the Telework Enhancement Act of 2010, and other appropriate measures of agencies' effective use of workplace flexibilities;

(g) within 120 days from receipt of the agency reports submitted pursuant to section 5 of this memorandum, prepare a report to the President that includes information on agency best practices with regard to the use of workplace flexibilities, any barriers to or limitations that may unnecessarily restrict the use of existing workplace flexibilities and work-life programs, recommendations for addressing or eliminating such barriers or limitations, proposals for future data reporting, and metrics for tracking the use and cost-benefit of work-life programs; and

(h) review, for the purpose of identifying relevant trends related to workplace flexibility issues, the annual report that agencies provide to OPM under the No FEAR Act, which includes the agency's analysis of violations of antidiscrimination and whistleblower laws, an examination of trends, causal analysis, practical knowledge gained through experience, and any actions planned or taken to improve programs within the agency.

SEC. 5. *Agency Review of Workplace Flexibilities and Work-Life Policies and Programs.* Within 120 days of the date of the issuance of guidance pursuant to section 1(c) of this memorandum, each agency shall review its workplace flexibilities and work-life policies and programs to assess whether they are being effectively used to the maximum extent practicable and submit a report to OPM that includes:

(a) any best practices the agency has employed to create a culture and work environment that supports the productive and efficient use of workplace flexibilities and work-life programs; and

(b) any barriers to or limitations that may unnecessarily restrict the use of existing workplace flexibilities and work-life programs and recommendations for addressing or eliminating such barriers or limitations.

SEC. 6. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law or Executive Order to an agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) The Director is hereby authorized and directed to publish this memorandum in the Federal Register.

BARACK OBAMA.

§ 6121. Definitions

For purposes of this subchapter—

(1) ''agency'' means any Executive agency, any military department, the Government Publishing Office, the Library of Congress, the Architect of the Capitol, and the Botanic Garden;

(2) ''employee'' has the meaning given the term in subsection (a) of section 2105 of this title, except that such term also includes an employee described in subsection (c) of that section;

(3) ''basic work requirement'' means the number of hours, excluding overtime hours, which an employee is required to work or is required to account for by leave or otherwise;

(4) ''credit hours'' means any hours, within a flexible schedule established under section 6122 of this title, which are in excess of an employee's basic work requirement and which the employee elects to work so as to vary the length of a workweek or a workday;

(5) ''compressed schedule'' means—

(A) in the case of a full-time employee, an 80-hour biweekly basic work requirement which is scheduled for less than 10 workdays, and

(B) in the case of a part-time employee, a biweekly basic work requirement of less than 80 hours which is scheduled for less than 10 workdays;

(6) ''overtime hours'', when used with respect to flexible schedule programs under sections 6122 through 6126 of this title, means all hours in excess of 8 hours in a day or 40 hours in a week which are officially ordered in advance, but does not include credit hours;

(7) ''overtime hours'', when used with respect to compressed schedule programs under sections 6127 and 6128 of this title, means any hours in excess of those specified hours which constitute the compressed schedule; and

(8) ''collective bargaining'', ''collective bargaining agreement'', and ''exclusive representative'' have the same meanings given such terms—

(A) by section 7103(a)(12), (8), and (16) of this title, respectively, in the case of any unit covered by chapter 71 of this title; and

(B) in the case of any other unit, by the corresponding provisions applicable under the personnel system covering this unit.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 227; amended Pub. L. 101–163, title III, § 312, Nov. 21, 1989, 103 Stat. 1065; Pub. L. 104–106, div. A, title X, § 1041, Feb. 10, 1996, 110 Stat. 433; Pub. L. 111–68, div. A, title I, § 1302(1), Oct. 1, 2009, 123 Stat. 2034; Pub. L. 113–235, div. H, title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537.)

Editorial Notes

AMENDMENTS

2009—Par. (1). Pub. L. 111–68 substituted ''the Library of Congress, the Architect of the Capitol, and the Botanic Garden'' for ''and the Library of Congress''.

1996—Par. (2). Pub. L. 104–106 amended par. (2) generally. Prior to amendment, par. (2) read as follows: '' 'employee' has the meaning given it by section 2105 of this title;''.

1989—Par. (1). Pub. L. 101–163 inserted ''the Government Printing Office,'' after ''military department,''.

Statutory Notes and Related Subsidiaries

CHANGE OF NAME

''Government Publishing Office'' substituted for ''Government Printing Office'' in par. (1) on authority of section 1301(b) of Pub. L. 113–235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

§ 6122. Flexible schedules; agencies authorized to use

(a) Notwithstanding section 6101 of this title, each agency may establish, in accordance with this subchapter, programs which allow the use of flexible schedules which include—

(1) designated hours and days during which an employee on such a schedule must be present for work; and

(2) designated hours during which an employee on such a schedule may elect the time of such employee's arrival at and departure from work, solely for such purpose or, if and to the extent permitted, for the purpose of accumulating credit hours to reduce the length of the workweek or another workday.

An election by an employee referred to in paragraph (2) shall be subject to limitations generally prescribed to ensure that the duties and requirements of the employee's position are fulfilled.

(b) Notwithstanding any other provision of this subchapter, but subject to the terms of any written agreement referred to in section 6130(a) of this title, if the head of an agency determines that any organization within the agency which is participating in a program under subsection (a) is being substantially disrupted in carrying out its functions or is incurring additional costs because of such participation, such agency head may—

(1) restrict the employees' choice of arrival and departure time,

(2) restrict the use of credit hours, or

(3) exclude from such program any employee or group of employees.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 228.)

§ 6123. Flexible schedules; computation of premium pay

(a) For purposes of determining compensation for overtime hours in the case of an employee participating in a program under section 6122 of this title—

(1) the head of an agency may, on request of the employee, grant the employee compensatory time off in lieu of payment for such overtime hours, whether or not irregular or occasional in nature and notwithstanding the provisions of sections 5542(a), 5543(a)(1) and section[1] 5544(a) of this title, section 7453(e) of title 38, section 7 of the Fair Labor Standards Act (29 U.S.C. 207), or any other provision of law; or

(2) the employee shall be compensated for such overtime hours in accordance with such provisions, as applicable.

(b) Notwithstanding the provisions of law referred to in subsection (a)(1) of this section, an employee shall not be entitled to be compensated for credit hours worked except to the extent authorized under section 6126 of this title or to the extent such employee is allowed to have such hours taken into account with respect to the employee's basic work requirement.

(c)(1) Notwithstanding section 5545(a) of this title, premium pay for nightwork will not be paid to an employee otherwise subject to such section solely because the employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which such premium pay is otherwise authorized, except that—

(A) if an employee is on a flexible schedule under which—

(i) the number of hours during which such employee must be present for work, plus

(ii) the number of hours during which such employee may elect to work credit hours or elect the time of arrival at and departure from work,

which occur outside of the nightwork hours designated in or under such section 5545(a) total less than 8 hours, such premium pay shall be paid for those hours which, when combined with such total, do not exceed 8 hours, and

(B) if an employee is on a flexible schedule under which the hours that such employee must be present for work include any hours designated in or under such section 5545(a), such premium pay shall be paid for such hours so designated.

(2) Notwithstanding section 5343(f) of this title, and section 7453(b) of title 38, night differential will not be paid to any employee otherwise subject to either of such sections solely because such employee elects to work credit hours, or elects a time of arrival or departure, at a time of day for which night differential is otherwise authorized, except that such differential shall be paid to an employee on a flexible schedule under this subchapter—

(A) in the case of an employee subject to subsection (f) of such section 5343, for which all or a majority of the hours of such schedule for any day fall between the hours specified in such subsection, or

(B) in the case of an employee subject to subsection (b) of such section 7453, for which 4 hours of such schedule fall between the hours specified in such subsection.

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 228; amended Pub. L. 102–40, title IV, § 403(c)(2), May 7, 1991, 105 Stat. 240; Pub. L. 102–378, § 2(44)(D), Oct. 2, 1992, 106 Stat. 1352.)

Editorial Notes

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–378 substituted ''5543(a)(1) and section 5544(a)'' for ''5543(a)(1), 5544(a), and 5550''.

1991—Subsec. (a)(1). Pub. L. 102–40, § 403(c)(2)(A), substituted ''section 7453(e)'' for ''section 4107(e)(5)''.

Subsec. (c)(2). Pub. L. 102–40, § 403(c)(2)(B), in introductory provisions substituted ''section 7453(b)'' for ''section 4107(e)(2)'' and in subpar. (B) substituted ''subsection (b) of such section 7453'' for ''subsection (e)(2) of such section 4107''.

§ 6124. Flexible schedules; holidays

Notwithstanding sections 6103 and 6104 of this title, if any employee on a flexible schedule under section 6122 of this title is relieved or prevented from working on a day designated as a holiday by Federal statute or Executive order, such employee is entitled to pay with respect to that day for 8 hours (or, in the case of a part-time employee, an appropriate portion of the employee's biweekly basic work requirement as determined under regulations prescribed by the Office of Personnel Management).

(Added Pub. L. 97–221, § 2(a)(2), July 23, 1982, 96 Stat. 229.)

[1] So in original. The word ''section'' probably should not appear.