

110TH CONGRESS
2^D SESSION

H. R. 4106

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2008

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To improve teleworking in executive agencies by developing a telework program that allows employees to telework at least 20 percent of the hours worked in every 2 administrative workweeks, 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 “Telework Improve-
3 ments Act of 2008”.

4 **SEC. 2. TELEWORK.**

5 (a) IN GENERAL.—Part III of title 5, United States
6 Code, is amended by inserting after chapter 63 the fol-
7 lowing:

8 **“CHAPTER 65—TELEWORK**

“Sec.

“6501. Definitions.

“6502. Governmentwide telework requirement.

“6503. Implementation.

“6504. Telework Managing Officer.

“6505. Evaluating telework in agencies.

“6506. Continuity of operations.

9 **“§ 6501. Definitions**

10 “For purposes of this chapter—

11 “(1) the term ‘agency’ means an Executive
12 agency (as defined by section 105), except as pro-
13 vided in section 6506(c);

14 “(2) the term ‘telework’ or ‘teleworking’ refers
15 to a work arrangement under which an employee
16 regularly performs the duties and responsibilities of
17 such employee’s position, and other authorized ac-
18 tivities, from home or another worksite removed
19 from the employee’s regular place of employment;
20 and

21 “(3) the term ‘continuity of operations’ refers
22 to an effort within individual executive departments

1 and agencies to ensure that primary mission essen-
2 tial functions continue to be performed during a
3 wide range of emergencies, including localized acts
4 of nature, accidents, public health emergencies, and
5 technological or attack-related emergencies.

6 **“§ 6502. Governmentwide telework requirement**

7 “(a) TELEWORK REQUIREMENT.—

8 “(1) IN GENERAL.—Not later than 180 days
9 after the date of the enactment of this chapter, the
10 head of each agency shall establish a policy under
11 which employees shall be authorized to telework,
12 subject to paragraph (2) and subsection (b).

13 “(2) REGULATIONS.—The policy of each agency
14 under this subsection—

15 “(A) shall be in conformance with regula-
16 tions which the Administrator of General Serv-
17 ices shall, within 120 days after the date of the
18 enactment of this chapter and in coordination
19 with the Office of Personnel Management, pre-
20 scribe for purposes of this subsection; and

21 “(B) shall ensure that employees are au-
22 thorized to telework—

23 “(i) to the maximum extent possible;
24 and

1 “(ii) without diminishing employee
2 performance or agency operations.

3 “(b) TREATMENT OF CERTAIN CIRCUMSTANCES.—

4 Nothing in subsection (a) shall be considered—

5 “(1) to require the head of an agency to au-
6 thorize teleworking in the case of an employee whose
7 duties and responsibilities—

8 “(A) require daily access to classified in-
9 formation;

10 “(B) require daily face-to-face contact with
11 members of the public or other persons, or the
12 use of equipment, at the employee’s regular
13 place of employment; or

14 “(C) are such that their performance from
15 a site removed from the employee’s regular
16 place of employment is not feasible; or

17 “(2) to prevent the temporary denial of permis-
18 sion for an employee to telework if, in the judgment
19 of the agency head—

20 “(A) the employee is needed to respond to
21 an emergency;

22 “(B) the employee requires additional
23 training; or

24 “(C) the denial is necessary, for a specific
25 or ascertainable period of time, to achieve goals

1 and objectives of programs administered by the
2 agency.

3 “(c) **RULE OF CONSTRUCTION.**—Nothing in this
4 chapter shall—

5 “(1) be considered to require any employee to
6 telework; or

7 “(2) prevent an agency from permitting an em-
8 ployee to telework as part of a continuity of oper-
9 ations plan.

10 **“§ 6503. Implementation**

11 “In order to carry out the purposes of this chapter—

12 “(1) the head of each agency shall ensure
13 that—

14 “(A) appropriate training is provided to
15 supervisors and managers and to all employees
16 who are authorized to telework; and

17 “(B) no distinction is made between tele-
18 workers and nonteleworkers for purposes of
19 performance appraisals;

20 “(2) the General Services Administration, in co-
21 ordination with the Office of Personnel Manage-
22 ment, shall provide advice, assistance, and, to the
23 extent necessary, training to agencies, including with
24 respect to—

1 “(A) questions of eligibility to telework, in-
2 cluding considerations relating to employee per-
3 formance; and

4 “(B) making telework part of the agency’s
5 goals, including those of individual supervisors
6 and managers;

7 “(3) the General Services Administration, in co-
8 ordination with the Office of Management and
9 Budget and the National Institute of Standards and
10 Technology, shall prescribe regulations, within 120
11 days after the date of the enactment of this chapter,
12 to ensure the adequacy of information and security
13 protections for information and information systems
14 used in, or otherwise affected by, teleworking; such
15 regulations shall be consistent with information se-
16 curity policies and guidance issued by the Office of
17 Management and Budget and the National Institute
18 of Standards and Technology, and shall, at a min-
19 imum, include requirements necessary—

20 “(A) to control access to agency informa-
21 tion and information systems;

22 “(B) to protect agency information (includ-
23 ing personally identifiable information) and in-
24 formation systems;

1 “(C) to limit the introduction of
2 vulnerabilities;

3 “(D) to protect information systems not
4 under the control of the agency that are used
5 for teleworking; and

6 “(E) to safeguard the use of wireless and
7 other telecommunications capabilities used for
8 telework purposes; and

9 “(4) the General Services Administration
10 shall—

11 “(A) maintain a central, publicly available
12 telework website to be jointly controlled and
13 funded by the General Services Administration
14 and the Office of Personnel Management; and

15 “(B) include on that website any regula-
16 tions relating to telework and any other infor-
17 mation the General Services Administration and
18 the Office of Personnel Management consider
19 appropriate.

20 **“§ 6504. Telework Managing Officer**

21 “(a) APPOINTMENT AND COMPENSATION.—

22 “(1) IN GENERAL.—Each agency may appoint
23 an officer to be known as the ‘Telework Managing
24 Officer’. If an agency appoints a Telework Managing
25 Officer, such Officer—

1 “(A) shall be appointed—

2 “(i) by the Chief Human Capital Offi-
3 cer of such agency; or

4 “(ii) if none, by the head of such
5 agency; and

6 “(B) shall be compensated at a rate not
7 less than the minimum rate of basic pay for
8 grade GS–15 of the General Schedule.

9 “(2) WAIVER.—The Administrator of General
10 Services may waive the minimum rate requirement
11 under paragraph (1)(B) with respect to an agency if
12 such agency has fewer than 100 employees (deter-
13 mined on a full-time equivalent basis) and the head
14 of such agency certifies that being required to com-
15 ply with paragraph (1)(B) would adversely impact
16 agency operations.

17 “(b) LIMITATIONS.—An individual may not hold the
18 position of Telework Managing Officer as a noncareer ap-
19 pointee (as defined in section 3132(a)(7)), and such posi-
20 tion may not be considered or determined to be of a con-
21 fidential, policy-determining, policy-making, or policy-ad-
22 vocating character.

23 “(c) DUTIES AND RESPONSIBILITIES.—The duties
24 and responsibilities of the Telework Managing Officer of
25 an agency shall be as follows:

1 “(1) Serving as—

2 “(A) an advisor on teleworking to the head
3 of such agency and to the Chief Human Capital
4 Officer of such agency (if any);

5 “(B) a resource on teleworking for super-
6 visors, managers, and employees of such agen-
7 cy; and

8 “(C) the agency’s primary point of contact
9 on teleworking matters for employees of such
10 agency, Congress, and other agencies.

11 “(2) Ensuring that the agency’s teleworking
12 policy is communicated effectively to employees.

13 “(3) Ensuring that electronic or written notifi-
14 cation is provided to each employee of specific
15 telework programs and the agency’s teleworking pol-
16 icy, including authorization criteria and application
17 procedures.

18 “(4) Developing and administering a tracking
19 system for compliance with Governmentwide
20 telework reporting requirements.

21 “(5) Providing to the Comptroller General and
22 to the Administrator of General Services such infor-
23 mation as the Comptroller General may require to
24 prepare the annual reports under section 6505(b).

1 “(6) Establishing a system for receiving feed-
2 back from agency employees on the agency’s
3 telework policy.

4 “(7) Developing and implementing a program
5 to identify and remove barriers to telework and to
6 maximize telework opportunities in the agency.

7 “(8) Ensuring that employees are notified of
8 grievance procedures available to them (if any) with
9 respect to any disputes that relate to telework.

10 “(9) Performing such other duties and respon-
11 sibilities relating to telework as the head of the
12 agency may require.

13 “(d) ALTERNATIVE TO TELEWORK MANAGING OFFI-
14 CER.—If no Telework Managing Officer is appointed
15 under subsection (a) with respect to an agency, the duties
16 and responsibilities of a Telework Managing Officer shall
17 be carried out by the Chief Human Capital Officer of, or
18 a career employee in, such agency, as determined by the
19 agency head.

20 **“§ 6505. Evaluating telework in agencies**

21 “(a) IN GENERAL.—The Comptroller General shall
22 establish a system for evaluating—

23 “(1) the telework policy of each agency; and

24 “(2) employee participation in telework pro-
25 grams at each agency.

1 “(b) ANNUAL REPORT.—The Comptroller General
2 shall, based on the system established under subsection
3 (a), submit an annual report to the Committee on Over-
4 sight and Government Reform of the House of Represent-
5 atives and the Committee on Homeland Security and Gov-
6 ernmental Affairs of the Senate. Each report under this
7 subsection shall, with respect to the period covered by such
8 report—

9 “(1) evaluate the telework policy of each agen-
10 cy;

11 “(2) for each agency, indicate the total number
12 of employees in such agency and identify—

13 “(A) the number and percentage of em-
14 ployees who were eligible to telework;

15 “(B) the number and percentage of em-
16 ployees who teleworked an average of at least
17 once a week on a regular basis, determined
18 based on time spent actually teleworking;

19 “(C) the number and percentage of em-
20 ployees who teleworked an average of at least
21 20 percent of the hours that they worked in
22 every 2 administrative workweeks, determined
23 based on time spent actually teleworking;

24 “(D) the number and percentage of em-
25 ployees who teleworked at least once a month

1 on a regular basis, determined based on time
2 spent actually teleworking;

3 “(E) the number and percentage of em-
4 ployees who were not authorized to telework
5 and the reasons why they were not so author-
6 ized;

7 “(F) the number and percentage of em-
8 ployees who were authorized to telework and
9 then later stopped teleworking, the reasons why
10 those employees stopped teleworking, and
11 whether their stopping was voluntary or due to
12 other factors, such as office coverage needs or
13 productivity;

14 “(G) the extent to which barriers to maxi-
15 mizing teleworking opportunities have been
16 identified and eliminated;

17 “(H) the impact (if any) of the agency’s
18 telework policy on the recruitment and reten-
19 tion of employees;

20 “(I) the impact (if any) of the agency’s
21 telework policy on the performance of agency
22 employees; and

23 “(J) the level of employee satisfaction with
24 the agency’s telework policy, determined based
25 on employee feedback;

1 “(3) evaluate the compliance of each agency
2 with the requirements of this chapter; and

3 “(4) identify best practices in agency telework
4 programs.

5 A report under this subsection shall be submitted for the
6 year in which the regulations under section 6502(a)(2)(A)
7 take effect and for each of the 4 succeeding years. Each
8 such report shall be submitted within 6 months after the
9 end of the year to which it relates.

10 “(c) MINIMUM REQUIREMENT FOR COMPLIANCE.—

11 For purposes of subsection (b)(3), an agency shall not be
12 considered to be in compliance with the requirements of
13 this chapter unless the employees of such agency who were
14 authorized to telework were permitted to telework for at
15 least 20 percent of the hours that they worked in every
16 2 administrative workweeks (disregarding any workweeks
17 for which such employees did not submit a request or for
18 which they were otherwise ineligible to telework).

19 **“§ 6506. Continuity of operations**

20 “(a) IN GENERAL.—The head of each agency shall
21 ensure that—

22 “(1) to the maximum extent practicable,
23 telework is incorporated into the continuity of oper-
24 ations planning of such agency; and

1 “(2) mission critical personnel, as determined
2 by the head of such agency, are equipped to telework
3 in time of a catastrophe.

4 “(b) COORDINATION RULE.—The continuity of oper-
5 ations plan of an agency shall supersede any telework pol-
6 icy of such agency to the extent that they are inconsistent
7 with one another.

8 “(c) AGENCY DEFINED.—For purposes of carrying
9 out subsection (a)(2), the term ‘agency’ means an agency
10 named in paragraph (1) or (2) of section 901(b) of title
11 31.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
13 (1) The analysis for part III of title 5, United States Code,
14 is amended by inserting after the item relating to chapter
15 63 the following:

“65. Telework 6501”.

16 (2) Section 622 of the Departments of Commerce,
17 Justice, and State, the Judiciary, and Related Agencies
18 Appropriations Act, 2005, as contained in the Consoli-
19 dated Appropriations Act, 2005 (5 U.S.C. 6120 note) is
20 amended by striking “designate a ‘Telework Coordinator’
21 to be” and inserting “appoint a Telework Managing Offi-
22 cer or designate the Chief Human Capital Officer or other
23 career employee to be”.

1 **SEC. 3. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.**

2 (a) IN GENERAL.—Chapter 14 of title 5, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

5 “SUBCHAPTER II—CHIEF HUMAN CAPITAL
6 OFFICERS COUNCIL

7 “§ 1421. Chief Human Capital Officers Council

8 “(a) ESTABLISHMENT.—There is established a Chief
9 Human Capital Officers Council, consisting of—

10 “(1) the Director of the Office of Personnel
11 Management, who shall act as chairperson of the
12 Council;

13 “(2) the Deputy Director for Management of
14 the Office of Management and Budget, who shall act
15 as vice chairperson of the Council;

16 “(3) the Administrator of General Services; and

17 “(4) the Chief Human Capital Officers of Exec-
18 utive departments and any other members who are
19 designated by the Director of the Office of Personnel
20 Management.

21 “(b) FUNCTIONS.—The Chief Human Capital Offi-
22 cers Council shall meet periodically to advise and coordi-
23 nate the activities of the agencies of its members on such
24 matters as modernization of human resources systems, im-
25 proved quality of human resources information, telework

1 (as defined by section 6501), and legislation affecting
 2 human resources operations and organizations.

3 “(c) EMPLOYEE LABOR ORGANIZATIONS AT MEET-
 4 INGS.—The Chief Human Capital Officers Council shall
 5 ensure that representatives of Federal employee labor or-
 6 ganizations are present at a minimum of 1 meeting of the
 7 Council each year. Such representatives shall not be mem-
 8 bers of the Council.

9 “(d) ANNUAL REPORT.—Each year, the Chief
 10 Human Capital Officers Council shall submit a report to
 11 Congress on the activities of the Council.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
 13 (1) Chapter 14 of title 5, United States Code, is amended
 14 by striking the matter before section 1401 and inserting
 15 the following:

16 **“CHAPTER 14—CHIEF HUMAN CAPITAL**
 17 **OFFICERS**

“SUBCHAPTER I—AGENCY CHIEF HUMAN CAPITAL OFFICERS

“Sec.

“1401. Establishment of agency Chief Human Capital Officers.

“1402. Authority and functions of agency Chief Human Capital Officers.

“SUBCHAPTER II—CHIEF HUMAN CAPITAL OFFICERS COUNCIL

“1421. Chief Human Capital Officers Council.

1 “SUBCHAPTER I—AGENCY CHIEF HUMAN
2 CAPITAL OFFICERS”.

3 (2) The analysis for part II of title 5, United States
4 Code, is amended by striking the item relating to chapter
5 14 and inserting the following:

“14. Chief Human Capital Officers 1401”.

6 (3) Section 1303 of Public Law 107–296 (5 U.S.C.
7 1401 note) is repealed.

8 **SEC. 4. REPORTING REQUIREMENT.**

9 (a) INCORPORATION OF TELEWORK INTO CON-
10 TINUITY OF OPERATIONS PLANNING.—Within 12 months
11 after the effective date of the regulations under section
12 6502(a)(2)(A) of title 5, United States Code (as amended
13 by section 2), the General Services Administration, in co-
14 ordination with the Office of Personnel Management, the
15 Federal Emergency Management Agency, and the Chief
16 Human Capital Officers Council, shall report to the appro-
17 priate committees of Congress on the incorporation of
18 telework into agencies’ continuity of operations planning,
19 including—

20 (1) the extent to which such incorporation has
21 occurred within each of the respective agencies;

22 (2) the extent to which each agency has con-
23 ducted continuity of operations tests and exercises
24 incorporating telework for essential and non-essen-
25 tial personnel;

1 (3) the extent to which agencies have used
2 telework in response to emergencies; and

3 (4) any recommendations the General Services
4 Administration considers appropriate.

5 (b) DEFINITIONS.—For purposes of this section—

6 (1) the term “appropriate committees of Con-
7 gress” means the Committee on Oversight and Gov-
8 ernment Reform of the House of Representatives
9 and the Committee on Homeland Security and Gov-
10 ernmental Affairs of the Senate;

11 (2) the terms “telework” and “continuity of op-
12 erations” have the meanings given those terms by
13 section 6501 of title 5, United States Code (as
14 amended by section 2); and

15 (3) the term “agency” means an agency named
16 in paragraph (1) or (2) of section 901(b) of title 31,
17 United States Code.

Passed the House of Representatives June 3, 2008.

Attest: LORRAINE C. MILLER,
Clerk.