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Early Retirement, Buyout Authority Detailed

Of the civil service reform provisions approved in the recent bill to create a homeland security department, the changes of the most interest to many employees involve creation of early retirement and buyout authorities. However, contrary to what many seem to have come to believe, the authorities would not create opportunities for anyone interested to apply; instead, offers of either type would be subject to several limitations.

Following is a description of the provisions prepared on Capitol Hill during consideration of the language.

"This section would amend chapters 35, 83 and 84 of title 5, United States Code, authorizing the permanent extension, revision and expansion of authorities for the use of voluntary separation incentive pay and voluntary early retirement across the executive and judicial branches of the federal government for the purposes of workforce restructuring. "The downsizing of the federal government that took place during the 1990s paid little heed to workforce planning or the retention of employees with valuable years of experience, resulting in significant skills imbalances. In addition, downsizing failed to account for the large percentage of federal employees who will be eligible for early or regular retirement in the coming years.

"Voluntary separation incentive pay and voluntary early retirement authority would be a critical tool for improving the quality of our federal workforce. These flexibilities would grant agencies the authority to reduce high-grade, managerial, or supervisory positions, correct skill imbalances, or reduce operating costs without concomitant position loss, without linking their use to eliminating full time equivalent positions, the demoralizing use of involuntary separations, or changes to lower grade.

"Offers could be targeted on the basis of organizational unit, occupational series or level, geographic location, specific periods, skills, knowledge, or other job related factors, or a combination of these factors, but not performance. A determination of which employees are within the scope of an offer of early retirement would be made only on the basis of consistent and well-documented application of relevant criteria.

"An agency that uses these tools for workforce restructuring would be required to submit to OPM a detailed plan describing the use of these authorities and how the agency's workforce would be restructured. An agency plan could not be implemented without the approval of OPM, which could modify the plan before approving it. "The plan would also have to specify the time period during which the authorities would be used, as well as the number of employees for which it would be used, although this section does not impose a cap on the number of employees to whom buyouts or early retirements can be offered. No payment could exceed \$25,000. OMB would necessarily play a role in this process, not in terms of modifying agencies' plans but because of their financial implications. "Agencies would be required to pay buyouts in a lump sum to employees who voluntarily retire or resign in accordance with their approved plans. An incentive payment would be the lesser of the amount of severance pay the employee would be entitled to or the amount offered by the agency, not to exceed \$25,000.

"Certain employees would be excluded from eligibility for a buyout, including reemployed annuitants, employees eligible for disability retirement, employees about to be separated for misconduct or unacceptable performance, and employees who have previously received a buyout from the federal government.

"In addition, employees would be required to repay the entire amount of a buyout if that employee were to accept any paid employment with the federal government within five years after separating. The repayment would have to be completed before the individual's first day of work in the new position. If the subsequent employment would be in executive branch, including the U.S. Postal Service, the OPM Director could waive the repayment at the request of the agency head if the individual possessed unique abilities and is the only qualified applicant available for the position. "Repayment could also be waived in situations involving emergencies that threaten life or property. With respect to subsequent employment in the legislative branch, the appointing official or the head of the entity concerned would have the same authority. The Director of the Administrative Office of the U.S. Courts could waive repayment on the same basis, in the case of subsequent employment in the judicial branch. Employment under a personal services contract with the U.S. Government would be subject to the requirement for repayment; however, the OPM Director would have the authority to waive this provision.

"This section provides that an agency subject to a previously enacted voluntary separation incentive authority may continue to use the authority until the authority expires (e.g., Department of Defense). It also authorizes OPM to issue necessary implementing regulations and allows the Director of the Administrative Office of the U.S. Courts to establish a similar program for employees of the judicial branch.

"Finally, this section contains non-binding "Sense of Congress" language that emphasizes the intention of these "early out" and "buyout" authorities: workforce shaping, not downsizing."