of 1965; (2) ‘institution of higher education’ has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and (3) ‘program’ means the NASA Science and Technology Scholarship Program.</p> <p>(j)(1) There is authorized to be appropriated to NASA for the program \$10 million dollars for each fiscal year.</p> <p>(j)(2) Amounts appropriated would remain available for two fiscal years.</p>	

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
Distinguished Scholar Appointment Authority		
<p>5 U.S.C. 3104 - Employment of specially qualified scientific and professional personnel Authorizes OPM director to establish scientific or professional positions which require services of specially qualified personnel and which may be established outside the General Schedule.</p>	<p>5 U.S.C. 9811, Distinguished scholar appointment authority (a)(1) “Professional position” means a position that is classified to an occupational series identified by OPM as a position that (A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and (B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and (2) “research position” means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study. (b) NASA could appoint, without regard to 5 U.S.C. 3304(b) and 3309 through 3318, but subject to (c), candidates directly to General Schedule professional, competitive service positions in NASA for which public notice has been given (in</p>	<p>5 U.S.C. 9810, Distinguished scholar appointment authority Same as H.R. 1085.</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>accordance with OPM regulations), if (1) with respect to a GS-7 position, the individual (A) received, within two years before the effective date of the appointment, from an accredited institution authorized to grant baccalaureate degrees (BAs), a BA in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by OPM for the position to which the individual is being appointed; and (B) achieved a cumulative grade point average (GPA) of 3.0 or higher on a 4.0 scale and a GPA of 3.5 or higher for courses in the field of study required to qualify for the position; (2)-(4) with respect to a GS-9, GS-11, GS-12 position, the individual (A) received, within two years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by OPM for the position to which the individual is being appointed; and (B) achieved a cumulative GPA of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study</p>	

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>required for the position.</p> <p>(c) In making any selections under this section, preference eligibles who meet the criteria for distinguished scholar appointments would be considered ahead of nonpreference eligibles.</p> <p>(d) An appointment made under this authority would be a career-conditional appointment in the competitive civil service.</p>	
Travel and Transportation Expenses of Certain New Appointees		
<p>5 U.S.C. Chapter 57, Subchapter II - Travel and transportation expenses; new appointees, student trainees, and transferred employees</p> <p>5 U.S.C. 5724 - Travel and transportation expenses of employees transferred; advancement of funds; reimbursement on commuted basis; 5 U.S.C. 5724a - Relocation expenses of employees transferred or reemployed; 5 U.S.C.</p>	<p>5 U.S.C. 9812, Travel and transportation expenses of certain new appointees</p> <p>(a) “New Appointee” means (1) a person newly appointed or reinstated to federal service to NASA to (A) a career or career-conditional appointment; (B) a term appointment; (C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment; (D) a career or limited term Senior Executive Service appointment; (E) an appointment made under 42 U.S.C. 2473(c)(2)(A); (F) an appointment to a position established under 5 U.S.C. 3104; or (G) an appointment to a position established under 5 U.S.C. 5108; or (2) a student</p>	<p>5 U.S.C. 9811, Travel and transportation expenses of certain new appointees</p> <p>Same as H.R. 1085, except as noted.</p> <p>(A) a career or career-conditional appointment or an excepted service appointment to a continuing position;</p>

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5724b - Taxes on reimbursements for travel, transportation, and relocation expenses of employees transferred; 5 U.S.C. 5724c - Relocation services	trainee who, upon completion of academic work, is converted to an appointment in NASA that is identified in (1) in accordance with an appropriate authority. (b) The Administrator could pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under 5 U.S.C. 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the U.S. Government.	
Annual Leave Enhancements		
5 U.S.C. 6303 - Annual leave accrual 5 U.S.C. 6304 - Annual leave accumulation Only employees who have at least 15 years of service accrue one day of annual leave for each full biweekly pay period.	5 U.S.C. 9813, Annual leave enhancements (a)(1) “Newly appointed employee” means an individual who is first appointed (A) as an employee of the federal government; or (B) as an employee of the federal government following a break in service of at least 90 days after that individual’s last period of federal employment, other than (i) employment under the Student Educational Employment Program administered by OPM; (ii) employment as a law clerk trainee; (iii) employment under a short-term temporary appointing authority while a student during periods of	5 U.S.C. 9812, Annual leave enhancements Same as H.R. 1085.

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>vacation from the educational institution at which the student is enrolled; (iv) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or (v) employment under a temporary appointment that is neither full-time nor the individual's principal employment. (2) "period of qualified non-federal service" means any period of service performed by an individual that (A) was performed in a position the duties of which were directly related to the duties of the position in NASA to which that individual will fill as a newly appointed employee; and (B) except for this section would not otherwise be service performed by an employee for purposes of 5 U.S.C. 6303; and (3) "directly related to the duties of the position" means duties and responsibilities in the same line of work which require similar qualifications. (b)(1) For purposes of 5 U.S.C. 6303, the Administrator could deem a period of qualified non-federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee. (2) A decision under (1) to treat a period of qualified non-federal service as if it were</p>	

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>service performed as an employee would continue to apply so long as that individual serves in or under NASA. (c)(1) Notwithstanding 5 U.S.C. 6303(a), the annual leave accrual rate for a NASA employee in a position paid under 5 U.S.C. 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS-15, step 10, would be one day for each full biweekly pay period. (2) The accrual rate established under this subsection would continue to apply to the employee so long as such employee serves in or under NASA.</p>	

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
Limited Appointments to Senior Executive Service Positions		
<p>5 U.S.C. 3132. Definitions and exclusions (a)(8) A career reserved position is required to be filled by a career appointee.</p>	<p>5 U.S.C. 9814, Limited appointments to Senior Executive Service positions Sec. 9814 does not use the terms “limited emergency appointee” or “limited term appointee.” (b) The Administrator may fill a career reserved position on a temporary basis, but only if the position is vacant because the incumbent separated or is otherwise absent due to illness, training, or reassignment; or if it would be difficult to fill the position in any other manner due to the fact the position is likely to be eliminated within the next two years.</p>	<p>5 U.S.C. 9813, Limited appointments to Senior Executive Service positions Sec. 9813(a)(1) A career appointee, or a limited emergency or limited term appointee who meets certain conditions, may fill a career reserved position.</p>
<p>5 U.S.C. 3132. Definitions and exclusions (a)(6) A limited emergency appointee is an individual appointed to a nonrenewable appointment for a position that was established to meet a bona fide, unanticipated, urgent need. The appointment cannot exceed 18 months.</p>	<p>No similar provision</p>	<p>Sec. 9813(a)(2) Language similar to 5 U.S.C. 3132(a)(6)</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
<p>5 U.S.C. 3132. Definitions and exclusions (a)(5) A limited term appointee is an individual appointed to a nonrenewable appointment that cannot exceed three years. The duties of the SES position will expire at the end of the appointment.</p>	<p>No similar provision</p>	<p>Sec. 9813(a)(3) A limited term appointee is an individual appointed to an SES position in NASA to meet a bona fide temporary need, as determined by the Administrator.</p>
<p>No similar language</p>	<p>Sec. 9814(e) Language similar to S. 610</p>	<p>Sec. 9813(b) The number of career reserved positions filled by limited emergency or limited term appointees may not exceed 10% of the total number of SES positions allocated to NASA.</p>
<p>5 U.S.C. 3132. Definitions and exclusions (a)(5) A limited term appointment cannot exceed three years.</p>	<p>Sec. 9814 (c) A temporary appointment shall not exceed two years. (d) The Administrator may grant an extension of up to one year.</p>	<p>Sec. 9813(c) The Administrator may appoint an individual as a limited term appointee for no more than four years to a position the duties of which will expire at the end of the term, or for no more than one year to a position the duties of which are continuing. In rare circumstances, the Administrator may extend a limited appointment for no more than two years or no more than one year, respectively.</p>

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
<p>5 CFR 317.605 Tenure of appointees</p> <p>A limited term or limited emergency appointee who received the limited term appointment without a break of service in the same agency and whose appointment is terminated for reasons other than misconduct, neglect of duty, or malfeasance, is entitled to be placed in his/her former position or a position of like status, tenure, and grade.</p>	<p>Sec. 9814(f)</p> <p>An individual who was appointed to a career reserved position from a civil service position held under a career or career-conditional appointment shall be entitled, upon completion of the temporary appointment, to be reemployed in the position from which such individual was so appointed. Reemployment shall be carried out under such regulations that OPM may prescribe.</p>	<p>Sec. 9813(d)</p> <p>A limited term appointee who was appointed in NASA from a career or career-conditional appointment outside the SES shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by OPM. OPM shall have the authority to direct such placement in any agency.</p>
<p>5 U.S.C. 3395(b)(2)</p> <p>Reassignment and transfer within the Senior Executive Service</p> <p>A limited term appointee may be reassigned to another SES position in the same agency, the duties of which will expire at the end of a term of three years or less. Appointees may not</p>	<p>No similar provision</p>	<p>Sec. 9813(e)</p> <p>A limited term appointee serving in an SES position may be reassigned to another SES position in NASA, the duties of which will expire at the end of a term of four years or less. A limited term appointee serving under a term prescribed under this section may be reassigned to another continuing SES position in NASA, except that the appointee may not serve in one or more position in NASA under such appointment in excess of one year, except</p>

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
serve in one of more positions in the agency under such appointment in excess of three years.		that in rare circumstances, the Administrator may approve an extension up to an additional year.
5 U.S.C. 3395(c) A limited term or a limited emergency appointee may not be appointed to, or continue to hold, a position under such an appointment if, within the preceding 48 months, the individual has served more than 36 months, in aggregate, under any combination of such types of appointment.	No similar provision	Sec. 9813(f) A limited term appointee may not serve more than seven consecutive years under any combination of limited appointments.
5 U.S.C. 3394. Noncareer and limited appointments (a) Each noncareer, limited term, and limited emergency appointee shall meet the qualifications of the position to which appointed, as determined in writing by the appointing authority. (b) An individual may	Sec. 9814(g) Prior approval of OPM is required if the individual to be appointed to a career reserved position on a temporary basis is coming from outside the federal government, held a civil service position that was other than career or career-conditional, or is a senior executive but not a career appointee.	No language similar to 5 U.S.C. 3394(a) or H.R. 1085 Sec. 9813(a)(1)(B)(ii) Language similar to 5 U.S.C. 3394(b)

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
not be appointed as a limited term or limited emergency appointee without prior approval of the exercise of such authority by OPM.		
5 U.S.C. 5384. Performance awards in the Senior Executive Service (a) An agency may give performance awards to career appointees.	Sec. 9814(h) An individual appointed to a career reserved position on a temporary basis shall, for purposes of performance awards under 5 U.S.C. 5384, be treated as a career appointee.	Sec. 9813(g) The Administrator may authorize performance awards to limited term appointees in NASA in the same amounts and in the same manner as career appointees.
Qualifications Pay		
5 U.S.C. 5377 - Pay authority for critical positions Authorizes OMB to establish critical pay positions for positions at an extremely high level and critical to agency missions; up to 800 may be established at any time. Compensation cannot exceed Executive Schedule level I without the President's approval. 5 U.S.C. 9502 - Pay	5 U.S.C. 9815, Qualifications pay (a) Notwithstanding 5 U.S.C. 5334, the Administrator could set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, if the employee (1) possesses unusually high or unique qualifications; and (2) is assigned (A) new duties, without a change of position; or (B) to a new position. (b) If an exercise of the authority under this section relates to a current employee selected for another position within NASA, a determination would be made that the employee's contribution in the	5 U.S.C. 9814, Qualifications pay Same as H.R. 1085.

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
<p>authority for critical positions (Internal Revenue Service)</p> <p>Authorizes critical pay positions. Compensation cannot exceed the Vice President's salary.</p> <p>5 U.S.C. 9503 - Streamlined critical pay authority (Internal Revenue Service)</p> <p>Secretary of the Treasury may establish critical pay positions for positions at an extremely high level and critical to the IRS mission for a 10-year period. Appointments are limited to four years. Total compensation cannot exceed the Vice President's salary.</p>	<p>new position will exceed that in the former position, before setting pay under this section.</p> <p>(c) Pay as set under this section is basic pay for such purposes as pay set under 5 U.S.C. 5334.</p> <p>(d) If the employee serves for at least one year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position could be used in succeeding actions to set pay under 5 U.S.C. Chapter 53.</p> <p>(e) Before setting any employee's pay under this section, the Administrator would submit a plan to OPM, and the appropriate congressional committees, that includes (1) criteria for approval of actions to set pay under this section; (2) the level of approval required to set pay under this section; (3) all types of actions and positions to be covered; (4) the relationship between the exercise of authority under this section and the use of other pay incentives; and (5) a process to evaluate the effectiveness of this section.</p>	

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
Reporting Requirement		
No similar provision	<p>5 U.S.C. 9816, Reporting requirement</p> <p>The Administrator would submit to the appropriate congressional committees, not later than February 28 of each of the next 6 years beginning after the enactment date of the proposed new Chapter 98, a report that would provide the following: (1) A summary of all bonuses paid under (b)-(c) of the proposed new Section 9804 during the preceding fiscal year. The summary would include the total amount and the total number of bonuses paid, the percentage of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount under each of those subsections. (2) A summary of all bonuses paid under (b)-(c) of the proposed new section 9805 during the preceding fiscal year. The summary would include the total amount and the total number of bonuses paid, the percentage of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount under each of those subsections. (3) The total number of term appointments</p>	<p>5 U.S.C. 9815, Reporting requirement</p> <p>Same as H.R. 1085, except as noted.</p> <p>the percentage of the amount of bonuses awarded</p> <p>the percentage of the amount of bonuses awarded</p>

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>converted during the preceding fiscal year under the proposed new Section 9806 and, of that total number, the number of conversions that were made to address a critical need described in the workforce plan. (4) The number of positions for which the rate of basic pay was fixed under the proposed new Section 9807 during the preceding fiscal year, the number of positions for which the rate of basic pay under such section was terminated during the preceding fiscal year, and the number of times the rate of basic pay was fixed under such section to address a critical need described in the workforce plan. (5) The number of scholarships awarded under the proposed new Section 9810 and the number of scholarship recipients appointed by NASA, during the preceding fiscal year. (6) The total number of distinguished scholar appointments made under the proposed new Section 9811 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan. (7) The average amount paid per appointee, and the largest amount paid to any appointee, under the proposed new Section 9812 during the preceding fiscal year for travel</p>	

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U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	<p>and transportation expenses. (8) The total number of employees who were awarded enhanced annual leave under the proposed new Section 9813 during the preceding fiscal year; of that total number, the number of employees who were serving in a position addressing a critical need described in the workforce plan; and, for employees in each of the respective groups, the average amount of additional annual leave such employees earned in the preceding fiscal year (over and above what they would have earned absent the proposed new Section 9813). (9) The total number of appointments made under the proposed new Section 9814 during the preceding fiscal year, and of that total number, the number of appointments that were made to address a critical need described in the workforce plan. (10) The number of employees for whom the Administrator set the pay under the proposed new Section 9815 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan.</p>	

Current Law	108th Congress Proposals	
U.S. Code	NASA Flexibility Act of 2003: H.R. 1085 , as reported	NASA Flexibility Act of 2003: S. 610 , as passed by Senate
	No similar provision	(11) A summary of all recruitment, relocation, redesignation, and retention bonuses paid under authorities other than this chapter and excluding the authorities provided in 5 U.S.C. 5753 and 5754, during the preceding fiscal year. The summary would include, for each type of bonus, the total amount and the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.
Workforce Diversity		
No similar provision	<p>Sec. 4, Workforce diversity</p> <p>It is the sense of the Congress that NASA should, in accordance with 5 U.S.C. 7201, conduct a continuing program for the recruitment of members of minority groups for positions in NASA to carry out the policy set forth in subsection (b) of such section in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment within the Federal service, with special efforts directed at recruiting in minority communities, in educational institutions, and from other sources from which minorities can be recruited.</p>	No similar provision

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