

107TH CONGRESS  
2D SESSION

# H. R. 3843

To amend the Clinger-Cohen Act of 1996 to extend until January 1, 2008, a program applying simplified procedures to the acquisition of certain commercial items; to establish an exchange program between the Federal Government and the private sector in order to promote the development of expertise in information technology management; and to authorize telecommuting for Federal contractors, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2002

Mr. BURTON of Indiana (for himself and Mr. TOM DAVIS of Virginia) introduced the following bill; which was referred to the Committee on Government Reform

---

## A BILL

To amend the Clinger-Cohen Act of 1996 to extend until January 1, 2008, a program applying simplified procedures to the acquisition of certain commercial items; to establish an exchange program between the Federal Government and the private sector in order to promote the development of expertise in information technology management; and to authorize telecommuting for Federal contractors, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Federal Information  
3 Technology Workforce and Acquisition Improvement Act  
4 of 2002”.

5 **SEC. 2. EXTENSION OF PROGRAM APPLYING SIMPLIFIED**  
6 **PROCEDURES TO CERTAIN COMMERCIAL**  
7 **ITEMS.**

8       Section 4202 of the Clinger-Cohen Act of 1996 (divi-  
9 sions D and E of Public Law 104–106; 110 Stat. 652;  
10 10 U.S.C. 2304 note) is amended—

11           (1) in subsection (e), by striking “January 1,  
12 2003” and inserting “January 1, 2008”; and

13           (2) by adding at the end the following new sub-  
14 section:

15       “(f) REPORT.—Not later than December 31, 2004,  
16 the Comptroller General shall submit to Congress a report  
17 on the effectiveness of the implementation of the provi-  
18 sions enacted by this section and any recommendations for  
19 improving such effectiveness.”.

20 **SEC. 3. INFORMATION TECHNOLOGY EXCHANGE PROGRAM.**

21       (a) FINDINGS.—Congress finds that—

22           (1) unless action is taken soon, there will be a  
23 crisis in the government’s ability to deliver essential  
24 services to the American people;

25           (2) by 2006, over 50 percent of the Federal  
26 Government’s information technology workforce will

1 be eligible to retire, creating a huge demand in the  
2 Federal Government for high-skill workers;

3 (3) despite a 44 percent decrease in the demand  
4 for information technology workers in the private  
5 sector, the Information Technology Association of  
6 America reported in 2001 that employers will need  
7 to fill over 900,000 new information technology jobs  
8 and will be unable to find qualified workers for  
9 425,000 of those jobs;

10 (4) to highlight the urgency of this situation, in  
11 January 2001, the General Accounting Office added  
12 the Federal Government's human capital manage-  
13 ment to its list of high-risk problems for which an  
14 effective solution must be found;

15 (5) despite efforts to increase flexibility in Fed-  
16 eral agencies' employment practices, compensation  
17 issues continue to severely restrain recruitment for  
18 Federal agencies; and

19 (6) an effective, efficient, and economical re-  
20 sponse to this crisis would be to create a vibrant, on-  
21 going exchange effort designed to share talent, ex-  
22 pertise, and advances in management between lead-  
23 ing-edge businesses and Federal agencies engaged in  
24 best practices.

1 (b) INFORMATION TECHNOLOGY EXCHANGE PRO-  
2 GRAM.—

3 (1) IN GENERAL.—Subpart B of part III of  
4 title 5, United States Code, is amended by adding  
5 at the end the following:

6 **“CHAPTER 37—INFORMATION**  
7 **TECHNOLOGY EXCHANGE PROGRAM**

“Sec.

“3701. Definitions.

“3702. General provisions.

“3703. Assignment of employees to private sector organizations.

“3704. Assignment of employees from private sector organizations.

“3705. Authority of the Office of Personnel Management.

8 **“§ 3701. Definitions**

9 “For purposes of this chapter—

10 “(1) the term ‘agency’ means an Executive  
11 agency, but does not include the General Accounting  
12 Office; and

13 “(2) the term ‘detail’ means—

14 “(A) the assignment or loan of an em-  
15 ployee of an agency to a private sector organi-  
16 zation without a change of position from the  
17 agency that employs the individual; or

18 “(B) the assignment or loan of an em-  
19 ployee of a private sector organization to an  
20 agency without a change of position from the  
21 private sector organization that employs the in-  
22 dividual,

1       whichever is appropriate in the context in which  
2       such term is used.

3   **“§ 3702. General provisions**

4       “(a) On request from or with the agreement of a pri-  
5   vate sector organization, and with the consent of the em-  
6   ployee concerned, the head of an agency may arrange for  
7   the assignment of an employee of the agency to a private  
8   sector organization or an employee of a private sector or-  
9   ganization to the agency. An eligible employee is an indi-  
10   vidual who—

11           “(1) works in the field of information tech-  
12       nology management;

13           “(2) is considered an exceptional performer by  
14       the individual’s current employer; and

15           “(3) is expected to assume increased informa-  
16       tion technology management responsibilities in the  
17       future.

18   An employee of an agency shall be eligible to participate  
19   in this program only if the employee is employed at the  
20   GS–11 level or above (or equivalent) and is serving under  
21   a career or career-conditional appointment or an appoint-  
22   ment of equivalent tenure in the excepted service.

23       “(b) Each agency that exercises its authority under  
24   this chapter shall provide for a written agreement between  
25   the agency and the employee concerned regarding the

1 terms and conditions of the employee's assignment. In the  
2 case of an employee of the agency, the agreement shall—

3 “(1) require the employee to serve in the civil  
4 service, upon completion of the assignment, for a pe-  
5 riod equal to the length of the assignment; and

6 “(2) provide that, in the event the employee  
7 fails to carry out the agreement (except for good and  
8 sufficient reason, as determined by the head of the  
9 agency from which assigned) the employee shall be  
10 liable to the United States for payment of all ex-  
11 penses (excluding salary) of the assignment. The  
12 amount shall be treated as a debt due the United  
13 States.

14 “(c) Assignments may be terminated by the agency  
15 or private sector organization concerned for any reason  
16 at any time.

17 “(d) Assignments under this chapter shall be for 1  
18 year and may be extended for an additional period not  
19 to exceed 1 year.

20 “(e) The Chief Information Officers Council, by  
21 agreement with the Office of Personnel Management, may  
22 assist in the administration of this chapter, including by  
23 maintaining lists of potential candidates for assignment  
24 under this chapter, establishing mentoring relationships

1 for the benefit of individuals who are given assignments  
2 under this chapter, and publicizing the program.

3 **“§ 3703. Assignment of employees to private sector or-**  
4 **ganizations**

5 “(a) An employee of an agency assigned to a private  
6 sector organization under this chapter is deemed, during  
7 the period of the assignment, to be on detail to a regular  
8 work assignment in his agency.

9 “(b) Notwithstanding any other provision of law, an  
10 employee of an agency assigned to a private sector organi-  
11 zation under this chapter is entitled to retain coverage,  
12 rights, and benefits under subchapter I of chapter 81, and  
13 employment during the assignment is deemed employment  
14 by the United States, except that, if the employee or the  
15 employee’s dependents receive from the private sector or-  
16 ganization any payment under an insurance policy for  
17 which the premium is wholly paid by the private sector  
18 organization, or other benefit of any kind on account of  
19 the same injury or death, then, the amount of such pay-  
20 ment or benefit shall be credited against any compensation  
21 otherwise payable under subchapter I of chapter 81.

22 “(c) The assignment of an employee to a private sec-  
23 tor organization under this chapter may be made with or  
24 without reimbursement by the private sector organization  
25 for the travel and transportation expenses to or from the

1 place of assignment, subject to the same terms and condi-  
2 tions as apply with respect to an employee of a Federal  
3 agency or a State or local government under section 3375,  
4 and for the pay, or a part thereof, of the employee during  
5 assignment. Any reimbursements shall be credited to the  
6 appropriation of the agency used for paying the travel and  
7 transportation expenses or pay.

8 “(d) The Federal Tort Claims Act and any other  
9 Federal tort liability statute apply to an employee of an  
10 agency assigned to a private sector organization under this  
11 chapter. The supervision of the duties of an employee of  
12 an agency so assigned to a private sector organization may  
13 be governed by an agreement between the agency and the  
14 organization.

15 **“§ 3704. Assignment of employees from private sector**  
16 **organizations**

17 “(a) An employee of a private sector organization as-  
18 signed to an agency under this chapter is deemed, during  
19 the period of the assignment, to be on detail to such agen-  
20 cy.

21 “(b) An employee of a private sector organization as-  
22 signed to an agency under this chapter—

23 “(1) may continue to receive pay and benefits  
24 from the private sector organization from which he  
25 is assigned;



1           “(2) is deemed, notwithstanding subsection (a),  
2           to be an employee of the agency for the purposes  
3           of—

4                   “(A) chapter 73, except for section  
5                   7353(a)(1);

6                   “(B) sections 203, 205, 207, 208, 603,  
7                   606, 607, 643, 654, 1905, and 1913 of title 18;

8                   “(C) sections 1343, 1344, and 1349(b) of  
9                   title 31;

10                  “(D) the Federal Tort Claims Act and any  
11                  other Federal tort liability statute;

12                  “(E) the Ethics in Government Act of  
13                  1978;

14                  “(F) section 1043 of the Internal Revenue  
15                  Code of 1986; and

16                  “(G) section 27(p)(8) of the Office of Fed-  
17                  eral Procurement Policy Act; and

18                  “(3) is subject to such regulations as the Presi-  
19                  dent may prescribe.

20           The supervision of an employee of a private sector organi-  
21           zation assigned to an agency under this chapter may be  
22           governed by agreement between the agency and the private  
23           sector organization concerned. Such an assignment may  
24           be made with or without reimbursement by the agency for  
25           the pay, or a part thereof, of the employee during the pe-

1 riod of assignment, or for any contribution of the private  
 2 sector organization to employee benefit systems.

3 “(c) An employee of a private sector organization as-  
 4 signed to an agency under this chapter who suffers dis-  
 5 ability or dies as a result of personal injury sustained  
 6 while performing duties during the assignment shall be  
 7 treated, for the purpose of subchapter I of chapter 81,  
 8 as an employee as defined by section 8101 who had sus-  
 9 tained the injury in the performance of duty, except that,  
 10 if the employee or the employee’s dependents receive from  
 11 the private sector organization any payment under an in-  
 12 surance policy for which the premium is wholly paid by  
 13 the private sector organization, or other benefit of any  
 14 kind on account of the same injury or death, then, the  
 15 amount of such payment or benefit shall be credited  
 16 against any compensation otherwise payable under sub-  
 17 chapter I of chapter 81.

18 **“§ 3705. Authority of the Office of Personnel Manage-**  
 19 **ment**

20 “The Director of the Office of Personnel Manage-  
 21 ment shall prescribe regulations for the administration of  
 22 this chapter.”.

23 (2) CLERICAL AMENDMENT.—The analysis for  
 24 part III of title 5, United States Code, is amended  
 25 by inserting after the item relating to chapter 35

1 the following:

“37. Information Technology Exchange Program ..... 3701”.

2 (c) ALLOWABILITY OF COSTS.—Within 120 days  
 3 after the enactment of this Act, the Federal Acquisition  
 4 Regulatory Council shall amend the Federal Acquisition  
 5 Regulation to recognize the costs associated with an em-  
 6 ployee’s participation in the program authorized by sub-  
 7 section (b) as allowable training and education costs. Such  
 8 costs—

9 (1) include the employee’s salary and fringe  
 10 benefits for a period not to exceed the period of the  
 11 employee’s assignment under the program author-  
 12 ized by subsection (b), as well as moving and travel  
 13 expenses; and

14 (2) may be treated, for accounting purposes—

15 (A) as an indirect cost and accounted for  
 16 in—

17 (i) an established overhead account; or

18 (ii) an overhead account established  
 19 specifically for the program authorized by  
 20 subsection (b) and allocated exclusively to  
 21 the contractor’s Federal Government con-  
 22 tracts; or

23 (B) as a direct cost chargeable to fixed  
 24 price or time and material contracts.

25 (d) TECHNICAL AND CONFORMING AMENDMENTS.—

1           (1) AMENDMENTS TO TITLE 5, UNITED STATES  
2       CODE.—Title 5, United States Code, is amended—

3           (A) in section 3111 by adding at the end  
4       the following:

5       “(d) Notwithstanding section 1342 of title 31, the  
6       head of an agency may accept voluntary service for the  
7       United States under chapter 37 of this title and regula-  
8       tions of the Office of Personnel Management.”; and

9           (B) in section 4108 by striking subsection  
10       (d).

11       (2) OTHER AMENDMENTS.—Section 125(c)(1)  
12       of Public Law 100–238 (5 U.S.C. 8432 note) is  
13       amended—

14           (A) in subparagraph (B) by striking “or”  
15       at the end;

16           (B) in subparagraph (C) by striking “and”  
17       at the end and inserting “or”; and

18           (C) by adding at the end the following:

19       “(D) an individual assigned from a Fed-  
20       eral agency to a private sector organization  
21       under chapter 37 of title 5, United States Code;  
22       and”.

1 **SEC. 4. AUTHORIZATION OF TELECOMMUTING FOR FED-**  
2 **ERAL CONTRACTORS.**

3 (a) AMENDMENT TO THE FEDERAL ACQUISITION  
4 REGULATION.—Not later than 180 days after the date of  
5 the enactment of this Act, the Federal Acquisition Regula-  
6 tion issued in accordance with sections 6 and 25 of the  
7 Office of Federal Procurement Policy Act (41 U.S.C. 405  
8 and 421) shall be amended to permit the use of telecom-  
9 muting by employees of Federal contractors in the per-  
10 formance of contracts with executive agencies.

11 (b) CONTENT OF AMENDMENT.—The amendment  
12 issued pursuant to subsection (a) shall, at a minimum,  
13 provide that solicitations for the acquisition of goods or  
14 services shall not set forth any requirement or evaluation  
15 criteria that would—

16 (1) render an offeror ineligible to receive a con-  
17 tract award based on the offeror's plan to allow its  
18 employees to telecommute; or

19 (2) reduce the scoring of an offeror's proposal  
20 based upon the contractor's plan to allow its employ-  
21 ees to telecommute, unless the contracting officer  
22 first—

23 (A) determines that the needs of the agen-  
24 cy, including the security needs of the agency,  
25 cannot be met without any such requirement;  
26 and

1 (B) explains in writing the basis for that  
2 determination.

3 (c) GAO REPORT.—Not later than one year after the  
4 date on which the amendment required by subsection (a)  
5 is published in the Federal Register, the Comptroller Gen-  
6 eral shall submit to Congress an evaluation of—

7 (1) compliance by executive agencies with the  
8 regulations; and

9 (2) conformance of the regulations with existing  
10 law, together with any recommendations that the  
11 Comptroller General considers appropriate.

12 (d) DEFINITION.—In this section, the term “execu-  
13 tive agency” has the meaning given that term in section  
14 105 of title 5, United States Code.

○