

GAO HUMAN CAPITAL REFORM ACT OF 2003

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NOVEMBER 19, 2003.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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Mr. TOM DAVIS of Virginia, from the Committee on Government  
Reform, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 2751]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 2751) to provide new human capital flexibilities with respect to the GAO, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 31.**

(a) **SHORT TITLE.**—This Act may be cited as the “GAO Human Capital Reform Act of 2003”.

(b) **AMENDMENT OF TITLE 31.**—Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of title 31, United States Code.

**SEC. 2. AMENDMENTS TO PUBLIC LAW 106-303.**

(a) **AUTHORITIES MADE PERMANENT.**—Sections 1 and 2 of Public Law 106-303 (5 U.S.C. 8336 note and 5597 note) are amended by striking “for purposes of the period beginning on the date of the enactment of this Act and ending on December 31, 2003” each place it appears and inserting “October 13, 2000”.

(b) **SENSE OF CONGRESS.**—

(1) **VOLUNTARY EARLY RETIREMENT AUTHORITY.**—Section 1 of Public Law 106-303 is amended by adding at the end the following:

“(e) **SENSE OF CONGRESS.**—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.”

(2) **VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**—Section 2 of Public Law 106-303 is amended by adding at the end the following:

“(g) **SENSE OF CONGRESS.**—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.”

(c) **ADDITIONAL LIMITATION RELATING TO VSIPs.**—Section 2(b) of Public Law 106-303 is amended by striking paragraph (2) and inserting the following:

“(2) subsection (a)(2)(G) of such section shall be applied—

“(A) by construing the citations therein to be references to the appropriate authorities in connection with employees of the General Accounting Office; and

“(B) by deeming such subsection to be amended by striking ‘Code.’ and inserting ‘Code, or who, during the thirty-six month period preceding the date of separation, performed service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code.’”

**SEC. 3. ANNUAL PAY ADJUSTMENTS.**

(a) **OFFICERS AND EMPLOYEES GENERALLY.**—Paragraph (3) of section 732(c) is amended to read as follows:

“(3) except as provided under section 733(a)(3)(B) of this title, basic rates of officers and employees of the Office shall be adjusted annually to such extent as determined by the Comptroller General, and in making that determination the Comptroller General shall consider—

“(A) the principle that equal pay should be provided for work of equal value within each local pay area;

“(B) the need to protect the purchasing power of officers and employees of the Office, taking into consideration the Consumer Price Index or other appropriate indices;

“(C) any existing pay disparities between officers and employees of the Office and non-Federal employees in each local pay area;

“(D) the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area;

“(E) the appropriate distribution of agency funds between annual adjustments under this section and performance-based compensation; and

“(F) such other criteria as the Comptroller General considers appropriate, including, but not limited to, the funding level for the Office, amounts allocated for performance-based compensation, and the extent to which the Office is succeeding in fulfilling its mission and accomplishing its strategic plan;

notwithstanding any other provision of this paragraph, an adjustment under this paragraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;”

(b) **OFFICERS AND EMPLOYEES IN THE OFFICE SENIOR EXECUTIVE SERVICE.**—Subparagraph (B) of section 733(a)(3) is amended to read as follows:

“(B) adjusted annually by the Comptroller General after taking into consideration the factors listed under section 732(c)(3) of this title, except that an adjustment under this subparagraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;”

(c) CONFORMING AMENDMENT.—Section 732(b)(6) is amended by striking “title 5,” and inserting “title 5, except as provided under subsection (c)(3) of this section and section 733(a)(3)(B) of this title.”.

#### SEC. 4. PAY RETENTION.

Paragraph (5) of section 732(c) is amended to read as follows:

“(5) the Comptroller General shall prescribe regulations under which an officer or employee of the Office shall be entitled to pay retention if, as a result of any reduction-in-force or other workforce adjustment procedure, position reclassification, or other appropriate circumstances as determined by the Comptroller General, such officer or employee is placed in or holds a position in a lower grade or band with a maximum rate of basic pay that is less than the rate of basic pay payable to the officer or employee immediately before the reduction in grade or band; such regulations—

“(A) shall provide that the officer or employee shall be entitled to continue receiving the rate of basic pay that was payable to the officer or employee immediately before the reduction in grade or band until such time as the retained rate becomes less than the maximum rate for the grade or band of the position held by such officer or employee; and

“(B) shall include provisions relating to the minimum period of time for which an officer or employee must have served or for which the position must have been classified at the higher grade or band in order for pay retention to apply, the events that terminate the right to pay retention (apart from the one described in subparagraph (A)), and exclusions based on the nature of an appointment; in prescribing regulations under this subparagraph, the Comptroller General shall be guided by the provisions of sections 5362 and 5363 of title 5.”.

#### SEC. 5. RELOCATION BENEFITS.

Section 731 is amended by adding after subsection (e) the following:

“(f) The Comptroller General shall prescribe regulations under which officers and employees of the Office may, in appropriate circumstances, be reimbursed for any relocation expenses under subchapter II of chapter 57 of title 5 for which they would not otherwise be eligible, but only if the Comptroller General determines that the transfer giving rise to such relocation is of sufficient benefit or value to the Office to justify such reimbursement.”.

#### SEC. 6. INCREASED ANNUAL LEAVE FOR KEY EMPLOYEES.

Section 731 is amended by adding after subsection (f) (as added by section 5 of this Act) the following:

“(g) The Comptroller General shall prescribe regulations under which key officers and employees of the Office who have less than 3 years of service may accrue leave in accordance with section 6303(a)(2) of title 5, in those circumstances in which the Comptroller General has determined such increased annual leave is appropriate for the recruitment or retention of such officers and employees. Such regulations shall define key officers and employees and set forth the factors in determining which officers and employees should be allowed to accrue leave in accordance with this subsection.”.

#### SEC. 7. EXECUTIVE EXCHANGE PROGRAM.

Section 731 is amended by adding after subsection (g) (as added by section 6 of this Act) the following:

“(h) The Comptroller General may by regulation establish an executive exchange program under which officers and employees of the Office may be assigned to private sector organizations, and employees of private sector organizations may be assigned to the Office, to further the institutional interests of the Office or Congress, including for the purpose of providing training to officers and employees of the Office. Regulations to carry out any such program—

“(1) shall include provisions (consistent with sections 3702 through 3704 of title 5) as to matters concerning—

“(A) the duration and termination of assignments;

“(B) reimbursements; and

“(C) status, entitlements, benefits, and obligations of program participants;

“(2) shall limit—

“(A) the number of officers and employees who are assigned to private sector organizations at any one time to not more than 15; and

“(B) the number of employees from private sector organizations who are assigned to the Office at any one time to not more than 30;

“(3) shall require that an employee of a private sector organization assigned to the Office may not have access to any trade secrets or to any other nonpublic

information which is of commercial value to the private sector organization from which such employee is assigned;

“(4) shall require that, before approving the assignment of an officer or employee to a private sector organization, the Comptroller General shall determine that the assignment is an effective use of the Office’s funds, taking into account the best interests of the Office and the costs and benefits of alternative methods of achieving the same results and objectives; and

“(5) shall not allow any assignment under this subsection to commence after the end of the 5-year period beginning on the date of the enactment of this subsection.

“(i) An employee of a private sector organization assigned to the Office under the executive exchange program shall be considered to be an employee of the Office for purposes of—

“(1) chapter 73 of title 5;

“(2) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

“(3) sections 1343, 1344, and 1349(b) of this title;

“(4) chapter 171 of title 28 (commonly referred to as the ‘Federal Tort Claims Act’) and any other Federal tort liability statute;

“(5) the Ethics in Government Act of 1978 (5 U.S.C. App.);

“(6) section 1043 of the Internal Revenue Code of 1986; and

“(7) section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).”.

#### **SEC. 8. REDESIGNATION.**

(a) **IN GENERAL.**—The General Accounting Office is hereby redesignated the Government Accountability Office.

(b) **REFERENCES.**—Any reference to the General Accounting Office in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the date of enactment of this Act shall be considered to refer and apply to the Government Accountability Office.

#### **SEC. 9. PERFORMANCE MANAGEMENT SYSTEM.**

Paragraph (1) of section 732(d) is amended to read as follows:

“(1) for a system to appraise the performance of officers and employees of the General Accounting Office that meets the requirements of section 4302 of title 5 and in addition includes—

“(A) a link between the performance management system and the agency’s strategic plan;

“(B) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;

“(C) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period and setting timetables for review;

“(D) effective transparency and accountability measures to ensure that the management of the system is fair, credible, and equitable, including appropriate independent reasonableness, reviews, internal assessments, and employee surveys; and

“(E) a means to ensure that adequate agency resources are allocated for the design, implementation, and administration of the performance management system.”.

#### **SEC. 10. CONSULTATION.**

Before the implementation of any changes authorized under this Act, the Comptroller General shall consult with any interested groups or associations representing officers and employees of the General Accounting Office.

#### **SEC. 11. REPORTING REQUIREMENTS.**

(a) **ANNUAL REPORTS.**—The Comptroller General shall include—

(1) in each report submitted to Congress under section 719(a) of title 31, United States Code, during the 5-year period beginning on the date of enactment of this Act, a summary review of all actions taken under sections 2, 3, 4, 6, 7, 9, and 10 of this Act during the period covered by such report, including—

(A) the respective numbers of officers and employees—

(i) separating from the service under section 2 of this Act;

(ii) receiving pay retention under section 4 of this Act;

(iii) receiving increased annual leave under section 6 of this Act; and

(iv) engaging in the executive exchange program under section 7 of this Act, as well as the number of private sector employees partici-

pating in such program and a review of the general nature of the work performed by the individuals participating in such program;

(B) a review of all actions taken to formulate the appropriate methodologies to implement the pay adjustments provided for under section 3 of this Act, except that nothing under this subparagraph shall be required if no changes are made in any such methodology during the period covered by such report; and

(C) an assessment of the role of sections 2, 3, 4, 6, 7, 9, and 10 of this Act in contributing to the General Accounting Office's ability to carry out its mission, meet its performance goals, and fulfill its strategic plan; and

(2) in each report submitted to Congress under such section 719(a) after the effective date of section 3 of this Act and before the close of the 5-year period referred to in paragraph (1)—

(A) a detailed description of the methodologies applied under section 3 of this Act and the manner in which such methodologies were applied to determine the appropriate annual pay adjustments for officers and employees of the Office;

(B) the amount of the annual pay adjustments afforded to officers and employees of the Office under section 3 of this Act; and

(C) a description of any extraordinary economic conditions or serious budget constraints which had a significant impact on the determination of the annual pay adjustments for officers and employees of the Office.

(b) **FINAL REPORT.**—Not later than 6 years after the date of enactment of this Act, the Comptroller General shall submit to Congress a report concerning the implementation of this Act. Such report shall include—

(1) a summary of the information included in the annual reports required under subsection (a);

(2) recommendations for any legislative changes to section 2, 3, 4, 6, 7, 9, or 10 of this Act; and

(3) any assessment furnished by the General Accounting Office Personnel Appeals Board or any interested groups or associations representing officers and employees of the Office for inclusion in such report.

(c) **ADDITIONAL REPORTING.**—Notwithstanding any other provision of this section, the reporting requirement under subsection (a)(2)(C) shall apply in the case any report submitted under section 719(a) of title 31, United States Code, whether during the 5-year period beginning on the date of enactment of this Act (as required by subsection (a)) or at any time thereafter.

#### **SEC. 12. TECHNICAL AMENDMENT.**

Section 732(h)(3)(A) is amended by striking “reduction force” and inserting “reduction in force”.

#### **SEC. 13. EFFECTIVE DATES.**

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

(b) **PAY ADJUSTMENTS.**—

(1) **IN GENERAL.**—Section 3 of this Act and the amendments made by that section shall take effect on October 1, 2005, and shall apply in the case of any annual pay adjustment taking effect on or after that date.

(2) **INTERIM AUTHORITIES.**—In connection with any pay adjustment taking effect under section 732(c)(3) or 733(a)(3)(B) of title 31, United States Code, before October 1, 2005, the Comptroller General may by regulation—

(A) provide that such adjustment not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment; and

(B) provide that such adjustment be reduced if and to the extent necessary because of extraordinary economic conditions or serious budget constraints.

(3) **ADDITIONAL AUTHORITY.**—

(A) **IN GENERAL.**—The Comptroller General may by regulation delay the effective date of section 3 of this Act and the amendments made by that section for groups of officers and employees that the Comptroller General considers appropriate.

(B) **INTERIM AUTHORITIES.**—If the Comptroller General provides for a delayed effective date under subparagraph (A) with respect to any group of officers or employees, paragraph (2) shall, for purposes of such group, be applied by substituting such date for “October 1, 2005”.

## COMMITTEE STATEMENT AND VIEWS

## PURPOSE AND SUMMARY

H.R. 2751, as amended, would provide the U.S. General Accounting Office (GAO) with additional human capital flexibilities, make permanent the voluntary early retirement and buyout authorities granted to the GAO in Public Law 106-303, the GAO Personnel Flexibilities Act, and change the name of the agency to the U.S. Government Accountability Office.

## BACKGROUND AND NEED FOR THE LEGISLATION

One of the top priorities for the Government Reform Committee in the 108th Congress is to advance comprehensive civil service reform for the federal government. The current system, put in place more than fifty years ago, does not adequately address the priorities of a 21st century workforce. This legislation builds on the management and human capital tools and flexibilities already granted to the GAO. The Congress relies on the GAO to support it in meeting its constitutional responsibilities and to help improve the performance and ensure the accountability of the federal government for the American people. Unlike many executive branch agencies, which have either recently received or are just requesting broad-based human capital tools and flexibilities, GAO has had certain human capital tools and flexibilities for over two decades. This legislation will further GAO's ability to accomplish its mission and meet its strategic plan, assure its accountability, and help ensure that it can attract, retain, motivate, and reward a top-quality and high-performing workforce currently and in future years.

Until 1980, GAO's personnel system was indistinguishable from those of executive branch agencies—that is, GAO was subject to the same laws, regulations, and policies governing executive branch agencies. With the expansion of GAO's role in congressional oversight of federal agencies and programs, concerns grew about the potential for conflicts of interest. Congress passed the GAO Personnel Act of 1980 (Public Law 96-191, February 15, 1980) to avoid potential conflicts by making GAO's personnel system independent of the executive branch. Along with this independence, the Act gave GAO greater flexibility in hiring and managing its workforce. Among other things, it granted the Comptroller General authority to appoint, pay, promote, and assign employees on the basis of fitness and merit but without regard to title 5 requirements in the areas of pay and classification. Most significantly, the Act no longer made GAO subject to the General Schedule pay system and authorized the Comptroller General to establish a merit pay system for appropriate officers and employees. By excepting GAO from the above requirements, the GAO Personnel Act of 1980 allowed GAO to pursue some significant innovations in managing its people, including the establishment of a "broad banding" or "pay banding," approach for classifying and paying its Analyst and Attorney workforce in 1989.

Given GAO's role as a key provider of information and analyses to the Congress, maintaining the right mix of technical knowledge and subject matter expertise as well as general analytical skills is vital to achieving the agency's mission. GAO spends about 80 percent of its resources on its people. And yet, like other federal agen-

cies, GAO has faced significant human capital challenges—challenges that if not effectively addressed, could impair the timeliness and quality of its work for its congressional clients and the American people they represent. Therefore, in early 2000, GAO sought legislation establishing narrowly tailored flexibilities that would help to reshape the agency's workforce and recruit and retain staff with needed technical skills. With the support of the House Committee on Government Reform, Congress passed H.R. 4642 which became Public Law 106–303 on October 13, 2000. This Act provided GAO with new personnel flexibilities and authorized the Comptroller General to:

1. Offer voluntary early retirement to realign the workforce to meet budgetary constraints or mission needs; correct skill imbalances; or reduce high-grade, managerial, or supervisory positions.
2. Offer separation incentive payments to realign the workforce to meet budgetary constraints or mission needs; correct skill imbalances; or reduce high-grade, supervisory, or managerial positions.
3. Establish modified regulations for the separation of employees during a reduction or other adjustment in force.
4. Establish senior-level scientific, technical, and professional positions and provide those positions with the same pay and benefits applicable to the Senior Executive Service while remaining within GAO's current allocation of super-grade positions.
5. Renew the appointments of experts and consultants for additional terms beyond an initial 3-year term and pay them at a rate up to level IV of the Executive Schedule.

Lastly, the 2000 Act required the Comptroller General to report annually on the agency's use of the first three authorities and a 3-year assessment of the effectiveness of the Act and any suggestions for change.

GAO issued an assessment of Public Law 106–303 entitled “The Role of Personnel Flexibilities in Strengthening GAO's Human Capital” in June 2003 (GAO–03–954SP). It concluded that the additional flexibilities authorized in Public Law 106–303 have helped to ensure that GAO has the right staff, with the right skills, in the right locations to better meet the needs of the Congress and the American people. We believe that GAO has used the narrowly tailored flexibilities granted by the Congress in Public Law 106–303 responsibly, prudently, and strategically. For this and other reasons, including GAO's extensive experience with broad bands and pay for performance systems, its human capital infrastructure, and its unique role in leading by example in major management areas, we believe that additional management flexibilities should be granted to GAO.

This legislation would change existing law by: (1) making permanent GAO's 3-year authority to offer voluntary early retirement and voluntary separation incentive payments, (2) allowing GAO to adjust annually the rates of basic pay on a separate basis than the annual adjustment authorized for employees of the executive branch, (3) permitting GAO to set the pay of an employee demoted as a result of workforce restructuring or reclassification at his or her current rate with no automatic annual increase to basic pay until his or her salary is less than the maximum rate of their new position, (4) providing authority in appropriate circumstances to reimburse employees for some relocation expenses when that transfer

has some benefit to GAO, but does not meet the legal requirements for reimbursement, (5) providing authority to place key officers and employees, as defined by regulations, with fewer than 3 years of federal experience in the 6-hour leave category, (6) authorizing an executive exchange program with the private sector that will sunset after 5 years, (7) changing GAO's legal name from the "General Accounting Office" to the "Government Accountability Office," (8) codifying several ongoing practices for GAO's Performance Management System including, among other things, that there be a link between the performance management system and the agency's strategic plan, adequate training for all employees in the performance management system, and a means to ensure that adequate resources are allocated for the performance management system, (9) requiring the Comptroller General to consult with interested groups or associations that represent GAO employees before implementing any of the new flexibilities under the Act; and (10) requiring GAO to include in its annual reports to the Congress for a 5-year period a summary of all actions taken in regard to the new flexibilities provided under sections 2, 3, 4, 6, 7, 9, and 10 of the legislation as well as a final report summarizing the annual reporting data and recommending any changes to the legislation.

#### LEGISLATIVE HISTORY

On July 16, 2003, H.R. 2751 was introduced by subcommittee Chairwoman Jo Ann Davis, for herself and full committee Chairman Tom Davis. That same day, H.R. 2751 was referred to the Government Reform Subcommittee on Civil Service and Agency Organization, which Jo Ann Davis chairs. A hearing titled, GAO Human Capital Reform: Leading the Way, was held on that same day before the Government Reform Subcommittee on Civil Service and Agency Organization. The witnesses included the Comptroller General of the United States, David M. Walker, Chris Keisling, GAO's Employee Advisory Council's representative, Paul Light of the Brookings Institution, and Pete Smith of the Private Sector Council. At a July 23, 2003, Subcommittee business meeting, H.R. 2751 was marked-up, with the adoption of an en bloc amendment offered by Congressman Danny Davis by voice vote, and reported out of the Subcommittee. On November 6, 2003, the full committee held a business meeting, to consider H.R. 2751. The committee adopted an amendment in the nature of a substitute offered by Jo Ann Davis. The amendment reflected changes suggested by Ranking Minority Member Henry Waxman. By voice vote, the committee ordered the bill favorably reported to the House of Representatives.

#### SECTION-BY-SECTION

##### *Section 1. Short title; amendment of title 31*

Section 1 of the bill entitles the Act the "GAO Human Capital Reform Act of 2003".

##### *Section 2. Amendments to Public Law 106-303*

Section 2 of the bill makes permanent the authority of the General Accounting Office (GAO) under Public Law 106-303, sections 1 and 2, to offer voluntary early retirements and voluntary separation payments to certain employees of GAO when necessary to re-



align GAO's workforce in order to meet budgetary or mission needs, correct skill imbalances, or reduce high-grade positions. Originally, these authorities were to lapse on December 31, 2003.

Additionally both sections 1 and 2 are amended by the addition of a new provision expressing the "sense of the Congress" that the implementation of these sections is intended to reshape the Office's workforce and not downsize the Office. The aforementioned "sense of the Congress" language is not intended to contradict Section 1 and Section 2 of Public Law 106-303. Lastly, in regard to voluntary separation payments, a provision has been added to make ineligible for this benefit an employee who during the 36-month period preceding separation performed services for which a student loan repayment benefit was or is to be paid.

### *Section 3. Annual pay adjustments*

Section 3 enables the Comptroller General to annually adjust the pay rates for officers and employees of GAO without having to adjust the GAO pay rates at the same time and to the same extent as the annual statutory adjustments are made to the General Schedule. Subsection (a) accomplishes this for all GAO employees other than members of the Senior Executive Service (SES) and Senior Level (SL) staff. Subsection (b) accomplishes this for members of the SES and SL staff.

Section 3 enables the Comptroller General to annually adjust the pay rates for GAO officers and employees whose performance is at a satisfactory level, as defined in advance by regulations, after reviewing various factors such as the need to protect the purchasing power of employees of the Office and pay disparities between GAO employees and private sector employees in the local pay areas. In considering certain of these factors related to economic data, the data will be specifically related to positions at GAO. This section also enables the Comptroller General to determine what other factors, such as the overall agency performance and funding levels, would be relevant to adjusting pay rates for GAO officers and employees. Methodologies to support the compensation of employees would be developed only after consultation with the Employee Advisory Council and Managing Directors, and employees would be given the opportunity for notice and comment to any regulations promulgated to implement this provision.

Section 3 is designed, among other reasons, to afford additional flexibility to the Comptroller General to increase the amount of merit or performance-based compensation that could be provided to reward employees at different rates, based on their knowledge, skills, position, and performance rather than on the passage of time, the rate of inflation and geographic location. The funds made available from the annual adjustments that would not be paid to GAO staff who are rated as performing at a below satisfactory level would be applied towards performance-based compensation. Additionally, this would be accomplished in certain years by increasing the funding for performance-based compensation, the amounts of which can vary by performance category. At the same time, employees could receive less annual across the board base pay increases than they would receive under the existing law. However, for some employees increases in performance-based compensation would make up for this loss.

*Section 4. Pay retention*

Section 4 deletes the requirement that GAO provide grade and pay retention consistent with the statutory provisions in subchapter VI of chapter 53 of title 5, United States Code. The passage of this provision will enable employees who are demoted due to a reduction-in-force, other adjustment-in-force, reclassification or other specified reasons as determined by the Comptroller General to be placed immediately in a lower grade or band but their pay would not be reduced if it exceeds the maximum rate of the new band or grade. However, these employees would not be eligible for increases to their basic pay as long as their basic pay is at or exceeds the maximum rate of the band or grade into which they are placed. Under the chapter 53 provisions, employees who suffer a loss of grade or band due to, among other things, reduction-in-force procedures or reclassification receive full statutory increases for 2 years and then receive 50 percent of the statutory pay increases until the pay of their new position falls within the range of pay for that position. Essentially, this antiquated system allows employees for extended periods of time to fundamentally be paid at a rate that exceeds the value of the duties that they are performing. Such provisions are inconsistent with the merit principle that there should be equal pay for equal work. This section allows the Comptroller General to immediately place employees in the band or grade that is commensurate with the roles and responsibilities of their positions. At the same time, the Comptroller General could not reduce the basic pay of employees whose basic pay exceeds the maximum rate of the grade or band in which the employees are placed. The employees would retain this rate, without receiving any increases to basic permanent pay, until their basic pay was less than the maximum for their grade or band. These employees, however, could be eligible for performance awards. As with section 3, this provision would be implemented only after consultation with the Employee Advisory Council and Managing Directors and opportunity for notice and comment by employees to any pay retention regulations.

*Section 5. Relocation benefits*

Section 5 gives the Comptroller General the ability to provide employees who relocate but do not qualify for the relocation benefits set forth in subchapter II of chapter 57 of title 5, United States Code, some relief from the high costs of relocating if the Comptroller General determines that the transfer giving rise to such relocation is of sufficient benefit or value to GAO to justify relief. Presently, employees whose transfer is deemed to be in the interest of the Government are reimbursed for most of their costs (i.e. travel expenses, real estate expenses, moving expenses, and other related expenses) while employees who are not eligible receive no reimbursements even though their transfer may be of some benefit or value to the agency. This provision allows the Comptroller General to promulgate regulations permitting employees who would otherwise not receive any reimbursement for their relocation costs to receive a portion of such costs in appropriate circumstances.

*Section 6. Increased annual leave for key employees*

Section 6 allows the Comptroller General to provide 160 hours of annual leave to key officers and employees, as defined by regulations, who have less than 3 years of Federal service. Under the annual leave provision in section 6303 of title 5, United States Code, employees earn annual leave based on Federal years of service. Until an employee has 3 years of service, the employee earns 104 hours (13 days) of annual leave in a year. Between 3 and 15 years, the employee earns 160 hours (20 days) of annual leave in a year. By increasing the annual leave that certain newly hired officers and employees may earn, this provision is designed to attract and retain highly skilled employees needed to best serve the Congress and the country.

*Section 7. Executive exchange program*

Section 7 establishes an executive exchange program for GAO. Under this program employees from GAO may work in the private sector, and private sector employees may work at GAO. This section is based on the existing Information Technology Exchange Program in chapter 37 of title 5, United States Code. Section 7 makes all private sector participants subject to the same laws that are applicable to the participants in the Information Technology Exchange Program, relating to such matter as conflict of interest and financial disclosure. For the other aspects of the program, the Comptroller General will promulgate regulations that are consistent with most of the provisions in chapter 37. However, some of the provisions of the Information Technology Exchange Program (ITEP) would not be relevant to GAO's program because ITEP involves technology exchanges, whereas GAO's exchange program will cover not only those who work in the field of information technology but also accountants, economists, lawyers, actuaries, and other highly skilled professionals.

In this regard, GAO's regulations are required to be consistent with the general provisions in section 3702 concerning agreements, termination and duration of assignments. Nevertheless, the definitional provision at section 3701 does not apply to GAO and GAO's regulations need not be consistent with subsections (a), (e) and (f) of section 3702, as they specifically concern matters that relate to a technology exchange program. Section 3703 sets out the rules relative to the assignment of employees to private sector organizations. This subsection would apply to GAO's program, except for subsection (e), which covers matters related to small business concerns and is not relevant to the GAO program. Section 3704 sets out the rules relative to assignment of employees from private sector organizations and would be applicable to the GAO program, except for the provision regarding regulations prescribed by the President. Under this section, private sector participants would receive their salary and benefits from their employers and GAO need not contribute to these costs. Section 3705, which concerns the Office of the Chief Technology Officer of the District of Columbia, is not applicable to the GAO program. In addition, the reporting requirements of the Office of Personnel Management in section 3706 will not cover GAO.

The number of GAO employees participating in the program is limited to no more than 15 at any one time. Prior to approving the

assignment of an employee to a private sector organization, the Comptroller General must determine that the assignment is an effective use of the Office's funds, taking into account the best interests of the Office and the costs and benefits of alternate methods to accomplish the same results and objects. For private sector employees, there is a limit of 30 individuals who may participate at any one time. Lastly, the program has a sunset provision that disallows the commencement of assignments under the program 5 years after the enactment of this provision.

#### *Section 8. Redesignation*

Section 8 of the bill changes the name of the General Accounting Office to the Government Accountability Office to more accurately reflect the current mission of GAO and assist the agency in its recruiting and public communication efforts. While the U.S. General Accounting Office may be reflective of the agency's role in its initial decades of existence, it is not reflective of the modern agency. The modern agency is focused on improving the performance and assuring the accountability of the federal government for the benefit of the American people. Importantly, although the name has been changed, the well-known acronym for the agency, "GAO", remains the same.

#### *Section 9. Performance management system*

Section 9 amends section 732(d)(1) of title 31 by retaining the provision that the GAO performance management system must meet the requirements of section 4302 of title 5 and including several additional practices, as defined in advance by regulations, to assure an effective system. These practices include, among other things, that there be a link between the performance management system and agency's strategic plan, adequate training for all employees in the performance management system, and a means to ensure that adequate resources are allocated for the performance management system.

#### *Section 10. Consultation*

Section 10 requires that before the implementation of any changes authorized under the Act, the Comptroller General will consult with interested groups or associations that represent GAO employees.

#### *Section 11. Reporting requirements*

Section 11 adds reporting requirements. Annually, the Comptroller General reports to the Congress under section 719(a) of title 31. For a 5-year period beginning on the date of enactment of the Act, the annual report will summarize all actions taken under section 2, 3, 4, 6, 7, 9, and 10 of the Act. Additionally, this section requires specific information to be included in the report for certain provisions, such as the number of employees separating under section 2, receiving pay retention under section 4, and engaging in the Executive Exchange Program under section 7. Furthermore, the report must describe certain actions with regard to the pay adjustments under the Act including the methodology applied, the amount of the annual pay adjustments, and any extraordinary economic conditions or significant budget constraints that significantly

impacted on the determination of the adjustments. Even after the 5-year period has expired, the Comptroller General must include in the annual report a description of extraordinary economic conditions or serious budget constraints if these significantly impacted on the annual adjustments.

This section also requires a final report not later than 6 years after the enactment of the Act, which summarizes the information included for the prior 5 years in the annual report regarding this Act, makes recommendations for any changes to sections 2, 3, 4, 6, 7, 9, and 10, and includes any assessment of the GAO Personnel Appeals Board or interested groups representing employees.

#### *Section 12. Technical amendment*

Section 12 is a technical amendment correcting a reference in subsection 732(h)(3)(A) of title 31, so that the existing term “reduction force” is changed to “reduction in force”.

#### *Section 13. Effective dates*

Section 13 provides that the effective date of the Act will be the date of passage except for sections 3 and 4 that concern annual adjustments to the pay rates for GAO employees. These provisions are effective for any pay adjustments on or after October 1, 2005, and until then, with two exceptions, the existing statutory provisions will be in effect. The first exception gives the Comptroller General the authority to prescribe regulations that would immediately preclude employees who are not performing at a satisfactory level from receiving the annual adjustment to the pay rates, instead of having to wait until section 4 is effective. The second exception authorizes the Comptroller General to prescribe regulations that would enable him to give less than the full amount of the adjustments under existing law, if the agency encounters serious budget constraints or extraordinary economic conditions. However, the Comptroller General may delay the implementation of sections 3 and 4 for groups of employees if he deems this appropriate.

### EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

### COMMITTEE CONSIDERATION

On November 6, 2003, the Committee met in open session and ordered reported favorably the bill, H.R. 2751, as amended, by voice vote.

### ROLLCALL VOTES

No rollcall votes were held.

### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This bill provides the U.S. General Accounting Office with additional human capital flexibilities, make permanent the voluntary early retirement and buyout authorities granted to the GAO in Public Law 106–303, the GAO Personnel Flexibilities Act, and change the

name of the agency to the U.S. Government Accountability Office. Because the GAO is a legislative branch agency, the employment provisions of this bill apply to legislative branch employees who are employed by GAO. This bill does not apply to other legislative branch employees.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(2) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Because this bill does not authorize funding, a statement of general performance goals pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives is not required.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 2751. The constitutional authority to set the terms and conditions of legislative branch employees and to rename a legislative branch agency is part of the general legislative authority granted to Congress under Article I.

#### UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

#### COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2751. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

#### BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of

1974, the Committee has received the following cost estimate for H.R. 2751 from the Director of Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 12, 2003.*

Hon. TOM DAVIS,  
*Chairman, Committee on Government Reform,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2751, the GAO Human Capital Reform Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

ELIZABETH M. ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*H.R. 2751—GAO Human Capital Reform Act of 2003*

Summary: H.R. 2751 would authorize the General Accounting Office (GAO) to modify its personnel and workforce practices to allow greater flexibility in determining pay increases, pay retention rules, and other compensation matters. The bill also would permanently extend GAO's authority to offer separation (buyout) payments and early retirement to employees who voluntarily leave GAO. Finally, H.R. 2751 would rename GAO as the Government Accountability Office.

GAO estimates that enacting H.R. 2751 would increase direct spending for retirement annuities and related health benefits by about \$1 million in fiscal year 2004, by \$19 million over the 2004–2008 period, and by \$40 million over the 2004–2013 period. Several provisions of the bill could affect GAO employee compensation costs, but the net budgetary effect of such provisions would depend on how GAO exercises its new authorities and on whether future agency appropriations are adjusted to reflect any savings or costs. Finally, we expect that any additional discretionary costs associated with changing the agency's name would not be significant.

H.R. 2751 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated impact of H.R. 2751 on direct spending is shown in the following table. The costs of this legislation fall within budget function 800 (general government).

	By fiscal year, in millions of dollars—									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
CHANGES IN DIRECT SPENDING										
Estimated budget authority .....	1	3	5	5	5	5	4	4	4	4
Estimated outlays .....	1	3	5	5	5	5	4	4	4	4

*Basis of estimate**Direct spending*

H.R. 2751 would give GAO permanent authority to offer retirement to employees who voluntarily leave the agency early. GAO's existing buyout authority, which will expire on December 31, 2003, allows the agency to offer certain employees a lump sum payment of up to \$25,000 to voluntarily leave the agency. In addition, certain qualified employees who leave (whether they collect a separation payment or not) are entitled to receive immediate retirement annuities earlier than they would have otherwise. CBO estimates that extending this authority would increase direct spending by \$1 million in 2004, by \$19 million over the 2004–2008 period, and by \$40 million over the 2004–2013 period.

Based on information provided by GAO about use of its early retirement authority over the past several years, CBO estimates that each year about 35 agency employees would begin receiving retirement benefits three years earlier than they would have under current law. Inducing some employees to retire early results in higher-than-expected benefits from the Civil Service Retirement and Disability Fund (CSRDF). CBO estimates that the additional retirement benefits would increase direct spending by \$1 million in 2004, by \$16 million over the 2004–2008 period, and by \$32 million over the 2004–2013 period.

Extending GAO's buyout and early retirement authority also would increase direct spending for federal retiree health benefits. Many employees who retire early would continue to be eligible for coverage under the Federal Employees' Health Benefits (FEHB) program. The government's share of the premium for retirees is classified as mandatory spending. Because many of those accepting the buyouts under the bill would have retired later under current law, mandatory spending on FEHB premiums would increase. CBO estimates these additional benefits would increase direct spending by less than \$500,000 in 2004, by \$3 million over the 2004–2008 period, and by \$8 million over the 2004–2013 period.

*Spending subject to appropriation*

The authorities provided by H.R. 2751 would allow GAO to create a performance-based employee compensation system to govern basic pay adjustments, pay retention for employees affected by reductions in force, relocation reimbursements, and annual leave accruals beginning in fiscal year 2006. (Under existing law, GAO is required to follow personnel management policies determined by the Office of Personnel Management.) Implementing the new authorities that would be provided by the bill could affect GAO's total costs of providing employee compensation, but CBO cannot predict any cost or saving associated with these new authorities, or the net effect of all such changes on the federal budget. Ultimately, the net budgetary effect of the proposed authorities would depend on the features of the compensation system adopted by GAO and on how the agency applies that new system to individual employees. Moreover, any savings or costs would only be realized if the agency's annual appropriations are adjusted accordingly.

Providing GAO with the option of providing voluntary separation payments could also increase GAO's costs, but CBO estimates that



any new costs would average less than \$500,000 annually over the 2004–2013 period. Section 2 of the bill would allow GAO to offer certain employees payments of up to \$25,000 to voluntarily leave the agency. The buyout program also requires that GAO make a deposit amounting to 45 percent of each buyout recipient's basic salary toward the CSRDF. Unlike an increase in retirement benefits, these two payments would be from the agency's discretionary budget and are thus subject to appropriation. Since GAO's current buyout authority was first authorized in October 2000, no one at the agency has received a buyout payment. CBO therefore expects that relatively few employees would receive a buyout payment over the next 10 years and that the cost of any buyout payments and required deposits toward the CSRDF would be negligible in any given year.

**Intergovernmental and private-sector impact:** H.R. 2751 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

**Previous CBO cost estimate:** On November 4, 2003, CBO transmitted a cost estimate for S. 1522, the GAO Human Capital Reform Act of 2003, as ordered reported on October 22, 2003, by the Senate Committee on Governmental Affairs. S. 1522 and H.R. 2751 are very similar, and their estimated costs are the same.

**Estimate prepared by:** Federal Costs: Ellen Hays, Geoffrey Gerhardt, and Deborah Reis. Impact on State, Local, and Tribal Governments: Sarah Puro. Impact on the Private Sector: Selena Caldera.

**Estimate approved by:** Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### ACT OF OCTOBER 13, 2000

(Public Law 106–303)

AN ACT To make certain personnel flexibilities available with respect to the General Accounting Office, and for other purposes.

#### SECTION 1. VOLUNTARY EARLY RETIREMENT AUTHORITY.

(a) **CIVIL SERVICE RETIREMENT SYSTEM.**—Effective [for purposes of the period beginning on the date of the enactment of this Act and ending on December 31, 2003] *October 13, 2000*, paragraph (2) of section 8336(d) of title 5, United States Code, shall, with respect to officers and employees of the General Accounting Office, be applied as if it had been amended to read as follows:

“(2)(A) \* \* \*

\* \* \* \* \*

(b) **FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.**—Effective [for purposes of the period beginning on the date of the enactment of

this Act and ending on December 31, 2003] *October 13, 2000*, subparagraph (B) of section 8414(b)(1) of title 5, United States Code, shall, with respect to officers and employees of the General Accounting Office, be applied as if it had been amended to read as follows:

“(B)(i) \* \* \*

\* \* \* \* \*

(e) *SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.*

\* \* \* \* \*

## **SEC. 2. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.**

(a) **IN GENERAL.**—Effective [for purposes of the period beginning on the date of the enactment of this Act and ending on December 31, 2003] *October 13, 2000*, the authority to provide voluntary separation incentive payments shall be available to the Comptroller General with respect to employees of the General Accounting Office.

(b) **TERMS AND CONDITIONS.**—The authority to provide voluntary separation incentive payments under this section shall be available in accordance with the provisions of subsections (a)(2)–(e) of section 663 of the Treasury, Postal Service, and General Government Appropriations Act, 1997, as contained in Public Law 104–208 (5 U.S.C. 5597 note), except that—

(1) \* \* \*

[(2) subsection (a)(2)(G) of such section shall be applied by construing the citations therein to be references to the appropriate authorities in connection with employees of the General Accounting Office;]

(2) *subsection (a)(2)(G) of such section shall be applied—*

*(A) by construing the citations therein to be references to the appropriate authorities in connection with employees of the General Accounting Office; and*

*(B) by deeming such subsection to be amended by striking “Code.” and inserting “Code, or who, during the thirty-six month period preceding the date of separation, performed service for which a student loan repayment benefit was or is to be paid under section 5379 of title 5, United States Code.”;*

\* \* \* \* \*

(g) *SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the General Accounting Office workforce and not downsize the General Accounting Office workforce.*

\* \* \* \* \*

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## **TITLE 31, UNITED STATES CODE**

\* \* \* \* \*

## SUBTITLE I—GENERAL

\* \* \* \* \*

### CHAPTER 7—GENERAL ACCOUNTING OFFICE

#### SUBCHAPTER III—PERSONNEL

\* \* \* \* \*

#### § 731. General

(a) \* \* \*

\* \* \* \* \*

(f) *The Comptroller General shall prescribe regulations under which officers and employees of the Office may, in appropriate circumstances, be reimbursed for any relocation expenses under subchapter II of chapter 57 of title 5 for which they would not otherwise be eligible, but only if the Comptroller General determines that the transfer giving rise to such relocation is of sufficient benefit or value to the Office to justify such reimbursement.*

(g) *The Comptroller General shall prescribe regulations under which key officers and employees of the Office who have less than 3 years of service may accrue leave in accordance with section 6303(a)(2) of title 5, in those circumstances in which the Comptroller General has determined such increased annual leave is appropriate for the recruitment or retention of such officers and employees. Such regulations shall define key officers and employees and set forth the factors in determining which officers and employees should be allowed to accrue leave in accordance with this subsection.*

(h) *The Comptroller General may by regulation establish an executive exchange program under which officers and employees of the Office may be assigned to private sector organizations, and employees of private sector organizations may be assigned to the Office, to further the institutional interests of the Office or Congress, including for the purpose of providing training to officers and employees of the Office. Regulations to carry out any such program—*

(1) *shall include provisions (consistent with sections 3702 through 3704 of title 5) as to matters concerning—*

(A) *the duration and termination of assignments;*

(B) *reimbursements; and*

(C) *status, entitlements, benefits, and obligations of program participants;*

(2) *shall limit—*

(A) *the number of officers and employees who are assigned to private sector organizations at any one time to not more than 15; and*

(B) *the number of employees from private sector organizations who are assigned to the Office at any one time to not more than 30;*

(3) *shall require that an employee of a private sector organization assigned to the Office may not have access to any trade secrets or to any other nonpublic information which is of commercial value to the private sector organization from which such employee is assigned;*

(4) shall require that, before approving the assignment of an officer or employee to a private sector organization, the Comptroller General shall determine that the assignment is an effective use of the Office's funds, taking into account the best interests of the Office and the costs and benefits of alternative methods of achieving the same results and objectives; and

(5) shall not allow any assignment under this subsection to commence after the end of the 5-year period beginning on the date of the enactment of this subsection.

(i) An employee of a private sector organization assigned to the Office under the executive exchange program shall be considered to be an employee of the Office for purposes of—

(1) chapter 73 of title 5;

(2) sections 201, 203, 205, 207, 208, 209, 603, 606, 607, 643, 654, 1905, and 1913 of title 18;

(3) sections 1343, 1344, and 1349(b) of this title;

(4) chapter 171 of title 28 (commonly referred to as the Federal "Tort Claims Act") and any other Federal tort liability statute;

(5) the Ethics in Government Act of 1978 (5 U.S.C. App.);

(6) section 1043 of the Internal Revenue Code of 1986; and

(7) section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423).

## **§ 732. Personnel management system**

(a) \* \* \*

(b) The personnel management system shall—

(1) \* \* \*

\* \* \* \* \*

(6) provide that the Comptroller General shall fix the basic pay of officers and employees of the Office not fixed by law, consistent with section 5301 of [title 5.] title 5, except as provided under subsection (c)(3) of this section and section 733(a)(3)(B) of this title.

(c) Under the personnel management system—

(1) \* \* \*

\* \* \* \* \*

[(3) except as provided under section 733(a)(3)(B) of this title or section 5349(a) of title 5, basic pay rates of officers and employees of the Office shall be adjusted at the same time and to the same extent as basic pay rates of the General Schedule are adjusted;]

(3) except as provided under section 733(a)(3)(B) of this title, basic rates of officers and employees of the Office shall be adjusted annually to such extent as determined by the Comptroller General, and in making that determination the Comptroller General shall consider—

(A) the principle that equal pay should be provided for work of equal value within each local pay area;

(B) the need to protect the purchasing power of officers and employees of the Office, taking into consideration the Consumer Price Index or other appropriate indices;

(C) any existing pay disparities between officers and employees of the Office and non-Federal employees in each local pay area;

(D) the pay rates for the same levels of work for officers and employees of the Office and non-Federal employees in each local pay area;

(E) the appropriate distribution of agency funds between annual adjustments under this section and performance-based compensation; and

(F) such other criteria as the Comptroller General considers appropriate, including, but not limited to, the funding level for the Office, amounts allocated for performance-based compensation, and the extent to which the Office is succeeding in fulfilling its mission and accomplishing its strategic plan;

notwithstanding any other provision of this paragraph, an adjustment under this paragraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;

\* \* \* \* \*

[(5) officers and employees of the Office are entitled to grade and basic pay retention consistent with subchapter VI of chapter 53 of title 5.]

(5) the Comptroller General shall prescribe regulations under which an officer or employee of the Office shall be entitled to pay retention if, as a result of any reduction-in-force or other workforce adjustment procedure, position reclassification, or other appropriate circumstances as determined by the Comptroller General, such officer or employee is placed in or holds a position in a lower grade or band with a maximum rate of basic pay that is less than the rate of basic pay payable to the officer or employee immediately before the reduction in grade or band; such regulations—

(A) shall provide that the officer or employee shall be entitled to continue receiving the rate of basic pay that was payable to the officer or employee immediately before the reduction in grade or band until such time as the retained rate becomes less than the maximum rate for the grade or band of the position held by such officer or employee; and

(B) shall include provisions relating to the minimum period of time for which an officer or employee must have served or for which the position must have been classified at the higher grade or band in order for pay retention to apply, the events that terminate the right to pay retention (apart from the one described in subparagraph (A)), and exclusions based on the nature of an appointment; in prescribing regulations under this subparagraph, the Comptroller General shall be guided by the provisions of sections 5362 and 5363 of title 5.

(d) The personnel management system shall provide—

[(1) for a system to appraise the performance of officers and employees of the General Accounting Office that meets the requirements of section 4302 of title 5;]

(1) for a system to appraise the performance of officers and employees of the General Accounting Office that meets the requirements of section 4302 of title 5 and in addition includes—

(A) a link between the performance management system and the agency's strategic plan;

(B) adequate training and retraining for supervisors, managers, and employees in the implementation and operation of the performance management system;

(C) a process for ensuring ongoing performance feedback and dialogue between supervisors, managers, and employees throughout the appraisal period and setting timetables for review;

(D) effective transparency and accountability measures to ensure that the management of the system is fair, credible, and equitable, including appropriate independent reasonableness, reviews, internal assessments, and employee surveys; and

(E) a means to ensure that adequate agency resources are allocated for the design, implementation, and administration of the performance management system;

\* \* \* \*

(h)(1) \* \* \*

\* \* \* \*

(3)(A) Except as provided in subparagraph (B), an employee may not be released, due to a [reduction force] *reduction in force*, unless such employee is given written notice at least 60 days before such employee is so released. Such notice shall include—

\* \* \* \*

### § 733. Senior Executive Service

(a) The Comptroller General may establish a General Accounting Officer Senior Executive Service—

(1) \* \* \*

\* \* \* \*

(3) providing rates of basic pay—

(A) \* \* \*

[(B) adjusted as the same time and to the same extent as rates in the Senior Executive Service under section 5382 of title 5 are adjusted;]

(B) adjusted annually by the Comptroller General after taking into consideration the factors listed under section 732(c)(3) of this title, except that an adjustment under this subparagraph shall not be applied in the case of any officer or employee whose performance is not at a satisfactory level, as determined by the Comptroller General for purposes of such adjustment;

\* \* \* \*

## ADDITIONAL VIEWS

In general, we believe that civil service reform is best pursued on a government-wide basis, not an agency-by-agency basis. A piecemeal approach has the effect of creating a hodge-podge of personnel systems, which limits the mobility of employees and increases the potential for unfair treatment. Nevertheless, Comptroller General David M. Walker made a strong case for why GAO should be granted the personnel flexibilities in H.R. 2751. On that basis, we support the bill. We are writing to highlight several provisions in the bill.

Section 3 gives the Comptroller General discretion over annual pay raises for GAO employees. Mr. Walker has assured GAO employees that anyone performing satisfactory work will receive at least a cost of living adjustment. Mr. Walker also has assured this Committee that he will provide annual reporting on the size of pay raises given to minorities, women, and veterans. (A copy of Mr. Walker's letter is attached.) In the past, these groups have received lower appraisal ratings than the employee population as a whole. Although we support the flexibility that Mr. Walker has requested, we want all GAO employees to know that we will be vigilant in monitoring the use of this pay flexibility.

As originally drafted, Section 6 gave GAO the authority to provide increased annual leave, based on other relevant work experience, only to upper-level employees. At the subcommittee markup, Representative Danny Davis offered an amendment, which was adopted, to ensure that increased annual leave could be offered to all GAO employees, thus ensuring that supervisors and managers were not the sole beneficiaries of these flexibilities.

Section 7 relates to employee exchanges with private sector companies. In general, we are skeptical about the appropriateness of using taxpayer dollars to pay for federal employees to work for private sector companies. However, Mr. Walker and his staff worked to modify this provision to address our concerns. The number of GAO employees who could participate in such exchanges was decreased from 30 to 15. The provision was clarified to ensure that private sector employees will be subject to federal ethics laws and will not have access to trade secrets. Language was added to ensure that any exchanges must be an effective use of GAO's resources. Finally, GAO's authority to engage in such programs sunsets after five years.

At the subcommittee markup, Representative Danny Davis offered an amendment, which was approved, to add a reporting requirement to the bill. This provision (section 11) requires GAO to submit annual reports to Congress, detailing its use of the flexibilities in the bill. This reporting requirement is necessary for Congress to fulfill its oversight responsibilities.

In sum, the inclusion of the minority during the consideration of this bill has made this a better bill and demonstrates the benefits of a collaborative approach to legislation.

HENRY A. WAXMAN.  
EDOLPHUS TOWNS.  
PAUL E. KANJORSKI.  
CAROLYN B. MALONEY.  
ELIJAH E. CUMMINGS.  
DENNIS J. KUCINICH.  
DANNY K. DAVIS.  
WM. LACY CLAY.  
DIANE E. WATSON.  
STEPHEN F. LYNCH.

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GENERAL ACCOUNTING OFFICE,  
Washington, DC, July 28, 2003.

Subject: GAO Human Capital Reform Act of 2003.

Hon. JO ANN DAVIS,  
*Chairwoman,*

Hon. DANNY DAVIS,  
*Ranking Minority Member,*  
*Subcommittee on Civil Service and Agency Reorganization, Com-*  
*mittee on Government Reform, House of Representatives.*

At the July 23, 2003, markup of H.R. 2751, the "GAO Human Capital Reform Act of 2003", by the Subcommittee on Civil Service and Agency Organization, Ranking Minority Member Danny Davis offered an amendment which would require GAO to submit annual reports to the Congress, detailing its use of numerous flexibilities provided in the bill. Although Representative Davis had originally planned to require GAO to report information on its annual pay adjustments with respect to sex, race and veteran's status, he did not do so. Instead he indicated that, based on assurances from me that I would be willing to provide this information in a non-public document annually to the Subcommittee, he would not offer the amendment.

This letter is to confirm that I will provide the data privately to the Subcommittee for the period covered by the amendment for reporting on the annual pay adjustments, i.e., during the five-year period beginning on the date of enactment of the Act but after the close of fiscal year 2006. This arrangement will assist in providing reasonable transparency and appropriate accountability to the members of the Subcommittee on the decisions I make with respect to the annual pay adjustment provision of the bill but will not require that this information be made a part of the public record.

As you know, we already provide this type information to our democratically elected Employee Advisory Council (EAC). In addition, we provide certain summary data to all GAO employees. As a result, I have no problem providing this information to the Subcommittee. At the same time, I am opposed to providing such information in a public document since, in my view, it would be excessive, potentially counter-productive and far beyond any requirement imposed on other federal agencies. If you or your staff have



any questions about this issue, please contact me at (202) 512-5500 or Managing Associate General Counsel, Legal Services & Ethics, Joan M. Hollenbach at (202) 512-8404.

Thank you for your interest and efforts in connection with the GAO Human Capital Reform Act of 2003. I look forward to continuing to work together on issues of mutual interest and concern in the future.

Sincerely, yours,

DAVID M. WALKER,  
*Comptroller General of the United States.*

