

08 FEB 1984

MEMORANDUM FOR: Deputy Director of Personnel for
Special Projects
Deputy Director of Personnel for Policy,
Analysis, and Evaluations

STAT FROM:

[Redacted]
Liaison Division
Office of Legislative Liaison

SUBJECT: Report On S. 958, the Merit Pay Reform Act
of 1983

1. Attached for your information and use is a copy of Senate Report 98-351, issued by Senator Ted Stevens' (R,AL) Governmental Affairs subcommittee. While the major focus of the report, and the S. 958 bill, is merit pay, the Senior Executive Service (SES) is also addressed in both. The subcommittee staff has previously agreed that the Agency will be exempted from S. 958, but it seems to me that you will want to stay informationally current with legislation that affects both merit pay and the SES.

2. This office will continue to follow this issue and will report its progress accordingly.

STAT
Attachment:
As stated



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Calendar No. 646

98TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 98-351

MERIT PAY REFORM ACT OF 1983

R E P O R T

OF THE

**COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

TO ACCOMPANY

S. 958

TO AMEND CHAPTER 54 OF TITLE 5, UNITED STATES CODE, TO
REFORM THE MERIT PAY SYSTEM.



FEBRUARY 3 (legislative day, JANUARY 30), 1984.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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WASHINGTON : 1984

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Calendar No. 646

98TH CONGRESS }
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SENATE

{ REPORT
{ 98-351

MERIT PAY REFORM ACT OF 1983

FEBRUARY 3 (legislative day, JANUARY 30), 1984.—Ordered to be printed

Mr. STEVENS, from the Committee on Governmental Affairs,
submitted the following

R E P O R T

[To accompany S. 958]

The Committee on Governmental Affairs, to which was referred the bill (S. 958) to amend chapter 54 of title 5, United States Code, to reform the merit pay system, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

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I. BACKGROUND AND STATEMENT

In 1978 the Civil Service underwent its most significant reform since its establishment in 1883. The purpose of the reform was to enhance the efficiency of the government to better serve the public.

Much of the reform was based upon a report issued in 1977 known as the Ink report regarding federal personnel management. One of the report's recommendations was to strengthen the linkage between employee pay increases and performance. This was consistent with the Federal Salary Act Reform of 1962 which has converted the earlier automatic step increases within grade levels into a system which was intended to be based more upon performance. The 1962 law required for the first time that supervisors determine

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whether employees' work was "of an acceptable level of competence" to warrant a step increase. Quality increases were to be given to those who performed in an outstanding manner. Finally, cash awards were to be made available for suggestions, superior accomplishments or special acts.

The Ink report, though, found that the system established in 1962 was not working for a variety of reasons. It provided four options for change, one of which served as the basis for the merit pay system established in the 1978 reform act. The particular option called for a pay structure with only a maximum and minimum rate for each grade. All increases would be based upon performance with the exception of comparability raises. Appeals for failure to receive an increase would be limited to within the agency.

The reform act incorporated this recommendation linking pay to performance by creating a merit pay "pool concept." This "pool" of money was comprised of employees' within grade increases and one-half of the full comparability employees would have received. The pool was then redistributed among the employees according to their performance ratings. Merit pay employees had to earn pay increases which were granted automatically to their General Schedule counterparts. This inequity perpetuated the idea that merit pay employees were working under a system which "robbed Peter to pay Paul." Even among merit pay pools, the awards and merit payouts varied significantly.

Numerous witnesses, during hearings on the reform act, testified that comparability increases should be excluded from merit payouts and that the system should be tested prior to full implementation. From its inception the merit pay system has been fraught with problems.

Pay determinations were to be based upon the new performance appraisal systems. Although all of the systems were implemented on time, considerable inconsistencies existed among the various agencies' systems. Then a substantial amount of the funding to be utilized in the first payout was denied because of legal problems. The limited funds which were distributed among supervisors and the employees they were supervising fueled cries of conflicts of interest in rating performance. Employees quickly became dissatisfied with being forced to compete among themselves for a pool of money drawn from their own pockets, creating friction among co-workers. Finally, the appraisals themselves were often poorly drawn, incomplete, and inconsistently communicated to the employees.

On March 24, 1983, S. 958, the Merit Pay Reform Act of 1983 was introduced by Senators Tribble and Warner (R. Va.). The Subcommittee on Civil Service, Post Office and General Services, Senate Governmental Affairs Committee, held four hearings on the legislation as well as proposals by the Office of Personnel Management to extend some of the merit pay concepts to the rest of the workforce.

The Committee strongly favors linking employee pay increases to performance. However, any extension of a merit based system covering additional employees should be accomplished only after sufficient pretesting. This view is consistent with the Ink Report, which suggested an experimental stage. "This approach would allow the Federal service to learn while moving into merit pay systems

rather than risking one monumental leap that might fail." The Committee is cognizant of the very successful merit pay experiment in the Department of Navy at China Lake. The Committee urges the Committee of Personnel Management to use its demonstration project authority to further test the merit pay concept in other segments of the workforce.

The Committee feels that the current merit pay system suffers from serious defects in its structure and has been so badly poisoned by bad experiences, that the best solution is to establish a new system, one which more equitably and efficiently advances the concept of merit pay. Therefore, the Committee has deliberately restricted the breadth of the merit pay in the legislation and has established this performance management and recognition system as a five year experiment. This approach is the most reasoned approach to promoting a quality workforce governed by sound management policies and performance practices and one which is viewed favorably by those covered by it.

In addition, the Civil Service Reform Act of 1978 established a new branch of the Civil Service known as the Senior Executive Service (SES) which comprises the government's top level managers. The purpose of the SES was to make the top career executives of the government more responsive to the needs of the Administration in office. The Service was to be a fluid, highly competitive group of executives who could receive substantial awards and bonuses for good performance while being subject to legally unencumbered removals for poor performance.

The law requires that the SES be reviewed by Congress five years after its inception. The Committee decided to use the review of the merit pay system to make changes to the SES. The Committee finds that many of the objectives of the SES have not been realized. Improvements by legislation and administration are necessary. The Committee has made major changes to the SES bonus program and reduction in force and reassignment procedures in this legislation. In addition, the Committee urges the Office of Personnel Management to examine or improve the following areas:

(1) The purpose of the SES was to encourage movement of employees among agencies to further the government's mission. The Committee encourages the use of executive interchange rather than hiring new employees.

(2) The Committee finds that training for SES employees and retraining surplus executives has been inconsistent among the agencies. The Committee urges OPM to assume a more centralized role for such training and implement it government wide.

(3) The intent of the Civil Service Reform Act was to create a cadre of top executives and pay them according to performance not according to position. Recent actions by some agencies to downgrade executives due to positions held is an improper use of the grading authority. The Committee urges OPM to oversee these agency actions to assure compliance with the intent of the SES.

(4) Private businesses utilize a variety of methods to reward their top executives in order to retain them. The federal government has lost many executives in recent years. The Committee urges OPM to examine private sector practices in this regard and to recommend

and implement changes that would tend to retain the government's executives.

MAJOR PROVISIONS

Currently, the merit pay system guarantees employees one-half of pay comparability each year. In lieu of within-grade increases and 100 percent of comparability, the system provides for merit pay increases of varying size along with a possible incentive award, based on the employee's performance appraisal rating. Funding for the system is derived from the other one-half of comparability not guaranteed to employees plus the money formerly used for within-grade increases.

S. 958 replaces this merit pay system with a five year experimental performance management and recognition system for improving the performance of key supervisory and managerial personnel in Grades 13 through 15 of the General schedule.

The legislation strengthens the performance appraisal system by standardizing the process throughout the government. Five levels of performance are established for the appraisal system, of which the mid and expected level of performance is called "fully successful".

<Full comparability is guaranteed for employees who receive a fully successful rating or better under the performance management and recognition system.> Employees rated one level below fully successful do not receive a comparability adjustment at the same time as employees rated fully successful or better. Instead, these employees are rated again six months after the normal adjustment period. If the employee's performance for the six month period is rated fully successful or above, the employee will receive the comparability adjustment at that time. Employees rated two levels below fully successful do not receive comparability adjustments.

Periodic step-increases, or within-grade increases are reestablished under this performance management and recognition system. In comparison to within-grade increases for General Schedule employees, within-grade increases under this new system are accelerated for those people who perform better than in a fully successful manner and are slowed down for those employees receiving a fully successful rating in the middle steps of each grade. In addition, employees rated below fully successful do not receive within-grade increases.

An employee in pay rates 1, 2 or 3 who receives a fully successful rating or above for one year shall receive a within-grade increase. An employee in pay rates 4 through 9 who receives the top level rating, or two steps above fully successful, for one year shall receive a step increase. An employee in pay rates 4 through 9 who receives a fully successful rating for three consecutive years shall receive a step increase.

Employees rated at the top level rating, or two levels above fully successful, will receive a performance award. Employees rated one level above fully successful may receive a performance award. These awards are made in a lump sum fashion and do not affect the employee's rate of basic pay.

In addition, the legislation does not provide for quality step increases but rather places heavy emphasis on the acceleration of within-grade increases and the expansion and usage of performance based cash awards. Through the establishment of a mandatory funding of 1 percent of the base salary in the agency, incentive awards will be used as an effective management tool to encourage high levels of performance annually. Individuals should strive for high performance yearly, and receive compensation for high performance in base pay as well as in a lump sum manner.

The final section makes changes to the Senior Executive Service bonus and RIF provisions. Currently, reduction-in-force procedures for the SES are muddled and cumbersome. The bill repeals the current restrictions on SES RIFs and substitutes it with fallback rights to positions not less than GS-15.

The bill also changes the SES bonus provisions which now authorize 50 percent of the SES to be eligible for a bonus. Limitations on appropriations bills in the past have restricted the availability on bonuses to 20 percent of the SES. The bill repeals the bonus arrangement and instead authorizes 3 percent of the SES payroll to be used for bonuses. There is no limit as to the number of senior executives eligible for a bonus; instead, the limitation is on the availability of funds. Approximately 2 percent of the SES payroll has been utilized for bonuses in the past.

II. SECTION-BY-SECTION ANALYSIS

The Committee amendment is a substitute for S. 958.

Section 1 provides that the Act be cited as the "Civil Service Amendments of 1983."

Section 101 amends Chapter 54 of title 5, United State Code and is entitled "Performance Recognition".

Section 5401 of such title provides for the purpose of the legislation. The purposes delineated are similar to those listed in current law, namely using performance appraisals to determine pay and awards, recognize and reward quality performance, train employees to improve the appraisal process and to regulate the costs of awards. A new objective is to reduce or withhold pay increases for poor performance.

Subsection (a) of section 5402 of such title provides that coverage of the Performance Recognition System be the same as those covered under the Merit Pay System, i.e., supervisors and management officials employed in GS-13, 14 or 15 positions.

Subsection (b) grants the President similar authority as in current law to exclude various groups from the Performance Recognition System. The President may additionally exclude a class of employees within a unit from participating in the system.

Section 5403 of such title provides for the establishment of the performance management and recognition system.

Subsection (a) specifies the pay items to be included in such a system:

- (1) Maximum and minimum rates of basic pay within each grade.
- (2) Comparability adjustments.
- (3) Periodic step increases.

(4) Performance awards.

Subsection (b) authorizes the heads of agencies to provide for the pay increases for each employee under the system.

Paragraph (1) of Subsection (b) provides that comparability adjustments be provided at the same time the rest of the General Schedule employees receive them.

Paragraph (2) provides that comparability adjustments shall be granted to those who receive fully successful ratings or better.

Paragraphs (2) and (3) provide that an employee who receives a rating two levels below fully successful will not receive a comparability adjustment. An employee who receives a rating one level below a fully successful will not receive a comparability adjustment at the time they are provided to everyone else. However, 6 months after the normal adjustment period, the employee will be rated again. If the employee's performance for the six month period is rated fully successful or above, the employee will receive the remainder of the year's comparability adjustment at that time.

Paragraph (4) defines the comparability adjustment to be the employee's basic pay multiplied by the percentage adjustment applicable to the employee's grade as recommended by the President.

Subsection (d) provides for the schedule of periodic step increases. An employee in pay rates 1, 2 or 3 who receives a fully successful rating or above for one year shall receive a step increase. An employee in pay rates 4 through 9 who receives the top level rating for one year shall receive a step increase. An employee in pay rates 4 through 9 who receives a rating one level above fully successful for two consecutive years shall receive a step increase. An employee in the same pay rates who receives a fully successful rating for three consecutive years shall receive a step increase.

Employees must receive the above mentioned ratings for the entire period to receive a scheduled step increase. For instance, an employee in pay rates 4 through 9 who receives a fully successful rating in the first year and then receives a rating one level above fully successful the second year would not be eligible for a step increase. The employee must receive two consecutive ratings at one level above fully successful to receive a step increase. On the other hand, if the same employee received the top rating in the second year, the employee would receive a step increase.

Subsection (e) provides that an employee receiving a top level rating shall receive a performance award. An employee receiving a rating one level above fully successful may receive such an award. The awards shall be in addition to comparability and step increases but will not be added to basic pay. Agency heads will determine the size of awards and whether employees rated one level above fully successful will receive awards; however, an individual award cannot exceed 20 percent of an employee's basic pay. An agency shall use an amount equal to 1 percent of employee payroll in the agency's performance recognition system for performance awards. Failure to pay a performance award is not appealable.

Subsection (f) provides that employees brought under the performance recognition system shall not be subject to a reduction in pay as long as the employee continues to occupy the same position.

Subsection (g) allows an employee to be paid less than the minimum rate of basic pay in the employee's grade as a result of a performance evaluation less than fully successful.

Subsection (h) preserves the benefits of the performance recognition system for employees who serve in the Armed Forces or serve in essential non-government civilian employment during a war or a national emergency.

Subsection (i) clarifies that cost of living allowances payable to employees stationed outside of the contiguous 48 states are not part of basic pay for the purposes of the performance recognition system.

Section 5404 of such title is identical to Section 5403 of the current law providing a cash award program.

Section 5405 of such title requires that OPM submit an annual report to the President and the Congress evaluating the effectiveness of the performance recognition system. Each report shall be based upon consultation with a range of agency heads.

Section 5406 of such title authorizes OPM to issue regulations for the performance recognition system.

Section 5407 of such title sunsets the performance management and recognition system and the annual report 5 years after the date of enactment of this legislation.

Section 102 of the Act amends Section 5335 of title 5, United States Code, to apply periodic step increases to employees under the performance recognition system. It, however, applies a different schedule of step increases than employees under the General Schedule.

Section 103 of this Act amends title 5, United States Code by adding a new section 4302a.

Subsection (a) of such section requires agencies to develop a separate performance appraisal system for employees covered by the performance recognition system. Such a system shall provide for periodic appraisals of job performance, require that supervisors consult with employees prior to establishing performance standards, and be suitable to set basic pay and awards.

Subsection (b) requires OPM to issue regulations regarding the appraisal systems. Each system shall have five levels of performance with the middle and expected level of performance termed the fully successful level. The system also shall assure accurate evaluation of job performance, communication with employees regarding the requirements of the job prior to each appraisal period, evaluation of the employee based upon the standards, assistance to employees performing below the fully successful level, reduction in grade or removal of employees who continually perform at the lowest level and awards and step increases for superior performers.

Subsection (c) lists the items performance appraisals must take into account. Most of the items to be considered are individualistic in nature. However, one item states the appraisals may take into account organizational accomplishment. The Committee urges OPM to consider ways to reward employees who work in organizations that perform more efficiently than projected or organizations which achieve results far in excess of expectations.

Nothing in the appraisal is appealable except an employee rating below the fully successful level.

Subsection (d) prohibits OPM and an agency from directing a specific distribution or curve of ratings in an agency. This is not intended to prevent either OPM or an agency from examining system in which there appears to be extremes in the distribution of performance ratings and questioning them.

Subsection (e) prohibits OPM from directing agencies to include a specific performance standard or element in an agency's system. This is not intended to prevent OPM from assisting agencies in the development systems when requested.

Section 104 of the Act amends various provisions of the Senior Executive Service.

Subsection (a) amends Section 3135 of title 5, United States Code, to add to OPM's reporting requirements on the SES a provision listing the number of SES employees who were removed from the SES as a result of a reduction in-force and placed in a General Schedule position.

Subsection (b) amends section 3592 of such title by authorizing the removal of an SES employee from the SES to another civil service position as a result of a reduction-in-force.

Subsection (c) amends Section 3593 of such title by repealing the reinstatement rights of a former career civil servant to the SES who was removed from the SES as a result of a reduction-in-force. This provision is no longer needed since SES employees subject to a reduction-in-force are entitled to positions in the General Schedule at no less than a GS-15 level in any agency.

Paragraph (1) of subsection (d) amends section 3594 of such title by entitling an SES employee who is removed from the SES as a result of a reduction-in-force to be placed in a civil service position in any agency at a grade no lower than a GS-15. This means, in effect, an SES employee so removed cannot be removed from the Civil Service. The employee must be placed in a position in any agency not lower than a GS-15. Such protections do not apply to such an employee for subsequent reductions-in-force.

Paragraph (2) eliminates the pay protection an SES employee receives who is removed from the SES due to unacceptable performance. Currently, such an individual is entitled to receive the highest of (1) the pay in effect for the new position; (2) the pay for the Civil Service position held prior to appointment to the SES; and (3) the pay as an SES employee. Such employee's basic pay would instead be no lower than GS-15 pay. An employee removed from the SES due to a reduction-in-force would receive all of the pay protection provisions.

Subsection (e) amends section 3595 of such title by repealing the requirement to place an SES employee removed from his position to another SES position in the government and then to notify Congress if such an employee cannot be placed. These provisions are replaced by a requirement to place an SES employee in a vacant SES position in the employee's agency for which he is qualified. If no such vacancy exists, the SES employee may be removed from the SES and placed in a position no less than GS-15 in any agency as specified in subsection (d)(1).

The Committee hopes, however, that OPM will continue to monitor agency reductions-in-force and to try and place SES employees removed for such reasons in other agencies if the SES employee re-

quests such assistance. SES positions are intended to be fungible and thus such an employee should be qualified for some vacancies in other agencies.

Subsection (f) adds new sections 3597 and 3598 to such title.

Section 3597 authorizes the furlough of SES employees for insufficient work or funds or for other nondisciplinary reasons. Such a furlough is appealable to the Merit Systems Protection Board.

Section 3598 requires the head of an agency to inform a career SES employee of a reassignment outside of the employee's commuting area. Such a notice must be reasonably in advance of a reassignment. Current law provides 15 days advance notice for any reassignment. The Committee does not feel 15 days is sufficient notice for a reassignment outside of an employee's commuting area. Reasonable notice should depend upon the needs of the employee as well as the agency. Consideration should be given to an employee's marital and family status, living accommodations and other factors that would tend to tie an employee to a particular area. An employee's needs should be counterbalanced by the needs of the agency, e.g. whether the new position must be filled on an emergency basis. In addition, the notice shall state the management reasons for such a move. Such a statement should explain why the move is necessary for the agency. An explanation such as "for the efficiency of the agency" would be an insufficient reason.

Paragraph (1) of subsection (g) amends Section 5384 of such title by assuring that a performance award cannot be less than 3 percent of the SES employee's basic pay.

Paragraph (2) replaces the limitation on the number of SES employees in an agency eligible for an award by a limitation on the amount of funding authorized for awards. Performance awards in an agency may not exceed 3 percent of the payroll of all SES career appointees in an agency. This makes all SES career appointees eligible for an award. The Committee hopes, however, that with the increased flexibility in the award program, agencies will use the program prudently to grant larger awards to the superior performers.

Subsection (h) amends Section 7543 of such title by clarifying the law with respect to the consequences for failing to accept a directed reassignment. Current law provides that a suspension or removal from the Civil Service of an SES employee may occur as a result of the employee's misconduct, neglect of duty or malfeasance. To suspend or remove an SES employee, an agency must find that failure to accept a reassignment meets one of the above definitions. A basic premise of the SES is to foster position and geographic movement when in the best interest of the agency. This subsection makes it absolutely clear that failure to accept a directed reassignment or to accompany a position in a transfer of function is grounds for suspension or removal.

Subsection (i) requires OPM to issue regulations regarding SES reductions-in-force after notice and hearing pursuant to the Administrative Procedures Act.

Subsection (j) amends Section 8336 of such title to clarify that an SES employee who is separated from the government due to failure to accept a directed reassignment or to accompany a position in a transfer of function will not jeopardize the employee's eligibility to

receive an annuity based upon an involuntary separation. Current law prohibits an employee who is removed for misconduct or delinquency from receiving benefits if eligible through an involuntary separation.

Subsection (k) amends Section 5383 of such title by repealing the aggregate pay limitation for SES employees who receive a bonus, award or an allowance which would cause their total pay to exceed the pay level of Executive Level I employees.

Section 105 of the legislation is comprised of technical amendments.

Section 201 of the legislation provides that all of the changes to the Merit Pay System and the SES shall take effect in October, 1984.

Section (a) of Section 202 of the legislation provides that any employee covered by the Merit Pay System who is not covered by the new performance system shall be converted to the General Schedule.

Subsection (b) of such section provides that any employee covered by the Merit Pay System who then is covered by the new performance system shall receive at least the same basic pay.

III. EVALUATION OF REGULATORY IMPACT

Paragraph 11(b) (1) of Rule XXVI requires each report accompanying a bill to evaluate "the regulatory impact which would be incurred in carrying out the bill."

S. 958 will not have any regulatory impact. It does not authorize any additional regulation of activities in the private sector, impose any new record keeping or reporting requirements on any segment of the public, or abolish any existing regulations.

IV. ESTIMATED COST OF THE LEGISLATION

Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the cost implications of S. 958. The following is CBO's estimate of the potential costs of this legislation:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., January 27, 1984.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee of Governmental Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 958, the Civil Service Amendments of 1984, as ordered reported by the Senate Committee on Governmental Affairs on November 17, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

RUDOLPH G. PENNER, *Director*.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE, JANUARY 27, 1984

1. Bill number: S. 958.

2. Bill title: Civil Service Amendments of 1984.

3. Bill purpose: S. 958 would make several major changes to the federal civil service laws. The bill would replace the current merit system with a performance management and recognition system. Under the new system, employees with less than fully successful job performance evaluations would receive neither a pay comparability increase nor a within-grade increase, while employees evaluated as fully successful or above fully successful would receive periodic step increases and the full annual pay comparability adjustment approved for other federal white-collar employees. In addition, merit system employees with above fully successful ratings would qualify for accelerated step increases and cash performance awards. Quality step increases would be eliminated under the performance management and recognition system. S. 958 would also provide a formula for determining cash performance awards for members of the Senior Executive Service (SES); this formula is the same as that provided in Office of Personnel Management (OPM) regulations published in November 1983.

4. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1985	1986	1987	1988	1989
Estimated authorization level		61	88	117	150
Estimated outlays		59	86	114	146

These costs would fall in all budget functions except function 900 (net interest).

5. Basis of Estimate: This estimate assumes the fiscal year 1984 pay comparability adjustment of 3.5 percent, effective in January 1984. Future federal pay adjustments are those in CBO's 1985-1989 baseline, which assumes that federal civilian employees will receive pay adjustments equal to the annual rate of increase in private-sector pay. Those adjustments are 3.3 percent in fiscal year 1985, 5.4 percent in 1986, 5.6 percent in 1987, and 5.5 percent in 1988 and 1989, effective in October each year.

Title II of the bill specifies that the sections relating to the performance management and recognition system become effective on the first day of the fiscal year following the bill's enactment. CBO, therefore, assumes that the new performance appraisal system would begin in fiscal year 1985, and that pay adjustments based on the new system would begin in 1986. CBO also assumes that about 82,000 merit system employees (the number of current merit system employees in supervisory positions) and about 6,100 career-appointed members of the SES would be affected by the bill.

The performance management and recognition system created by S. 958 would raise federal expenditures by allowing cash performance awards and accelerated step adjustments for employees rated above fully successful. The accelerated step adjustments are estimated to increase federal budget outlays by \$30 million in 1986, rising to \$140 million in 1989. CBO estimates that the provisions of the bill relating to step increases would raise the total annual cost of step adjustments from 1.6 percent to 2.4 percent of total payroll.

This represents the net effect of (1) an increase in outlays resulting from accelerated step increases for employees rated above fully successful and of (2) a decrease in outlays because of the slowing or reduction of step increases for employees rated at or below the fully successful level. CBO has estimated the cost of the proposed merit pay system by applying the rules contained in the bill to the current distribution of performance rankings by grade and step. The estimate assumes that the proposed merit pay system will not alter the distribution of performance rankings.

The bill also specifies that an amount equal to no less than one percent of the performance and recognition system payroll is to be used to make performance awards to workers evaluated as performing above the fully successful level. Assuming a 1984 payroll of \$3.7 billion, and annual pay comparability adjustments in future years equal to those in the CBO baseline, there performance awards would cost on average about \$41 million per year from 1986-1989.

Increased expenditures for accelerated step increases and performance awards would be partially offset by eliminating pay adjustments for workers receiving less than fully successful evaluations, and by discontinuing quality step increases for all supervisory employees currently covered by the merit pay system. Data provided by OPM indicate that approximately one percent of merit system employees receive less than fully successful ratings. Because the bill does not require a specific distribution of employees among the various evaluation categories, CBO assumes the enactment of S. 958 would not alter the current distribution of evaluation ratings. Given this assumption, eliminating all pay adjustments for employees receiving below fully successful ratings would reduce federal spending by about \$1 million in 1986, \$3 million in 1987, \$6 million in 1988, and \$8 million in 1989. By discontinuing quality step increases for all merit system employees, the federal government would save an additional \$6 million in 1986, \$12 million in 1987, \$19 million in 1988, and \$27 million in 1989.

S. 958 also specifies that the aggregate level of performance awards to members of the SES may not exceed 3 percent of total SES basic pay. Data provided by OPM indicate that the level of these awards in 1983 was about 2 percent of total SES basic pay. OPM, however, issued regulations on November 16, 1983 that provide, effective in 1984, performance awards to career-appointed members of the SES at the same 3 percent level specified in the bill. Therefore, relative to current law, this section of S. 958 would have no net budgetary effect.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: This estimate differs from an estimate on S. 958 prepared by CBO on September 16, 1983 for the Subcommittee on Civil Service, Post Office, and General Services of the Senate Committee on Governmental Affairs. The previous CBO estimate (1) assumed an effective date one year earlier, (2) assumed pay rate increases specified in the first budget resolution for fiscal year 1984 (4 percent each year, effective in January), (3) used less up-to-date employment level and payroll numbers, and (4) included the cost of a provision, since dropped from the bill, that would have

established a 45-month experimental program to test the effectiveness of various performance appraisal systems.

9. Estimate prepared by: David Bashore.

10. Estimate approved by: C. G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

V. RECORDED VOTE IN COMMITTEE

In compliance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the rollcall vote taken during committee consideration is as follows:

Final passage: Ordered reported, 16 yeas; 0 nays.

Yeas—16

Nays—0

Percy
Stevens
Mathias
Cohen
Durenberger
Rudman
Danforth
Cochran
Eagleton
Chiles
Nunn
Glenn
Sasser
Levin
Bingaman
Roth

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no changes is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

- 3131. The Senior Executive Service.
- 3132. Definitions and exclusions.
- 3133. Authorization of positions; authority of appointment.
- 3134. Limitations on noncareer and limited appointments.
- 3135. Biennial report.

3136. Regulations.

* * * * *

§ 3135. Biennial report

(a) The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted by the President to the Congress during each odd-numbered calendar year, a report on the Senior Executive Service. The report shall include—

* * * * *

(8) the estimated number of career reserved positions which, during the two fiscal years following the then current fiscal year, will become general positions and the estimated number of general positions which during such two fiscal years, will become career reserved positions; **[and]**

(9) the number of career appointees who have been placed in a position outside the Senior Executive Service under section 3594 of this title as a result of a removal under section 3595 of this title; and

[(9)](10) such other information regarding the Senior Executive Service as the Office considers appropriate.

[(b)] The Office of Personnel Management shall submit to each House of the Congress, at the time the budget is submitted to the Congress during each even-numbered a calendar year, an interim report showing changes in matters required to be reported under subsection (a) of this section.

CHAPTER 35—RETENTION PREFERENCE, RESTORATION AND REEMPLOYMENT

* * * * *

SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE

- 3591. Definitions.
- 3592. Removal from the Senior Executive Service.
- 3593. Reinstatement in the Senior Executive Service.
- 3594. Guaranteed placement in other personnel systems.
- 3595. Reduction in force in the Senior Executive Service.
- 3596. Regulations.
- 3597. *Furlough in the Senior Executive Service.*
- 3598. *Reassignment notice.*

* * * * *

§ 3592. Removal from the Senior Executive Service

(a) Except as provided in subsection (b) of this section, a career appointee may be removed from the Senior Executive Service to a civil service position outside of the Senior Executive Service—

(1) during the 1-year period of probation under section 3393

(d) of this title, **[or]**

(2) at any time for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title,

(3) as a result of a reduction in force under section 3595 of this title,

except that in the case of a removal under paragraph (2) of this subsection the career appointee shall, at least 15 days before the removal, be entitled, upon request, to an informal hearing before an official designated by the Merit Systems Protection Board at which the career appointee may appear and present arguments, but such hearing shall not give the career appointee the right to initiate an action with the Board under section 7701 of this title, nor need the removal action be delayed as a result of the granting of such hearing.

* * * * *

§3593. Reinstatement in the Senior Executive Service

(a) A former career appointee may be reinstated, without regard to section 3393 (b) and (c) of this title, to any Senior Executive Service position for which the appointee is qualified if—

(1) the appointee has successfully completed the probationary period established under section 3393(d) of this title; and

(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43 of this title.

(b) A career appointee who is appointed by the President to any civil service position outside the Senior Executive Service and who leaves the position for reasons other than misconduct, neglect of duty, or malfeasance shall be entitled to be placed in the Senior Executive Service if the appointee applies to the Office of Personnel Management within 90 days after separation from the Presidential appointment.

[(c)(1) A former career appointee shall be reinstated, without regard to section 3393 (b) and (c) of this title, to any vacant Senior Executive Service position in any agency for which the appointee is qualified if—

[(A) the individual was a career appointee on May 31, 1981;

[(B) the appointee was removed from the Senior Executive Service under section 3594 of this title due to a reduction in force in that agency;

[(C) before the removal occurred, the appointee successfully completed the probationary period established under section 3393(d) of this title; and

[(D) the appointee applies for that vacant position within one year after the Office receives certification regarding that appointee pursuant to section 3595(b)(3)(B) of this title.

[(2) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title any determination by the agency that the appointee is not qualified for a position for which the appointee applies under paragraph (1) of this subsection.]

§ 3594. Guaranteed placement in other personnel systems

(a) A career appointee who was appointed from a civil service position held under a career or career-conditional appointment (or an appointment of equivalent tenure, as determined by the Office of Personnel Management) and who, for reasons other than miscon-

duct, neglect of duty, or malfeasance, is removed from the Senior Executive Service during the probationary period under section 3393(d) of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive position) in any agency.

[(b) A career appointee—

[(1) who has completed the probationary period under section 3393(d) of this title; and

[(2) who is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title;

shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.]

(b) A career appointee who has completed the probationary period under section 3393(d) of this title and who—

(1) is removed from the Senior Executive Service for less than fully successful executive performance as determined under subchapter II of chapter 43 of this title; or

(2) is removed from the Senior Executive Service as a result of a reduction in force under section 3595 of this title, shall be entitled to be placed in a civil service position (other than a Senior Executive Service position) in any agency.

(c)(1) For purposes of subsections (a) and (b) of this section—

(A) the position in which any career appointee is placed under such subsections shall be a continuing position at GS-15 or above of the General Schedule, or an equivalent position, and, in the case of a career appointee referred to in subsection (a) of this section, the career appointee shall be entitled to an appointment of a tenure equivalent to the tenure of the appointment held in the position from which the career appointee was appointed;

(B) any career appointee placed under [subsection (a) or (b) of this section] *subsection (a) of this section, other than by reason of unacceptable performance, or under subsection (b)(2) of this section* shall be entitled to receive basic pay at the highest of—

(i) the rate of basic pay in effect for the position in which placed;

(ii) the rate of basic pay in effect at the time of the placement for the position the career appointee held in the civil service immediately before being appointed to the Senior Executive Service; or

(iii) the rate of basic pay in effect for the career appointee immediately before being placed under subsection (a) or (b) of this section; and

(C) the placement of any career appointee under subsection (a) or (b) of this section may not be made to a position which would cause the separation or reduction in grade of any other employee.

(2) An employee who is receiving basic pay under paragraph (1)(B)(ii) or (iii) of this subsection is entitled to have the basic pay rate of the employee increased by 50 percent of the amount of each increased in the maximum rate of basic pay for the grade of the position in which the employee is placed under subsection (a) or (b) of this section until the rate is equal to the rate in effect under

paragraph (1)(B)(i) of this subsection for the position in which the employee is placed.

§ 3595. Reduction in force in the Senior Executive Service

(a) An agency shall establish competitive procedures for determining who shall be removed from the Senior Executive Service in any reduction in force of career appointees within that agency. The competitive procedures shall be designed to assure that such determinations are primarily on the basis of performance, as determined under subchapter II of chapter 43 of this title.

(b)(1) This subsection applies to any career appointee who has successfully completed the probationary period prescribed under section 3393(d) of this title.

[(2) Except as provided in paragraphs (4) and (5), a career appointee may not be removed from the Senior Executive Service due to a reduction in force within an agency.

[(3) A career appointee who, but for this subsection, would be removed from the Senior Executive Service due to a reduction in force within an agency—

[(A) is entitled to be assigned by the head of that agency to a vacant Senior Executive Service position for which the career appointee is qualified; or

[(B) if the agency head certifies, in writing, to the Office of Personnel Management that no such position is available in the agency, is entitled (i) to be placed by the Office in any agency in any vacant Senior Executive Service position unless the head of that agency determines that the career appointee is not qualified for that position or (ii) [to] be detailed by the Office to any vacant Senior Executive Service position for which the Office deems the employee to be qualified in any agency for a period not to exceed 60 days, and be placed in such position by the Office after the period of such detail, unless the head of the agency determines that the career appointee is not qualified for such position.

The Office of Personnel Management shall take all reasonable steps to place a career appointee under subparagraph (B) and may require any agency to take any action which the Office considers necessary to carry out any such placement.

[(4) A career appointee who is not assigned under paragraph (3)(A) may be removed from the Senior Executive Service and the civil service due to a reduction in force if—

[(A) the career appointee declines a reasonable offer for placement in a Senior Executive Service position under paragraph (3)(B); or

[(B) subject to paragraph (5), the career appointee is not placed in another Senior Executive Service position under paragraph (3)(B) within 120 days after the Office receives certification regarding that appointee under paragraph (3)(B).

[(5) An individual who was a career appointee on May 31, 1981, may be removed from the Senior Executive Service and the civil service due to a reduction in force after the 120-day period specified in paragraph (4)(B) only if the Director of the Office of Personnel Management certifies to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Gov-

ernmental Affairs of the Senate, no later than 30 days prior to the effective date of such removal, that—

[(A) the Office has taken all reasonable steps to place the career appointee in accordance with paragraph (3) of this subsection, and

[(B) due to the highly specialized skills and experience of the career appointee, the Office has been unable to place the career appointee.

[(c) A career appointee is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title—

[(1) whether the reduction in force complies with the competitive procedures required under subsection (a),

[(2) any removal under subsection (b)(4)(A), and

[(3) in the event the career appointee is not placed under subsection (b)(3) of this section—

[(A) whether the Office of Personnel Management took all reasonable steps to achieve such placement, and

[(B) the decision of an agency under subsection (b)(3)(B) of this section that the career appointee is not qualified to be placed in a position.

[(d) For purposes of this section, “reduction in force” includes the elimination or modification of a position due to a reorganization, due to a lack of funds or curtailment of work, or due to any other factor.]

(2) A career appointee may be removed from the Senior Executive Service due to a reduction in force within an agency only if the appointee is not assigned to a Senior Executive Service position under paragraph (3) of this subsection.

(3) A career appointee who, but for this paragraph, would be removed from the Senior Executive Service due to a reduction in force within an agency is entitled to be assigned by the head of that agency to a vacant Senior Executive Service position for which the career appointee is qualified.

§ 3596. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

§ 3597. Furlough in the Senior Executive Service

(a) For the purposes of this section, the term “furlough” means the placement of a senior executive in a temporary status in which the senior executive has no duties and is not paid when the placement in such status is by reason of insufficient work or funds or for other nondisciplinary reasons.

(b) An agency may furlough a career appointee only pursuant to regulations issued by the Office of Personnel Management.

(c) A career appointee who is furloughed is entitled to appeal his status to the Merit Systems Protection Board under section 7701 of this title.

§ 3598. Reassignment notice

The head of an agency reassigning any career appointee outside the career appointee's commuting area under this chapter shall transmit to the career appointee reasonable advance notice of the

reassignment. The notice shall include a statement setting forth valid management reasons for the reassignment.

* * * * *

SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINTMENT IN THE FOREIGN SERVICE

[§ 3597.] § 3599. Reemployment following limited appointment in the Foreign Service

An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increase in pay which the employee would have received if the employee had remained in the former position in the agency.

CHAPTER 43—PERFORMANCE APPRAISAL

SUBCHAPTER I—GENERAL PROVISIONS

SEC.

4301. Definitions.

4302. Establishment of performance appraisal systems.

4302a. *Establishment of performance appraisal systems for performance management and recognition system employees.*

4303. Actions based on unacceptable performance.

4304. Responsibilities of Office of Personnel Management.

4305. Regulations.

* * * * *

§ 4302a. Establishment of performance appraisal systems for performance management and recognition system employees

(a) Each agency shall develop a performance appraisal system for employees covered by the performance management and recognition system established under section 5403 of this title which—

(1) provides for periodic appraisals of job performance;

(2) requires that the supervising official consult with the employee before established performance standards; and

(3) is suitable for use in setting the basic pay and performance awards for an employee in accordance with section 5403 of this title.

(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system under this section shall—

(1) provide for five levels of performance ratings as follows:

(A) two levels which are below fully successful;

(B) a fully successful level; and

(C) two levels which are above fully successful;

(2) provide for establishing performance standards and critical elements which will, to the maximum extent feasible, permit the accurate evaluation of job performance;

(3) require each supervisor of an employee covered by the performance management and recognition system to discuss with each such employee, before the beginning of each appraisal period, the performance standards and critical elements applicable to the employee's position during such appraisal period;

(4) provide for evaluating each such employee on the basis of such standards during the appraisal period;

(5) provide for assisting such employees in improving less than fully successful performance;

(6) provide for reducing in grade or removing any such employee who continually performs at the level which is two levels below the fully successful level, after providing an opportunity to perform at the fully successful level; and

(7) provide for making decisions to increase a rate of basic pay or to make a performance award based on annual performance appraisals made under this section.

(c)(1) Appraisals of performance under this section—

(A) shall take into account—

(i) individual performance;

(ii) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

(iii) cost efficiency;

(iv) timeliness of performance; and

(v) other indications of the effectiveness, productivity, and quality of performance of the appraised employee or other employees for whom the appraised employee or other employees for whom the appraised employee is responsible;

(B) may take into account organizational accomplishment; and

(C) except as provided in paragraph (2) of this subsection, shall be subject to review only within the agency of the employee and only in accordance with and to the extent provided by procedures established by the Office of Personnel Management and may not be appealed outside the agency.

(2) An employee whose performance is rated below the fully successful level is entitled to appeal the rating to the Merit Systems Protection Board.

(3) If a review under paragraph (1)(C) of this subsection or an appeal under paragraph (2) of this subsection results in a higher performance rating, such rating supersedes the earlier rating and is deemed to have been made as of the date of the earlier rating.

(d) In carrying out this section, the Office of Personnel Management and an agency may not prescribe a distribution of levels of performance ratings for employees covered by chapter 54 of this title.

(e) The Office of Personnel Management may not prescribe or require agencies to prescribe any specific performance standard or element for the purposes of this section.

* * * * *

CHAPTER 45—INCENTIVE AWARDS

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

- SEC.
 4501. Definitions.
 4502. General provisions.
 4503. Agency awards.
 4504. Presidential awards.
 4505. Awards to former employees.
 4506. Regulations.
 4507. Awarding of ranks in the Senior Executive Service.

* * * * *

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

§ 4501. Definitions

For the purpose of this subchapter—

- (1) "agency" means—
 (A) an Executive agency;
 (B) the Administrative Office of the United States Courts;
 (C) the Library of Congress;
 (D) the Office of the Architect of the Capitol;
 (E) the Botanic Garden;
 (F) the Government Printing Office; and
 (G) the government of the District of Columbia; but does not include—
 (i) the Tennessee Valley Authority; or
 (ii) the Central Bank for Cooperatives;
- (2) "employee" means—
 (A) an employee as defined by section 2105 of this title but does not include an employee covered by [the merit pay system established under section 5402] *the performance management and recognition system established under section 5403* of this title; and
 (B) an individual employed by the government of the District of Columbia; and
- (3) "Government" means the Government of the United States and the government of the District of Columbia.

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CHAPTER 53—PAY RATES AND SYSTEMS

* * * * *

SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

5331. Definitions; application.
 5332. The General Schedule.
 5333. Minimum rate for new appointments; higher rates for supervisors of prevailing rate employees.
 5334. Rate on change of position or type of appointment; regulations.
 5335. Periodic step-increases.
 5336. Additional step-increases.
 5337. [Repealed.]

5338. Regulations.

* * * * *

SUBCHAPTER III—GENERAL SCHEDULE PAY RATES

* * * * *

§ 5332. The General Schedule.

(a) The General Schedule, the symbol for which is "GS", is the basic pay schedule for positions to which this subchapter applies. Each employee to whom this chapter applies, except an employee covered by [the merit pay system established under section 5402] *the performance management and recognition system established under section 5403* of this title, is entitled to basic pay in accordance with the General Schedule.

* * * * *

§ 5334. Rate on change of position or type of appointment; regulations

* * * * *

(f) In the case of an employee covered by [the merit pay system established under section 5402] *the performance management and recognition system established under section 5403* of this title, all references in this section to "two steps" or "two step-increases" shall be deemed to mean 6 percent.

§ 5335. Periodic step-increases

* * * * *

[(e) This section does not apply to the pay of an individual covered by the merit pay system established under section 5402 of this title, or, appointed by the President, by and with the advice and consent of the Senate.]

(e) This section does not apply to the pay of an individual appointed by the President, by and with the advice and consent of the Senate.

(f) Notwithstanding clauses (1), (2), and (3) of subsection (a) of this section, employees covered by the performance management and recognition system under chapter 54 of this title shall be advanced in pay only as provided in section 5403(d) of this title.

§ 5336. Additional step-increases

* * * * *

(c) This section does not apply to the pay of an individual covered by [the merit pay system established under section 5402] *the performance management and recognition system established under section 5403* of this title, or, appointed by the President, by and with the advice and consent of the Senate.

* * * * *

SUBCHAPTER VI—GRADE AND PAY RETENTION

§5361. Definitions

For the purpose of this subchapter—

(1) "employee" means an employee to whom chapter 51 of this title applies, and a prevailing rate employee, as defined by section 5342(a)(2) of this title, whose employment is other than on a temporary or term basis;

(2) "agency" has the meaning given it by section 5102 of this title;

(3) "retained grade" means the grade used for determining benefits to which an employee to whom section 5362 of this title applies is entitled;

(4) "rate of basic pay" means, in the case of a prevailing rate employee, the scheduled rate of pay determined under section 5343 of this title;

(5) "covered pay schedule" means the General Schedule, any prevailing rate schedule established under subchapter IV of this chapter, or the [merit pay system] *performance management and recognition system* under chapter 54 of this title;

* * * * *

SUBCHAPTER VIII—PAY FOR THE SENIOR EXECUTIVE SERVICE

* * * * *

§5383. Setting individual senior executive pay

* * * * *

[(b) In no event may the aggregate amount paid to a senior executive during any fiscal year under sections 4507, 5382, 5384, and 5948 of this title exceed the annual rate payable for positions at level I of the Executive Schedule in effect at the end of such fiscal year.]

* * * * *

§5384. Performance awards in the Senior Executive Service

* * * * *

(b)(1) No performance award under this section shall be paid to any career appointee whose performance was determined to be less than fully successful at the time of the appointee's most recent performance appraisal and rating under subchapter II of chapter 43 of this title.

(2) The amount of a performance award under this section shall be determined by the agency head but may not [exceed] *be less than 3 percent nor more than 20 percent* of the career appointee's rate of basic pay.

[(3) The number of career appointees in any agency paid performance awards under this section during any fiscal year may not exceed 50 percent of the number of Senior Executive Service positions in such agency. This paragraph shall not apply in the case of any agency which has less than 4 Senior Executive Service positions.]

(3) The total amount of performance awards paid during a fiscal year by an agency under this section may not exceed 3 percent of the aggregate payroll for career appointees in the agency.

* * * * *

SUBPART D—PAY AND ALLOWANCES

51—Classified	5101
53—Pay Rates and Systems	5301
[54—Merit Pay and Cash Awards	5401]
<i>54. Performance Recognition</i>	<i>5401</i>
55—Pay Administration	5501
57—Travel, Transportation, and Subsistence.....	5701
59—Allowances.....	5901

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[CHAPTER 54—MERIT PAY AND CASH AWARDS

- [SEC.**
- [5401.** Purpose.
- [5402.** Merit pay system.
- [5403.** Cash award program.
- [5404.** Report.
- [5405.** Regulations.

[§ 5401. Purpose

[(a) It is the purpose of this chapter to provide for—

[(1) a merit pay system which shall—

[(A) within available funds, recognize and reward quality performance by varying merit pay adjustments;

[(B) use performance appraisals as the basis for determining merit pay adjustments;

[(C) within available funds, provide for training to improve objectivity and fairness in the evaluation of performance; and

[(D) regulate the costs of merit pay by establishing appropriate control techniques; and

[(2) a cash award program which shall provide cash awards for superior accomplishment and special service.

[(b)(1) Except as provided in paragraphs (2) and (3) of this subsection, this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is GS-13, 14, or 15 of the General Schedule described in section 5104 of this title.

[(2)(A) Upon application under subparagraph (C) of this paragraph, the President may, in writing, exclude an agency or any unit of an agency from the application of this chapter if the President considers such exclusion to be required as a result of conditions arising from—

[(i) the recent establishment of the agency or unit, or the implementation of a new program,

[(ii) an emergency situation, or

[(iii) any other situation or circumstance.

[(B) Any exclusion under this paragraph shall not take effect earlier than 30 calendar days after the President transmits to each House of the Congress a report describing the agency or unit to be excluded and the reasons therefor.

[(C) An application for exclusion under this paragraph of an agency or any unit of an agency shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency or unit should be excluded from this chapter. The Office shall review the application and reasons, undertake such other review as it considers appropriate to determine whether the agency or unit should be excluded from the coverage of this chapter, and upon completion of its review, recommend to the President whether the agency or unit should be so excluded.

[(D) Any agency or unit which is excluded pursuant to this paragraph shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

[(E) The Office shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this paragraph be revoked. The President may at any time revoke, in writing, any exclusion under this paragraph.

[(3) This chapter shall not apply to individuals employed under the Office of the Architect of the Capitol or the Botanic Garden.

[(§ 5402. Merit pay system

[(a) In accordance with the purpose set forth in section 5401(a)(1) of this title, the Office of Personnel Management shall establish a merit pay system which shall provide for a range of basic pay for each grade to which the system applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each grade under chapter 53 of this title.

[(b)(1) Under regulations prescribed by the Office, the head of each agency may provide for increases within the range of basic pay or any employee covered by the merit pay system.

[(2) Determinations to provide pay increases under this subsection—

[(A) may take into account individual performance and organizational accomplishment, and

[(B) shall be based on factors such as—

[(i) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

[(ii) cost efficiency;

[(iii) timeliness of performance; and

[(iv) other indications of the effectiveness, productivity, and quality of performance of the employees for whom the employee is responsible;

[(C) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency; and

[(D) shall be made in accordance with regulations issued by the Office which relate to the distribution of increases authorized under this subsection.

[(3) For any fiscal year, the head of any agency may exercise authority under paragraph (1) of this subsection only to the extent of the funds available for the purpose of this subsection.

[(4) The funds available for the purpose of this subsection to the head of any agency for any fiscal year shall be determined before the beginning of the fiscal year by the Office on the basis of the amount estimated by the Office to be necessary to reflect—

[(A) within-grade step increases and quality step increases which would have been paid under subchapter III of chapter 53 of this title during the fiscal year to the employees of the agency covered by the merit pay system if the employees were not so covered; and

[(B) adjustments under section 5305 of this title which would have been paid under such subchapter during the fiscal year to such employees if the employees were not so covered, less an amount reflecting the adjustment under subsection (c)(1) of this section rates of basic pay payable to the employees for the fiscal year.

[(c)(1) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of this title, the rate of basic pay for any position under this chapter shall be adjusted by an amount equal to the greater of—

[(A) one-half of the percentage of the adjustment in the annual rate of pay which corresponds to the percentage generally applicable to positions not covered by the merit pay system in the same grade as the position; or

[(B) such greater amount of such percentage of such adjustment in the annual rate of pay as may be determined by the Office.

[(2) Any employees whose position is brought under the merit pay system shall, so long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the merit pay system, plus any subsequent adjustment under paragraph (1) of this subsection.

[(3) No employee to whom this chapter applies may be paid less than the minimum rate of basic pay of the grade of the employee's position.

[(d) Under regulations prescribed by the Office, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee covered by the merit pay system whose continuous service is interrupted in the public interest by service with the armed forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

[(e) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the merit pay system shall be considered rates of basic pay fixed by statute.

[(§ 5403. Cash award program

[(a) the head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

[(1) by the employee's suggestion, invention superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

[(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

[(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the merit pay system who—

[(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

[(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

[(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5402 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns.

[(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the merit pay system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

[(e) (1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed \$10,000.

[(2) If the head of any agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be awarded to the employee on the approval of the Office.

[(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the merit pay system. (Pub. L. 95-454, Oct 13, 1978, 92. Stat. 1182.)

§ 5404. Report

【The Office of Personnel Management shall include in each annual report required by section 1308(a) of this title a report on the operation of the merit pay system and the cash award program established under this chapter. The report shall include—

【(1) an analysis of the cost and effectiveness of the merit pay system and the cash award program; and

【(2) a statement of the agencies and units excluded from the coverage of this chapter under section 5401(b)(2) of this title, the reasons for which each exclusion was made, and whether the exclusion continues to be warranted.

§ 5405. Regulations

【The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.】

CHAPTER 54—PERFORMANCE RECOGNITION

Sec.

5401. Purpose.

5402. Coverage.

5403. Performance management and recognition system.

5404. Cash award program.

5405. Report.

5406. Regulations.

5407. Termination.

§ 5401. Purpose

It is the purpose of this chapter to provide for a performance management and recognition system which shall—

(1) use performance appraisals as the basis for determining basic pay and performance awards;

(2) within available funds, recognize and reward quality performance by varying levels of performance awards;

(3) within available funds, provide for training to improve accuracy and fairness in the evaluation of performance;

(4) regulate the costs of performance awards by establishing funding level restrictions; and

(5) provide the means to reduce or withhold pay increases for less than fully successful performance.

§ 5402. Coverage

(a) Except as provided in subsections (b) and (c), this chapter shall apply to any supervisor or management official (as defined in paragraphs (10) and (11) of section 7103 of this title, respectively) who is in a position which is in GS-13, GS-14, or GS-15 of the General Schedule described in section 5104 of this title.

(b)(1) Upon request filed under paragraph (3) of this subsection, the President may, in writing, exclude an agency, any unit of an agency, or any class of employees within any such unit from the application of this chapter if the President considers such exclusion to be required as a result of conditions arising from—

(A) the recent establishment of the agency, unit, or class, or the implementation of a new program;

(B) an emergency situation; or

(C) any other situation or circumstance.

(2) any exclusion under this subsection shall not take effect earlier than 30 calendar days after the President transmits to each house of the Congress a report describing the agency, unit, or class to be excluded and the reasons therefor.

(3) A request for exclusion of an agency, any unit of an agency, or any class of employees within any such unit under this subsection shall be filed by the head of the agency with the Office of Personnel Management, and shall set forth reasons why the agency, unit, or class should be excluded from the application of this chapter. The Office of Personnel Management shall review the request and reasons therefor, undertake such other review as it considers appropriate to determine whether the agency, unit, or class should be excluded from the application of this chapter, and upon completion of its review, recommend to the President whether the agency, unit, or class should be so excluded.

(4) Any agency, unit, or class which is excluded pursuant to this subsection shall, insofar as practicable, make a sustained effort to eliminate the conditions on which the exclusion is based.

(5) The Office of Personnel Management shall periodically review any exclusion from coverage and may at any time recommend to the President that an exclusion under this subsection be revoked. The President may at any time revoke, in writing, any exclusion under this subsection.

(c) This chapter shall not apply to individuals employed under the Office of the Architect of the Capitol, the Library of Congress, the Botanic Garden, or the Administrative Office of the Courts.

§ 5403. Performance management and recognition system

(a) In accordance with the purpose set forth in section 5401 of this title, the Office of Personnel Management shall establish a performance management and recognition system which shall provide for—

(1) a range of basic pay for each grade to which the system applies, which range shall be limited by the minimum and maximum rates of basic pay payable for each grade under section 5332 of this title, except as otherwise provided in this section;

(2) pay increases within such range, consisting of—

(A) comparability pay increases (under section 5305 of this title) to the extent provided in subsection (c); and

(B) periodic step-increases, as provided under subsection (d), based on performance; and

(3) performance awards based on performance, as provided under subsection (e).

(b) Under regulations prescribed by the Office of Personnel Management, the head of each agency shall provide for increases within the range of basic pay for each employee covered by the performance management and recognition system.

(c)(1) For the purposes of this subsection, the pay adjustment period applicable to an employee in any fiscal year shall be the period beginning on the first day of the first period applicable to the employee commencing on or after the first day of the month in which an adjustment would take effect under section 5305 of this title without regard to this section and ending at the close of the day preceding the beginning of the following pay adjustment period.

(2) Determinations to provide comparability pay increases under subsection (a)(2) shall, for any pay adjustment period, be made based on the level of performance of the employee involved, as most recently determined under chapter 43 of this title. If the employee's performance is rated at—

(A) either of the two levels below the fully successful level, the basic pay for the employee shall not be increased for such pay adjustment period except as provided in paragraph (3); or

(B) the fully successful level or either of the two levels above fully successful, the basic pay of the employee shall be increased by the full comparability increase for such pay adjustment period.

(3) If the basic pay of an employee is not increased for a pay adjustment period by reason of a performance rating at the first level below the fully successful level, the performance of such employee shall be rated again under chapter 43 of this title only for the purposes of this subsection six months after the date on which such pay adjustment period begins. If the performance of such employee during such period of six months is rated at the fully successful level or either of the two levels above the fully successful level, the basic pay of such employee shall be increased for the remainder of such pay adjustment period effective on the date of performance rating required by the first sentence of this paragraph.

(4)(A) The comparability increase, for purposes of paragraph (2) or (3) of this subsection, shall be an amount equal to the basic pay of the employee involved multiplied by the percentage increase applicable to the grade of the position of such employee under section 5305 of this title at the beginning of the pay adjustment period.

(B) For the purposes of determining the comparability increase applicable to an employee under subparagraph (A), such employee's rate of basic pay on the day immediately preceding the pay adjustment period involved shall be used.

(d) An employee covered by this chapter shall receive periodic step-increases upon the completion of—

(1) each period of 52 calendar weeks of service in pay rates 1, 2, and 3 if the performance of such service is rated under chapter 43 of this title for such period at not less than the fully successful level; and

(2)(A) each period of 52 calendar weeks of service in pay rates 4 through 9 if the performance of such service is rated under such chapter two levels above the fully successful level;

(B) each period of 104 consecutive calendar weeks of service in pay rates 4 through 9 if the performance of such service is rated under such chapter at not less than one level above the fully successful level for the entire period; or

(C) each period of 156 consecutive calendar weeks of service in pay rates 4 through 9 if the performance of such service is rated under such chapter at not less than the fully successful level for the entire period.

(e)(1)(A) If an employee's performance is rated two levels above the fully successful level, the employee shall be paid a performance award in accordance with the provisions of this subsection.

(B) If an employee's performance is rated one level above the fully successful level, the employee may be paid a performance award in accordance with the provisions of this subsection.

(C) Any award paid under this paragraph shall be in addition to any increase in basic pay provided under subsection (c) or (d).

(2) A performance award under this subsection may be made to an employee in such amount as the head of the agency considers appropriate, except that any such award may not exceed an amount equal to 20 percent of the rate of basic pay payable to such employee.

(3)(A) For any fiscal year, the head of any agency may exercise authority under this subsection only to the extent of the funds available for the purposes of this subsection.

(B) Performance awards under this subsection shall be paid from funds or appropriations available to the agency for pay of employees.

(C) Subject to the limitation on the maximum amount which may be paid as a performance award set forth in paragraph (2) of this subsection, in each fiscal year an agency shall pay performance awards under this subsection in a total amount equal to not less than one percent of the aggregate amount of basic pay which is payable to the employees of the agency who are covered by the performance management and recognition system for such fiscal year. The aggregate amount of performance awards payable under this subsection in any fiscal year shall be determined by the Office of Personnel Management before the beginning of such fiscal year.

(4) A failure to pay a performance award authorized by paragraph (1)(B) of this subsection may not be appealed.

(f) Except as provided in subsection (g) of this section, any employee whose position is brought under the performance management and recognition system shall, for as long as the employee continues to occupy the position, be entitled to receive basic pay at a rate of basic pay not less than the rate the employee was receiving when the position was brought under the performance management and recognition system.

(g) Under this section, an employee may be paid less than the minimum rate of basic pay of the grade of the employee's position to the extent that payment of the lesser amount is the result of a performance evaluation of less than fully successful.

(h) Under regulations prescribed by the Office of Personnel Management, the benefit of advancement through the range of basic pay for a grade shall be preserved for any employee who is covered by the performance management and recognition system and whose continuous service is interrupted in the public interest by service in the Armed Forces, or by service in essential non-Government civilian employment during a period of war or national emergency.

(i) For the purpose of section 5941 of this title, rates of basic pay of employees covered by the performance management and recognition system shall be considered rates of basic pay fixed by statute.

§ 5404. Cash award program

(a) The head of any agency may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the performance management and recognition system who—

(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs a special act or service in the public interest in connection with or related to the employee's Federal employment.

(b) The President may pay a cash award to, and incur necessary expenses for the honorary recognition of, any employee covered by the performance management and recognition system who—

(1) by the employee's suggestion, invention, superior accomplishment, or other personal effort, contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork; or

(2) performs an exceptionally meritorious special act or service in the public interest in connection with or related to the employee's Federal employment.

A Presidential cash award may be in addition to an agency cash award under subsection (a) of this section.

(c) A cash award to any employee under this section is in addition to the basic pay of the employee under section 5403 of this title. Acceptance of a cash award under this section constitutes an agreement that the use by the Government of any idea, method, or device for which the award is made does not form the basis of any claim of any nature against the Government by the employee accepting the award, or the employee's heirs or assigns.

(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the performance management and recognition system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious effort of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

(e)(1) Except as provided in paragraph (2) of this subsection, a cash award under this section may not exceed \$10,000.

(2) If the head of any agency certifies to the Office of Personnel Management that the suggestions, invention, superior accomplishment, or other meritorious effort of an employee for which a cash award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$10,000 but not in excess of \$25,000 may be awarded to the employee on the approval of the Office.

(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the performance management and recognition system.

§ 5405. Report

The Office of Personnel Management shall submit an annual report to the President and each House of Congress evaluating the

effectiveness of the performance management and recognition system. Each such report shall be prepared after consultation with the respective heads of a sufficient range of agencies so as to permit an adequate basis for making a meaningful evaluation.

§ 5406. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter.

§ 5407. Termination

The performance management and recognition system established pursuant to section 5403 of this title and the requirement of section 5405 of this title (relating to the annual report of the Office of Personnel Management on such system) shall not be effective after the date which is five years after the date of enactment of the Merit Pay Reform Act of 1983.

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CHAPTER 59—ALLOWANCES

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SUBCHAPTER IV—MISCELLANEOUS ALLOWANCES

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§ 5948. Physicians comparability allowances

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(g) For the purpose of this section—

(1) "Government physician" means any individual employed as a physician or dentist who is paid under—

(A) section 5332 of this title, relating to the General Schedule;

(B) subchapter VIII of chapter 53 of this title, relating to the Senior Executive Service;

(C) chapter 54 of this title, relating to the [Merit Pay System]; *performance management and recognition system;*

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CHAPTER 75—ADVERSE ACTIONS

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SUBCHAPTER V—SENIOR EXECUTIVE SERVICE

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§ 7543. Cause of procedure

(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for misconduct, neglect of duty, [or malfeasance.] *malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.*

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TITLE 10—ARMED FORCES

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CHAPTER 83. DEFENSE INTELLIGENCE AGENCY CIVILIAN PERSONNEL

- Sec.
1601. Defense-Intelligence Senior Executive Service.
1602. Defense Intelligence Agency merit pay system.
1603. Limit on pay.

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§ 1602. Defense Intelligence Agency merit pay system

The Secretary of Defense may by regulation establish a merit pay system for such employees of the Defense Intelligence Agency as the Secretary considers appropriate. The merit pay system shall be designed to carry out purposes consistent with those set forth in section [5401(a)] 5401 of title 5 [5 USCS § 5401(a)].

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TITLE 31—MONEY AND FINANCE

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SUBCHAPTER III. PERSONNEL

§ 731. General

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(b) The Comptroller General may establish for appropriate officers and employees a merit pay system consistent with section [5401(a)] 5401 of title 5 [5 USCS § 5401(a)].

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CHAPTER 83—RETIREMENT

SUBCHAPTER III—CIVIL SERVICE RETIREMENT

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§ 8336. Immediate retirement

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- (d) An employee who—
- (1) is separated from the service involuntarily, except by removal for cause on charges of misconduct or delinquency; or
For the purposes of paragraph (1) of this subsection, separation for failure to accept a directed reassignment or to accompany a position in a transfer of function shall not be considered to be a removal for cause or charges of misconduct or delinquency.
 - (2) while serving in a geographic area designated by the Office of Personnel Management, is separated from the service

voluntarily during a period in which the Office determines
that—

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