

1 **SEC. __. INDUSTRY EXCHANGE PROGRAM.**

2 (a) IN GENERAL.—Title 5, United States Code, is amended by inserting after
3 chapter 37 the following new chapter:

4 **“CHAPTER 38 - ASSIGNMENTS TO AND FROM EXTERNAL ORGANIZATIONS**

“§ 3801. Definitions.

“§ 3802. Assignment to and from external organizations.

“§ 3803. Assignment of employees to external organizations.

“§ 3804. Assignment of employees from external organizations.

“§ 3805. Travel expenses.

“§ 3806. Reporting and evaluation.

“§ 3807. Regulations.

5 **“§ 3801. Definitions**

6 “For the purpose of this chapter—

7 “(1) the term ‘Director’ means the Director of the Office;

8 “(2) the term ‘external organization’ means a corporation, partnership,
9 association, or any other organized group of persons involved in the sale or trade of
10 goods or services for the purpose of returning a profit to the owner;

11 “(3) the term ‘Federal agency’ means an Executive agency, but does not
12 include the Government Accountability Office; and

13 “(4) the term ‘Office’ except when used with respect to the Government
14 Accountability Office, means the Office of Personnel Management.

15 **“§ 3802. Assignment to and from external organizations**

16 “(a) ASSIGNMENT.—

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

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

7 “(B) an employee of an external organization to the Federal agency;

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

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

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

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

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

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

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

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

22 “(1) IN GENERAL.—An employee of a Federal agency may be assigned under
23 this chapter only if the employee agrees, as a condition of accepting an assignment

1 under this chapter, to serve in the Federal agency upon the completion of the
2 assignment for a period equal to the length of the assignment.

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

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

11 **“§ 3803. Assignment of employees to external organizations**

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

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

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

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

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

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

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

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

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

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

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

1 to receive supplemental pay from the Federal agency in an amount equal to
2 the difference between the external organization rate and the Federal agency
3 rate;

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

7 “(D) except as provided in paragraph (2), the employee is entitled,
8 notwithstanding other statutes—

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

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

1 pay, to treat the employee's service during that period as service of the
2 type performed in the Federal agency immediately before the employee's
3 assignment; and

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

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

23 "(g) DEATH OR DISABILITY.—

1 “(1) IN GENERAL.—An employee so assigned and on leave without pay who
2 dies or suffers disability as a result of personal injury sustained while in the
3 performance of duty during an assignment under this chapter shall be treated, for the
4 purpose of subchapter I of chapter 81, as though such employee were an employee as
5 defined by section 8101 who had sustained the injury in the performance of duty.
6 When an employee (or the employee’s dependents in case of death) who is entitled
7 by reason of injury or death to benefits under subchapter I of chapter 81 is also
8 entitled to benefits from an external organization for the same injury or death, the
9 employee (or the employee’s dependents in case of death) shall elect which benefits
10 to receive. The election shall be made within 1 year after the injury or death, or such
11 later time as the Secretary of Labor may allow for reasonable cause shown. When
12 made, the election is irrevocable unless otherwise provided by law.

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

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

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

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

3 **“§ 3804. Assignment of employees from external organizations**

4 “(a) IN GENERAL.—An employee of an external organization who is assigned to a
5 Federal agency under an arrangement under this chapter shall, prior to the commencement
6 of the assignment, successfully undergo the same level of background investigation and
7 security clearance and the same type of adjudication to which an incumbent of the position
8 would normally be subject, and may—

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

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

13 “(b) PAY AND FEDERAL STATUS.—

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

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

19 “(B) chapter 87; and

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

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

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

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

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

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

15 “(i) chapter 73;

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

17 “(iii) chapter 21 of title 41;

18 “(iv) sections 203, 205, 207, 208, 209, 602, 603, 606, 607, 643,
19 654, 1905, and 1913 of title 18;

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

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

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

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

5 “(2) SUPERVISION OF DUTIES.—The supervision of the duties of such an
6 employee may be governed by agreement between the Federal agency and the
7 external organization concerned. A detail of an external organization employee to a
8 Federal agency may be made with or without reimbursement by the Federal agency
9 for the pay, or a part thereof, of the employee during the period of assignment, or for
10 the contribution of the external organization, or a part thereof, to employee benefit
11 systems.

12 “(d) DISABILITY OR DEATH.—

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

19 “(2) BENEFITS ELECTION.—When an employee (or the employee’s dependents
20 in case of death) entitled by reason of injury or death to benefits under subchapter I
21 of chapter 81 is also entitled to benefits from an external organization for the same
22 injury or death, the employee (or the employee’s dependents in case of death) shall
23 elect which benefits to receive.

1 “(3) TIMING OF ELECTION.—The election shall be made within 1 year after the
2 injury or death, or such later time as the Secretary of Labor may allow for reasonable
3 cause shown.

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

6 “(e) EXTERNAL ORGANIZATION FAILURE TO CONTINUE CERTAIN EMPLOYER
7 CONTRIBUTIONS.—If an external organization fails to continue the employer’s contribution
8 to the external organization retirement, life insurance, and health benefit plans for an
9 external organization employee who is given an appointment in a Federal agency under this
10 chapter, the employer’s contributions covering the external organization employee’s period
11 of assignment, or any part thereof, may be made from the appropriations of the Federal
12 agency concerned.

13 **“§ 3805. Travel expenses**

14 “(a) IN GENERAL.—Appropriations of a Federal agency are available to pay, or
15 reimburse, a Federal or external organization employee in accordance with—

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

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

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

21 “(C) travel, including a per diem allowance, while traveling on official
22 business away from the employee’s designated post of duty during the

1 assignment when the head of the Federal agency considers the travel in the
2 interest of the United States;

3 “(2) section 5724 of this title, for the expenses of transportation of the
4 employee’s immediate family and household goods and personal effects to and from
5 the assignment location;

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

8 “(4) section 5724a(c) of this title, for subsistence expenses of the employee
9 and the employee’s immediate family while occupying temporary quarters at the
10 assignment location and on return to the employee’s former post of duty;

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

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

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

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

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

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

12 **“§ 3806. Reporting and evaluation**

13 “(a) REPORTING.—

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

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

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

20 “(B) a description of situations—

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

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

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

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

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

7 “(A) not later than December 31, 2020; and

8 “(B) not later than December 31, 2024.

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

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

13 “(1) IN GENERAL.—After Federal agency reports are provided to Congress on
14 December 31, 2020, and December 31, 2024, respectively, the Office shall—

15 (A) evaluate the efficiency and effectiveness of the Industry Exchange
16 Programs established under this chapter; and

17 (B) determine whether to continue the authority to make assignments
18 under this chapter.

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

21 “§ 3807. Regulations

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

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

Section-by-Section Analysis

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

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