

U. S. DEPARTMENT OF EDUCATION

HUMAN CAPITAL POLICY

HCP: 368-1

DATE: 10/1/2018

APPROVED:

_____/S/____

DIRECTOR, OFFICE OF HUMAN
RESOURCES

This policy is effective as of October 1, 2018. This policy supersedes Human Capital Memorandum 17-2, *ED Remote Work* and takes into account the Telework Program changes effective October 1, 2018.

TELEWORK PROGRAM

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I. AUTHORITY

The contents of this Human Capital Policy (HCP) conform to, and as appropriate, should be used in conjunction with the requirements found in the following:

- Public Law (P.L.) 111-292, Telework Enhancement Act of 2010, dated November 18, 2010;
- Office of Personnel Management (OPM) Guide to Telework in the Federal Government, dated April 2011;
- OPM Memorandum to Executive Heads of Agencies, subject: Washington, DC Area Dismissal or Closure Procedures, dated November 2012;
- OPM Guide: Washington, DC, Area, Dismissal and Closure Procedures dated December 2014;
- OPM Guidance to Heads of Executive Department and Agencies, subject: Establishing Telecommuting Policy, dated February 9, 2001;
- General Services Administration FMR Bulletin 2006-B3, dated March 17, 2006;
- P.L. 106-346, §359, dated October 23, 2000; P.L. 105-277, Omnibus Appropriation Action, Title IV, §630, dated October 21, 1998;
- P.L. 104-52, §620 (31 U.S.C. §1348) dated November 19, 1995; OPM memorandum for Personnel Directors dated October 21, 1993, on alternative workplace arrangements (Telework);
- Part 531 of Title 5 of the Code of Federal Regulations (CFR), §531.605(d), determining an employee's official worksite; and
- The WebTA Quick Reference Guide for Timekeepers, Telework Indicator Code.

II. APPLICABILITY

This policy applies to ED employees. In the case of Office of the Inspector General (OIG) employees, the Inspector General determines the applicability of the Telework Program on OIG positions in accordance with OPM guidance.

For information on obligations with the Union, please contact a Labor and Employee Relations Specialist.

III. PURPOSE

This policy is designed to meet the U.S. Department of Education's (the Department's or ED's) mission and operational needs by offering opportunities to balance employees' work lives, increase employment opportunities for persons with disabilities, and enable ED to continue operations in severe weather and other emergencies. This policy allows eligible employees to participate in fixed or "as needed" telework provided that such participation does not diminish the employee's performance or have an adverse effect on the performance of other employees or customer service.

IV. POLICY

It is the policy of ED that all eligible employees may be authorized to participate in the Telework Program (Program) as long as participation does not negatively impact employee or organizational performance. Supervisors and managers are eligible to participate in the Program as long as their participation meets the position and employee criteria as outlined in Section VIII of this policy and such participation does not negatively impact employee or organizational performance.

Under certain circumstances, as outlined in this policy, telework is an option for ED employees with signed telework agreements during weather and emergency situations, when normal business operations cannot be carried out at the official worksite location.

Alternative Worksite locations may include:

- The designated address as outlined on the signed Telework Agreement;
- A satellite facility, which is an office near the employee's home, in space owned or leased by one or more Federal agencies; and
- Any other location that is approved by the supervisor in advance and is equipped with standard office technology and equipment sufficient to perform assigned work in a safe and secure environment.

V. DEFINITIONS

Administrative Closing: The closing of Federal offices when hazardous weather or other emergency situations dictate that a Government office(s) should be closed for a portion of a workday or the entire workday.

Alternative Worksites: Places where individuals perform official duties away from the official duty station. The worksite can be, but is not limited to, the employee's home, a telework center, or another location approved in advance sufficient for the individual employee to perform his/her assigned work.

Continuity of Operations Program (COOP): An effort within individual agencies to ensure they can continue to perform Mission Essential Functions (MEFs) and Primary Mission Essential Functions (PMEFs) during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies.

Discretionary Closing: When employees are released from duty for all or part of the day at the official worksite as a discretionary benefit from management, such as closing down early the day before a holiday.

Eligibility: The designation used to describe the basic criteria for participating in the Program. An employee may be suitable for the Program if:

- The employee's most recent Rating of Record is at least the "Results Achieved" or equivalent under the system of record.
- The employee is not on a Performance Improvement Plan (PIP).
- The employee's work activities are portable and can be performed effectively outside the office.
- The technology needed to perform the job off site is available.
- Privacy Act concerns, health and safety, and the like, can be adequately assured.

Per the Telework Enhancement Act, there are two categories of employees who are not eligible to telework under any circumstances: an employee who "has been officially disciplined for being absent without permission for more than five (5) days in any calendar year" and an employee who "has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct of Employees of the Executive Branch for reviewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties [Public Law 111-292, 6502(a)(2)(A)(B)]."

Local Commuting Area: The geographic area that includes the population center and surrounding localities in which people live and can reasonably be expected to travel back and forth daily to their place of employment.

Official Duty Station: The city or town, county, and state in which the employee works on a regular basis. For most employees, this will be the location of the employee's official worksite. Pay is determined based on an employee's duty station. Complete information on policies for duty station changes and telework schedule expectations can be found in Section VII.

Official Worksite: The location of record where the employee regularly performs his or her duties. For an employee covered by a Telework Agreement who is not required to report to the regular worksite at least twice each biweekly pay period on a regular or recurring basis, the official worksite is the address designated in their telework agreement, a satellite facility, or any other location approved by their supervisor, except in certain temporary situations. The employee's official worksite must be documented on the employee's *Notification of Personnel Action* (Standard Form (SF) 50. See "Duty Station" blocks 38 and 39 of the SF 50 showing the city/county and state in which the official worksite is located).

Operating Status: The notification that provides Federal employees with the daily state of government operations and procedures for Government-wide emergencies or special events that create a disruption. The operating status announcements are applicable for any emergency or special event that causes a disruption inside the "Washington Capital Beltway."

Notification regarding regional office operating status is generally communicated through the local Federal Executive Board or Designated Official. For additional information refer to the Human Capital Management (HCM)-17-01, *Dismissals and Closures during Emergency Situations*.

Program Participant: An employee who has a signed Telework Agreement for Fixed/Scheduled or Situational/As-needed telework.

Position of Record: The employee's official position (defined by grade, occupational series, employing agency, Law Enforcement Officer (LEO) status, and any other condition that determines coverage under a pay schedule (other than official worksite), as documented on the employee's most recent Notification of Personnel Action (Standard Form 50 or equivalent) and current position description. A position to which an employee is temporarily detailed is not documented as a position of record.

Reasonable Accommodation: Any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities.

The Rehabilitation Act of 1973 (Sections 501 and 504) requires that agencies provide reasonable accommodation to a qualified individual with a disability unless the agency can demonstrate that the accommodation would impose an undue hardship to the operations of its program. For additional information see Section VII, Part I, or the Department's *Reasonable Accommodation Handbook*.

Telework: An arrangement in which an employee performs the duties and responsibilities of his or her position and other authorized official activities, from an authorized alternative worksite other than the location from which the employee would otherwise work.

Telework Agreement: A written agreement, completed and signed by the participating employee and appropriate authorizing official(s), that outlines the terms and conditions of the telework arrangement. A signed Telework Agreement is required to participate in the Program.

Telework-Ready: A Program participant that: (a) is equipped with standard office technology and equipment (i.e., computer, secure Internet connection, telephone access, etc.) sufficient to perform assigned work in a safe and secure environment at the alternate worksite, (b) has portable work that can be performed at an alternative worksite for all, or part of, the employee's regularly scheduled tour of duty for the day on which telework will be performed, and (c) has a signed telework agreement. Telework-Ready employees may be on a fixed/regular telework schedule or a Situational/As-needed schedule.

Unscheduled Telework: The option for a Telework-Ready (which includes having portable work that can be performed at an alternative worksite) employee to telework with prior supervisory approval when severe weather conditions or other circumstances disrupt or prevent employees from commuting or reporting to his or her official duty station.

Employees who perform scheduled or unscheduled telework are expected to start and complete their normal workday without regard to OPM or Federal Executive Board announcements of delayed opening, early departure, or immediate departure after the workday has begun.

VI. RESPONSIBILITIES

A. Chief Human Capital Officer (CHCO or designee)/Director Office of Human Resources (OHR) is responsible for the following:

- Overseeing the implementation of ED's policy on telework;
- Ensuring that annual telework reports are submitted to the Chief Human Capital Officers Council and OPM;
- Using information and data on telework to support the strategic management of human capital;
- Consulting with Approving Officials regarding Program eligibility determinations for all Department employees;
- Setting Department-wide goals and criteria for telework participation;
- Ensuring that OHR appropriately classifies positions as telework eligible; and
- Serving as the Telework Managing Officer.

B. Telework Managing Officer (TMO) and the Federal Student Aid (FSA)-only Telework Coordinator are responsible for the following:

- Reviewing Telework Agreements and any related forms for completeness and contacting the approving supervisor to discuss any incomplete forms;
- Maintaining a list of participants and their telework records (agreements, trainings, denials, etc.);
- Working with Principal Offices to provide guidance on telework inquiries;
- Ensuring that participants adhere to this policy;
- Submitting telework data to OPM and other organizations upon request (Responsibility of Headquarters); and
- Providing evaluation materials to the employees participating in the Program.

C. Approving Officials (Heads of the Principal Office (PO) or their designees) are responsible for:

- Determining the eligibility of all positions and employees to participate in the Program, in consultation with the CHCO or his or her designee;
- Authorizing participation in the Program within their organizations;
- Ensuring implementation of the Program to the fullest extent possible without adverse impact on employee or organizational performance;
- Reviewing and approving Telework Agreements, as appropriate;
- Providing a written explanation to employees whose requests for participation in the Program are denied no later than ten (10) working days upon receipt of the request;
- Ensuring appropriate funding in accordance with PO specific policy on purchase and installation of equipment and software, if necessary;
- Evaluating the impact of the Program on the efficiency and effectiveness of work operations within their organizations and providing input directly to the Telework Managing Officer, or via the FSA-only Telework Coordinator;
- Working with supervisors to remove any managerial, logistical, or organizational barriers to the successful implementation and maintenance of the Program; and

- Determining the need to temporarily suspend the Program when operational exigencies require employees to report to their official worksite.

D. Executive Officers (EXO) are responsible for:

- Collaborating with the TMO to ensure that his or her designated PO employees complete the annual Program requirements; and
- Collaborating with supervisors and Talent, Recruitment, and Hiring (TRH) to ensure PO employee's SF-50s reflect the correct information.

E. Supervisors are responsible for:

- Identifying and recommending to the Approving Official positions which are suitable and eligible for the Program;
- Accepting and making recommendations to the Approving Official for approval or disapproval of employee requests to participate in the Program no later than ten (10) working days upon receipt of the request. If the request is denied, the supervisor must provide the reasons for the denial in writing;
- Annually renewing the Telework Agreement;
- Completing annual Supervisors Telework Training on the Program prescribed by the Department before entering into a Telework Agreement with the employees;
- Providing equitable treatment of employees, as required by 5 USC §6503(a)(3), regardless of whether employees telework or not, in decisions which affect conditions of employment for awards, promotions, and any other conditions of employment consistent with applicable law, OPM regulation, and Department policy;
- Requiring the same level of reporting on daily assignments/work completion from employees participating in the Program they require of non-participating employees;
- Discussing the Telework Agreement with the employee and work to resolve any challenges that may occur;
- Collaborating with his or her assigned EXO to ensure that SF-50 forms accurately reflect the official worksite of assigned employees; and
- Clearly defining and communicating work assignments and expectations to all employees and providing regular and frequent review of the work of employees to ensure they meet performance requirements.

F. Employees are responsible for:

- Completing the Program training and obtaining the certificate of training completion for first-level supervisor for Program participation consideration;
- Annually renewing the Telework Agreement;
- Adhering to and operating under the provisions of the Telework Agreement, including observing hours of work in accordance with the Telework Agreement and established Department policies;
- Complying with OPM regulations, and Department policies for requesting approval of leave or unscheduled telework;
- Complying with all Government laws and regulations, and Department policies while working at an approved alternative worksite;
- Providing prompt notification to the supervisor whenever any problems arise at the approved alternative worksite which adversely affect the employee's ability to work; and
- Submitting an updated Telework Agreement for major changes (i.e. a change in the designated telework day).

VII. DESCRIPTION OF THE PROGRAM

(See Section VI, Part E. for specific information about employee responsibilities.)

- A. Participation in the Program is voluntary and available to employees, with the supervisor's and approving official's approval, who meet the requirements (See Section VIII, Part A). Prior to participating in the Program, and unless otherwise determined by the Secretary, both the employee and the employee's supervisor must each complete annual telework training.
- B. Employees approved to participate in the Program are limited to teleworking a maximum of one work day per week (in whole or in part).

Employees outside of the local commuting area of Washington, D.C. or an ED Regional office with an approved (signed prior to May 31, 2018) 100 percent telework agreement or a telework based reasonable accommodation are excluded from the one work day per week Program limitation. However, consistent with the provisions of this policy and other applicable laws, rules, regulations and policies, such agreements are subject to periodic review, modification or rescission.

- C. The Program is comprised of the following types of schedules:

1. Fixed /Regular and Recurring Telework: The employee teleworks on an on-going regular and recurring basis a maximum of one day per workweek. Work schedules must identify the day and the time that the employee will typically telework. Supervisors may initiate or approve changes to fixed telework to meet ED's operational or an employee's needs.

2. *Situational (As-needed) Telework*: The employee teleworks on an occasional, non-routine, irregular basis. Individuals may also use this type of telework during emergency situations declared by OPM, or as an integral part of ED's plans for COOP or Business Continuity Plan (BCP) allowing the Federal Government to remain responsive to the nation at all times. Employees must be Telework-Ready and obtain prior approval from his or her supervisor to participate when an "unscheduled telework" option is offered.
- D. Teleworkers may participate in some Alternative Work Schedules (AWS) in combination with a Telework Agreement. However, all employees must work from the official worksite location a minimum of four (4) days per work week.
- For example, an employee may participate in a 5-4-9 compressed work schedule (CWS) in combination with a telework agreement: Week 1: The employee has one (1) telework day; and Week 2: The employee has one (1) day off.
- Employees on a 4/10 CWS are prohibited from participating in Fixed/Regular and Recurring Telework. However, employees on a 4/10 CWS may participate in Situational (As-needed) telework.
- For information regarding Alternative Work Schedules refer to HCP 610-3.
- E. Part-time employees are prohibited from participating in Fixed/Regular and Recurring Telework. However, part-time employees may participate in Situational (As-needed) telework. For information regarding the Part-time Employment Program refer to HCP 340-1.
- F. Program participants are required to telework on the day/days when OPM declares/announces "Federal Offices are Closed-Emergency and Telework-Ready Employees Must Follow Their Agency's Policies." If a Program participant is not Telework-Ready (see Definition of Telework-Ready) on a day that Federal Offices are closed, the Program participant must request leave.
- G. The Telework Agreement may be terminated or altered by his or her supervisor if the employee no longer meets the required criteria. (See VIII B. 3. a for additional information.)
- H. A Telework Agreement, including the Telework Schedule, a Telework Technology Assessment Worksheet, completion of Program training, and an Employee Self-Certification Safety Checklist, are required for all employees in the Program, regardless of whether the telework is performed on a fixed/regular and recurring basis or on a Situational/As-needed basis.
- I. Employees with approved telework agreements must obtain approval from their supervisors prior to temporarily working from an alternative worksite other than the designated and pre-approved alternative worksite.

- J. For changes in alternative worksites expected to last thirty (30) or less days, employees must send an email to his or her supervisor requesting the temporary change. The supervisor will respond to the request via email. For changes expected to last more than thirty (30) days, employees must submit a new Telework Agreement.
- K. Employees must have an approved Telework Agreement in place to telework when an “unscheduled telework” option is offered by OPM. Additionally, the employee must have sufficient work to perform remotely. “Unscheduled telework” must be approved by the supervisor, preferably in advance, or as soon as feasible.
- L. Employees who are declared “emergency employees” for COOP and BCP purposes are required to have a Telework Agreement on file. “Emergency employees” may telework a maximum of one (1) day per week, unless their participation in a COOP or BCP activity requires additional days of telework.
- M. Participation in the Program is a benefit, not a right, even if the employee’s position is considered “eligible” by OPM and Department standards. When an employee makes a request in writing to participate in the Program, the request shall address the position and employee criteria set forth in Section VIII, Part A.

The supervisor must consider the request and make recommendations to the Approving Official for approval or disapproval of the employee’s request to participate in the Program no later than ten (10) working days from the date of receipt of the request. If the request is denied, the supervisor must provide, in writing, the reason(s) for the denial and provide appropriate appeal rights.

- N. An employee’s participation in the Program shall not diminish the employee’s performance or adversely affect the performance of other employees or degrade mission accomplishment by the PO or the Department. If the employee’s level of performance declines while participating in the Program, it may be a condition for removal from the Program (see Section VIII, B. 3 for additional information).
- O. Departmental policies on tour of duty, work schedules, and leave apply to all employees participating in the Program. The supervisor approves the employee’s work schedule, including the days and times that the employee will work at the official worksite and at the alternative worksite.

The approval will be consistent with the requirements of the specific organization, Department policies, regulations, and Government-wide policy.

- P. The provisions for working extra hours while an employee is at an official worksite also apply to an employee who is on a Telework Agreement. Employees may only work extra hours if they receive prior approval from their supervisors.
- Q. As part of contingency planning, in the event of a pandemic flu or other emergency, all managers and supervisors will ensure that employees who have been designated as “Emergency” have an approved Telework Agreement in place.

The Telework Agreement will be annotated to be activated only during an OPM-declared emergency or an emergency which requires activation of the COOP or BCP. Supervisors should perform periodic “dry run tests” with “Emergency” employees working at the alternative worksites, prior to an emergency situation, to ensure effective working conditions and communications.

Employees identified as “back-up” to emergency employees should also have approved Telework Agreements in place, which will be activated only during a declared emergency. All supervisors and employees, including those who are participating in the Program, must adhere to all of the guidance contained in both this and the Pandemic Flu Plan policy (HCP 610-2, *Pandemic Flu*). Additional guidance regarding COOP may be found at Departmental Directive, OM: 5-102: *Continuity Program*.

During any period that the Department is operating under the COOP, the COOP shall supersede this policy.

- R. It is important to distinguish between ordinary requests to telework and requests for telework as a reasonable accommodation for a qualified individual with a disability. For additional information on reasonable accommodations, please refer to the Department’s *Handbook on Reasonable Accommodations*.
- S. The official worksite is the official duty station unless, in the rare occasion, the employee is not scheduled to report to the official worksite at least twice each biweekly pay period on a regular and recurring basis. In those instances, the official duty station is the alternative work site, with limited exceptions. Reassignment of official worksite may have implications on locality pay, as the new location may be a different locality pay area than the original worksite. For information regarding exceptions see 5 CFR §531.605(d) (2)–(4).

VIII. PROGRAM REQUIREMENTS/GUIDELINES

A. APPROVAL CRITERIA

The decision to approve the employee’s request to participate in the Program will be made by the approving official or designee and the supervisor, based upon the following criteria:

1. POSITION CRITERIA

- a. Whether a position is suitable for the Program depends on the specific job duties. The job title, type of appointment, work schedule, or grade are not factors in determining if a position is suitable for the Program. Employees in supervisory or managerial positions are eligible to participate in the program as long as they meet the position and employee eligibility criteria.

- b. A position may be suitable for the Program, if:
 - 1. Work activities are portable and can be performed effectively outside the office;
 - 2. Job assignments are easily quantifiable or primarily project oriented;
 - 3. Contact with other employees and customers is predictable;
 - 4. The technology needed to perform the job off-site is available;
 - 5. Cyclical work does not present a problem;
 - 6. Privacy Act concerns can be adequately addressed; and
 - 7. Health and safety concerns can be adequately addressed.
- c. A position may NOT be suitable for the Program if:
 - 1. The employee needs to have daily face-to-face contact with the supervisor, other employees, customers, or the public;
 - 2. The employee is required to handle directly, on a daily basis, secure materials that potentially can cause a breach if transmitted over the Internet or taken out of the office.
 - 3. The Department cannot provide any special facilities or equipment that is deemed necessary to perform the job; or it would be impractical for the Department to duplicate the same level of privacy protection at the alternative worksite.

2. EMPLOYEE ELIGIBILITY CRITERIA

The following characteristics will help determine an employee's eligibility for participation in the Program.

- a. The employee has **NOT** been disciplined for being absent without permission for more than five (5) days in any calendar year (January 1–December 31) (5 U.S.C. Section 6502(a) (2) (A)).
- b. The employee has **NOT** been disciplined for violations of subpart G (“Misuse of Position”) of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.
- c. The employee's most recent Rating of Record, at a minimum, must be “Results Achieved” or equivalent performance category.

- d. The employee is **NOT** currently on a Performance Improvement Plan (PIP) for current performance below the “Results Achieved” (or equivalent performance category) level, even if his or her most recent Rating of Record was at the “Results Achieved” or higher level.
- e. Any new Department employee currently serving a probationary period (or the trial period in the excepted service) must be employed in his or her position under performance standards for at least 120 calendar days, or a period of time deemed appropriate by his or her supervisor, and be performing at a level that is at the “Results Achieved” (or equivalent performance category) level. Exceptions may be considered for anticipated weather-related or COOP circumstances.
- f. The employee can satisfy the alternative worksite requirements.

Note: For all specific telework requirements, also refer to 5 USC §6502(A) (B)

B. TELEWORK AGREEMENTS

1. GENERAL

- a. The Telework Agreement is a written agreement between the employee and the supervisor requiring each to adhere to applicable guidelines and policies. Once submitted for approval, the Telework Agreement constitutes a request to participate in the Program. Employees are not authorized to telework until the training has been completed, and the Telework Agreement is approved.
- b. The Telework Agreement will cover items such as the voluntary nature of the arrangement; length of the telework assignment; whether it is a fixed or as-needed agreement; hours and days of duty at each worksite; responsibilities for timekeeping, leave approval, and requests for overtime and compensatory time; performance expectations; proper use and safeguarding of Government property and records; standards of conduct; and completion of required program evaluation materials.
- c. Prior to participating in the Program, the employee must complete the automated telework agreement, including the Telework Work Schedule and the Telework Technology Assessment Worksheet.
- d. If an employee has specified that the alternative worksite will be the employee’s home, the Employee Self-certification Safety Checklist is also required.
- e. Employees are required to renew Telework Agreements annually through the Telework Agreement system of record. Telework Agreements expire one year after approval. Employees with expired Telework Agreements are not authorized to telework and, thereby, are no longer Telework-Ready.

2. CHANGES TO TELEWORK AGREEMENT

- a. An employee approved to telework must be available to work at the official worksite when a supervisor, in his or her discretion, makes the determination that the employee's presence is required. (This is not applicable if the employees' official worksite is his or her telework location). Where possible, the supervisor will make every effort to provide the employee at least one day's advance notice.

A teleworker may request to telework on an alternate day when the teleworker is required to report to the official worksite on a regularly scheduled telework day.

When a teleworker is required to work at the official worksite (for example, to attend an on-site meeting), he or she should plan to be in the office for the entire workday.

- b. While teleworking, if required to return to the official worksite on short notice, the teleworker must report within a reasonable amount of time. Items to take into consideration include traveling distance and mode of transportation. Teleworkers and supervisors must discuss these items in advance as in some cases there may not be sufficient time for the employee to report to the official worksite.
- c. Ad hoc requests by the employee to change his or her scheduled telework day in a particular week or biweekly pay period must be submitted in writing to, and approved in advance by, the supervisor.
- d. Ad hoc requests to telework on an as-needed basis (such as on an occasional, one-time or irregular day that is separate from any regularly scheduled telework) must be submitted in writing to, and approved in advance by, the supervisor.
- e. A permanent change in the telework arrangement requires a new Telework Agreement and supervisory approval. The changes should be completed as soon as feasible.

For example, if the employee currently has a fixed telework day on Monday but now wants to permanently change that schedule to fixed telework day on Thursday that change will require a new Telework Agreement.
- f. If a new supervisor is assigned, a review of assigned employee Telework Agreements must be conducted and Telework Agreements may be revised in the event that the new supervisor determines that current telework participation impacts the needs of the organization.

3. TERMINATION OF TELEWORK AGREEMENTS

- a. Supervisors and managers will make an effort, where appropriate, to counsel employees regarding specific problems before canceling an employee's participation in the Program. The supervisor or employee can terminate a

Telework Agreement at any time. In most instances, the supervisor or employee should provide a two-week advance written notice of Program participation changes. If the supervisor determines that the telework arrangement must be terminated, he or she must use the "Telework Termination Form." (Located in the Telework Program automated system.)

- b. The supervisor may remove an employee from the Program for one or more of the following reasons:
 - 1. The employee is placed on leave restriction (the employee may re-request participation in the Program when the leave restriction has been lifted);
 - 2. The employee is placed on a Performance Improvement Plan (PIP). The employee is eligible to request reinstatement 60 days after successful completion of the PIP;
 - 3. The employee fails to adhere to the requirements specified in the Telework Agreement including compliance with the facilities and technology requirements;
 - 4. Conditions have changed such that all of the employee's work must now be done at the employee's official worksite;
 - 5. The employee no longer meets the eligibility requirements; (See Section VIII, 2);
 - 6. The employee has demonstrated an inability to adhere to the provisions of the Telework Agreement, to include failures such as reduced work production, non-responsiveness to telephone calls and emails, and non-availability. In addition, whether working at the alternative worksite has proven to place an undue burden on the supervisor or other office staff may be taken into consideration;
 - 7. The employee's alternative worksite no longer meets the prescribed requirements;
 - 8. The employee performance is not at Results Achieved or equivalent level;
 - 9. The employee does not meet the conduct-related eligibility requirements;
 - 10. The employee is reassigned or detailed to a new position (in such case the Telework Agreement will be reviewed; and updated as needed); or
 - 11. There is a change in business processes such that the employee's existing telework schedule negatively impacts operations of the organization. In these instances, supervisors may remove or reduce the amount of telework days.

- c. Unless otherwise specified, an employee may reapply to participate in the Program thirty (30) calendar days after the date of his or her removal from the Program, provided that his or her performance is at a Results Achieved or equivalent level.
- d. In the event that operational exigencies require all employees to report to the official workplace, a manager may determine the need to temporarily suspend telework. Affected employees will be advised of the expected date for resumption of the suspended schedule. If the employee's official worksite is his or her telework location, the employee may be required to report to an agreed upon location.
- e. In the event that the employee elects to terminate his or her Telework Agreement, the request for termination is effective the pay period following the submission of the Program termination request. Upon termination of the Telework Agreement, the employee will be eligible to reapply to the Program (90) calendar days after the effective date of the termination.

C. TIME AND ATTENDANCE

1. GENERAL

For purposes of documenting time and attendance:

- a. **Fixed/Regular and Recurring Telework** work schedules must identify the day and times the employee will work at the alternative worksite. Work schedules may parallel those in the office or be structured to meet the needs of participating employees and their supervisors.

Situational (As-needed) the employee must identify the day and time the employee worked at the alternative worksite.

- b. If the Government is open and OPM announces that employees have the option to take "unscheduled leave" or "unscheduled telework," each Program participant must obtain approval from his or her supervisor prior to performing unscheduled telework or using unscheduled leave.

Managers and Supervisors cannot require Program participants to participate in unscheduled telework and may also deny the request for unscheduled telework or unscheduled leave.

Any unscheduled telework declared by OPM or as an integral part of ED's plans for COOP and BCP will not count against the fixed/regularly scheduled telework workday that an employee will have for that particular week.

2. LEAVE

- a. Annual leave, sick leave, or leave without pay shall be requested and approved in accordance with existing laws and regulations, and Departmental policies.
- b. Employees on pre-approved leave for the entire workday or employees who have notified their supervisors of their intent to use unscheduled leave will be charged leave accordingly.
- c. Telework cannot be used as a replacement for childcare, elder care, etc. Employees will be charged leave if the employee is unable to successfully telework.
- d. In the event that an employee is on pre-approved paid leave on a day when OPM declares that federal offices are closed due to weather- related issues or emergency circumstances, the employee will generally remain in a leave status. However, there may be instances that warrant a change in leave status (e.g., employee is scheduled to use sick leave for a medical appointment and appointment is canceled, employee has scheduled annual leave but is a Program participant, is Telework-Ready and agrees to perform telework in lieu of the scheduled leave, etc.)

3. CERTIFICATION AND CONTROL OF TIME AND ATTENDANCE

- a. Proper monitoring and certification of employee work time are critical to the success of the Program. Supervisors must require employees to use the correct Telework Indicator codes when recording time and attendance.
- b. Employees on Telework Agreements must report their telework hours with the appropriate Telework Indicator Code in WebTA or the current time and attendance reporting system. (Refer to WebTA or the current time and attendance reporting system for additional information for a listing of the telework codes.)

4. ADMINISTRATIVE LEAVE, DISMISSALS, DELAYED ARRIVAL, AND EMERGENCY CLOSINGS

- a. During an OPM-declared emergency situation, such as closing due to severe weather, etc., Program participants are required to work.

If a Program participant does not meet the definition of Telework-Ready ((a) a current, written Telework Agreement in place; (b) possesses the appropriate equipment (i.e., computer, Internet connection, telephone access, etc.) at the alternate worksite, and (c) has portable work that can be performed at an alternative worksite for all, or part of, the employee's regularly scheduled tour of duty for the day), the employee **must take Leave** for all or any portion of the day that the employee ceases to be Telework-Ready.

(For information regarding the use of Leave see HCP 630-1, *Leave Administration*)

- b. During a disruption in government operations, such as an OPM-declared emergency, employees who are Telework-Ready and are working from their alternate worksite at the time of the disruption are required to complete their normal workday or take approved leave for any period during which work is not performed.
- c. Exceptions are as follows:
 - 1. If for any reason beyond the control of the employee, he or she cannot perform work at home or at an approved telework location (such as a power failure or natural disaster), the supervisor may grant administrative leave, consistent with Department Leave policy (HCP 630-1); and
 - 2. If management announces a discretionary closing.

Employees who are teleworking on the day of a discretionary closing are considered on duty and will receive the same discretionary benefit as employees who reported to their official worksite.

5. PAY FOR TELEWORK

- a. Employees who perform work (including telework) during their regular tour of duty on a day when the Department is closed (or when other employees are dismissed early) are NOT entitled to receive overtime pay, credit hours, or compensatory time off for performing work during their regularly scheduled non-overtime hours. (For additional information refer to HCP 550-3, *Premium Pay*.)
- b. Employees are in a pay status while working at an alternative worksite. If the employee works overtime, credit hours, or compensatory time that has been approved in advance, he or she will be compensated in accordance with applicable law, OPM regulation, and Department policy.

6. TELEWORK IN EMERGENCY SITUATIONS

- a. If a disruption in government operations requires activation of the COOP or a PO's BCP, employees designated as "emergency employees" will work in accordance with those plans;
- b. In emergency situations, Washington, D.C. area employees should follow OPM operating status announcements and any additional agency-specific procedures when an emergency occurs. For ED building specific emergencies, notifications will be sent via email and by contacting the 866-I-AM-OK-ED line. Employees teleworking from home, or at an alternative worksite, who have access to a

computer, will be able to read and send email by following the steps outlined in HCP 610-2, Section VIII, Part B.

When regional offices are affected by a Government-wide emergency, each regional office's Designated Official, or his or her representative, will make the decision regarding operating status. (For additional information, refer to the Departmental Directive OM: 2-104, *Occupant Emergency Organizations and Plans*.)

D. FAIR LABOR STANDARDS ACT (FLSA)

The existing rules under Title 5 U.S.C. §5542 and the FLSA that govern overtime also apply to employees working under a telework arrangement. However, employees must seek pre-approval for any overtime consistent with the Department's policies and procedures for overtime. (For additional information refer to HCP 550-3, *Premium Pay*.)

E. INJURIES, CONTINUATION OF PAY AND WORKERS' COMPENSATION

Telework employees are covered by the Federal Employees Compensation Act (FECA) for continuation of pay or workers compensation for on-the-job injury or occupational illness while they are teleworking.

F. REASONABLE ACCOMODATION

1. When an employee requests that he or she be allowed to telework as an accommodation for his or her disability, this request will be evaluated by the employee's immediate supervisor as a reasonable accommodation request, not as a regular telework request.
2. The employee must articulate the disability-related reason for telework and how telework will enable him or her to perform essential job functions. The employee must also provide medical documentation stating his or her disabling condition as it relates to the request and may have to provide such documentation periodically in order to have telework as an accommodation.
3. The immediate supervisor will follow the Department's reasonable accommodation procedures to make a decision to grant or deny the request. Please see the Department of Education's Handbook for Reasonable Accommodations for information on how to request a reasonable accommodation.

G. PAY ISSUES

1. DUTY STATION

An employee's official worksite is normally the location of an employee's position of record where the employee regularly performs his or her duties. However, if an employee under a Telework Agreement is not scheduled to report to the official worksite at least twice each biweekly pay period on a regular and recurring basis,

then the telework site is the official duty station and the employee's pay must be based on the locality pay applicable to the telework site.

- a. All pay, leave, and travel entitlements will be based on the employee's official duty station.
- b. In circumstances where the official duty station is reassigned to the telework location, trips to the main worksite are "official business" and the employee is entitled to travel reimbursement. 5 U.S.C. §5702

2. SPECIAL SALARY RATE

The employee's official duty station serves as the basis for determining special salary rates.

3. PREMIUM PAY

The normal rules apply for night differentials, Sunday, and holiday pay whether work is accomplished at the official worksite or alternative worksite. Official work schedules determine the entitlement to premium pay.

H. FACILITIES ISSUES

1. HOME/ALTERNATIVE WORKSITE OFFICE SPACE

- a. Employees participating in the Program must have a designated work space or work station for performance at the alternative worksite. Requirements will vary depending on the nature of the work and the equipment needed to perform the work. At a minimum, an employee must be able to communicate by telephone and by email (with computer equipment as noted in Section H (2) below) with the supervisor and other employees during the telework day and have access to high speed Internet at the alternative worksite.

Failure to maintain a safe work environment in accordance with these provisions is grounds for terminating participation in the Program.

- b. Telework-Ready employee must obtain prior approval from his or her supervisor to telework from an alternative worksite that is not his or her designated alternative worksite.

2. UTILITY EXPENSES

The Department does NOT pay utility costs associated with working from home or another alternative worksite. Exceptions apply only where the personal expense directly benefits the Government, e.g., business related long distance calls on the employee's personal phone.

3. PARTICIPATION IN 100 PERCENT TELEWORK

- a. Employees who are approved (prior to May 31, 2018) to participate in 100 percent telework *are not entitled to* a reserved workstation or office located at an ED facility but will be provided with a functioning workstation at an ED facility for the employee's use on days that the employee must report to an ED facility.

I. TELECOMMUNICATIONS AND EQUIPMENT

1. TELEPHONES

Federal agencies may use appropriated funds to pay for telephone installation and basic service in private residences for official Government business only and specific to telework. POs may also pay for the use of the employee's personal phone for business related long-distance phone calls. Current GSA regulations (31 USC §1348) allow for reimbursement of expenses incurred as a result of official duties on SF-1164, including telephone call expenses approved by the Department.

The payment of funds for telework equipment will be permitted if the budget allows for such.

2. COMPUTERS, GOVERNMENT-OWNED OR ACQUIRED EQUIPMENT, ETC.

Government-owned or government-acquired property, including computers, software, and other telecommunications equipment, should be used by employees at their alternative worksites.¹ Employees must comply with all Departmental policies related to IT assets.

- a. The purchase and installation of telework equipment will be made when the budget allows for such. While participation in the Program may be contingent on equipment costs if equipment is needed to perform the job, alternative means of securing equipment should first be explored, e.g. use of inventory surplus, leased equipment, etc.
- b. Employees and supervisors must identify the appropriate reference sources and other materials necessary to work at the alternative worksite and ensure that the participating employee has access to those items.
- c. For purposes of the Program, management may inspect the employee's home worksite, as long as the employee is given a minimum of 48 hours advance notice.

¹ To facilitate the provision of off-site technical assistance for Government-owned equipment and software, POs are urged to supply employees with laptops, software, modems, and communications software, that is compatible with and comparable to that used in the office worksite.

Management may conduct the inspection of the employee's worksite at periodic intervals during the employee's normal working hours to ensure proper maintenance and operation of Government-owned property, and to ensure compliance with the Safety and Occupational Health checklist.

J. COMPUTER SECURITY REQUIREMENTS

1. HARDWARE/SOFTWARE

Only hardware/software configurations approved by the Federal Government and authorized by an approving official for the alternative worksite shall be installed on government-owned property. If the employee is using a government-owned property, under no circumstances should the employee be allowed to add non-Government owned or unauthorized hardware or software, such as bulletin board software, to the home worksite station. For additional information refer to the Administrative Communication System: *Handbook for Software Management & Acquisition*.

2. SECURITY COMPLIANCE

Telework employees must comply with organizational security procedures and ensure adequate security measures are in place to protect any government-furnished equipment from being damaged, stolen, or accessed by unauthorized individuals.

For additional security requirements regarding telework and use of personal electronic devices, contact the Information Assurance Services (IAS) Policy and Planning Team or refer to the Telework and Remote Access Security Guidance.

K. PRIVACY ACT AND SENSITIVE DATA

1. DISCLOSURE

Teleworking employees must ensure that records subject to the Privacy Act of 1974 and other sensitive data are not disclosed or exposed to anyone except those who possess authority to access such information in order to perform their duties.

2. ACCESS

Access to sensitive materials must be consistent with regulations on Production or Disclosure of Information or Materials (34 C.F.R. Parts 5 and 5b, the Privacy Act of 1974, 5 U.S.C. §552a, and the Freedom of Information Act, 5 U.S.C. §552).

L. DEPENDENT CARE COSTS

The Program is not intended to serve as a substitute for child care, day care, elder care, or any other type of dependent care.

M. TAX BENEFITS

Generally, an employee who uses a portion of his or her home for telework does not qualify for any Federal tax deductions. However, employees should consult their tax advisors or the Internal Revenue Service for information on tax laws and interpretations that address their specific circumstances.

For additional information on the Program and how to apply for Telework, please visit the Telework web page on the connectED website.

For information on the Government Telework guidance, please see the OPM website.