

Calendar No. 362

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
111-177

TELEWORK ENHANCEMENT ACT OF 2010

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 707

TO ENHANCE THE FEDERAL TELEWORK PROGRAM



MAY 3, 2010.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

89-010

WASHINGTON : 2010

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

JOSEPH I. LIEBERMAN, Connecticut, *Chairman*

CARL LEVIN, Michigan	SUSAN M. COLLINS, Maine
DANIEL K. AKAKA, Hawaii	TOM COBURN, Oklahoma
THOMAS R. CARPER, Delaware	SCOTT P. BROWN, Massachusetts
MARK L. PRYOR, Arkansas	JOHN McCAIN, Arizona
MARY L. LANDRIEU, Louisiana	GEORGE V. VOINOVICH, Ohio
CLAIRE McCASKILL, Missouri	JOHN ENSIGN, Nevada
JON TESTER, Montana	LINDSEY GRAHAM, South Carolina
ROLAND W. BURRIS, Illinois	
EDWARD E. KAUFMAN, Delaware	

MICHAEL L. ALEXANDER, *Staff Director*

KEVIN J. LANDY, *Chief Counsel*

LAWRENCE B. NOVEY, *Senior Counsel*

LISA M. POWELL, *Staff Director, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia*

BRANDON L. MILHORN, *Minority Staff Director and Chief Counsel*

AMANDA WOOD, *Minority Director for Governmental Affairs*

JENNIFER A. HEMINGWAY, *Minority Staff Director, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia*

TRINA DRIESSNACK TYRER, *Chief Clerk*

Calendar No. 362

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-177

TELEWORK ENHANCEMENT ACT OF 2010

MAY 3, 2010.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and Government Affairs, submitted the following

R E P O R T

[To accompany S. 707]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 707) to enhance the Federal Telework Program, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	7
IV. Section-by-Section Analysis	7
V. Estimated Cost of Legislation	12
VI. Evaluation of Regulatory Impact	13
VII. Changes in Existing Law	13

I. PURPOSE AND SUMMARY

S. 707, the Telework Enhancement Act of 2010, requires Federal agencies to establish telework policies, determine the eligibility of individual employees to participate in telework programs, designate Telework Managing Officers, and work with the Office of Personnel Management (OPM) to compile agency data for annual reports to Congress. The bill also allows Federal agencies to create test programs for reimbursing certain travel expenses of teleworking employees and establishes one such program within the U.S. Patent and Trademark Office (PTO). The goal of this legislation is to ensure that Federal agencies more effectively integrate telework into their management plans and agency cultures. The recent snow emergency in the Washington, D.C., metropolitan area

during the first half of February 2010 vividly underscored the importance of every agency having a telework policy in place and a culture that values and is prepared for telework.¹

II. BACKGROUND AND NEED FOR THE LEGISLATION

The term “telework” refers to work arrangements under which employees perform officially assigned duties at home or at other worksites convenient to home. The Federal government has permitted work—even sensitive work—at remote sites since at least the 1930s, when some employees worked from their homes or other off-site locations on such issues as financial reports of credit union examinations.² One such remote worker—a consultant rocket scientist named Jack Nilles who in the 1960s worked from Los Angeles for the Washington, D.C.-based U.S. Air Force Space Program—coined the terms “teleworking” and “telecommuting” in 1973.³

During the subsequent decades, Federal agencies began promoting “flexiplace” programs under which Federal personnel worked from home or remote sites. By the early 1990s the President’s Council on Management Improvement implemented a pilot flexiplace program government-wide.⁴ Over the past decade, advances in information and computer technology have greatly increased the ability of many Federal employees to work from home or from other locations convenient to home, and in 2006 more than 110,000 employees teleworked for the Federal government.⁵

As the Congressional Research Service aptly summarized, numerous considerations combine to make telework a valuable benefit for Federal agencies:

Management considerations, such as productive and satisfied workers; environmental considerations, such as reduced traffic congestion and improved air quality; and quality of life considerations, such as accommodating the short- or long-term health problems or family responsibilities of employees, have been offered as justification for telework programs. Some believe that the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, and the discovery of anthrax in Washington, DC, and other cities have fundamentally changed the workplace and demonstrated the practical application of

¹Unprecedented snows in the Washington, D.C., Metropolitan area disrupted Federal employee work schedules over a period of two weeks, including four consecutive days when Federal offices were closed. See U.S. Office of Personnel Management (OPM), Federal Government Operating Status in the Washington, DC, Area: Archive, available online at [<http://www.opm.gov/status/archive.aspx>]. On the fourth day that offices were closed, OPM Director John Berry stated that the ability of many Federal workers to telework was tremendously valuable in enabling the government to keep functioning, and he was optimistic that this experience would make agencies better appreciate the importance of “allowing as many workers as possible to telework.” Michael Hardy, “OPM’s Berry Discusses Telework During Government Shutdowns,” GCN.COM, Feb. 11, 2010, available online at [<http://gcn.com/Articles/2010/02/11/OPM-Berry-discusses-government-closing.aspx>]; see also OPM, News Release, “Statement of OPM director John Berry on the Continuing Snow Emergency,” Feb. 11, 2010, available online at [<http://www.opm.gov/news/statement-of-opm-director-john-berry-on-the-continuing-snow-emergency.1546.aspx>].

²See Congressional Research Service (CRS) Report, *Telework in the Federal Government: Background, Policy, and Oversight* (RL30863), by Lorraine H. Tong and Barbara L. Schwemle (April 3, 2002), at page 3.

³See *id.*

⁴See *id.*, at pages 3–5.

⁵See OPM, *Status of Telework in the Federal Government: Report to Congress 2007* (December 2007), available online at [http://www.telework.gov/Reports_and_Studies/Annual_Reports/2007_TeleworkReport.pdf] (hereinafter referred to as the “2007 Telework Status Report”), at page 2.

telework to the continued operation of the government. Issues of security, crisis management, disaster recovery, and remote access to office computer systems are prompting some federal executive and legislative branch agencies and their employees to expand existing telework programs or to consider telework⁶

This Committee's Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia heard substantial testimony about telework's potential to serve as a powerful management tool for Federal agencies at a 2007 hearing.⁷ An OPM representative, for example, testified that "telework is a useful tool which can help attract and retain a 21st century high-performing workforce that produces high-quality results,"⁸ and the Director of the PTO reported that teleworking at his agency has allowed for "decreased commute time, greater control over workloads, and even a more balanced lifestyle. This all translates into increased employee productivity and satisfaction, as well as higher employee retention."⁹

A representative of the General Services Administration (GSA) also testified at the Subcommittee's 2007 hearing that telework is a natural mechanism for agencies' emergency continuity of operations (COOP) plans¹⁰—the plans agencies adopt to allow for continued work during events, such as natural disasters or terrorist attacks, that could prevent employees from getting to the agency's offices. To be an effective part of the COOP plan, telework must be integrated into the agency's normal operations, "so that employees may fully transition to this alternative work arrangement in the event of an emergency. The result would be a better trained and more properly equipped work force that is allowed to participate in telework to the maximum extent possible."¹¹

Telework also brings benefits beyond a particular agency itself: for traffic decongestion, the environment, and energy conservation. The Federal government is the largest employer in the United States as well as the largest employer in the National Capital Region, and the environmental benefits of telework are a further reason to foster stronger telework participation by Federal employees. The GSA witness at the 2007 hearing offered the following hypothetical illustration: "As an example, if 50 percent of the Federal workforce teleworked 2 days per week, that theoretically could cut nearly a fourth (23 percent), or 944,000 tons of work trip emissions produced by Federal workers who commute to work in single occupancy vehicles. Collectively, these teleworking employees could theoretically save nearly 2 billion miles of vehicle travel, more than 90 million gallons of gasoline, more than 277 million dollars in gas-

⁶ CRS Report, note 2 above, at Summary page.

⁷ Hearing on "Assessing Telework Policies and Initiatives in the Federal Government," before this Committee's Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, June 12, 2007, available online at [http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_ID=be652718-fa97-45e0-a700-d2d9d7aa0313] (hereinafter referred to as the "Telework Hearing").

⁸ Testimony of Mr. Daniel A. Green, Deputy Associate Director for Employee and Family Support Policy, Strategic Human Resources Policy Division, OPM, at Telework Hearing, note 7 above.

⁹ Testimony of the Honorable Jon W. Dudas, Under Secretary of Commerce for Intellectual Property and Director, U.S. Patent & Trademark Office, at Telework Hearing, note 7 above.

¹⁰ Testimony of Mr. Stan Kaczmarczyk, Principle Deputy Associate Administrator for Government-Wide Policy, General Services Administration, at Telework Hearing, note 7 above.

¹¹ *Id.*

oline expenses, and more than 32,000 typical work years of time.”¹² Not surprisingly, the U.S. Department of Transportation includes expansion of telecommuting as a key part of the *National Strategy to Reduce Congestion on America’s Transportation Network*.¹³

Witnesses at the 2007 hearing also testified that creative work-site arrangements help agencies to get the most benefit out of telework. One such measure is called “hoteling,” where individual employees who spend much of their work time teleworking are not assigned their own permanent office space at their agency, but rather have access to shared workspace when they are on site. The Director of the PTO testified that his agency’s telework program combines rigorous goal-setting with hoteling, “which translates into documented space and related cost-savings for the PTO.”¹⁴ The GSA witness further testified that “telework combined with alternative officing can enable agencies to reduce cost and improve the utilization of existing facilities.”¹⁵

Congress has long recognized the benefits—to the government and to the public—of telework by Federal workers. Until now, though, Congress has addressed the issue piecemeal, primarily through appropriations legislation. The fiscal year 1991 Treasury, Postal Service, and General Government Appropriations Act, for example, authorized Federal agencies to pay for telephone lines, related equipment, and monthly fees in the homes of teleworking employees participating in a telework pilot program.¹⁶ That authorization was repeated in subsequent corresponding Appropriations Acts¹⁷ and was made permanent in the act for fiscal year 1996.¹⁸

The fiscal year 2001 Department of Transportation and Related Appropriations Act included provisions that required each executive agency to “establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance,” and that called on the Director of OPM to assure that 25 percent of the Federal workforce was covered by such policies within six months (April 2001) and that the remainder would be covered over the next three years.¹⁹ To track agencies’ compliance with these requirements, the accompanying conference report directed OPM to survey Federal agencies’ progress annually.²⁰

In surveys conducted annually from 2001 through 2004, OPM found that agencies made substantial progress in establishing telework policies, though these policies fell short of covering the entire workforce as required under the 2001 Act.²¹ OPM also reported

¹² *Id.*

¹³ U.S. Department of Transportation, *National Strategy to Reduce Congestion on America’s Transportation Network* (May 2006), available online at [<http://isddc.dot.gov/OLPFiles/OST/012988.pdf>].

¹⁴ Testimony of Jon Dudas, note 9 above.

¹⁵ Testimony of Stanley Kaczmarczyk, note 10 above.

¹⁶ Pub. L. 101–509, § 624 (Nov. 5, 1990).

¹⁷ Pub. L. 102–141, § 625 (Oct. 28, 1991); Pub. L. No. 102–393, § 625 (Oct. 6, 1992); Pub. L. No. 103–123, § 623 (Oct. 28, 1993); Pub. L. No. 103–329, § 625 (Sept. 30, 1994).

¹⁸ Pub. L. 104–52, § 620 (Nov. 19, 1995).

¹⁹ Pub. L. 106–346, § 359 (Oct. 23, 2000) (5 U.S.C. § 6120 note); Memorandum for Heads of Executive Branch Departments and Agencies, from Steven R. Cohen, Acting OPM Director, subject: “Establishing Telecommuting Policies” (Jan. 29, 2001) (describing the legislative mandate), available online at [http://www.telework.gov/Reports_and_Studies/tw_rpt02/dirmemo1.aspx].

²⁰ H.R. Rep. No. 106–940, 106th Cong., 2d Sess., at 151 (Oct. 5, 2000).

²¹ OPM, *The Status of Telework in the Federal Government 2002*, available online at [http://www.telework.gov/Reports_and_Studies/tw_rpt02/status-toc.aspx]; OPM, *The Status of*

that the numbers of Federal employees eligible to telework rose steadily between 2001 and 2004, from 521,542 to 752,337, bringing the total eligibility up to 44 percent of the 1.7 million member Federal workforce.²² Likewise, the number of Federal employees actually teleworking rose, from 72,844 to 140,694 during the years 2001 and 2004.²³ However, in 2003, the Government Accountability Office (GAO) reported that, since each agency had its own telework policy to fit the agency's mission and culture, efforts to report on and measure telework programs were inconsistent.²⁴

Concerned about the relatively low percentage of Federal employees actually participating in telework, Congress included provisions in the fiscal year 2003 and fiscal year 2004 Appropriations Acts for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies setting aside money for implementation of telework programs, requiring each agency to submit progress reports to the Appropriations Committees every six months, and directing each agency to designate a telework coordinator to develop agency telework programs.²⁵ The Act for 2004 also specified that each agency's telework policy must provide that "eligible employees may participate in telecommuting to the maximum extent possible without diminished employee performance."²⁶ The following year, Congress included a provision in the fiscal year 2005 Commerce, Justice, and State Appropriations Act requiring agencies funded by the bill to certify that telework opportunities were offered to 100 percent of the eligible workforce and making \$5 million of each agency's funding available only upon such certification.²⁷ For fiscal year 2006, the Science, State, Justice, Commerce, and Related Agencies Appropriations Act made \$5 million of each agency's funding available only upon certification that the agency had increased the number of eligible teleworkers above the previous year's level.²⁸

Despite these actions by Congress and despite resources provided by OPM and GSA, only 110,592 Federal employees teleworked at least one day per month in 2006, which was about 6.1 percent of the total population of Federal employees.²⁹ Of those teleworkers, only 52 percent teleworked at least one day each week, and about 13 percent did so at least three days per week.³⁰ These numbers actually declined slightly from 2005, when 119,248 employees teleworked at least one day per month, constituting approximately 6.6

Telework in the Federal Government 2005 (December 2005), available online at [http://www.telework.gov/Reports_and_Studies/tw_rpt05/index.aspx].

²² *Id.*

²³ *Id.*

²⁴ U.S. Government Accountability Office (GAO), *Human Capital: Further Guidance, Assistance, and Coordination Can Improve Federal Telework Efforts* (GAO-03-679) (July 2003).

²⁵ Pub. L. 108-7, Division B, § 623 (Feb. 20, 2003); Pub. L. 108-199, Division B, § 627 (Jan. 23, 2004).

²⁶ *Id.*

²⁷ Pub. L. 108-447, Division B, § 622 (Dec. 8, 2004).

²⁸ Pub. L. 109-108, § 617 (Nov. 22, 2005).

²⁹ 2007 Telework Status Report, note 5 above. The decrease in teleworking employees from 140,694 in 2004 to 110,592 in 2006 was attributed to decreases in three large agencies: the Departments of Commerce, Treasury, and Interior. The Departments of Commerce and Treasury cited faulty telework reporting mechanisms across their components as the reason for the variation in the number of teleworking employees between 2004 and 2006. The Department of the Interior cited technological security concerns as the reason for reigning in their telework policy.

Id., at pages 5-6.

³⁰ *Id.*

percent of all Federal employees; 25 percent of those teleworkers did so at least 3 days per week.³¹

At the Subcommittee's 2007 hearing, a number of witnesses emphasized that although many agency managers start out resistant to telework, experience with telework and its benefits often overcomes that initial resistance. For example, the PTO Director, who has established a robust telework policy, discussed the importance of convincing management to support telework:

The leaders really had to be convinced originally by some very bright people within the office who recognized the good that could be done and that it would improve morale. . . . Then it was just a matter of making certain all the managers realized this is the direction and the vision.³²

The difficulties gaining manager support for telework were further illustrated by a survey conducted by the Telework Exchange and the Federal Managers Association (FMA).³³ As explained in testimony by a representative of FMA at the 2007 hearing, the study found that managers cite productivity issues and a fear of not having control over employees as the top inhibitors of telework.³⁴ However, the study also found that, as managers become more exposed to and involved with telework, they express more favorable attitudes toward telework.³⁵

To help address managers' concerns and provide them reassurance about telework, the FMA witness recommended training of both managers and employees:

Strong policies and procedures in place before teleworking occurs is one way to ensure employees focus on their work. . . . Educating managers and employees alike on the benefits of teleworking would certainly make one more likely to participate. Training is an essential part of helping both employees and agencies realize the benefits of teleworking. . . .

. . . Without educating managers and employees alike regarding teleworking opportunities available across the government, participation will remain stagnant.³⁶

The Committee has concluded that telework is an essential tool that agencies should deploy as part of their overall strategies for human capital management and continuity of operations, and that legislation is needed to help agencies overcome resistance to telework arising from inertia and fear of the unknown. To accomplish this, S. 707, the Telework Enhancement Act of 2010, would require each agency to establish a robust telework policy, while also leaving each agency ample discretion to tailor and implement the policy in a manner that best serves its own particular cir-

³¹ *Id.*, at page 8.

³² Testimony of Dudas, note 9 above.

³³ Telework Exchange and the Federal Managers Association, *Face-to-Face with Management Reality—A Telework Research Report* (January 22, 2007), available online at [<http://www.teleworkexchange.com/managementstudy/Face-to-Face-with-Management-Reality-Study-012207.pdf>], at slide 5.

³⁴ Testimony of Tom Davison, Trustee, Chapter 275, Environmental Protection Agency Region 5 FMA, at Telework Hearing, note 7 above.

³⁵ *Id.*

³⁶ *Id.*

cumstances. Building upon provisions in past Appropriations Acts that foster telework, this bill would be the first authorization legislation—and the most comprehensive legislation thus far—to address telework policies for government employees.

Under S. 707, executive branch agencies would establish policies to authorize eligible employees to telework and would determine, and notify each employee of, his or her eligibility. These agency policies would have to ensure that telework would not diminish employee performance or agency operations, and would not apply to employees who must daily handle secure materials or perform on-site activities that cannot be done remotely. Agencies would have to incorporate their telework policies into their COOP plans. Agencies also would have to set up training programs for employees and managers involved in telework and designate Telework Managing Officers devoted to developing and implementing telework programs at their agencies. The bill also would authorize test programs under which employing agencies could pay certain travel expenses for employees who telework, such as the costs for employees who live outside of the commuting area and who generally telework from home to travel occasionally to the agency's offices.

III. LEGISLATIVE HISTORY

S. 707 was introduced by Senators Daniel K. Akaka and George V. Voinovich on March 25, 2009, was referred to the Committee on Homeland Security and Governmental Affairs, and was then further referred on April 23, 2009 to the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. Senator Mary L. Landrieu was added as a co-sponsor on May 18, 2009.

The Committee considered S. 707 on May 20, 2009. Senator Tom Coburn offered an amendment to require the PTO to conduct a test program to pay expenses of an employee for travel to and from a PTO worksite under certain conditions. The Committee adopted the amendment by unanimous consent and ordered the bill reported favorably, as amended, by voice vote. Present for both actions were Senators Lieberman, Akaka, Carper, Pryor, McCaskill, Burris, Collins, Coburn, and Voinovich.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section titles the bill the “Telework Enhancement Act of 2010.”

Section 2. Definitions

Paragraph (1)—Employee. This paragraph, by cross referencing 5 U.S.C. § 2105, defines the term “employee” as meaning Federal civilian employees generally, including employees of the military exchanges. However, postal employees are not included in this definition of employee.

Paragraph (2)—Executive Agency. This paragraph cross references 5 U.S.C. § 105, which defines “executive agency” to include executive departments, government corporations, and other establishments in the executive branch. The definition under this paragraph also includes the Government Accountability Office (GAO).

This definition applies to all provisions of the Act except section 7, which has its own definition of “executive agency,” which excludes GAO.

Paragraph (3)—Telework. This paragraph defines the term “telework” as a work arrangement under which an employee performs his or her officially assigned duties at home or at another location convenient to home.

Section 3. Executive agencies telework requirement

Subsection (a)—Telework Eligibility. This subsection requires the head of each agency to establish a telework policy under which eligible employees may be authorized to telework. It also directs the head of each agency to determine employees’ eligibility to telework and to inform employees of their eligibility.

Subsection (b)—Participation. Under this subsection, agency telework policies must—(1) not diminish employee or agency performance; (2) require a written telework agreement detailing an employee’s telework arrangement with the agency; (3) allow an employing agency to discontinue an employee’s telework authorization if that employee does not comply with the terms of the telework agreement; (4) require an agency to deem certain employees ineligible to participate in telework if the employees’ official duties require daily on-site activity that cannot be handled remotely, except in emergencies situations; and (5) incorporate telework in the agency’s continuity of operations plan.

Section 4. Training and monitoring

Subsection (a)—In General. Under this subsection, the head of each agency must ensure that—(1) an interactive training program is provided both to employees eligible to telework and to managers of teleworkers; (2) the training is completed by an employee prior to engaging in telework; and (3) teleworking and non-teleworking employees are treated the same for purposes of pay, performance appraisals, or work requirements.

Subsection (b)—Training Requirement Exemptions. Under this subsection, employees who were engaged in telework prior to the enactment of this bill may be exempted by their agencies from the training requirement under subsection (a).

Section 5. Policy and support

Subsection (a)—Agency Consultation with the Office of Personnel Management. Under this subsection, agencies must consult with the Office of Personnel Management (OPM) in developing telework policies.

Subsection (b)—Guidance and Consultation. This subsection directs OPM to—(1) provide policy and guidance for telework in areas including pay and leave, performance management, recruitment and retention, accommodations for employees with disabilities, and others; (2) assist agencies in developing measures and teleworking goals; and (3) consult with the Federal Emergency Management Agency (FEMA) on policies regarding continuity of operations (COOP) plans, and with the General Services Administration (GSA) on policies regarding telework centers, travel, technology, equipment, and dependent care.

Subsection (c)—Continuity of Operations Plans. This subsection requires agencies to incorporate telework into their COOP plans and provides that when agencies are operating under their COOP plans, those plans supersede any telework policies.

Subsection (d)—Telework Website. Under this subsection, OPM is directed to maintain a central website with links to webpages with general information about telework, announcements, and guidance developed by OPM and submitted to OPM by FEMA and GSA.

Section 6. Telework Managing Officer

Subsection (a)—In General. Under this subsection, the head of each executive agency must designate a Telework Managing Officer (TMO) within the Office of the Chief Human Capital Officer (CHCO) or similar office within the agency. The subsection also makes conforming amendments to Appropriations Acts under which certain agencies now designate individuals to perform similar functions.

Subsection (b)—Duties. This subsection directs the TMO to develop and implement telework policy and to serve within the agency as an advisor and resource and as OPM's primary point of contact regarding telework matters within the agency.

Section 7. Reports

Subsection (a)—Definition. This subsection exempts GAO from the definition of "executive agency" for the purposes of section 7. (This exemption is also cross referenced in section 2(2) of the bill, which states the definition of "executive agency" for purposes of the entire legislation.)

Subsection (b)—Reports by the Office of Personnel Management. This subsection requires OPM, in consultation with the Chief Human Capital Officers Council (CHCO Council), to report on telework within 18 months after enactment of the bill and annually thereafter. OPM must submit its reports to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform, GAO, and the Office of Management and Budget. These reports must include, for each executive agency, data on employee participation in telework; the reasons for any variations of more than 10 percent from the previous year; the agency goal for increasing telework participation; an explanation of whether or not the goal from the last reporting period was met and, if not, actions being taken to eliminate barriers to teleworking; and an assessment of the progress made and the impact of telework on emergency readiness, energy use, and other factors. OPM's annual reports are also to include best practices in agency telework programs.

Subsection (c)—Comptroller General Reports. This subsection requires GAO to report on its telework program within 18 months after enactment, and annually thereafter, to the same Senate and House Committees referred to in subsection (b). GAO also must review OPM's initial report required under subsection (b), and report to Congress on the progress each executive agency has made towards meeting the goals established under section 5(b)(2).

Subsection (d)—Chief Human Capital Officer Reports. Under this subsection, the CHCO of each executive agency must, in consultation with the agency's TMO, submit an annual report to the Chair

and Vice Chair of the CHCO Council addressing agency management efforts to promote telework. The subsection then tells the Chair and Vice Chair to review the reports, to include relevant information in the annual report to Congress required under subsection (b), and to also use that information to formulate human capital strategies. (The Chair of the CHCO Council is the OPM Director, and in that capacity would prepare the report under subsection (b).)³⁷

Section 8. Authority for telework travel expenses test programs

This section of the bill adds a new §5711 to title 5, United States Code, authorizing telework travel-expenses test programs. New 5 U.S.C. §5711 is similar to existing 5 U.S.C. §5710, which was enacted in 1998 and expired in 2005 and which authorized pilot programs by agencies to test innovative arrangements for reimbursement of employee travel expenses.

New 5 U.S.C. §5711(a). This subsection authorizes agencies, subject to GSA's approval, to establish test programs to pay the necessary travel expenses of teleworking employees. For example, if an agency wishes to recruit an individual who lives a substantial distance from the agency and who wants to telework, the agency might use the test program to pay for the employee's occasional trips to the agency's offices. Under the bill, telework travel test programs must be designed to save the Government money, so the agency would have to demonstrate that its ability to pay teleworkers' travel expenses would yield gains in efficiency and productivity that would more than make up for the increased travel expenses paid by the agency. The bill also specifies that if an employee voluntarily relocates away from the employee's pre-existing duty station, and if the agency wishes to retain the employee as a teleworker, the agency may establish a reasonable number of occasional visits to the agency offices that the employee must make at the employee's own expense before the employee would become eligible for reimbursement of travel expenses by the agency.

New 5 U.S.C. §5711(b). Under this subsection, GSA must transmit a copy of any test program approved, and the rationale for approval, to Congress at least 30 days before the effective date of the program.

New 5 U.S.C. §5711(c). This subsection requires any agency conducting a test program to provide to GSA, the agency's own TMO, and the appropriate committees of Congress a report on the results of that program not later than three months after the program is completed.

New 5 U.S.C. §5711(d). Under this subsection, no more than ten test programs may be conducted simultaneously across the agencies at any one time.

New 5 U.S.C. §5711(e). Under this subsection, the authority to conduct telework travel-expense test programs expires seven years after the date of enactment.

³⁷See Pub. L. 107-292, 1303(a)(1) (Nov. 25, 2002, 5 U.S.C. § 1401 note) (OPM Director acts as chairperson of the CHCO Council).

Section 9. Patent and Trademark Office travel expenses test program

As noted in the preceding analysis of section 8 of the bill, existing 5 U.S.C. § 5710 authorized agencies to conduct travel expense test programs, but expired in 2005. Section 9 of the bill amends § 5710 to authorize the PTO to conduct a test program through 2018 for reimbursing travel expenses for PTO employees engaged in telework.

Subsection (a)—In General. This subsection strikes the provision in 5 U.S.C. § 5710(a)(1) that limits travel expense test programs to a period not to exceed 24 months. Therefore, the test program at PTO would not be subject to the former 24-month limit on test programs. This subsection (c) of the bill also repeals existing subsection (e) of 5 U.S.C. § 5710, under which the authority to conduct travel expenses test programs expired in 2005, and adds new subsections (e) and (f) to § 5710, which are described below.

New 5 U.S.C. § 5710(e)(1)–(2). These provisions require the PTO to conduct a travel expense test program under 5 U.S.C. § 5710 and allow the PTO, in conducting the program, to pay travel expenses to and from a PTO worksite if—(A) the PTO employee enters into an approved telework arrangement; (B) the PTO employee requests to telework from beyond the local commuting area of the PTO worksite; and (C) the PTO approves the request for the purpose of employee convenience.

New 5 U.S.C. § 5710(e)(3). Under this paragraph, the PTO must establish an oversight committee, composed of an equal number of management and labor representatives, that would develop operating procedures for the test program.

New 5 U.S.C. § 5710(e)(4). This paragraph requires that—(A) the PTO test program must be designed to enhance cost savings or efficiencies for the Federal government; (B) the Director of the PTO, before implementing a test program, must evaluate the cost effectiveness of the program and submit an analysis to GSA and appropriate congressional committees; (C) the program may require that a PTO employee who voluntarily relocates from the employee’s pre-existing duty station must make a reasonable number of occasional visits to his or her pre-existing duty station before the employee is eligible for repayment of travel expenses; and (D) the Director of the PTO, within three months of completion of a test program, must submit a report on the results of the test program to the GSA and appropriate congressional committees. The paragraph also specifies that the “appropriate” congressional committees are the Senate Committees on Homeland Security and Governmental Affairs and the Judiciary and the House Committees on Government Oversight and Reform and the Judiciary.

New 5 U.S.C. § 5710(f)(1). This paragraph states that, except with respect to the PTO telework test program, the authority to conduct test programs under 5 U.S.C. § 5710 expired seven years after the date of enactment of the Travel and Transportation Reform Act of 1998. (This expiration date is the same as under existing 5 U.S.C. § 5710(e), which the bill repeals.)

New 5 U.S.C. § 5710(f)(2). Under this paragraph, the PTO’s authority to conduct test programs under the bill will expire 20 years after the date of enactment of the Travel and Transportation Reform Act of 1998.

Subsection (b)—Effective Date. This subsection of the bill states that the amendments made by section 9 take effect as though they had been enacted as part of the Travel and Transportation Reform Act of 1998. The amendments include the repeal of existing 5 U.S.C. §5710(e), under which the authority to conduct test programs expired in 2005, and include the enactment of the new authority for PTO to conduct the test program. Accordingly, the repeal of the sunset and the enactment of the new authority apply as though they had both been enacted before the original 2005 expiration date.

V. ESTIMATED COST OF LEGISLATION

JUNE 1, 2009.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 707, the Telework Enhancement Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 707—Telework Enhancement Act of 2009

S. 707 would require the executive branch of the federal government to establish policies to determine which federal employees are eligible to participate in federal telework programs (telework programs enable employees to work from places other than their official duty stations). The legislation also would require agencies to incorporate telework options into their emergency operations plans. Finally, S. 707 would authorize appropriations to pay for the cost of two test programs regarding certain travel expenses of telework employees.

CBO estimates that implementing S. 707 would increase administrative costs across federal agencies by \$5 million in 2010 and by \$25 million over the 2010–2014 period assuming availability of appropriated funds. That amount includes initial costs to notify employees of their eligibility to participate in telework programs and the rest of the annual reporting requirements specified in the bill. S. 707 could affect direct spending and revenues, but CBO estimates that such amounts would not be significant in any year.

Under current law, executive branch agencies are required to establish policies for employees to participate in telework programs to the maximum extent possible without diminishing employees' performance. The General Services Administration (GSA) and the Office of Personnel Management provide guidance and resources to federal agencies to support telework policies governmentwide. This bill would require agencies to establish and implement policies to enable eligible employees to participate in telework programs and annually report on their efforts.

For most agencies, any such impact on spending would be subject to the availability of appropriated funds; however, the bill could af-

fect direct spending by agencies not funded through annual appropriations, such as the Tennessee Valley Authority and the Bonneville Power Administration. CBO estimates, however, that any increase in spending for telework programs by those agencies would not be significant.

The legislation also would authorize two test programs—one seven-year program for the government as a whole and one eight-year program for the Patent and Trademark Office to reimburse the travel expenses of certain teleworking employees. CBO expects that few federal employees would change their work location as a result of those programs. We expect that any savings, such as lower costs for office space or diminished locality pay adjustments, would be offset by additional costs for travel and equipment so that implementing those programs would have no significant net impact on the federal budget.

S. 707 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Theresa M. Gullo, Deputy Assistant Director for Budget Analysis.

VI. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. The Congressional Budget Office (CBO) states that there are no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and no costs on State, local, or tribal governments. The legislation contains no other regulatory impact.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, 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 and existing law, in which no change is proposed, is shown in roman):

TITLE 5, UNITED STATES CODE: GOVERNMENT ORGANIZATION AND EMPLOYEES

PART III—EMPLOYEES

Subpart D—Pay and Allowances

CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

Subchapter I—Travel, Subsistence Expenses; Mileage Allowances

Sec.

5701. * * *

* * * * *

5711. Authority for telework travel expenses test programs

* * * * *

Subchapter I—Travel, Subsistence Expenses; Mileage Allowances

* * * * *

§ 5710. Authority for travel expenses test programs

(a)(1) Notwithstanding any other provision of this subchapter, under a test program which the Administrator of General Services determines to be in the interest of the Government and approves, an agency may pay through the proper disbursing official **for a period not to exceed 24 months** any necessary travel expenses in lieu of any payment otherwise authorized or required under this subchapter. * * *

* * * * *

[(e) The authority to conduct test programs under this section shall expire 7 years after the date of the enactment of the Travel and Transportation Reform Act of 1998.]

(e)(1) The Patent and Trademark Office shall conduct a test program under this section.

(2) In conducting the program under this subsection, the Patent and Trademark Office may pay any travel expenses of an employee for travel to and from a Patent and Trademark Office worksite, if—

(A) the employee is employed at a Patent and Trademark Office worksite and enters into an approved telework arrangement;

(B) the employee requests to telework from a location beyond the local commuting area of the Patent and Trademark Office worksite; and

(C) the Patent and Trademark Office approves the requested arrangement for reasons of employee convenience instead of an agency need for the employee to relocate in order to perform duties specific to the new location.

(3)(A) The Patent and Trademark Office shall establish an oversight committee comprising an equal number of members representing management and labor, including representatives from each collective bargaining unit.

(B) The oversight committee shall develop the operating procedures for the program under this subsection to—

(i) provide for the effective and appropriate functioning of the program; and

(ii) ensure that—

(I) reasonable technological or other alternatives to employee travel are used before requiring employee travel, including teleconferencing, videoconferencing or internet-based technologies;

(II) the program is applied consistently and equitably throughout the Patent and Trademark Office; and

(III) an optimal operating standard is developed and implemented for maximizing the use of the telework arrange-

ment described under paragraph (2) while minimizing agency travel expenses and employee travel requirements.

(4)(A) The test program under this subsection shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

(B) The Director of the Patent and Trademark Office shall—

(i) prepare an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program; and

(ii) before the test program is implemented, submit the analysis and criteria to the Administrator of General Services and to the appropriate committees of Congress.

(C) With respect to an employee of the Patent and Trademark Office who voluntarily relocates from the preexisting duty station of that employee, the operating procedures of the program may include a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by the Office.

(D)(i) Not later than 3 months after completion of the test program under this subsection, the Director of the Patent and Trademark Office shall provide a report on the results of the program to the Administrator of General Services and to the appropriate committees of Congress.

(ii) The results in the report described under paragraph (1) may include—

(I) the number of visits an employee makes to the pre-existing duty station of that employee;

(II) the travel expenses paid by the Office;

(III) the travel expenses paid by the employee; or

(IV) any other information that the Director determines may be useful to aid the Administrator and Congress in understanding the test program and the impact of the program.

(E) In this paragraph, the term “appropriate committees of Congress” means—

(i) the Committees on Homeland Security and Governmental Affairs and on the Judiciary of the Senate; and

(ii) the Committees on Government Oversight and Reform and on the Judiciary of the House of Representatives.

(F)(1) Except as provided under paragraph (2), the authority to conduct test programs under this section shall expire 7 years after the date of the enactment of the Travel and Transportation Reform Act of 1998.

(2) The authority to conduct a test program by the Patent and Trademark Office under this section shall expire 20 years after the date of the enactment of the Travel and Transportation Reform Act of 1998.

§ 5711. Authority for telework travel expenses test programs

(a)(1) Notwithstanding any other provision of this subchapter, under a test program which the Administrator of General Services determines to be in the interest of the Government and approves, an employing agency may pay through the proper disbursing official any necessary travel expenses in lieu of any payment otherwise authorized or required under this subchapter for employees participating in a telework program. An agency shall include in any re-

quest to the Administrator for approval of such a test program an analysis of the expected costs and benefits and a set of criteria for evaluating the effectiveness of the program.

(2) Any test program conducted under this section shall be designed to enhance cost savings or other efficiencies that accrue to the Government.

(3) Under any test program, if an agency employee voluntarily relocates from the pre-existing duty station of that employee, the Administrator may authorize the employing agency to establish a reasonable maximum number of occasional visits to the pre-existing duty station before that employee is eligible for payment of any accrued travel expenses by that agency.

(4) Nothing in this section is intended to limit the authority of any agency to conduct test programs.

(b) The Administrator shall transmit a copy of any test program approved by the Administrator under this section, and the rationale for approval, to the appropriate committees of Congress at least 30 days before the effective date of the program.

(c)(1) An agency authorized to conduct a test program under subsection (a) shall provide to the Administrator, the Telework Managing Officer of that agency, and the appropriate committees of Congress a report on the results of the program not later than 3 months after completion of the program.

(2) The results in a report described under paragraph (1) may include—

(A) the number of visits an employee makes to the pre-existing duty station of that employee;

(B) the travel expenses paid by the agency;

(C) the travel expenses paid by the employee; or

(D) any other information the agency determines useful to aid the Administrator, Telework Managing Officer, and Congress in understanding the test program and the impact of the program.

(d) No more than 10 test programs under this section may be conducted simultaneously.

(e) The authority to conduct test programs under this section shall expire 7 years after the date of the enactment of the Telework Enhancement Act of 2009.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2003 (Public Law 108-7; 117 STAT. 103; Feb. 20, 2003)

* * * * *

DIVISION B—COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 2003

* * * * *

TITLE VI—GENERAL PROVISIONS

* * * * *

SEC. 623. Of the funds appropriated in this Act for the Departments of Commerce, Justice, and State, the Judiciary, and the

Small Business Administration, \$100,000 shall be available to each Department or agency only to implement telecommuting programs: *Provided*, That, 6 months after the date of enactment of this Act and every 6 months thereafter, each Department or agency shall provide a report to the Committees on Appropriations on the status of telecommuting programs, including the number of Federal employees eligible for, and participating in, such programs: *Provided further*, That each Department or agency shall [designate a “Telework Coordinator” to be] *designate a Telework Managing Officer to be* responsible for overseeing the implementation of telecommuting programs and serve as a point of contact on such programs for the Committees on Appropriations.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004 (Public Law 108–199; 118 STAT. 99; Jan. 23, 2004)

* * * * *

DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 2004

* * * * *

TITLE VI—GENERAL PROVISIONS

* * * * *

SEC. 627. The Departments of Commerce, Justice, State, the Judiciary, and the Small Business Administration shall each establish a policy under which eligible employees may participate in telecommuting to the maximum extent possible without diminished employee performance: * * * *Provided further*, That each Department or agency shall [designate a “Telework Coordinator” to be] *designate a Telework Managing Officer to be* responsible for overseeing the implementation of telecommuting programs and serve as a point of contact on such programs for the Committees on Appropriations.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2005 (Public Law 108–447; 118 STAT. 2919; Dec. 8, 2004)

* * * * *

DIVISION B—DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS, 2005

* * * * *

TITLE VI—GENERAL PROVISIONS

* * * * *

SEC. 622. The Departments of Commerce, Justice, State, the Judiciary, the Securities and Exchange Commission and the Small Business Administration shall, not later than two months after the date of the enactment of this Act, certify that telecommuting opportunities are made available to 100 percent of the eligible workforce: * * * *Provided further*, That each Department or agency shall [designate a “Telework Coordinator” to be] *designate a Telework Managing Officer to be* responsible for overseeing the implementation and operations of telecommuting programs, and serve as a point of contact on such programs for the Committees on Appropriations.

SCIENCE, STATE, JUSTICE, COMMERCE, AND RELATED AGENCIES APPROPRIATIONS ACT, 2006 (Public Law 109-108; 119 STAT. 2340; Nov. 22, 2005)

* * * * *

TITLE VI—GENERAL PROVISIONS

* * * * *

SEC. 617. The Departments of Commerce, Justice, and State, the Securities and Exchange Commission and the Small Business Administration shall, not later than two months after the date of the enactment of this Act, certify that telecommuting opportunities have increased over levels certified to the Committees on Appropriations for fiscal year 2005: * * * *Provided further*, That each Department or agency shall [maintain a “Telework Coordinator” to be] *maintain a Telework Managing Officer to be* responsible for overseeing the implementation and operations of telecommuting programs, and serve as a point of contact on such programs for the Committees on Appropriations.

