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TELECOMMUTING

Overview of Challenges Facing Federal Agencies

Statement of Robert E. Robertson, Director, Education,
Workforce, and Income Security Issues



Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss telecommuting and our recent work in this area. Telecommuting refers to work that is performed at an employee's home or at a work location other than a traditional business office or facility. Over the past decade, telecommuting has gained widespread attention as a business approach that may offer a variety of potential benefits to employers, employees, and society.

Last spring, the House Majority Leader asked us to identify potential regulatory, tax, and liability barriers that concern private sector employers considering telecommuting programs for their employees. In July, we briefed the Majority Leader and several other Members of Congress on the results of our research.¹ As you requested, our statement today is based largely on this work and includes our observations on telecommuting's applicability to the public sector.

In summary, perhaps the biggest challenge to establishing and expanding telecommuting programs in both the private and public sectors is management's concerns regarding the effect of telecommuting on the operation of their particular organization. These concerns relate to assessing whether the employer has the types of positions and employees suitable for telecommuting; protecting proprietary and sensitive data; and establishing cost-effective telecommuting programs. As we have said in the past, and as the Office of Personnel Management (OPM) has recently reported, a significant factor in management's decision to establish or expand telecommuting practices is the view that their organization's operation will fundamentally benefit from such practices.

Apart from the above management concerns, certain federal and state laws and regulations, including those governing taxes, workplace safety, workforce recordkeeping, and liability for home workplace injuries can also act as potential barriers to telecommuting for both the public and private sectors. For example, our work shows that the applicability of multiple state tax laws to telecommuting arrangements may be a key emerging issue. Here, the basic question for the private sector involves possible increased state tax liabilities for the employer and employee when an employee telecommutes from a state other than the one in which the employer is located. Similarly, from the public sector perspective,

¹*Telecommuting: Overview of Potential Barriers Facing Employers* (GAO-01-926, July 11, 2001).

interstate telecommuting arrangements could open up the possibility of some states “double taxing” the income of federal employee telecommuters. Overall, the application of state tax laws to telecommuting arrangements, as well as other laws and regulations enacted before the transition to a more technological and information based economy, is evolving and their ultimate impact remains somewhat unclear at this time.

Background

Telecommuting in the public sector began about 10 years ago as a federal pilot project. Its goals were to save energy, improve air quality, reduce congestion and stress on our highways, and help employees better balance the competing demands of work and family obligations. Typically, formal telecommuting arrangements establish specific times, generally ranging from 1 to 5 days per week, in which employees work at their homes or other remote locations. However, employers may also allow telecommuting on an informal basis, where arrangements are more episodic, shorter term, and designed to meet special employer or employee needs.

Although estimates vary depending on the definition of telecommuting that is used, recent data indicate that the number of employers and employees involved in telecommuting arrangements has grown over the past 10 years. In 1992, the U.S. Department of Transportation estimated that there were 2 million telecommuters (1.6 percent of the labor force) working from their homes 1 or 2 days per week. Last year, a private association that promotes the concept of telecommuting, estimated that 9.3 million employees telecommuted at least 1 day per week and 16.5 million telecommuted at least 1 day per month. These estimates show that out of 138 million wage and salary workers in the United States, about 7 to 12 percent telecommute periodically. For the federal workforce, a recent OPM survey of 97 federal agencies showed that 45,298 workers or 2.6 percent of their total workforce, telecommuted at least 52 days per year.²

²OPM, Interim Report on Telework in the Federal Government (June 2001).

Management Concerns Include Suitability, Security, and Costs of Telecommuting

In our examination of barriers to telecommuting in the private sector, we found that decisions on whether an organization ultimately adopted telecommuting programs or expanded them over time was heavily dependent on the resolution of three concerns: identifying the positions and employees suitable for telecommuting; protecting data; and controlling the costs associated with telecommuting. The concerns held by private sector management were similar to those of managers in federal agencies.

Of those management concerns that pose a potential barrier to telecommuting, the first involved identifying those positions and employees best suited for telecommuting. Our analysis and interviews with employers, proponents of telecommuting, and other experts, showed that telecommuting is not a viable option for every position or employee. For example, site-specific positions involving manufacturing, warehousing, or face-to-face interaction with customers are usually not suitable for telecommuting. Conversely, positions involving information handling and professional knowledge-related tasks, such as administrative activities and report writing, can often be performed from a remote location. Beyond having jobs suitable for telecommuting, an organization must also have employees that are able to perform in a telecommuting environment. The current literature showed that telecommuting is best suited for high-performing and self-motivated employees with a proven record of working independently and with limited supervision. If an organization determines that it lacks the positions or employees that are suitable for telecommuting, it may choose not to establish or expand such arrangements.

A second management concern pertained to an employer's ability to protect proprietary and sensitive data and monitor employee access to such data without invading individual privacy rights. Our analysis of current literature and studies on this subject, as well as interviews with employers, showed that security concerns generally centered on potential vulnerabilities associated with providing employees with remote access to internal record systems. Access involving the Internet and employers' ability to prevent unauthorized copying, manipulation, and modification of company information was of particular concern. We also identified uncertainties among employers regarding the extent to which electronic monitoring of employee activities is permissible or considered an infringement on individual privacy. Left unresolved, these data security issues could potentially cause employers to choose not to adopt telecommuting arrangements.

The third management concern involved assessing the costs associated with starting a telecommuting program and its potential impact on productivity and profits. Telecommuting programs often involve some employer investment related to upgrading systems and software to permit remote access, providing employees with hardware and software to work from their homes, or incurring additional costs to rent space and equipment available at telecenters. These costs may adversely affect profits if productivity does not increase or at least remain the same.

The potential barriers to private sector telecommuting discussed today are similar in many ways to those confronting telecommuting in the federal government, as noted in prior GAO work and OPM's June 2001 report. In 1997, we reported on the implementation of telecommuting (then referred to as flexiplace) in federal agencies.³ Among the topics discussed in our report were barriers affecting the growth of telecommuting programs. The most frequently cited obstacle to increased use of telecommuting related to management concerns. Interviews with agency and union officials disclosed that managers and supervisors were hesitant to pursue telecommuting arrangements because of fears that employee productivity would diminish if they worked at home. Other related concerns cited in our report included

- management views that agencies did not have sufficient numbers of suitable employees and positions for telecommuting arrangements;
- concerns regarding the treatment of sensitive data, especially the additional cost of ensuring the security of data accessed from remote locations; and
- lack of resources necessary to provide additional computers, modems, and phone lines for the homes of telecommuters.

OPM's June 2001 report on federal agency efforts to establish telecommuting policies identified similar potential barriers. OPM reported that its survey of 97 federal agencies showed that management reluctance was the most frequently cited barrier to increased telecommuting among federal employees. Basic concerns centered on the ability to manage workers at remote sites and the associated loss of control over telecommuters. OPM also noted that security concerns about allowing remote access to sensitive and classified data remained high, as did questions about funding the purchase of additional computer hardware

³*Federal Workforce: Agencies' Policies and Views on Flexiplace in the Federal Government* (GAO/GGD-97-116, July 3, 1997).

and software for equipment that would be deployed at telecommuters' homes.

Current Laws and Regulations Have Implications for Federal Telecommuting Programs

While management concerns are often cited as a potential barrier to private and federal telecommuting programs, our work identified a number of laws and regulations that could also impact these arrangements. These laws and regulations include those covering taxes, workplace safety, recordkeeping, and liability for injuries. Because several of these laws and regulations predate the shift toward a more technological and information-based economy in which telecommuting has developed, their application to telecommuting is still evolving and unclear at this time.

Of those laws and regulations that could impact an employer's provisions of telecommuting arrangements, increased state tax liability for employers and employees involved in interstate telecommuting arrangements may have the greatest potential to undermine further growth. At issue for employers is whether having telecommuters work from their residence in a state where a company has no other physical presence can expose the company to additional tax liabilities and burdens. For the employees, the tax issue has taken on increasing importance, most notably in the Northeastern United States, where a number of states have tax rules that allow them to deem all wages of nonresident telecommuters working for companies located in their states as taxable whenever working at home is for the employee's convenience rather than an employer necessity. At the same time, the state where the telecommuter resides and works via telecommuting may be taxing some of the same income because it was earned while they worked at home, which in effect "double taxes" that income.

Our discussions and other information we received during our review, brought to our attention at least 13 tax cases related to telecommuting and taxing issues. One such case showing the long reach of a tax authority involves New York State's taxing the wages of a telecommuting Tennessee resident who was employed by a company located in New York, but worked 75 percent of the time from home.⁴ A number of telecommuting experts and employers we interviewed believed that the uncertainties surrounding the application of individual state tax laws to telecommuting situations was a significant emerging issue that, if left unresolved, could

⁴N.Y. Division of Tax Appeals In the Matter of the Petition of Thomas L. Huckaby, Docket No. 817284, Income Taxes, Feb. 8, 2001.

ultimately impact the willingness of employers and individuals (including federal employees) to participate in telecommuting programs.

Beyond the issue of state taxation, our work identified a number of other barriers to private-sector telecommuting programs that are also applicable to federal agencies. First, in regard to workplace safety, one concern was that employers would have to conduct potentially costly inspections of workers' home offices. The federal Occupational Safety and Health Act requires private employers to provide a place of employment that is free from recognized, serious hazards.⁵ A February 2000 OSHA policy directive stated that it would not inspect home offices, hold employers liable for their safety, or require employers to inspect these workplaces. Some employers and telecommuting proponents, however, remained concerned that this internal policy could be reversed in the future, exposing employers to workplace safety violations and ultimately requiring them to complete costly home office inspections. A number of employers told us they were attempting to eliminate potential workplace safety issues by offering employees guidance on home office safety and design or providing them with ergonomic furniture. Other experts have suggested that a training program on safety be part of an employer's program. Under the Occupational Safety and Health Act, federal agencies must also establish and maintain safety and health programs consistent with OSHA standards. To the extent that they attempt to meet OSHA safety standards for their telecommuters' home offices, the potential financial and administrative costs of initiatives similar to those taken in the private sector may serve as a barrier to implementation.

Second, federal wage and hour law and regulations may also pose a barrier to telecommuting programs in both the private and public sectors. The Fair Labor Standards Act (FLSA) requires, among other things, that employers maintain sufficient records to document all hours worked, including overtime. Concerns voiced by telecommuting experts in this area centered on the increased documentation burden this may pose, as well as the uncertainties regarding an employer's ability to sufficiently monitor hours worked and control labor costs. However, our review and interviews with employers showed that most telecommuters fall under employee classifications (i.e., executive, administrative, or professional) that are exempt from FLSA requirements. In addition, to comply with the law and control labor costs for the few employees to whom the FLSA did apply, some employers developed ad hoc procedures to preauthorize and

⁵The Occupational Safety and Health Administration (OSHA) administers the act.

record hours and overtime worked. As a result, monitoring the hours of telecommuting workers was not viewed as a substantial barrier. However, to the extent that federal agencies have a workforce covered by the FLSA, concerns about the ability to sufficiently control and track telecommuter hours worked may serve as a barrier to implementation.

A final issue I will discuss relates to the potential for increased employer liability for home workplace injuries and the rising worker compensation costs this could bring. Generally, work-related injuries are covered under state workers' compensation programs. Numerous telecommuting experts are concerned that, because injuries at home are not usually witnessed, determining whether they are truly work-related is problematic. Our analysis and interviews showed that this is an area that could be vulnerable to increased fraud and abuse. The employers we interviewed and other experts have said that they were not yet experiencing significant problems with home workplace injuries or workers' compensation claims. However, some experts noted that this could become a larger issue as more individuals telecommute.

Concluding Observations

Telecommuting offers a new set of opportunities that could benefit employers, employees, and society as a whole. Whether these opportunities are realized, however, will depend on resolving fundamental questions about how telecommuting affects an employer's ability to manage employees and other resources, specifically about its suitability as a work arrangement as well as questions about data security and overall costs. Knowing the extent to which these questions apply to federal agencies would provide important information for making decisions about telecommuting by federal workers. Realizing the full potential of telecommuting also requires looking beyond internal management concerns to the laws that govern an organization's operating environment. Some of these laws were put in place before we could imagine a world in which employees lived in one state, but through technology, worked in another distant state, and as a result, they may unintentionally discourage telecommuting. Further examining how current laws and regulations could potentially impact telecommuters and their employers would provide the opportunity to mitigate their effects. In conclusion, pursuing the question of how to promote telecommuting is really a question of how to adapt current management practices, and laws and regulations to changing work arrangements that are, and will be, part of the information age in which we now live.

This concludes my prepared statement. I will be happy to respond to any questions you or other Members of the Subcommittee may have.

**GAO Contacts and
Staff
Acknowledgments**

For information regarding this testimony, please contact Robert E. Robertson or Dan Bertoni on (202) 512-7215. Individuals who made key contributions to this testimony include Gerard V. Grant and William Staab.