

**AMENDMENT TO H.R. 5005, AS REPORTED
OFFERED BY MR. WAXMAN OF CALIFORNIA**

Strike section 761 and insert the following:

1 **SEC. 761. HUMAN RESOURCES MANAGEMENT.**

2 (a) **AUTHORITY TO ADJUST PAY SCHEDULES.—**

3 (1) **IN GENERAL.**—Notwithstanding any provi-
4 sion of title 5, United States Code, the Secretary
5 may, under regulations prescribed jointly with the
6 Director of the Office of Personnel Management,
7 provide for such adjustments in rates of basic pay
8 as may be necessary to address inequitable pay dis-
9 parities among employees within the Department
10 performing similar work in similar circumstances.

11 (2) **APPLICABILITY.**—No authority under para-
12 graph (1) may be exercised with respect to any em-
13 ployee who serves in—

14 (A) an Executive Schedule position under
15 subchapter II of chapter 53 of title 5, United
16 States Code; or

17 (B) a position for which the rate of basic
18 pay is fixed in statute by reference to a section
19 or level under subchapter II of chapter 53 of
20 such title 5.

21 (3) **LIMITATIONS.**—Nothing in this subsection
22 shall constitute authority—



1 (A) to fix pay at a rate greater than the
2 maximum amount of cash compensation allow-
3 able under section 5307 of title 5, United
4 States Code, in a year; or

5 (B) to exempt any employee from the ap-
6 plication of such section 5307.

7 (4) SUNSET PROVISION.—Effective 5 years
8 after the effective date of this Act, all authority to
9 issue regulations under this subsection (including
10 regulations which would modify, supersede, or termi-
11 nate any regulations previously issued under this
12 subsection) shall cease to be available.

13 (b) SUSPENSION AND REMOVAL OF EMPLOYEES IN
14 THE INTERESTS OF NATIONAL SECURITY.—The Sec-
15 retary shall establish procedures consistent with section
16 7532 of title 5, United States Code, to provide for the
17 suspension and removal of employees of the Department
18 when necessary in the interests of national security or
19 homeland security. Such regulations shall provide for writ-
20 ten notice, hearings, and review similar to that provided
21 by such section 7532.

22 (c) DEMONSTRATION PROJECT.—

23 (1) IN GENERAL.—Not later than 5 years after
24 the effective date of this Act, the Secretary shall
25 submit to Congress a proposal for a demonstration



1 project, the purpose of which shall be to help attain
2 a human resources management system which in the
3 judgment of the Secretary is necessary in order to
4 enable the Department best to carry out its mission.

5 (2) REQUIREMENTS.—The proposal shall—

6 (A) ensure that veterans' preference and
7 whistleblower protection rights are retained;

8 (B) ensure that existing collective bar-
9 gaining agreements and rights under chapter
10 71 of title 5, United States Code, remain unaf-
11 fected;

12 (C) ensure the availability of such meas-
13 ures as may be necessary in order to allow the
14 Department to recruit and retain the best per-
15 sons possible to carry out its mission;

16 (D) include one or more performance ap-
17 praisal systems which shall—

18 (i) provide for periodic appraisals of
19 the performance of covered employees;

20 (ii) provide for meaningful participa-
21 tion of covered employees in the establish-
22 ment of employee performance plans; and

23 (iii) use the results of performance
24 appraisals as a basis for rewarding, reduc-



1 ing in grade, retaining, and removing cov-
2 ered employees; and

3 (E) contain recommendations for such leg-
4 islation or other actions by Congress as the
5 Secretary considers necessary.

6 (3) DEFINITION OF A COVERED EMPLOYEE.—

7 For purposes of paragraph (2)(D), the term “cov-
8 ered employee” means a supervisor or management
9 official (as defined in paragraphs (10) and (11) of
10 section 7103(a) of title 5, United States Code, re-
11 spectively) who occupies a position within the De-
12 partment which is in the General Schedule.

13 (d) MERIT SYSTEM PRINCIPLES.—All authorities
14 under subsections (a) and (b) shall be exercised in a man-
15 ner, and all personnel management flexibilities or authori-
16 ties proposed under subsection (c) shall be, consistent with
17 merit system principles under section 2301 of title 5,
18 United States Code.

19 (e) REMEDIES FOR RETALIATION AGAINST WHIS-
20 TLEBLOWERS.—

21 Section 7211 of title 5, United States Code, is
22 amended—

23 (1) by inserting “(a)” before “The right”; and

24 (2) by adding at the end the following:



1 “(b) Any employee aggrieved by a violation of sub-
2 section (a) may bring a civil action in the appropriate
3 United States district court, within 3 years after the date
4 on which such violation occurs, against any agency, orga-
5 nization, or other person responsible for the violation, for
6 lost wages and benefits, reinstatement, costs and attorney
7 fees, compensatory damages, and equitable, injunctive, or
8 any other relief that the court considers appropriate. Any
9 such action shall, upon request of the party bringing the
10 action, be tried by the court with a jury.

11 “(c) The same legal burdens of proof in proceedings
12 under subsection (b) shall apply as under sections
13 1214(b)(4)(B) and 1221(e) in the case of an alleged pro-
14 hibited personnel practice described in section 2302(b)(8).

15 “(d) For purposes of this section, the term ‘employee’
16 means an employee (as defined by section 2105) and any
17 individual performing services under a personal services
18 contract with the Government (including as an employee
19 of an organization).”.

20 (f) NONREDUCTION IN PAY.—Nothing in this section
21 shall, with respect to any employee who is transferred to
22 the Department pursuant to this Act, constitute authority
23 to reduce the rate of basic pay (including any com-
24 parability pay) payable to such employee below the rate



- 1 last payable to such employee before the date on which
- 2 such employee is so transferred.

In section 812(e)(1), strike “Act; and” and insert the following: “Act, except that the rules, procedures, terms, and conditions relating to employment in the Transportation Security Administration before the effective date of this Act may be applied only to the personnel employed by or carrying out the functions of the Transportation Security Administration.”.

In section 812(e)(2), strike “except” and insert “Except”.

