

Civil Service Modernization Legislation for
Cyber Workforce Positions

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SEC. __. AUTHORITY TO ESTABLISH ALTERNATIVE CYBER WORKFORCE CLASSIFICATION AND PAY SYSTEMS.

1 (a) Subchapter IX of chapter 53 of title 5, United States Code, is amended by—

2 (1) amending section 5391 to read as follows:

3 **“§ 5391. Definitions**

4 “For the purpose of this subchapter—

5 “(1) ‘agency’ means an Executive agency (within the meaning of that term in section
6 105), excluding the Government Accountability Office;

7 “(2) ‘cyber workforce’ means work involving designing, building, securing,
8 operating, defending, and protecting cyberspace resources. It encompasses work in the
9 fields of information technology, cybersecurity, cyberspace operations, cyber
10 investigations, cyber intelligence roles, and related research and development. The cyber
11 workforce encompasses the full range of information technology, cybersecurity, data
12 protection and privacy, and other cyber-related work roles described in the National
13 Initiative for Cybersecurity Education (NICE) Cybersecurity Workforce Framework as
14 well as the Department of Defense (DOD), Defense Cyberspace Workforce Framework
15 (DCWF);

1 “(3) ‘Director’ means the Director of the Office of Personnel Management, unless
2 otherwise specified;

3 “(4) ‘employee’ means an employee of an agency who would otherwise be covered
4 by the General Schedule classification and pay system established under chapter 51 and
5 subchapter III of this chapter if not for the application of this subchapter; and

6 “(5) ‘position’ means the work, consisting of the duties, responsibilities, and skill
7 requirements assignable to an employee (consistent with the definition of “position” in
8 subsection 5102(a)(3)).”; and

9 (2) Adding, following section 5392, the following:

10 **“§ 5393. Establishment of alternative cyber workforce classification and pay systems**

11 “(a) The Director may establish one or more alternative cyber workforce classification and
12 pay systems for one or more categories of employees and positions.

13 “(b) For each alternative cyber workforce classification and pay system established under
14 this section, the Director shall—

15 “(1) identify the category of employees and positions covered by such system by
16 agency, occupation, grade or work level, geographic location, or other criteria (to include
17 specifying whether the coverage of a category of employees and positions is required and
18 establishing the effective dates of any required coverage under subsection (b)(10));

19 “(2) establish and define occupational series, groups, or families; official position
20 titling; skill paths; grades or work levels; and other classification and competency-based
21 qualification elements under such system;

1 “(3) set and adjust the ranges and rates of basic pay for each grade or work level for
2 categories of employees and positions identified under subsection (b)(1) based on labor
3 market, recruitment, retention, or other factors for the occupation, geographic area, or other
4 coverage criteria involved;

5 “(4) establish criteria for setting an employee’s rate of basic pay under such system,
6 including upon appointment, transfer, reassignment, promotion, reduction in grade or work
7 level, and geographic movement;

8 “(5) establish criteria for increasing an employee’s rate of basic pay (without a
9 change in grade or work level) under such system based on performance, capabilities,
10 contributions, or other factors;

11 “(6) establish criteria for reducing an employee’s rate of basic pay (without a change
12 in grade or work level) for performance-based reasons or for such cause as will promote the
13 efficiency of the service;

14 “(7) establish criteria for determining salary increase budgets and other cost
15 management mechanisms under such system;

16 “(8) establish awards, incentives, bonuses, or allowances, as needed to reward,
17 recruit, retain, or compensate employees under such system and meet mission
18 requirements;

19 “(9) establish uniform procedures requiring an agency to provide appropriate written
20 notice and opportunity for reconsideration of a decision to withhold a basic pay increase;

1 “(10) establish the effective date for the commencement of such system; reevaluate
2 the effectiveness of such system for recruitment, retention, and other matters at least every
3 five years; and establish conditions for modifying and terminating such system; and

4 “(11) establish pay-setting and other procedures for converting employees and
5 positions between different alternative cyber workforce classification and pay systems
6 established under this section, between alternative cyber workforce classification and pay
7 systems and special occupational pay systems established under this subchapter, between
8 alternative cyber workforce classification and pay systems established under this section
9 and other pay systems administered by the Director under this title, and moving from a pay
10 system administered by the head of an agency under an independent agency authority to an
11 alternative cyber workforce classification and pay system established under this section,
12 including procedures for –

13 “(A) converting the grades or work levels of positions upon movement between
14 systems, and

15 “(B) adjusting rates of basic pay or providing for other payments as a result of
16 conversion between systems.

17 “(c)(1) Subject to the limitations in paragraph (2) and subsection (e), the Director may
18 waive any provision of this title for cyber workforce employees and positions covered by an
19 alternative classification and pay system established under this subchapter. Establishment of an
20 alternative classification and pay system shall not be limited by any lack of specific authority
21 under this title to take the action contemplated, or by any provision of this title or any rule or
22 regulation prescribed under this title which is inconsistent with the action. Any action taken by

1 the Director under this section shall ensure that any alternative classification and pay system
2 conforms to the merit system principles established under section 2301(b).

3 “(2) The Director may not waive—

4 “(A) any provision described within section 4703(c) of this title;

5 “(B) any provision of section 4303 or chapter 75;

6 “(C) any provision under subchapter V of chapter 55, except that subsection 5545(d)
7 concerning hazardous duty differentials shall be waived to the extent necessary to provide
8 that a cyber employee paid under an alternative classification and pay system retains
9 coverage under such subsection; or

10 “(D) chapter 61.

11 “(d) Employees within a unit with respect to which a labor organization is accorded
12 exclusive recognition under chapter 71 shall not be included within any alternative cyber
13 workforce classification and pay system established under this section—

14 “(A) if the system would violate a collective bargaining agreement (as defined in
15 section 7103(a)(8)) between the agency and the labor organization, unless there is another
16 written agreement with respect to the system between the agency and the labor organization
17 permitting the inclusion; or

18 “(B) if the system is not covered by such a collective bargaining agreement, until
19 there has been consultation or negotiation, as appropriate, by the agency with the labor
20 organization.

1 “(e)(1) Except as provided in paragraph (2), rates of basic pay established for an
2 alternative classification and pay system under this section may not exceed the rate established
3 for the Vice President under section 104 of title 3.

4 “(2) The Director may establish a higher basic pay limitation for a specific category or
5 number of employees or positions as necessary to address critical mission requirements or based
6 on critical labor market, recruitment, retention, or other factors. Any such higher limitation may
7 not exceed 150 percent of the rate for level I of the Executive Schedule under section 5312.

8 “(3) For an employee whose pay rate is fixed under this subsection in excess of the rate for
9 level I of the Executive Schedule, the amount of pay considered the employee’s rate of basic pay
10 (for all purposes) and used in determining an employee’s lump-sum annual leave payment under
11 section 5551 or section 5552 shall be the rate for level I of the Executive Schedule.

12 “(f) An agency pay determination for an employee covered by an alternative cyber
13 workforce classification and pay system under this section is not subject to the Director’s claims
14 settlement authority in section 3702 of title 31.”

15 “(g)(1) In exercising authority under this section, the Director shall, as necessary and to the
16 extent permitted by law, consult with the Director of the Office of Management and Budget and
17 the National Cyber Director on matters within their respective authorities.

18 “(2)(A) To facilitate interagency consultation on any aspect of an alternative cyber
19 classification and pay system for employees and positions established under this subchapter, the
20 Director shall establish one or more interagency advisory councils as necessary.

21 “(B) Each interagency advisory council shall be chaired by a representative from one or
22 more lead agencies, as designated by the Director, and shall make recommendations to the

1 Director regarding the design of the alternative classification and pay system, adjustments to
2 rates of basic pay, within-range pay progression criteria and options, salary-increase budget
3 targets, and other compensation elements and matters under section 5393(b) regarding such
4 system.”

5 **“§ 5394. Regulations, records, and reports**

6 “(a) The Director may prescribe rules to carry out sections 5393 and 5394, including rules
7 for the administration of any alternative cyber workforce classification and pay system for
8 employees and positions established under this subchapter and any delegations of authority to the
9 heads of agencies. As required by the Director, an agency with employees covered by such an
10 alternative cyber workforce classification and pay system shall prescribe supplemental plans and
11 policies, not inconsistent with the regulations prescribed by the Director.

12 “(b) The Director, in accordance with 5 U.S.C. 1103(c) and implementing regulations (5
13 CFR 9.2), may require agencies to maintain records and report data such as number of cyber
14 vacancies funded and unfunded, number of work roles of critical need, projected number of
15 cyber hires, number of certifications, and other information regarding alternative cyber
16 workforce classification and pay systems established under this subchapter, as needed for
17 purposes of oversight and evaluation of such systems.”.

18 (b) The table of sections for subchapter IX of chapter 53 of title 5, United States Code, is
19 amended by inserting the following:

20 “5393. Establishment of alternative cyber workforce classification and pay systems.
21 “5394. Interagency advisory councils.
22 “5395. Regulations, records, and reports.”

23

1 (c) In title 5, United States Code—

2 (1) section 5361(5) is amended to read as follows:

3 “(5) ‘covered pay schedule’ means the General Schedule and any prevailing rate
4 schedule established under subchapter IV of this chapter;”;

5 (2) section 5363 is amended by—

6 (A) inserting “or” at the end of subsection (a)(2);

7 (B) striking “or” at the end of subsection (a)(3);

8 (C) striking subsection (a)(4); and

9 (3) section 5948(g)(1)(K) is amended by inserting “or alternative classification and
10 pay systems” before the semicolon.

Section-by-Section Analysis

This proposal would provide the Director of the Office of Personnel Management (OPM) authority to establish one or more alternative classification and pay systems for employees in cyber workforce positions who would otherwise be covered by the General Schedule (GS). This proposal would supplement the current special occupational pay system authority under 5 U.S.C. chapter 53, subchapter IX (which applies to any occupation but has never been used) with a new authority that would provide greater flexibility to implement a wide range of alternative systems and establish higher, market-sensitive pay rates subject to higher pay limits for cyber workforce positions under streamlined approval procedures.

The proposal would provide flexibility to waive certain title 5 laws and regulations and create new classification and pay approaches that better reflect cyber workforce work roles, compensate employees based on mission needs and labor market dynamics, and retain and reward high performers with essential skills. Waivable title 5 authorities include classification, qualifications, basic pay, performance appraisal, awards, incentives, allowances, and other provisions. Basic pay would be capped at the Vice President’s salary (\$272,100) or, for specific categories or numbers of employees to address a critical need, as determined by the OPM Director, the rate equal to 150 percent of the rate for EX-I (\$353,400). The design of any alternative system could include innovative strategies or the adoption of features from existing personnel demonstration projects or other cyber workforce alternative systems. To ensure that the new pay system meets the aim of enhancing recruitment and retention of critical cyber talent, the new system will be

periodically reviewed in light of effectiveness and changing market conditions for covered roles at least every five years.

The proposal would become effective on enactment and would allow OPM to prescribe rules for the administration of the proposed new authority and for any alternative classification and pay system established and delegations to agency heads where appropriate. In exercising this authority, the Director would, as necessary and to the extent permitted by law, consult with the Director of the Office of Management and Budget and the National Cyber Director on matters within their respective authorities. OPM would establish advisory councils to facilitate interagency consultation on alternative classification and pay systems and could require coverage of categories of cyber employees and positions if appropriate. Each council would be led by one or more agencies and make recommendations to OPM on the design of the systems. Agencies would develop supplemental policies and provide records and reports to OPM for oversight and evaluation of the alternative systems they implement.

For any alternative classification and pay system established for cyber workforce employees and positions, the proposal would provide OPM authority to waive one or more provisions under title 5 including classification, qualifications, basic pay, performance appraisal, awards, incentives, allowances, and other provisions and establish new authorities not otherwise authorized. The proposal would prohibit waiver of title 5 provisions regarding premium pay, hours of work, leave, insurance and annuities, merit system principles, prohibited personnel practices, and any other provision that may not be waived under 5 U.S.C. 4703(c). The proposal would also prohibit the waiver of title 5 provisions related to adverse actions and actions to address unacceptable performance for all employees and would address the treatment of bargaining unit employees consistent with the personnel demonstration project authority at 5 U.S.C. 4703(f) and (g) for those employees of a bargaining unit represented by a labor organization and for those employees of a unit not represented by a labor organization.

For each alternative classification and pay system, the proposal would allow OPM to—

- Use existing or establish new classification and qualifications elements. The proposal would provide flexibility to use the position-based approach associated with the current GS system or establish person-based classification systems. An alternative classification or work evaluation system could provide for fewer work levels than the GS system and broader, open pay ranges or pay bands.
- Set and adjust pay ranges and rates of basic pay based on labor market, recruitment, retention, or other factors. Rates of basic pay would be limited to the Vice President's salary (\$272,100 in 2023). However, the OPM Director could increase this cap to 150 percent of the rate for EX-I (\$353,400 in 2023) for specific categories or numbers of employees or positions in critical mission, labor market, or staffing situations. OPM would establish minimum and maximum basic pay rates and any intervening rates for each work level that vary by geographic area and occupation. Because the pay rates would be based on occupation and geographic area, there would be no need for a separate locality pay or special rate authority.

1 appoint, through competitive examination, an individual to a cyber workforce position in the
2 competitive service:

3 “(1) PUBLIC NOTIFICATION.—Each agency shall establish methods for announcing
4 and accepting applications for vacant cyber workforce positions in the competitive
5 service when accepting applications from outside of the agency’s workforce. Such
6 methods shall include:

7 “(A) the conditions under which applicants may be considered, including
8 any specific area of consideration,

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

10 “(C) the requirement to notify the Office, and

11 “(D) any other information which the Office considers appropriate.

12 “(2) RATING, RANKING AND SELECTION.—Each agency shall establish methods
13 for evaluating and assessing candidates to determine relative qualifications, which
14 shall—

15 “(A) be consistent with this chapter;

16 “(B) relate to the duties of the position sought; and

17 “(C) fairly evaluate the relative capacity and fitness of applicants for the
18 positions sought.

19 In addition, each agency shall establish methods for determining, pursuant to
20 regulations prescribed under subsection (c), which applicants will be available for
21 selection on a certificate of eligibles.

1 “(3) APPLICATION OF VETERANS’ PREFERENCE.—Each agency shall select for
2 appointment to each vacancy from among the candidates listed on the certificate of
3 eligibles furnished under paragraph (2), except that preference eligibles are afforded
4 selection priority over other candidates equally qualified or with the same proficiency
5 level unless the requirements of sections 3317(b) or 3318(c)(1), as applicable, are
6 satisfied.

7 “(b) Each agency shall develop policy guidance consistent with law and OPM regulations
8 for using the enhanced flexibilities in subsection (a) and shall make its guidance a matter of
9 record.

10 “(c) The Office shall prescribe regulations to carry out this section.

11 “(d) The Office shall revoke, in whole or in part, an agency’s authority to use the
12 authorities in subsection (a) if the Office finds that the agency’s use of the enhanced flexibilities
13 does not conform to regulations prescribed under subsection (c) or are otherwise contrary to
14 law.”

15 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is
16 amended by inserting after the item relating to section 3304a the following new item:

17 “3304b. Competitive service; enhanced flexibility in examination, certification, and selection for
18 cyber workforce positions.”.

19 (c) TECHNICAL AMENDMENT.—Section 2302(e)(1)(a) of this title is amended by inserting
20 “ 3304b,” after “2108,”.

Section-by-Section Analysis

This proposal would provide an alternative to the traditional methods for providing public notice and the rating, ranking, and selection process for making appointments for cyber workforce positions in the competitive service. This authority would help empower and entrust agencies with expanded flexibility and agility to hire top talent quickly and consistent with longstanding core merit system principles; however, the authority would be provided on a contingent basis and could be revoked if an agency does not comply with core standards and requirements.

Currently, an agency may receive hundreds of applications in response to a specific vacancy announcement. The agency must expend numerous resources and work hours to review, rate, and rank these large numbers of applications, resulting in extended timeframes for filling vacant positions. Under this proposal, agencies would be allowed to determine how to recruit for jobs subject to OPM regulations. For example, an agency could post positions on its website or it could post positions in a trade publication without posting it on USAJOBS.

Currently, once an agency screens the applications for minimum job-related qualifications, it uses a prescriptive methodology to rate, rank, and select candidates for positions in the competitive service. This methodology consists of assessing and ranking individuals (including the application of veterans' preference) in several ways, including the "Rule of Many," which requires the agency to use numeric ratings and select from among the three top-scoring candidates. Under this proposal, agencies would continue to determine how they will assess candidates, but the ranking and selection order could vary. For example, an agency could decide not to rank the candidates and all of those who meet a pre-defined cut off score would be available for selection.

Currently, the selection process involves making an appointment from among candidates on a properly ranked list of qualified candidates. A preference eligible must be selected before an equally or lower-ranked non-preference eligible unless there are job-related reasons for passing over the preference eligible. In the case of certain disabled preference eligibles, the agency must notify the preference eligible of their reasoning and provide an opportunity for the preference eligible to respond. The pass-over procedures involving certain disabled preference eligibles are performed in coordination with OPM. Under this proposal, veterans' preference would not apply in the rating and ranking process and it would serve as a tie-breaker. All candidates who meet the minimum requirements for jobs would be assessed. Based on the results of the assessments, agencies would determine which applicants (based on agency policy) are available for selection. In cases where a preference eligible is at least as qualified as a non-preference eligible, the preference eligible would have to be selected before an equally or lower-ranked non-preference eligible unless there are job-related reasons for passing over the preference eligible. The list of veterans' preference requirements at § 2302(e)(1)(A) is amended to include this requirement. Agencies would use the same procedures to propose to pass over a preference eligible regardless of the type of preference (i.e., the same process would be used for disabled and non-disabled preference eligibles).

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

SEC. _____. AMENDMENTS TO THE PAY AUTHORITY FOR CRITICAL POSITIONS.

1 Section 5377 of title 5, United States Code, is amended—

2 (1) by amending subsections (a)(1) and (a)(2) to read as follows:

3 “(1) the term ‘agency’ means an Executive agency (within the meaning of that term in
4 section 105), excluding the Government Accountability Office; and

5 “(2) the term ‘position’ means any position held by an employee (within the meaning
6 of that term in section 2105).”;

7 (2) in subsection (d)(2), by striking “for level I of the Executive Schedule,” and
8 inserting in its place “for the Vice President of the United States established under section
9 104 of title 3,”;

10 (3) in subsection (f), by striking “800” and inserting in its place “2,000”;

11 (4) in subsection (h)(2), by striking “rate on rates” and inserting in its place “rate or
12 rates”; and

13 (5) by striking subsection (i).

14 **SEC. _____. TECHNICAL AND CONFORMING AMENDMENTS.**

15 (a) In title 5, United States Code, section 9502(a) is amended by striking “sections
16 5377(d)(2) and” and inserting in its place “section”.

17 (b) In title 7, United States Code, section 7657(d)(2)(B) is amended by striking “unless the
18 rate is approved by the President under section 5377(d)(2)” and inserting in its place “unless the
19 rate is approved under section 5377”.

1 (c) In title 38, United States Code, section 706(h) is amended in paragraph (2) by striking
2 “in excess of the limitation set forth by section 5377(d)(2) of such title” and inserting in its place
3 “at any rate, subject to the limitation in paragraph (3)”.

Section-by-Section Analysis

This proposal would provide the Office of Personnel Management (OPM) greater flexibility to approve higher rates of pay to recruit or retain exceptionally well-qualified employees, as provided in the current critical pay law at 5 U.S.C. 5377(b)(2), for positions that require an extremely high level of expertise and are critical to an important agency mission. It would amend the current critical position pay authority at 5 U.S.C. 5377 to allow OPM, in consultation with the Office of Management and Budget, to grant the head of an agency authority to fix a rate of pay for an employee up to the rate of pay for the Vice President (\$272,100 in 2023). Critical pay rates above the Vice President’s rate would require written approval of the President. (Currently, OPM’s authority to grant critical pay is limited to the rate for level I of the Executive Schedule (EX-I) (\$235,600 in 2023). Critical pay rates above EX-I require approval of the President.)

This proposal would also expand the total number of positions that may be approved for critical pay from 800 to 2,000. (2,000 is less than 0.1% of the total Federal workforce.) Currently, approval of critical position pay above EX-I requires written approval from the President and, as a consequence, the critical pay authority under section 5377 has never been used above the EX-I pay level. We anticipate that agencies will express a greater market-based need for critical position pay up to the Vice President’s salary if those requests no longer require Presidential approval. The higher number of potential authorizations addresses this issue.

The proposal would also revise the definitions of “agency” and “employee” to clarify and broaden coverage under the critical pay authority. Those revisions would make the current subsection (i) in section 5377 unnecessary. The current language in subsection (i) would be removed. Finally, the proposal includes conforming amendments to other references to 5 U.S.C. 5377(d)(2), which would be amended. The proposal would be effective on enactment.

SEC. ____. INCREASE TO THE SPECIAL RATE LIMITATION.

4 IN GENERAL.— Section 5305 of title 5, United States Code, is amended by adding the
5 following at the end:

6 “(k)(1) Notwithstanding the rate limitations set forth in subsection (a), for employees who
7 are in cyber workforce, science, technology, engineering, or mathematics positions, a minimum
8 rate established under this section may not exceed the maximum rate of basic pay (excluding any

1 locality-based comparability payment under section 5304 or similar provision of law) for the
2 grade or level by more than 50 percent, and no rate may be established under this section in
3 excess of the rate established for level II of the Executive Schedule under section 5313.

4 “(2) In applying section 5307 to an employee receiving a special rate under this
5 subsection, subsection (a)(1) of such section shall be applied by replacing “the annual rate of
6 basic pay payable for level I of the Executive Schedule” with “the annual rate for the Vice
7 President under section 104 of title 3”.

8 “(l) For the categories of employees described in subsection (k), the Office of Personnel
9 Management may approve payment of special rates above level IV of the Executive Schedule
10 with the special rate supplement computed by multiplying the applicable locality-based
11 comparability payment percentage under section 5304 by the employee’s General Schedule base
12 rate. If an employee is receiving a special rate above such level IV with an established special
13 rate supplement of greater value than a supplement based on the applicable locality-based
14 comparability payment percentage, but a pay adjustment would cause such established special
15 rate supplement to be of lesser value, the special rate supplement shall be converted to a
16 supplement based on the applicable locality-based comparability percentage unless the Office
17 determines that some other action is appropriate.”

Section-by-Section Analysis

This proposal would amend 5 U.S.C. 5305 to establish a higher special rate limitation for employees in cyber workforce, science, technology, engineering, and mathematics positions.

Under 5 U.S.C. 5305, the Office of Personnel Management (OPM) may establish higher rates of basic pay for a group or category of General Schedule (GS) positions in one or more geographic areas to address significant or likely significant handicaps in recruiting or retaining well-qualified employees. Current law provides that a minimum special rate may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment) for the grade by more than 30 percent (resulting in a maximum 69 percent supplement) and no special rate may be established in excess of the rate payable for level IV of the Executive Schedule

(\$183,500 in 2023). This EX-IV cap is the same limit that applies to GS locality rates, which can make special rates ineffective in addressing staffing difficulties at higher grade levels in certain higher market pay locations.

This proposal would amend 5 U.S.C. 5305 by adding a new subsection (k) to raise the limit on special rates for cyber workforce, science, technology, engineering, and mathematics positions to the rate payable for level II of the Executive Schedule (\$212,100).

Under this proposal, the minimum special rate that may be established for such positions may not exceed the maximum rate of basic pay (excluding any locality-based comparability payment) for the grade by more than 50 percent (resulting in an increase in the maximum supplement to 95 percent). Increasing the special rate limit for employees in situations where market pay for such high-skilled positions is substantially above the current EX-IV pay level would help agencies better address recruitment and retention difficulties. Increasing the special rate cap would also provide a more level playing field for agencies competing with other agencies that have special authority to pay rates above EX-IV for cyber workforce, science, technology, engineering, and mathematics positions.

This proposal would also amend 5 U.S.C. 5305 to provide that employees receiving a special rate under the higher EX-II pay cap would be subject to a higher aggregate limitation on pay under 5 U.S.C. 5307. Currently, 5 U.S.C. 5307 provides that the total amount of title 5 allowances, differentials, bonuses, awards, or other similar payments an employee may receive in a calendar year, when combined with the employee's basic pay, may not exceed the rate payable for EX-I (\$235,600). Payments in excess of this aggregate limitation on pay (other than basic pay) must be deferred and are generally made as a lump-sum payment at the beginning of the following calendar year. This proposal would increase the aggregate compensation limit for covered special rate employees to the rate payable to the Vice President (\$272,100). This would allow cyber workforce, science, technology, engineering, and mathematics employees who are subject to the higher EX-II special rate cap to receive important additional compensation (including awards and incentives) during the year approved. Such awards and incentives might otherwise be deferred and paid in a later year if they remained subject to an EX-I aggregate pay limit.

This proposal would add a new subsection (l) that addresses the administration of special rates above the normal EX-IV cap. In addition, OPM may use its existing regulatory authority at 5 U.S.C. 5365 to provide for the application of pay retention provisions under 5 U.S.C. 5363 should any special rate above the normal EX-IV be terminated or reduced.

1

SEC. ___. CRITICAL SKILLS INCENTIVE.

2

(a) IN GENERAL.— Subchapter IV of chapter 57 of title 5, United States Code, is amended

3

by adding at the end the following:

4

“§ 5762. Critical skills incentive

5

“(a) For the purpose of this section—

1 “(1) ‘agency’ means an Executive agency as defined in section 105, excluding the
2 Government Accountability Office;

3 “(2) ‘Director’ means the Director of the Office of Personnel Management; and

4 “(3) ‘employee’ means an employee within the meaning given that term in section
5 2105 who is employed by an agency.

6 "(b) Subject to regulations prescribed under subsection (f), the Director may authorize the
7 head of an agency to pay an incentive under this section to an individual or group of employees
8 not to exceed 25 percent of the employee's rate of basic pay. The employee (or each employee in
9 an approved group) must possess skills that—

10 “(1) are in high demand or at a shortage;

11 “(2) are directly related to the duties and responsibilities of the employee’s position;

12 and

13 “(3) serve a critical mission-related agency need.

14 “(c) An incentive may not be paid under this section to an individual who holds a
15 position—

16 “(1) to which an individual is appointed by the President, by and with the advice and
17 consent of the Senate;

18 “(2) in the Senior Executive Service as a non-career appointee (as such term is
19 defined under section 3132(a));

20 “(3) that has been excepted from the competitive service by reason of its confidential,
21 policy-determining, policy-making, or policy-advocating character; or

22 “(4) that is determined to be political in character under regulations prescribed by the
23 Director.

1 “(d)(1) Payment of an incentive under this section shall be contingent on the employee
2 entering into a written service agreement to complete a period of employment with the agency,
3 subject to regulations prescribed by the Director.

4 “(2) The written service agreement shall specify—

5 “(A) the critical skills covered by the incentive;

6 “(B) the commencement and termination dates of the required service period;

7 “(C) the amount of the incentive;

8 “(D) the method of payment, including any use of lump sum or installment payments;

9 “(E) eligibility for any future critical skills incentives;

10 “(F) the conditions under which the written agreement may be terminated before the
11 agreed-upon service period has been completed and the effect of the termination; and

12 “(G) other terms and conditions under which the incentive is payable.

13 “(e)(1) An incentive paid under this section is not a part of the basic pay of an employee for
14 any purpose.

15 “(2) An incentive paid under this subsection is not subject to the limitation on certain
16 payments under section 5307.

17 “(f) The Director shall prescribe regulations to carry out this section, including any
18 regulations regarding the payment of critical skills incentives to employees receiving—

19 “(1) academic degree training under section 4107 (or fulfilling related service
20 agreements under section 4108);

21 “(2) student loan repayments under section 5379;

22 “(3) recruitment or relocation bonuses under section 5753; or

23 “(4) retention bonuses under section 5754.”

1 (b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 57 of title 5,
2 United States Code, is amended by adding at the end (after the item relating to section 5761) the
3 following:
4 “5762. Critical skills incentive.”

Section-by-Section Analysis

This proposal would establish a new section 5762 in title 5, United States Code, to allow the Director of the Office of Personnel Management (OPM) to authorize agencies to pay a critical skills incentive to employees who possess high-demand or shortage skills that serve a critical need. This new pay flexibility would assist agencies in closing mission-critical skills gaps and support employee reskilling efforts.

The proposal would allow OPM to delegate authority to agency heads to identify high-demand or shortage skills. Agencies would be able to authorize a critical skill incentive to an employee, or group of employees who possess(es) the identified critical skills if those skills are related to the duties and responsibilities of the employee's position. The incentive could not be paid (and the required service agreement would not be started) before an employee acquires the designated skill or while the employee is in training to acquire the designated skill.

The proposal would also allow OPM to prescribe regulations addressing the designation of high-demand or shortage skills that serve a critical need across the Federal Government and how frequently such critical skills would be reviewed for recertification, revision, or elimination. For example, OPM could identify certain cyber skills as high-demand or in a shortage category for purposes of paying a critical skill incentive. Agencies would have discretion to pay a critical skill incentive to employees who possess the OPM-identified skills if those skills are related to the duties and responsibilities of the employee's position without the need for separate documentation.

While a critical skills incentive would be somewhat similar to a recruitment, relocation, or retention (3Rs) incentive, it would differ from traditional 3Rs authorities in that there would be no requirement for an agency to determine that an employee's position would be difficult to fill or that the employee would be likely to leave Federal service in order to receive an incentive.

This proposal would allow a critical skills incentive of up to 25 percent of basic pay and the critical skills incentive would not count toward the aggregate limitation on pay under 5 U.S.C. 5307. OPM would regulate how to calculate incentive payments and allowable payment methods.

OPM could regulate the conditions under which an agency may determine in advance that a critical skills incentive would be paid for specific skills desired in an individual or group of positions. The proposal is broadly written to allow performance and other job-related factors to

be considered in determining employee eligibility for payment. The proposal would make clear that the critical skills incentive is not a part of an employee’s basic pay for any purpose.

The proposal would require employees to sign an agreement to complete a specified period of employment with the agency, which may be renewed under conditions established by the agency and OPM regulations. The agreement would also outline the conditions under which the incentive would be paid, when the service agreement could be terminated, and the effect of any termination.

This proposal would require OPM to issue regulations. OPM regulations could include further criteria on what constitutes critical, high-demand, and shortage skills and how critical skills incentives interact with other incentives such as payments for academic degree training, 3Rs, and student loan repayments. An agency could not use the authority until OPM issues regulations.

Budgetary Implications: This proposal does not have any significant Government-wide cost implications. A budget table is inapplicable and has not been provided.

SEC. __. AMENDMENTS TO RETENTION BONUSES.

- 1 (a) Subsection (e) of section 5754 of title 5, United States Code, is amended—
- 2 (1) in paragraph (2)(A) by—
- 3 (A) inserting “—” after “employee”;
- 4 (B) inserting “(i)” before “in installments”; and
- 5 (C) striking “.” after “agreement” and inserting in its place “; or (ii) as an initial
- 6 lump-sum payment.”;
- 7 (2) in paragraph (2)(B) by—
- 8 (A) inserting “(i)” after “(B)”;
- 9 (B) inserting “under subparagraph (A)(i)” after “payment” in redesignated
- 10 subparagraph (B)(i);
- 11 (C) appending the language in paragraph (2)(C) at the end of renumbered
- 12 redesignated subparagraph (B)(i);
- 13 (D) striking “(C)”;
- 14 (E) inserting at the end:

1 “(ii) An initial lump-sum payment under subparagraph (A)(ii) is derived by
2 multiplying the applicable bonus percentage rate established for the employee by
3 the annual rate of basic pay of the employee at the beginning of the service period
4 multiplied by the length of the required service period not to exceed 1 year
5 (including a fractional part of a year, as determined under regulations of the
6 Office).”;

7 (3) by renumbering paragraph (3) as (4); and

8 (4) in paragraph (2)(D), by—

9 (A) redesignating subparagraph (2)(D) as paragraph (3); and

10 (B) striking “paragraph” and inserting in its place “subsection (e)(1)”.

11 (b) Subsection (f) of section 5754 of title 5, United States Code, is amended by—

12 (1) striking “Upon the request of the head of an agency, the” and inserting in its place
13 “The”;

14 (2) inserting “authorize the head of an agency to” after “may”; and

15 (3) inserting “, subject to regulations prescribed by the Office” after “critical agency
16 need”.

Section-by-Section Analysis

This proposal would allow agencies to pay retention incentives as a lump sum prior to completion of a service agreement and allow the Office of Personnel Management (OPM) to authorize agencies to approve higher retention incentives up to 50 percent of an employee’s basic pay. OPM is proposing these provisions in the retention incentive law to be similar to the law for recruitment and relocation incentives.

Under current law and regulations, agencies have authority to approve recruitment and relocation incentives up to 25 percent of an employee’s annual rate of basic pay, multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years or 100 percent of an employee’s annual rate of basic pay). Agencies also have authority to pay retention incentives to individual employees up to 25 percent of an employee’s rate of basic pay and retention incentives to a group of employees up to 10 percent of an employee’s rate of basic pay.

Agencies must submit a request to OPM to approve recruitment, relocation, and retention incentives (3Rs) up to 50 percent based on a critical agency need. In an incredibly competitive market, 3Rs are essential to hiring and retaining talent. While the recruitment and relocation incentive law at 5 U.S.C. 5753 currently allows OPM to delegate to agencies the authority to approve incentive payments up to 50 percent, the retention incentive law at 5 U.S.C. 5754 does not provide OPM such flexibility since it requires an agency request. The amendments would allow OPM to delegate the authority to agencies to approve retention incentive payments of up to 50 percent of basic pay to retain critical employees without prior OPM approval. Currently, the law requires agencies to request an OPM waiver for retention incentives above 25 percent for individual employees and 10 percent for groups of employees.

Currently, recruitment and relocation incentives may be paid as an initial lump-sum payment at the commencement of the service period as required by the service agreement, as well as in installments during the service period or as a final lump-sum payment. A retention incentive may be paid in installments only after the completion of specified periods of service during the course of the full-service period as a single lump-sum payment after completion of the full period of service required by a service agreement. Agencies are not currently authorized to pay a retention incentive as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service or installment period for which the incentive is being paid. The amendments would allow the payment options for retention incentives under 5 U.S.C. 5754 to be similar to the payment options for recruitment and relocation incentives under 5 U.S.C. 5753. For example, the proposal would allow agencies to make a retention incentive payment in a single lump sum at the beginning of a service period. If an employee did not complete the retention incentive service period, agencies would have the authority to recover any portion of an incentive that the employee received in excess of the amount that would be attributable to the completed portion of the service period.

SEC. ____ . AMENDMENTS TO STUDENT LOAN REPAYMENT PROGRAM.

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

2 (1) in subsection (b)(2), by striking “by an agency”;

3 (2) in subsection (b)(2)(A), by striking “\$10,000” and inserting “\$40,000”;

4 (3) in subsection (b)(2)(B), by—

5 (A) striking “\$60,000” and inserting “\$100,000”; and

6 (B) striking “in the case of any employee” and inserting “for the lifetime of the
7 employee”;

8 (4) in subsection (c)(1)(A), by striking “(not less than 3 years)” and inserting “(a
9 minimum of 1 year)”;

1 (5) in subsection (c)(1)(B), by adding before the period “(subject to any reduction in
2 the repayment amount provided for in the agreement based on specified circumstances)”.

Section-by-Section Analysis

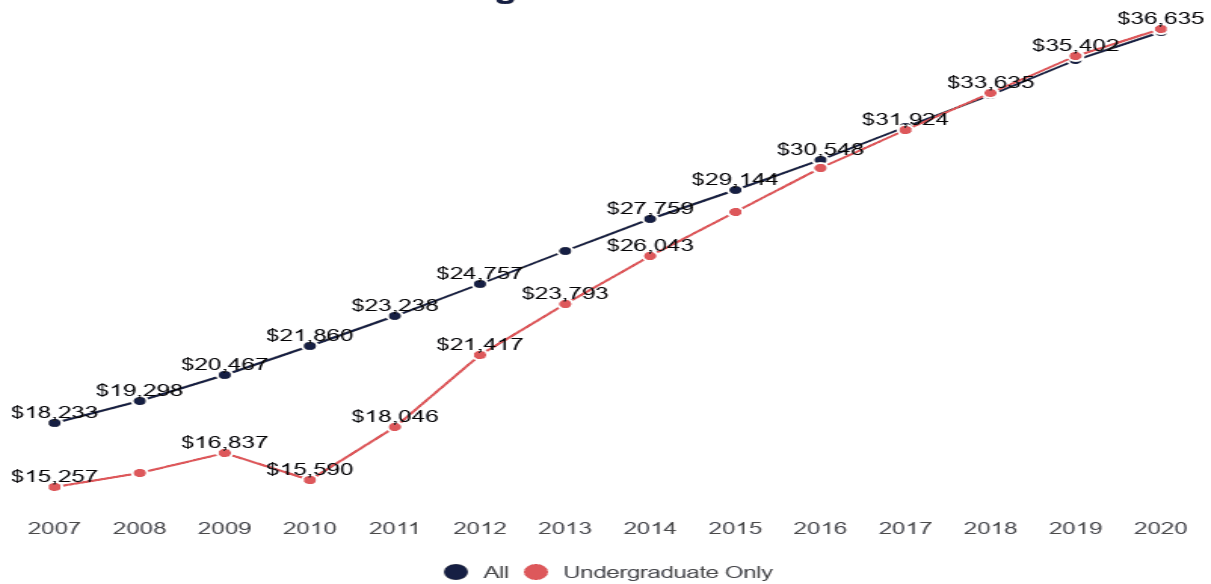
During the 2019 Chief Human Capital Officers (CHCO) Forum, the allowable repayment amounts were identified as recruitment barriers to the program. The CHCOs recommended increasing the amounts from \$10,000 to \$40,000, and from \$60,000 to \$100,000.

Agencies have also identified the three-year service requirement for recipients, coupled with the requirement for recipients to repay the full student loan repayment amount to the employing agency if the service requirement is not fully met, as a barrier to using the program as an effective recruitment or retention tool.

This proposal would provide an increase to the allowable student loan repayment amounts an agency may provide and amend the required service agreement period an employee must enter into to receive a student loan repayment. The proposal would also clarify that the maximum allowable total amount of \$100,000 applies to the employee over the lifetime of the employee’s Federal civilian service. This means that if the employee received a student loan repayment, left Federal civilian service, and subsequently returned to Federal civilian service, the amount of any new student loan repayment benefits would be added to the amount of the past student loan repayment benefits in applying the \$100,000 lifetime limit.

The last time the student loan repayment amounts were increased was 20 years ago. In 2003, Public Law 108-123 increased the limit in subsection (b)(2)(A) from \$6,000 to \$10,000 and the limit in subsection (b)(2)(B) from \$40,000 to \$60,000. Since then, student loan debt has continued to increase. The current statutory limitations have not kept up with the rising costs of tuition. The average federal student loan debt is \$36,510 per borrower. Private student loan debt averages \$54,921 per borrower. The average student borrows over \$30,000 to pursue a bachelor’s degree. A total of 45.3 million borrowers have student loan debt; 95 percent of them have federal loan debt. Twenty years after entering school, half of student borrowers still owe \$20,000 each on outstanding loan balances. Source: <https://educationdata.org/average-student-loan-debt>.

Historical Average Federal Student Loan Debt



The rigid three-year service agreement and the requirement to reimburse the paying agency for all repayment benefits received if the full-service agreement is not fulfilled stands in sharp contrast to the flexibility provided by the recruitment incentive program. When agencies use recruitment incentives under 5 U.S.C. 5753, they are not required to make the employee sign a three-year service agreement, but rather can craft service agreements of various lengths according to agency needs and their estimation of what would best serve to attract or retain the potential incentive recipient. Employees receiving a recruitment incentive are required to sign a service agreement that lasts at least 6 months but no longer than 4 years. (See 5 CFR 575.110(a).)

Section 5379(c)(1) of title 5, United States Code, states that “[a]n employee selected to receive benefits under this section must agree in writing, before receiving any such benefit, that the employee will—(A) remain in the service of the agency for a period specified in the agreement (not less than 3 years), unless involuntarily separated; and (B) if separated involuntarily on account of misconduct, or voluntarily, before the end of the period specified in the agreement, repay to the Government the amount of any benefits received by such employee from that agency under this section.” In other words, there is no circumstance in which the repayment amount can be reduced to reflect the portion of the agreed-upon service period completed by the employee.

This proposal would improve the student loan repayment program by providing more flexibility in setting the service requirement length. A minimum of 1 year of service would be required, but an agency would otherwise be able to specify the length of the service period in agreement with the employee. An agency could establish a policy to require a longer service agreement if it feels the proposed one-year minimum is too short. This flexibility could enable agencies to attract certain employees who would not otherwise accept an appointment.

The proposal would also provide more flexibility in determining the amount an employee must repay if the employee does not complete the agreed-upon service period. Agencies have such flexibility in administering recruitment incentives. (See 5 CFR 575.111.) The amendment to

subsection (c)(1)(B) would allow for reducing the default repayment amount (i.e., the full amount of repayment benefits received) under the specified terms of the service agreement between the agency and the employee.

The proposal would be effective on enactment.

Budgetary Implications: This proposal does not have any significant Government-wide cost implications. A budget table is inapplicable and has not been provided.

SEC. __. AMENDMENTS TO INCENTIVE AWARDS AUTHORITY.

1 Section 4502 of title 5, United States Code is amended—

2 (1) in subsection (a), by striking “\$10,000” and inserting “\$25,000”; and

3 (2) in subsection (b), by striking “\$10,000 but not in excess of \$25,000” and inserting

4 “\$25,000 but not in excess of \$50,000”.

Redline

Revised Section 4502 will read as follows:

(a) Except as provided by subsection (b) of this section, a cash award under this subchapter [5 U.S.C. 4501 *et seq.*] may not exceed \$25,000.

(b) When the head of an agency certifies to the Office of Personnel Management that the suggestion, invention, superior accomplishment, or other meritorious effort for which the award is proposed is highly exceptional and unusually outstanding, a cash award in excess of \$25,000 but not in excess of \$50,000 may be granted with the approval of the Office.

(c) A cash award under this subchapter is in addition to the regular pay of the recipient. Acceptance of a cash award under this subchapter constitutes an agreement that the use by the Government of an idea, method, or device for which the award is made does not form the basis of a further claim of any nature against the Government by the employee, his heirs, or assigns.

(d) A cash award to, and expense for the honorary recognition of, an employee may be paid from the fund or appropriation available to the activity primarily benefiting or the various activities benefiting. The head of the agency concerned determines the amount to be paid by each activity for an agency award under section 4503 of this title. The President determines the amount to be paid by each activity for a Presidential award under section 4504 of this title.

(e) The Office of Personnel Management may by regulation permit agencies to grant employees time off from duty, without loss of pay or charge to leave, as an award in recognition of superior accomplishment or other personal effort that contributes to the quality, efficiency, or economy of Government operations.

(f)The Secretary of Defense may grant a cash award under subsection (b) of this section without regard to the requirements for certification and approval provided in that subsection.

Section-by-Section Analysis

This amendment would provide agencies more flexibility in designing incentive and recognition programs by giving agency heads authority to pay cash awards under [subchapter I of chapter 45 of title 5, U.S. Code](#) of up to \$25,000 without the need for approval from the Director of OPM.

Currently, each agency head may authorize the payment of a cash award up to \$10,000 and must submit a written request to the Director of OPM for approval to issue a cash award over \$10,000. The Director of OPM may approve an award for an individual employee up to \$25,000; if the recommended award is over \$25,000, the Director of OPM reviews the nomination and forwards his/her recommendation to the President for approval. Removing the OPM approval requirement for awards between \$10,001 and \$25,000 for all agencies is consistent with [Section 1132 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001](#) (for the Department of Defense) and [Section 9508\(c\) of the Internal Revenue Service Restructuring and Reform Act of 1998](#) (for the Internal Revenue Service), both of which provide those agency heads authority to approve awards up to \$25,000.

Most agencies pay rating-based performance awards as a percentage of basic pay. The \$10,000 limit in § 4502 has been in place since the passage of the Civil Service Reform Act of 1978 and the difference in the average Federal employee salary between then and now has caused the \$10,000 amount to become outdated. Unless this amendment is made, the number of written requests to the OPM Director for approval of cash awards over \$10,000 will continue to grow each year. This amendment would not only provide increased flexibility for agencies in designing their incentive and recognition programs but would also reduce administrative burden.

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

SEC. ____. EXCLUSION OF CYBER WORKFORCE EMPLOYEES FROM THE AGGREGATE LIMITATION ON PAY.

- 1 Section 5307(a) of title 5, United States Code, is amended by adding at the end the following:
- 2 “(3) The limitation under this section shall not apply to any employee in a cyber workforce
- 3 position, as defined in regulations prescribed under subsection (c).”.

Section-by-Section Analysis

This proposal would repeal the aggregate limitation on pay under 5 U.S.C. 5307 for cyber workforce employees who receive payments under title 5, United States Code.

The aggregate limitation on pay caps the total amount of title 5 allowances, differentials, bonuses, awards, and other similar payments an employee may receive in a calendar year, when combined with the employee's basic pay. The aggregate limitation on pay is currently set at EX-I (\$235,600 in 2023) or the Vice President's salary (\$272,100 in 2023) for SES/SL/ST employees in certified performance appraisal systems. Payments that would cause an employee's aggregate compensation to exceed the applicable limitation during the calendar year are deferred and paid at the beginning of the next calendar year and count toward the next year's aggregate limitation on pay.

The aggregate limitation on pay can prevent high-performing and mission-critical cyber employees from receiving their full compensation (including awards and incentives) during the year. It is a "soft" cap under which excess amounts are rolled over (deferred) for payment in a subsequent calendar year—often not until separation from service. Thus, this cap does not limit employees' pay entitlements or the Government's ultimate expenditures. An employee's rate of basic and the title 5 payments that are subject to this "soft" cap have their own individual limits or caps in law or regulation that serve to control costs. This proposal would allow cyber employees to receive additional compensation, such as recruitment and retention incentives and awards, when authorized instead of deferring payment to a later year or upon separation, which may be contrary to agency interests. It also eliminates burdens in estimating and tracking an employee's aggregate compensation and deferred payments each year.

This approach is not transparent and arguably has the effect of hiding an employee's actual pay entitlements, which may be a disincentive for critical cyber employees who are highly sought after in the private sector. There is no compelling reason for establishing such a "soft" cap. Furthermore, since deferred amounts can accumulate and grow into large sums, this can create an incentive for employees to separate from Federal service in order to be paid the deferred amounts, which may be contrary to agency interests.

The aggregate limitation on pay is also burdensome to administer because it requires agencies and Shared Service Centers to project and track aggregate compensation during the calendar year to ensure the cap is not exceeded.

SEC. ___. INCREASES IN MAXIMUM RATES OF PAY FOR CYBER WORKFORCE SENIOR EXECUTIVES.

- 1 Section 5382 of title 5, United States Code, is amended by adding at the end the following:
- 2 “(d)(1) Notwithstanding the maximum rates of pay specified for the ranges of rates of
- 3 basic pay established for the Senior Executive Service under subsections (a) and (b) of this
- 4 section, the Director of the Office of Personnel Management, in consultation with the Office of

1 Management and Budget, may establish a higher maximum rate based on labor market,
2 recruitment, retention, or other factors for the range of rates of basic pay for a category of Senior
3 Executive Service positions which involve significant cyber workforce duties, as determined by
4 the Director. Such maximum rate may not exceed the rate established for the Vice President
5 under section 104 of title 3, except as provided under paragraph (2) of this subsection.

6 “(2) The Director of the Office of Personnel Management, in consultation with the Office
7 of Management and Budget, may establish a higher maximum rate of basic pay for a category of
8 positions described in paragraph (1) of this subsection as necessary to address critical mission
9 requirements or based on critical labor market, recruitment, retention, or other factors. Any such
10 higher limitation may not exceed the rate that is 150 percent of the rate for level I of the
11 Executive Schedule under section 5312.

12 “(3) Notwithstanding any other provision of law, pay fixed under this subsection in
13 excess of the rate payable for level I of the Executive Schedule—

14 “(A) is not considered part of the basic pay of an employee for any purpose; and

15 “(B) may not be considered in determining the amount of an employee’s lump-sum
16 annual leave payment under section 5551 or section 5552.

17 “(4) The aggregate pay limitations prescribed under section 5307 shall not apply to an
18 employee whose pay is established under this subsection.

19 “(5) A pay rate determined under this subsection shall apply only to a senior executive
20 appointed to, and serving in, a Senior Executive Service position in a category of positions
21 determined under paragraphs (1) or (2) of this subsection. Notwithstanding subsection (c) of this
22 section or, if otherwise applicable, the restriction in section 5383(c), upon reassignment, transfer,
23 conversion or other appointment to a different Senior Executive Service position, the executive’s

1 pay shall be set or adjusted to a rate not exceeding the maximum rate of the rate range that
2 applies to the position in which appointed. If a senior executive receiving a rate determined
3 under paragraphs (1) or (2) of this subsection is removed from the Senior Executive Service
4 under circumstances that result in guaranteed placement under section 3594, pay shall be set as
5 provided in section 3594(c)(1)(B) except that the employee shall not be entitled or eligible to
6 retain the rate referenced in 3594(c)(1)(B)(iii) upon the guaranteed placement.”

Section-by-Section Analysis

This proposal would amend 5 U.S.C. 5382 by adding a new subsection (d) to provide the Director of the Office of Personnel Management (OPM) authority, in consultation with OMB, to establish a higher limitation on the maximum rate of basic pay for Senior Executive Service (SES) positions that involve significant cyber workforce duties, as determined by the Director of OPM. Under this proposal, the maximum rate for those positions could not exceed the Vice President’s salary (\$272,100 in 2023). The proposal would also provide the Director of OPM authority to establish a higher maximum rate, not to exceed 150 percent of the rate for EX-I (\$353,400) for such SES cyber positions necessary to address critical mission requirements or based on critical labor market, recruitment, retention, or other factors. Increasing the maximum rate of pay for these positions would help agencies better address recruitment and retention difficulties.

This proposal would also establish that any amount of pay for these positions that is in excess of the rate payable for level I of the Executive Schedule will not be considered “basic pay” for any purpose, nor be considered in determining the amount of an employee’s lump-sum annual leave payment under section 5551 or section 5552.

This proposal would also repeal the aggregate limitation on pay under 5 U.S.C. 5307 for these SES cyber employees who receive payments under title 5, United States Code. The aggregate limitation on pay caps the total amount of title 5 allowances, differentials, bonuses, awards, and other similar payments an employee may receive in a calendar year, when combined with the employee’s basic pay. The aggregate limitation on pay is currently set at EX-I (\$235,600 in 2023) or the Vice President’s salary (\$272,100 in 2023) for SES/SL/ST employees in certified performance appraisal systems. Payments that would cause an employee’s aggregate compensation to exceed the applicable limitation during the calendar year are deferred and paid at the beginning of the next calendar year and count toward the next year’s aggregate limitation on pay.

The aggregate limitation on pay can prevent high-performing and mission-critical SES cyber workforce employees from receiving their full compensation (including awards and incentives) during the year. It is a “soft” cap under which excess amounts are rolled over (deferred) for payment in a subsequent calendar year—often not until separation from service. Thus, this cap does not limit the SES members’ pay entitlements or the Government’s ultimate

expenditures. An employee’s rate of basic and the title 5 payments that are subject to this “soft” cap have their own individual limits or caps in statute or regulation that serve to control costs.

This approach is not transparent and arguably has the effect of hiding an employee’s actual pay entitlements, which may be a disincentive for critical SES cyber employees who are highly sought after in the private sector. There is no compelling reason for establishing such a “soft” cap. Furthermore, since deferred amounts can accumulate and grow into large sums, this can create an incentive for employees to separate from Federal service in order to be paid the deferred amounts, which may be contrary to agency interests.

The aggregate limitation on pay is also burdensome to administer because it requires agencies and Shared Service Centers to project and track aggregate compensation during the calendar year to ensure the cap is not exceeded.

This proposal would also limit the application of the higher maximum rate of pay strictly to a senior executive appointed to, and serving in, a position within a category of Senior Executive Service positions that involve significant cyber workforce duties, as determined by the Director. Upon reassignment, transfer, conversion or other appointment to a different Senior Executive Service position, the executive’s pay would be set or adjusted to a rate not exceeding the maximum rate of the rate range that applies to the position in which appointed.

SEC. ___. INCREASES IN MAXIMUM RATES OF PAY FOR CYBER WORKFORCE SENIOR-LEVEL AND SCIENTIFIC AND PROFESSIONAL POSITIONS.

1 Section 5376 of title 5, United States Code, is amended by adding at the end the following:

2 “(c)(1) Notwithstanding the maximum rates of pay for the ranges of rates specified under
3 subsections (b)(1)(B) and (b)(3) of this section, the Director of the Office of Personnel
4 Management, in consultation with the Office of Management and Budget, may establish a higher
5 maximum rate of basic pay based on labor market, recruitment, retention, or other factors for a
6 category of positions described in paragraphs (1) or (2) of subsection (a) that involve significant
7 cyber workforce duties, as determined by the Director. Such maximum rate may not exceed the
8 rate established for the Vice President under section 104 of title 3, except as provided under
9 paragraph (2) of this subsection.

10 “(2) The Director of the Office of Personnel Management, in consultation with the Office
11 of Management and Budget, may establish a higher maximum rate of basic pay for a category of
12 positions described in paragraph (1) of this subsection as necessary to address critical mission

1 requirements or based on critical labor market, recruitment, retention, or other factors. Any such
2 higher limitation may not exceed the rate that is 150 percent of the rate for level I of the
3 Executive Schedule under section 5312.

4 “(3) Notwithstanding any other provision of law, pay fixed under this subsection in excess
5 of the rate payable for level I of the Executive Schedule—

6 “(A) is not considered part of the basic pay of an employee for any purpose; and

7 “(B) may not be considered in determining the amount of an employee’s lump-sum
8 annual leave payment under section 5551 or section 5552.

9 “(4) The aggregate pay limitations prescribed under section 5307 shall not apply to an
10 employee whose pay is established under this subsection.

11 “(5) A pay rate determined under this subsection shall apply only to an employee appointed
12 to, and serving in, a position covered by this section within a category of positions determined
13 under paragraphs (1) or (2) of this subsection. Notwithstanding subsection (b)(4) of this section,
14 upon reassignment, transfer, conversion, or other appointment to a different position covered by
15 this section, the employee’s pay shall be set or adjusted to a rate not exceeding the maximum rate
16 of the rate range that applies to the position to which appointed.”.

Section-by-Section Analysis

This proposal would amend 5 U.S.C. 5376 by adding a new subsection (c) to provide the Director of the Office of Personnel Management (OPM) authority, in consultation with OMB, to establish a higher limitation on the maximum rate of basic pay for senior-level (SL) and scientific and professional (ST) positions that involve significant cyber workforce duties, as determined by the Director of OPM. Under this proposal, the maximum rate for those positions could not exceed the Vice President’s salary (\$272,100 in 2023). The proposal would also provide that the Director of OPM could establish a higher maximum rate not to exceed 150 percent of the rate for EX-I (\$353,400 in 2023) for such SL/ST cyber workforce positions necessary to address critical mission requirements or based on critical labor market, recruitment, retention, or other factors. Increasing the maximum rate of pay for these positions will help agencies better address recruitment and retention difficulties.

This proposal would also establish that any amount of pay for these SL/ST cyber workforce positions that is in excess of the rate payable for level I of the Executive Schedule will not be considered “basic pay” for any purpose, nor be considered in determining the amount of an employee’s lump-sum annual leave payment under section 5551 or section 5552.

This proposal would also repeal the aggregate limitation on pay under 5 U.S.C. 5307 for SL/ST cyber employees who receive payments under title 5, United States Code. The aggregate limitation on pay caps the total amount of title 5 allowances, differentials, bonuses, awards, and other similar payments an employee may receive in a calendar year, when combined with the employee’s basic pay. The aggregate limitation on pay is currently set at EX-I (\$235,600 in 2023) or the Vice President’s salary (\$272,100 in 2023) for SES/SL/ST employees in certified performance appraisal systems. Payments that would cause an employee’s aggregate compensation to exceed the applicable limitation during the calendar year are deferred and paid at the beginning of the next calendar year and count toward the next year’s aggregate limitation on pay.

The aggregate limitation on pay can prevent high-performing and mission-critical SL/ST cyber workforce employees from receiving their full compensation (including awards and incentives) during the year. It is a “soft” cap under which excess amounts are rolled over (deferred) for payment in a subsequent calendar year—often not until separation from service. Thus, this cap does not limit the SL/ST employees’ pay entitlements or the Government’s ultimate expenditures. An employee’s rate of basic pay and the title 5 payments that are subject to this “soft” cap have their own individual limits or caps in law or regulation that serve to control costs.

This approach is not transparent and arguably has the effect of hiding an employee’s actual pay entitlements, which may be a disincentive for critical SL/ST cyber employees who are highly sought after in the private sector. There is no compelling reason for establishing such a “soft” cap. Furthermore, since deferred amounts can accumulate and grow into large sums, this can create an incentive for employees to separate from Federal service in order to be paid the deferred amounts, which may be contrary to agency interests.

The aggregate limitation on pay is also burdensome to administer because it requires agencies and Shared Service Centers to project and track aggregate compensation during the calendar year to ensure that the cap is not exceeded.

This proposal would also limit the application of the higher maximum rate of pay strictly to an SL/ST employee appointed to, and serving in, a category of positions that involve significant cyber workforce duties, as determined by the Director. Upon reassignment, transfer, conversion, or other appointment to a different position, the SL/ST employee’s pay would be set or adjusted to a rate not exceeding the maximum rate of the salary range that applies to the position to which appointed.

SEC. _____. ON-CALL PREMIUM PAYMENTS

- 1 (a) Section 5545 of title 5, United States Code, is amended—

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

2 “§ 5545. Pay for night, standby, irregular, hazardous, and on-call duty”; and

3 (2) by adding at the end:

4 “(e)(1) The head of an agency may provide an on-call premium payment on an hourly basis
5 to an employee who is—

6 “(A) specifically assigned by an authorized agency official to be ready and
7 immediately available to report to work outside of the employee’s regular tour of duty or
8 on a holiday designated by Federal statute or Executive order; and

9 “(B) subject to special restrictions and requirements because of the need to be ready
10 and immediately available to report to work that are not applicable to employees in a
11 similar job who are not so assigned.

12 “(2) An on-call premium payment under this subsection may be applied only to a limited
13 subset of employees engaged in a particular function whose immediate availability to report to
14 work outside regular hours is considered necessary to meet mission requirements, as determined
15 by an authorized agency official.

16 “(3) Premium pay paid under this subsection is paid for each hour (or specified fractional
17 increment thereof) in an on-call status as an hourly rate equal to 10 percent of the employee’s
18 hourly rate of basic pay.

19 “(4) Any premium pay paid under this subsection shall not be included when calculating
20 total remuneration under the Fair Labor Standards Act of 1938.

21 “(5) On-call premium pay under this subsection may not be paid for any hour that qualifies
22 as an hour of work or that is a basis for compensation (other than on-call premium pay under this
23 section) under applicable law or other legal authority, such as an hour during which an employee

1 is receiving paid leave or any other type of paid time off (excluding holiday pay), is available to
2 work under section 5545a, or is earning compensatory time off under any authority. Any time
3 spent by an employee in an on-call status under this subsection may not be considered hours of
4 work for overtime purposes under this subchapter or the Fair Labor Standards Act of 1938.”.

5 (b) Section 5547(a) of title 5, United States Code, is amended by striking “and (c)” and
6 inserting in its place “(c), and (e)”.

7 (c) The table of sections for chapter 55 of title 5, United States Code, is amended by
8 striking the item relating to section 5545 and inserting the following:

9 “5545. Pay for night, standby, irregular, hazardous, and on-call duty”.

Section-by-Section Analysis

On-call payments are provided as special compensation to an employee who is specifically assigned by agency management to be ready and immediately available to report to work outside of the employee’s regular tour of duty or on a holiday and is subject to special restrictions and requirements that are not applicable to employees in a similar job who are not so assigned. Unlike the standby duty status described by 5 U.S.C. 5545(c), employees in an on-call status are not required to remain at the duty station in question and do not have restrictions that severely constrain their ability to use the time for their own purposes. However, being assigned to on-call status with special restrictions and requirements to ensure immediate availability does impose a modest burden on employees. Accordingly, this legislation would provide special additional compensation of 10 percent of the employee’s hourly rate of basic pay, paid on an hourly basis for each hour (or specified fractional increment thereof) of on-call status. The proposal would amend 5 U.S.C. 5547(a) to include on-call pay as a type of premium pay subject to the biweekly and annual premium pay limitations under 5 U.S.C. 5547. OPM would have authority to prescribe regulations on the administration of on-call premium pay under its existing regulatory authority in 5 U.S.C. 5548.

An agency could not provide on-call premium pay to all employees performing a particular function. Rather, it would have to be applied only to a limited subset of employees engaged in a particular function whose immediate availability to report to work outside regular hours is considered necessary to meet mission requirements, as determined by an authorized agency official. It is expected that, for a function that requires use of on-call pay, agencies would rotate on-call assignments among employees in that function.

Providing on-call payments would allow the Government to compete more effectively in high-demand career fields where on-call pay is frequently provided, such as information technology and healthcare. It would also create a level playing field within the Government by authorizing a

governmentwide pay authority that all agencies could use for any occupation, in contrast to special agency-specific authorities such as those in 38 U.S.C. 7453(h) (for Veterans Health Administration nurses) and 38 U.S.C. 7457 (for certain other Veterans Health Administration employees).

Under the proposal, on-call premium pay could not be applied to any hour that qualifies as an hour of work under applicable law or other legal authority (title 5 or the Fair Labor Standards Act (FLSA)). By definition, an hour for which on-call premium pay received is not an hour of work under either title 5 or the FLSA. On-call pay may not be paid for any hour that is an hour of work under law or other legal authority or a basis for other compensation, such as an hour during which an employee is receiving paid leave or any other type of paid time off (excluding a holiday for which an employee receives holiday pay), is available to work for purposes of law enforcement availability pay, or is earning compensatory time off under any authority. Thus, on-call hours are not considered in computing a FLSA-nonexempt employee's straight time rate or hourly regular rate. The proposal also would exclude any on-call payments from the calculation for an employee's total remuneration under the FLSA so that payment of on-call pay would not increase the overtime pay for overtime hours that happen to occur in the same week in which on-call pay is payable.

1 **SEC. ___ UPDATES TO FEDERAL CYBER SCHOLARSHIP-FOR-SERVICE**
2 **PROGRAM**

3 Section 302 of Public Law 113-274, the Cybersecurity Enhancement Act of 2014 (15 U.S.C.
4 7442), as amended, is further amended--

5 (a) in subsection (c), by inserting “, or 5 years for students in a graduate program,” after “3
6 years”; and

7 (b) in subsection (j), by striking “A loan described subsection (i) shall” and inserting in its
8 place “The full amount of a loan described in subsection (i), regardless of any other limitations
9 placed on those loans under part D of title IV of the Higher Education Act of 1965 (20 U.S.C.
10 1087a *et seq.*) or any implementing regulation, order, or other policy, shall”.

Section-by-Section Analysis

There is a critical national shortage of the advanced, entrepreneurial research and development cyber workforce that can exploit the potential of emerging technologies, such as Artificial Intelligence (AI) and Quantum Information Science (QIS), to invent and build a digital ecosystem that is secure by design. Out of more than 4,200 students who graduated under the CyberCorps Scholarship for Service program, only 126 students, or 3%, completed the academic

phase with a doctoral degree. It reflects the critical shortage of doctoral students in cyber entering government and academic institutions as documented by the Computing Research Association (CRA) [Taulbee Survey](#).¹ In addition, most of the students in research-based doctoral programs in cyber are non-citizens, reaching sometimes 90%, who are non-eligible for the CyberCorps SFS scholarships. To address the cyber faculty shortage, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283) authorized up to 10% of CyberCorps SFS graduates to be placed as educators at the SFS institutions but, to date, less than 1% were actually placed due to the shortage of doctoral students.

Under the proposal, scholarship time limits would be increased for students in graduate programs, primarily those seeking doctoral degrees. For example, a student recruited with junior standing in a bachelor's degree program, or a student enrolled in a master's degree program, would be able to get up to three years of additional support to continue to a doctoral degree.

Subsection (b) would clarify that, if a scholarship is converted to a loan under the SFS program, the entire converted amount would be treated as a loan regardless of any other limitations placed on those loans under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a *et seq.*) or any implementing regulation, order, or other policy.

¹ [CRA Taulbee Survey - CRA](#) The CRA Taulbee Survey is the principal source of information on the enrollment, production, and employment of Ph.D.s in information, computer science and computer engineering (I, CS & CE) and in providing salary and demographic data for faculty in I, CS & CE in North America.