

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2006–B3]

Federal Management Regulation; Guidelines for Alternative Workplace Arrangements

AGENCY: Office of Governmentwide Policy (MP), GSA.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin establishes guidelines for implementing and operating alternative workplace arrangements (AWA). These policies are designed to assist agencies in the design and operation of AWA programs as well as to resolve AWA issues commonly faced by agencies.

EFFECTIVE DATE: This bulletin is effective March 17, 2006.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Regulations Management Division, General Services Administration, Office of Governmentwide Policy (MPR), Washington, DC 20405; e-mail, stanley.langfeld@gsa.gov, telephone (202) 501–1737.

Dated: March 13, 2006.

John G. Sindelar,

Acting Associate Administrator, Office of Governmentwide Policy.

General Services Administration

[FMR Bulletin 2006–B3]

Real Property

TO: Heads of Federal Agencies

SUBJECT: Guidelines for Alternative Workplace Arrangements

1. *What is the purpose of this bulletin?* This bulletin establishes guidelines for implementing and operating alternative workplace arrangements (AWA). These policies are designed to assist agencies in the design and operation of AWA programs as well as to resolve AWA issues commonly faced by agencies.

2. *What is the effective date of this bulletin?* This bulletin is effective March 17, 2006.

3. *When does this bulletin expire?* This bulletin will remain in effect indefinitely until specifically cancelled.

4. *What are the terms and definitions?* Following are terms and definitions used in and for the purposes of this bulletin:

a. *Telework and telecommuting* are used interchangeably and are defined as the act of performing all or a portion of work functions at an alternative worksite, such as working from home or

a telework center, under circumstances that reduce or eliminate the employee's commute. To be considered telework, it must occur at least one day per week on a regular and recurring basis and does not include (1) situational telework (unscheduled, project-oriented, non-recurring, and/or irregular telework and/or any teleworking that occurs less frequently than once a week on a recurring basis) or (2) full-time mobile work arrangements.

b. *AWA* includes telecommuting, hoteling, virtual offices, telework centers, hot desking, and other distributed workplace arrangements.

c. *Telework center:* A facility that (1) provides workstations and other office facilities/services that are utilized (typically on a fee for use/service basis) by employees from several organizations and (2) is used as a geographically convenient alternative worksite for its users.

d. *Excess personal property/equipment:* Excess personal property is any personal property that is no longer required by the holding agency for the discharge of its responsibilities.

e. *Virtual office or virtual workplace:* A work environment in which employees work cooperatively from different locations using a computer network (in lieu of a single building or other single physical location). As opposed to a single location site (facility) where workers are housed, the virtual office is typically a collaborative communications medium, such as a computer network, where workers gather electronically to collaborate and/or carry out other work activities. The actual physical locations of the employees working in a virtual office can be temporary or permanent and can be nearly anywhere, such as their homes, satellite offices, hotel rooms, corporate offices (shared work space), airports, airplanes, or automobiles.

f. *Hoteling:* An AWA in which (1) employees work in one facility (facility A) part of the time and at one or more alternative worksites the rest of the time and (2) when working in facility A, these employees use non-dedicated, non-permanent workspaces assigned for use by reservation on an as-needed basis.

g. *Hot desking* (also known as free address or touchdown workstations): An AWA in which (1) employees work in one facility (facility A) part of the time and at one or more alternative worksites the rest of the time and (2) when working in facility A, these employees use non-dedicated, non-permanent workspaces assigned on a first come, first served basis.

5. *What is the background?*

a. 40 U.S.C. § 587(c)(3), (Pub. L. 104–208, div. A, title I, § 101(f), title IV, § 407(a), (September 30, 1996)), as revised, restated and recodified without substantive change by Pub. L. 107–217, August 21, 2002, authorizes GSA to provide guidance, assistance, and oversight, as needed, regarding planning, establishment and operation of AWA.

b. In accordance with 40 U.S.C. § 587(c)(2), (Pub. L. 104–208, div. A, title I, § 101(f), title IV, § 407(a), (September 30, 1996)), as revised, restated, and recodified without substantive change, by Pub. L. 107–217 (August 21, 2002), when considering whether to acquire any space, quarters, buildings, or other facilities for use by employees of any Executive agency, the head of that agency shall consider whether the need for the facilities can be met using AWA.

c. In accordance with section 359 of Public Law 106–346, effective October 23, 2000, each Executive agency must establish a policy under which eligible employees of the agency may participate in telecommuting to the maximum extent possible without diminished employee performance.

d. Guidance and policy from the Office of Personnel Management (February 9, 2001), <http://www.telework.gov/twlaws.asp>, as reflected in 41 CFR. § 102–74.590, instructs Federal agencies as follows:

Many of you already have telecommuting policies, but this does not necessarily mean you are in compliance with the new law. The purpose of the law is to require that each agency take a fresh look at the barriers that currently inhibit the use of this flexibility, act to remove them and increase actual participation. The law recognizes that not all positions are appropriate for telecommuting; therefore, each agency must identify positions that are appropriate in a manner that focuses on broad objective criteria. Once an agency has established eligibility criteria, subject to any applicable agency policies or bargaining obligations, employees who meet them and want to participate must be allowed that opportunity if they are satisfactory performers.

e. 40 U.S.C. § 587(d)(2), Public Law 105–277, div. A, § 101(h), title VI, § 630, October 21, 1998, as revised, restated and recodified without substantive change by Public Law 107–217, August 21, 2002, requires that each of the following departments and agencies, in each fiscal year, must make at least \$50,000 available from amounts provided for salaries and expenses to pay telework center program user fees:

- (1) Department of Agriculture,
 - (2) Department of Commerce,
 - (3) Department of Defense,
 - (4) Department of Education,
 - (5) Department of Energy,
 - (6) Department of Health and Human Services,
 - (7) Department of Housing and Urban Development,
 - (8) Department of the Interior,
 - (9) Department of Justice,
 - (10) Department of Labor,
 - (11) Department of State,
 - (12) Department of Transportation,
 - (13) Department of the Treasury,
 - (14) Department of Veterans Affairs,
 - (15) Environmental Protection Agency,
 - (16) General Services Administration,
 - (17) Office of Personnel Management,
 - (18) Small Business Administration,
 - (19) Social Security Administration,
- and
- (20) United States Postal Service.

6. *Who should we contact for further information regarding locating Federal facilities in rural areas?*

General Services Administration,
Office of Governmentwide Policy,
Regulations Management Division,
Attn: Stanley C. Langfeld,
1800 F Street, NW.,
Washington, DC 20405.
Telephone Number: (202) 501-1737.
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Guidelines for Alternative Workplace Arrangements (AWA)

I. Can agencies provide workplace equipment for use at alternative worksites such as employee residences or telework centers?

Yes. Agencies may provide/procure either new or excess equipment for alternative worksites as long as it is clear that the equipment continues to belong to the Government and there is an audit trail indicating the location of the equipment. Regarding telecommunications equipment and services that agencies provide to and/or purchase for employees working in home-based or other alternative workplace arrangements (AWA), the following apply:

a. In accordance with Public Law 104-52, section 620; 31 U.S.C. § 1348 note, agencies may use appropriated funds to install telephone lines and necessary equipment, and to pay monthly charges, in any private residence of an employee who has been authorized to work at home in accordance with guidelines issued by the Office of Personnel Management. The head of the department, division, bureau, or office must certify that

adequate safeguards against private misuse exist, and that the service is necessary for direct support of the agency's mission.

b. This authority includes facsimile machines, internet services, broadband access, e-mail services, voice over IP equipment and services, desktop videoconference equipment and services, and, in general, any other telecommunications equipment and services the agency deems needed by individuals working in home-based AWA.

c. Based on the same authority used for installing telecommunications equipment for a government employee in a government contractor's office, agencies also are authorized to provide/procure the telecommunications equipment/services described in paragraph b, above, for employees in non-home-based AWA (such as telework centers).

II. Can agencies provide teleworkers with underutilized equipment (for use in their alternative worksites) before it is declared excess?

Yes. Agencies may provide underutilized computers or other equipment for use by teleworkers or for use in other AWA situations. In accordance with 41 CFR §§ 102-36.30 and 102-36.35, even though equipment may no longer be used for its original purpose, employee, or location, the agency must determine if the equipment can serve other agency uses, such as in alternative worksites. The equipment does not officially become excess until the agency determines that it cannot be used in main or alternative worksites.

III. Once declared excess by one agency, can computer and/or other equipment be acquired for use by another agency for its telework or other alternative worksite program?

Yes. When items are no longer needed by an agency, they are reported to GSA as excess in accordance with 41 CFR part 102-36, Disposition of Excess Personal Property, for possible transfer to other Federal agencies. To learn more about the transfer of excess personal property between Federal agencies, visit *About Excess Transfers*, on GSA's Property Disposal website.

IV. What help desk and/or other technical support services, if any, can agencies provide to and/or purchase for employees working in home-based telework or other alternative work arrangements?

Agencies may provide or purchase help desk and/or other technical support to employees working in any

approved AWA, provided the agency deems the support necessary for successful accomplishment of officially assigned work. Such support services may be provided on-site at the employee's alternative worksite, via telecommunication services such as remote control, at a service site conveniently located to the alternative worksite, at the employing organization's local facility, or using other reasonable means/locations that minimize disruption of the workflow.

V. Can agencies provide/procure office furnishing (e.g., desks, chairs) for alternative worksites?

Yes. As with computers and equipment, agencies may provide their own new or used furniture or excess furniture from another agency for alternative worksites, as long as it is clear that the furniture continues to belong to the Government and there is an audit trail indicating the location of the furniture.

VI. Can agencies pay the utility costs for alternative worksites?

The answer depends on the type of alternative worksite. For residential (home-based) alternative worksites, the answer is no. A GAO decision concluded that, absent specific legislative authority, an agency may not use appropriated funds for the reimbursement of employees for incremental utility costs for heating, air conditioning, lighting, and the operation of government-furnished data processing equipment associated with the residential AWA (B-225159, June 19, 1989). For alternative worksites contractually procured by the agency (e.g., telework centers), the agency may pay utility costs associated with employee usage of the site, as long as such expenses are provided for in the contract between the agency and the provider of the site. Regarding alternative worksite arrangements not covered by the latter, the agency may not pay utility costs.

VII. Can agencies require employees to sign a safety checklist to participate in an alternative workplace arrangement? What impact does such a checklist have regarding the Federal Employees' Compensation Act?

The answer depends upon the intended use of the checklist. If the checklist is used solely for program purposes, such as acquainting the teleworker with workplace safety, then the agency may require employees to sign such a checklist to participate in the program.

On the other hand, if the checklist is intended to have legal standing for safety and/or liability purposes, then the answer is no. In accordance with Federal Employees' Compensation Act (FECA) Bulletin 98-9 (1998), in providing guidance for determining whether employees injured while working at alternative worksites meet the "performance of duty" criterion for coverage under FECA, employees who are directly engaged in performing the duties of their jobs are covered by FECA, regardless of whether the work is performed on the agency's premises or at an alternative worksite. There is no statement (such as a safety checklist) that can be signed by the employee to negate this coverage.

VIII. Can agencies allow employees to pay for their own alternative workspace? Can agencies establish cost sharing arrangements in which the agency and the employee share the costs for alternative worksite equipment, facilities, and/or services used by the employee?

In cases in which the agency requires an employee to telework or otherwise utilize an alternative worksite, allowing or requiring an employee to pay for or share the costs for the alternative workspace would be an illegal augmentation of the agency's appropriation.

If the agency is not ordering the employee to telework or otherwise utilize an alternative worksite but is, instead, merely allowing the employee to do so, the agency may allow or require the employee to pay for or share the costs for using the alternative space.

Augmentation is a concept of appropriations law that is derived from statute, specifically 31 U.S.C. § 3302(b) (miscellaneous receipts rule) and 31 U.S.C. § 1301(a) (restricting the use of appropriated funds to their intended purposes). The Government Accountability Office has held that an agency may not augment its appropriations from outside sources without specific statutory authority. The concept is related to the separation of powers doctrine. When Congress makes an appropriation, it is also establishing an authorized program level. It is, in effect, telling the agency that it cannot operate beyond the level that it can finance under its appropriation. The objective of the rule against augmentation of appropriations is to prevent a government agency from undercutting the Congressional power of the purse by exceeding the amount Congress has appropriated for that activity.

IX. Can agencies pay taxes charged for residential telephone lines and/or related equipment that is used for officially sanctioned telework purposes?

No. The providers of residential telephone lines, services, and/or related telecommunications equipment/services typically charge Federal and State taxes for the acquisition/use of these items. Federal agencies are exempt from Federal taxes and, depending on State tax law, from State taxes as well. Accordingly, agencies are not authorized to pay Federal or, in some cases, State taxes for equipment or services used by their teleworkers.

X. Can agencies authorize teleworkers to make personal use of the alternative worksite equipment provided by the agency?

Yes. The head of each agency has the authority to set personal use policies. In accordance with GSA guidance set forth in "Recommended Executive Branch Model Policy/Guidance On Limited Personal Use Of Government Office Equipment Including Information Technology," http://www.cio.gov/documents/peruse_model_may_1999.pdf, agencies can authorize teleworkers limited personal use of alternative worksite equipment. Limited personal use of the government office equipment by employees during non-work time is considered to be an "authorized use" of Government property. Authority for this policy is found at 5 U.S.C. § 301, which provides that the head of an executive department or military department may prescribe regulations for the use of its property, and Executive Order 13011 of July 16, 1996, Federal Information Technology, section 3(1), which requires the Chief Information Officers Council to develop recommendations for Federal information technology management policy, procedures, and standards.

For more info on this topic, visit the following Web site: <http://www.estrategy.gov/documents/43.pdf>.

XI. Who is responsible for the relocation and re-setup of alternative worksite workstations and equipment when an employee relocates?

If the relocation of an employee is required by the agency, then the agency is fully responsible for the relocation and re-setup of any associated alternative worksite workstation and/or equipment. If the employee relocates on her/his own accord, then the determination of responsibility for the relocation and re-setup of alternative

worksite workstations and equipment (especially agency-owned workstations and equipment) is within the discretion of the agency. When establishing AWA programs, it is the agency's responsibility to establish adequate and equitable policies to cover this issue.

XII. Must the head of an Executive agency consider whether needs can be met using alternative workplace arrangements in considering whether to acquire space, quarters, buildings, or other facilities for use by employees?

Yes. In considering whether to acquire space, quarters, buildings, or other facilities for use by employees, 40 U.S.C. § 587(c)(2) requires the head of an Executive agency to consider whether needs can be met using AWA.

XIII. What factors should an Executive agency head consider in considering whether the agency's needs can be met using alternative workplace arrangements?

Executive agency heads should consider as many of the following factors as are relevant to the agency's circumstances:

- a. Facility performance and space utilization efficiency/effectiveness;
- b. Allocation/utilization/flexibility of space to meet diverse/changing organizational needs;
- c. Workspace quality factors, quality of workforce;
- d. Individual/organizational performance;
- e. Technology utilization and return on investment;
- f. Reduced/saved facility costs per person;
- g. Reduced/avoided other expenses;
- h. Increased/earned revenue;
- i. Workplace/space flexibility to accommodate/meet diverse/changing uses, configurations, staff, and/or other organizational needs; and
- j. Environmental impact, sustainability.

XIV. Should the head of the Executive agency document the result of the agency's consideration of whether to acquire space, quarters, buildings, or other facilities for use by employees?

Yes. Documenting the relevant considerations will help the agency make more informed decisions about its immediate space needs and will provide a reference for future agency space considerations. Through early planning, the agency may be able to shorten and simplify the space acquisition process and acquire the necessary space at the most reasonable cost to the Government.

XV. Do space per person standards apply in an alternative worksite environment?

No. The Government no longer maintains space per person requirements. Under current GSA space planning guidance, space allocation should be based on organizational needs. When feasible, AWA can accommodate those needs as well as reduce overall agency space requirements. This is the essence of the requirement in 40 U.S.C. § 587(c)(2): use AWA in lieu of new space acquisition to meet agency space needs in a more cost effective and/or otherwise beneficial manner.

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OFFICE OF GOVERNMENT ETHICS

Proposed Collection; Comment Request for Modified OGE Form 450 Executive Branch Confidential Financial Disclosure Report (New First Round Notice)

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice.

SUMMARY: In August of 2005, the Office of Government Ethics published in the *Federal Register* a first round paperwork notice that it intended to modify the OGE Form 450 Executive Branch Confidential Financial Disclosure Report form, to improve its clarity and design, and to change in part the information that it collects. Because we received so many helpful comments in response to that notice, we have significantly redesigned the proposed new OGE Form 450 and are publishing another first round paperwork notice in order to provide a further comment period. After this additional first round notice and public comment period, OGE plans to submit a modified OGE Form 450 to the Office of Management and Budget (OMB) for review and three-year extension of approval under the Paperwork Reduction Act. The modified OGE Form 450 would be used for confidential disclosure financial disclosure reporting starting in 2007 under OGE's proposed amended executive branch regulations, once those regulatory revisions are finalized and become effective.

DATES: Comments by the public and agencies on this proposal are invited and should be received by May 31, 2006.

ADDRESSES: You may submit comments to OGE on this paperwork notice by any of the following methods:

- *E-mail:* usoge@oge.gov (include reference to "OGE Form 450 Paperwork Comment" in the subject line of the message).
- *Fax:* 202-482-9237.

- *Mail, Hand Delivery/Courier:* Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: James V. Parle, Associate Director, Information Resources Management Division.

FOR FURTHER INFORMATION CONTACT: James V. Parle, Associate Director, Information Resources Management Division, Office of Government Ethics; Telephone: 202-482-9300; TDD: 202-482-9293; Fax: 202-482-9237. A copy of the proposed further modified OGE Form 450 may be obtained, without charge, by contacting Mr. Parle.

SUPPLEMENTARY INFORMATION: The OGE Form 450 (OMB control #3209-0006) collects information from covered department and agency officials as required under OGE's executive branchwide regulatory provisions in subpart I of 5 CFR part 2634. The OGE Form 450 serves as the uniform report form for collection, on a confidential basis, of financial information required by the OGE regulation from covered new entrant and incumbent employees of Federal Government executive branch departments and agencies. Agency ethics officials then use the completed OGE Form 450 reports to conduct conflict of interest reviews and to resolve any actual or potential conflicts identified.

The basis for the OGE regulation and the report form is two-fold. First, section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990, 3 CFR, 1990 Comp., pp. 306-311, at p. 308) makes OGE responsible for the establishment of a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public financial disclosure under the Ethics in Government Act of 1978 (the "Ethics Act"), as amended, 5 U.S.C. appendix. Second, section 107(a) of the Ethics Act, 5 U.S.C. app., sec. 107(a), further provides authority for OGE as the supervising ethics office for the executive branch of the Federal Government to require that appropriate executive agency employees file confidential financial disclosure reports, "in such form as the supervising ethics office may prescribe." The OGE Form 450, and the underlying executive branchwide financial disclosure

regulation (5 CFR part 2634), constitute the basic reporting system that OGE has prescribed for such confidential financial disclosure in the executive branch.

Proposed Further Modifications to the Form

As noted above, in August of 2005, the Office of Government Ethics published a first round paperwork notice that it intended to modify the OGE Form 450 Executive Branch Confidential Financial Disclosure Report form, to improve its clarity and design, and to change in part the information that it collects. See 70 FR 47204-47206 (August 12, 2005). We also made our draft form as proposed to be modified available for public review and comment upon request. OGE received 18 agency comments on the proposed revised form, both in response to that paperwork notice and form-specific comments in response to the related proposed amendments to the confidential disclosure regulation noted below. Based thereon, OGE is now proposing further modifications to the OGE Form 450's design and content, and publishing in the *Federal Register* this additional first round paperwork notice.

As we noted in our first paperwork notice, the proposed modifications to the OGE Form 450 (both the previous and current drafts) are intended primarily to make it easier for filers to complete the form electronically. Modifications being proposed to the current version of the OGE Form 450 (9/02 edition) include changing the form layout from landscape to portrait. OGE expects to have a system in place by February 2007, not only for electronic completion of the new form but also for electronic filing.

Regardless of whether the form is filed electronically, the proposed modifications also are intended to make completion of the OGE Form 450 easier overall, by simplifying the instructions and placing them on the same pages as the reporting schedules so that filers will not have to scroll through multiple screens to read directions. Moreover, contacting filers with follow-up questions would be facilitated by the addition of space for the filer's e-mail address.

In response to concerns expressed about the length of the proposed modified form, we have decreased the number of pages from nine to five, or to one page if the filer has nothing to report. We did this, in part, by recombining the "noninvestment income" and the "assets and investment income" subparts into one part entitled