



**Office of Inspector General  
U.S. Government Accountability Office  
Report Highlights**

July 15, 2019

**TELEWORK PARTICIPATION AND ELIGIBILITY**

**Additional Controls Are Needed to Strengthen Compliance with  
Telework Act Requirements and GAO Policies for Certain Employees**

**Objective**

This report addresses the extent to which GAO has established effective controls to comply with the Telework Enhancement Act of 2010 (Telework Act) and GAO's policies regarding telework participation and eligibility requirements for certain employees.

**What OIG Found**

GAO telework policies provide for the use of management discretion in allowing telework for employees with unacceptable performance and misconduct rising to the level of disciplinary and adverse actions. Managers did not cancel all approved telework arrangements for 20 employees who received unacceptable performance ratings, demonstrated unacceptable performance, or were formally disciplined for misconduct in calendar year 2017, and most continued to telework to some extent. In addition to using managerial discretion, managers used established telework guidance to assist them in making decisions. However, established telework guidance lacks practical information to assist managers in their consideration of the appropriateness of continued telework participation in such cases. For example, several considerations could be addressed in the guidance such as

- **Competency(s) at the unacceptable level.** Performance problems in competencies may make it more difficult for the employee to plan, prioritize, and balance assigned work or produce quality, timely work while teleworking.
- **Impact of unacceptable performance and misconduct.** Individual performance problems and misconduct may affect unit and team goals and results.
- **Equitable and consistent application of telework eligibility policy.** If employees with documented or demonstrated poor performance or conduct issues are allowed to continue telework, it may affect the equitable and consistent application of telework eligibility policy.

In addition, GAO has not established or implemented eligibility criteria for re-employed annuitants, consultants, and senior managers participating in the telework program, as required by the Telework Act. Additionally, GAO lacked procedures for ongoing monitoring compliance with telework policy, which allowed some interns to participate in GAO's telework program.

**What OIG Recommends**

OIG made recommendations to address the controls that GAO needs to ensure that employees who telework are eligible to telework under the law and GAO's policies. GAO has implemented, or is in the process of implementing, our recommendations.



July 15, 2019

**To:** Gene L. Dodaro  
Comptroller General of the United States

**From:** Adam R. Trzeciak  
Inspector General

A handwritten signature in black ink, appearing to read "A.R. Trzeciak", is positioned to the right of the printed name.

**Subject:** Transmittal of Office of Inspector General's (OIG) Audit Report

Attached for your information is our report, *Telework Participation and Eligibility: Additional Controls Are Needed to Strengthen Compliance with Telework Act Requirements and GAO Policies for Certain Employees* (OIG-19-1). The audit objective was to evaluate the extent to which GAO has established effective controls to comply with the Telework Act and GAO's policies regarding telework eligibility and participation requirements for certain employees.

GAO agreed with our recommendations, and has implemented, or is in the process of implementing, them. We worked with management to close three recommendations involving establishing clearer guidance for managers to use in deciding whether to cancel telework arrangements and internal controls to prevent interns from teleworking. While management agreed with our fourth recommendation to establish eligibility criteria for re-employed annuitants, consultants, and senior managers participating in the telework program, we were not able to close the recommendation before we issued the report. Management comments are included in Appendix II of our report.

We are sending copies of this report to the Executive Committee, GAO's Congressional Oversight Committees, Audit Advisory Committee, and select GAO managers, as appropriate. The report is also available on GAO's website at <http://www.gao.gov/about/workforce/ig.html> and <https://www.oversight.gov/reports>.

If you have questions about this report, please contact me at (202) 512-5748 or [trzeciaka@gao.gov](mailto:trzeciaka@gao.gov).

Attachment

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**Abbreviations**

APSS	Administrative Professional and Support Staff
AWOL	Absent without leave
CHCO	Chief Human Capital Officer
CY	Calendar Year
HCO	Human Capital Office
OGC	Office of General Counsel
PAB	Personnel Appeals Board
PDP	Professional Development Program
SAS	Statistical Analysis System
TMO	Telework Managing Officer

## Introduction

GAO's telework program has grown steadily since the Telework Enhancement Act of 2010 (Telework Act).<sup>1</sup> In 2017, 91 percent of GAO's employees participated in the program. With such widespread participation, it is important to ensure that employees who telework are eligible to telework under the law and GAO's policies.

## Objective, Scope, and Methodology

This report addresses the extent to which GAO has established effective controls to comply with the Telework Act and GAO's policies regarding telework eligibility and participation requirements for certain employees.

To achieve our objective, we reviewed: the collective bargaining agreement and related memorandums of agreement with the employee Union on telework; the Telework Act; and GAO's policies on telework, re-employed annuitants, consultants, interns, performance management, and disciplinary and adverse actions. We also compared agency policies to the Telework Act to assess compliance. We interviewed GAO officials from the offices of the Chief Administrative Officer and Human Capital Office (HCO), Employee Relations and Benefits Center to discuss telework policy and program implementation.

We obtained aggregated telework data for all employees included in GAO's report to Congress, *GAO Telework Report Calendar Year 2017*. We reviewed GAO's Statistical Analysis System (SAS) programming code used to analyze data from GAO's time and attendance system, and interviewed agency officials about the methodology used to execute, review, and verify the output results. We compared the aggregated telework data to the SAS output results and GAO's telework report to identify any discrepancies, and determined these data to be reliable for the purposes of our report.

We selected individual cases for each aspect of our review—eligibility to apply for telework; requirements for continued participation in telework; new employee participation; and approved telework arrangements—using various characteristics. Specifically, for the eligibility review, we selected a nongeneralizable sample of 327 employees by employee type (e.g., annuitants and interns) and pay plan.<sup>2</sup> For the review of participation requirements, we identified and selected 21 employees who received unacceptable performance ratings in at least one competency, demonstrated unacceptable performance, or received formal disciplinary and adverse actions for misconduct at any time in calendar year 2017.<sup>3</sup> To assess telework participation requirements unique to entry-level employees, we obtained a GAO report that identified entry-level employees with GAO less than 18 months who exceeded specific telework limits in at least one pay period in calendar year 2017. We included 36 entry-level employees in our review. We also determined whether employees had approved telework arrangements for employees in our eligibility sample and an additional nongeneralizable sample of 386 other employees, selected by employee type and pay plan. We compared those arrangements against webTA data for each pay period in calendar year 2017. In total, we analyzed

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<sup>1</sup>Pub. L. No. 111-292, 124 Stat. 3165 (Dec. 9, 2010), codified at chapter 65 of title 5, United States Code.

<sup>2</sup>Because the sample is nongeneralizable, our results cannot be generalized to the total number of employees GAO reported were eligible to telework and who teleworked in calendar year 2017.

<sup>3</sup>Three employees included in our review had both performance and conduct issues during calendar year 2017.

approved telework arrangements for 585 employees. For more detailed information on our objective, scope, and methodology, please see appendix I.

We conducted this performance audit from June 2018 through July 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## **Background**

The Telework Enhancement Act of 2010 established a framework of federal agency requirements related to telework eligibility, participation, agreements, and more. The Telework Act instructs agencies to establish a policy under which eligible employees of the agency are authorized to telework; determine the eligibility for all employees of the agency to participate in telework; and notify all employees of their eligibility to telework. Agencies (including GAO) must meet these requirements when implementing their telework programs.

An agency telework policy established under the Telework Act must require a written agreement between an agency manager and an employee authorized to telework that outlines the specific agreed upon work arrangement. A written agreement is mandatory for any employee to participate in telework. The Telework Act also stipulates specific conduct that disqualifies employees from telework. Employees who have been officially disciplined for absences without permission for more than 5 days in any calendar year; or who have been officially disciplined for viewing, downloading, or exchanging pornography on a government computer or while performing official duties in violation of executive branch standards of conduct, are not permitted to telework.

The Telework Act also describes situations in which employee participation in telework may be limited or not authorized:

- Employees are ineligible to participate in telework if participation diminishes employee performance or agency operations.
- Employees may not be authorized to telework if the performance of that employee does not comply with the terms of the written agreement between the employee's manager and that employee.
- Except in emergency situations, employees are not authorized to telework if official duties require on a daily basis (1) direct handling of secure materials determined inappropriate for telework, or (2) on-site activities that cannot be handled remotely.

GAO's telework program supports several agency objectives, including emergency readiness and continuity planning, and work/life balance for employees. GAO first established a telework policy in 1991 and revised it several times to address changes in technology, legal requirements, and increased demand for a mobile work environment.

To address the requirements of the Telework Act, GAO revised its *Telework* policy in June 2012. In 2017, GAO updated its policy as two separate policies. One policy, *Telework for Non-Bargaining Unit Employees*, issued in September 2017, applies to employees whose positions are not included in the GAO Employees Organization, IFPTE Local 1921, Analyst or Administrative Professional and Support Staff (APSS) bargaining units.<sup>4</sup> A second telework policy covering bargaining unit employees is pending negotiations. In the interim, all bargaining unit employees are required to follow the 2012 *Telework* policy and negotiated agreements with the union on telework.<sup>5</sup>

Under GAO telework policies, participation is voluntary and most GAO employees generally are eligible to apply for and participate in three types of telework arrangements:

- **Continuing/episodic**, where employees work at home (or other approved location) on a recurring basis as part of their regular work schedule. Employees approved for a continuing/episodic telework arrangement may also request to episodically telework; however the employee must request permission from the manager prior to teleworking.
- **Episodic-only**, where employees occasionally work at home (or other approved location), as needed, when it is more beneficial to the work units and the employees to complete tasks away from the office. All GAO employees are encouraged, but not required, to apply for an episodic-only arrangement, if they do not already have an approved continuing/episodic arrangement, in order to accommodate continuity of operations during situations such as inclement weather and unforeseen circumstances that might require an employee to work outside of their duty station.
- **Short-term**, where employees work at home (or other approved location), under a time-limited arrangement for up to 100 percent of the time to accommodate a special circumstance—most commonly convalescence from an illness or injury. These arrangements are for a specific period of time (for example 30 days, 3 months, and so on), not to exceed 1 year for the same event.

Under GAO's telework policies, participation in the telework program is subject to the nature of the employee's work and how suitable it is for telework; GAO's organizational and client needs; and employee eligibility.

Under GAO policies, employee eligibility is established prior to the employee's participation in telework. Specifically, employees must have all competencies rated at the

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<sup>4</sup>This order was superseded by GAO Order 2300.5.1, *Telework for Non-Bargaining Unit Employees*, dated January 17, 2019, to make editorial changes and update a form used to claim reimbursement for payments made by teleworkers for reasonable work expenses required for official business.

<sup>5</sup>*Master Collective Bargaining Agreement: The Government Accountability Office and the GAO Employees Organization, IFPTE, Local 1921* (May 2011); *Memorandum of Agreement Between The Government Accountability Office and the GAO Employees Organization, IFPTE, Local 1921 (Analyst): Expanded Telework Implementation, Technology, and PDP Support* (June 2013); *Memorandum of Agreement Between the Government Accountability Office and the GAO Employees Organization, IFPTE, Local 1921: Field Office Workspace Sharing /Expanded Telework* (March 2014); and *Memorandum of Agreement Between the Government Accountability Office and the GAO Employees Organization, IFPTE, Local 1921: The GAO Headquarters Expanded Telework* (May 2017).

“marginal” level or better in their most recent performance appraisal to be eligible to telework. An employee that has not been at GAO long enough to receive a performance appraisal must be performing at the “marginal” performance level or better in all competencies when a telework arrangement is requested.

Further, the telework policies provide that certain performance issues render employees ineligible for telework. For example, employees placed in a performance opportunity period to improve their performance to an acceptable level are deemed ineligible. Conduct issues such as failing to comply with the telework terms and conditions may also affect an employee’s eligibility to telework.

In addition to performance and conduct eligibility requirements, employees in the entry-level Professional Development Program (PDP) have additional telework limitations based on how long they have been in the program.<sup>6</sup> For example, PDP employees are eligible to apply for and participate in telework only on an “as needed” basis for short periods to accommodate special circumstances during the first 6 months at GAO, but they are not eligible to establish a continuing, regularly occurring telework schedule. Following completion of the 6-month period, PDP employees become eligible to participate in additional telework opportunities.

To participate in the telework program employees must submit applications for each type of telework arrangement requested using GAO’s web-based telework application and approval system. Telework arrangements must be renewed annually. By submitting the request, the employee agrees to the terms and conditions of the telework arrangement that cover such items as the voluntary nature of the arrangement; official work site/duty station; performance requirements; leave approval, etc. Employees should provide information covering the nature of the work activities; tasks to be performed; agreement ending date, if any; the frequency and methods of contact required between the employee, co-workers, and managers; and days and hours to be worked at the alternate work site. As part of the telework application, the employee and managers should agree to the tasks to be performed and other specifics of a telework arrangement. If the manager changes, the employee and new manager should discuss any existing telework arrangements and affirm that the arrangements are still valid. A new agreement is also necessary if there is a significant change to anything in the arrangement, such as changes to the type of arrangement, telework days, or alternative work site.

Designated managers approve or deny continuing/episodic and episodic-only telework applications. GAO’s Telework Managing Officer (TMO) approves short-term telework applications. For these applications, designated managers make a recommendation for approval or disapproval of the application to the TMO, who makes a final decision.

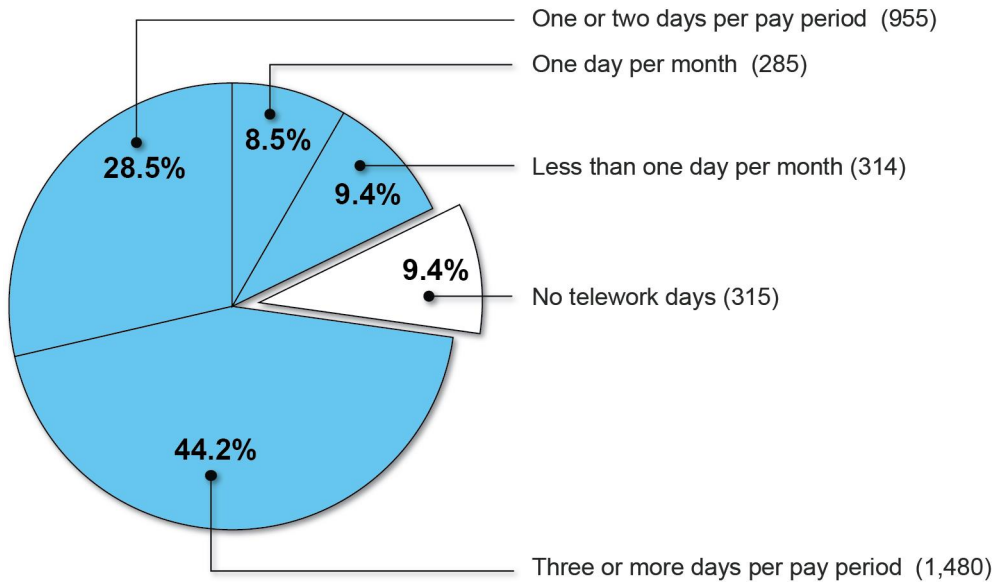
In calendar year (CY) 2017, over 3,000 employees, or 91 percent of all GAO employees, teleworked to some extent. About 73 percent of the staff teleworked at least an average of 1 day or more per pay period. Figure 1 shows the number and percentage of employees who telework by frequency categories.

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<sup>6</sup>Professional development program employees are entry-level employees who are newly hired Band I analysts.



**Figure 1: Number and Percentage of GAO Employees Who Teleworked by Frequency Categories for Calendar Year 2017**



**Total number of employees in CY 2017: 3,349**

Source: GAO-18-579SP | OIG-19-1

**Data for Figure 1: Number and Percentage of GAO Employees Who Teleworked by Frequency Categories for Calendar Year 2017**

- Three or more days per pay period = 1,480 / 44.2%
- One or 2 days per pay period = 955 staff / 28.5%
- One day per month = 285 staff / 8.5%
- Less than on day per month = 314 staff / 9.4%
- No telework days = 315 staff / 9.4%

Note: The “less than one day per month” category includes employees that teleworked at least 1 hour, but less than once per month during calendar year 2017. The “no telework” category includes employees who did not record any telework hours.

### **Additional Controls Are Needed to Strengthen Compliance with Participation and Eligibility Requirements of the Act and GAO Policies for Certain Employees**

GAO telework policies provide for the use of management discretion in allowing telework for employees with unacceptable performance and misconduct rising to the level of disciplinary and adverse actions. However, established telework guidance lacks practical information to assist managers in their consideration of the appropriateness of continued telework participation in such cases—which could limit transparency, consistency, and fairness in decisions throughout the agency. We also found some areas where internal

controls were insufficient to prevent ineligible employees from obtaining telework arrangements or teleworking.

While Manager Discretion Is Provided in Policy, Specific Guidance Is Needed to Ensure That Performance Requirements Are Considered for Continued Participation in Telework

Under GAO's bargaining unit and non-bargaining unit telework policies, employees are ineligible to telework if they are placed in a performance improvement opportunity period to improve their performance to an acceptable level ("Marginal Performance" or better). Only GAO's non-bargaining unit policy requires that approved telework arrangements must be cancelled in such circumstances.<sup>7</sup>

Further, GAO's telework policies are not specific regarding continued telework participation during periods of unacceptable performance that do not result in a performance opportunity period. In such circumstances, the telework policies provide for managers to use discretion in deciding whether to modify or cancel telework arrangements for performance reasons.

We analyzed reports in GAO's performance appraisal systems and case tracking spreadsheet and identified 10 employees who received unacceptable performance ratings or demonstrated unacceptable performance in one or more competencies during calendar year 2017. We found that unacceptable performance generally did not affect employees' telework arrangements or participation. All approved telework arrangements were not cancelled for the 10 employees, and we found 8 employees continued to telework to some extent as the following examples illustrate.<sup>8</sup>

**Unacceptable performance resulted in a performance opportunity period, but not cancellation of approved episodic telework arrangement:** The employee received manager approval for an episodic telework arrangement in February 2017. In calendar year 2017, the employee's performance was rated at the Unacceptable Performance level in two competencies—Managing Own Workload and Producing Quality Work. In May 2017, the unacceptable performance resulted in the employee's placement in a 90-day opportunity period to improve performance to at least the Marginal Performance level in the two competencies with unacceptable performance. The employee's episodic arrangement was not cancelled.

**Unacceptable performance resulted in cancellation of neither the approved episodic nor continuing telework arrangements:** The employee received manager approval for both episodic and continuing telework arrangements in March and May 2017, respectively. Later in calendar year 2017, the employee's performance was rated at the Unacceptable Performance level in two competencies—Managing Own Workload and Producing Quality Work. The employee's performance did not improve to an acceptable level at the conclusion of the appraisal period, and the employee's approved episodic and continuing telework arrangements were not cancelled. Even though the performance was not

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<sup>7</sup>Employees granted a telework arrangement during an opportunity period as a reasonable accommodation under the Americans with Disabilities Act remain eligible to telework.

<sup>8</sup>Approved telework arrangements for 1 employee were not cancelled under an existing reasonable accommodations agreement. Approved telework arrangements for another employee were not cancelled but the employee did not telework in calendar year 2017.

acceptable, the employee was permitted to continue to participate in the telework program during the period of unacceptable performance, charging 43 days to episodic and continuing telework in calendar year 2017.

**Unacceptable performance resulted in cancellation of the approved continuing telework arrangement, but not the episodic arrangement:** The employee received manager approval for both episodic and continuing telework arrangements in January 2017 and February 2017, respectively. During calendar year 2017, the employee was performing at the unacceptable performance level in the Managing Own Workload and Producing Quality Work competencies and demonstrably affected team objectives as noted in formal progress reviews. In a March 2017 letter to the employee, the Chief Human Capital Officer (CHCO) cancelled the employee's approved continuing telework arrangement due to the unacceptable performance. The employee's episodic telework arrangement was not cancelled and the employee continued to participate in the telework program in calendar year 2017, charging 39 days to telework over a 2-month period before separating from GAO.

According to GAO officials, agency telework policies provide for the use of management discretion in allowing employees with unacceptable performance to telework to facilitate the accomplishment of work. The officials explained that GAO provides guidance to managers for making determinations about telework arrangement cancellations for performance-based reasons.

Telework guidance is available on GAO's telework intranet page for all staff and managers, including guidance on telework arrangement cancellations. For example, *Managing Telework Compliance @ GAO: Guide for Managers* includes a checklist of management rights, including "the right to recommend cancellation of a telework arrangement when an employee's performance declines."<sup>9</sup> *Guidance for Handling Expanded Telework Requests* and *Guidance for Handling Telework Requests from PDP Employees* provide information on things managers should consider when considering staff requests for telework. The guidance only states that "approved telework arrangements can be cancelled" and "all cancellation decisions should be based on operational needs or performance-based reasons." This guidance does not provide information to assist managers in using their discretion when considering performance requirements for continued telework participation. For instance, several considerations could be addressed in the guidance.

- **Competency(s) at the unacceptable level.** Performance problems in competencies may make it more difficult for the employee to plan, prioritize, and balance assigned work or produce quality, timely work while teleworking.
- **Impact of unacceptable performance.** Individual performance problems may affect unit and team goals and agency results.
- **The employee's ability to accomplish work in a telework setting.** It may be difficult for the employee to accomplish work without closer supervision, assistance, and direction than virtual supervision may provide.

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<sup>9</sup>[https://intranet.gao.gov/career\\_and\\_life/work\\_and\\_life\\_events/telework/managing\\_employees\\_who\\_telework#Manager\\_Responsibilities\\_in\\_the\\_Approval\\_Denial\\_of\\_Telework](https://intranet.gao.gov/career_and_life/work_and_life_events/telework/managing_employees_who_telework#Manager_Responsibilities_in_the_Approval_Denial_of_Telework)

- **Equitable and consistent application of telework eligibility policy.** If employees with documented or demonstrated poor performance are allowed continued participation in telework, it may affect the equitable and consistent application of telework eligibility policy.

These are example considerations that are not intended to be all-inclusive and may not apply to every case. However, more specific guidance on unacceptable performance and considerations that should be given to continued telework participation and cancellation of approved telework arrangements would help to ensure transparency, consistency, and fairness in these decisions throughout the agency.

The Telework Act calls for agencies to establish performance-related internal controls by making performance a criterion for continued employee participation in agencies' telework programs. The Telework Act states that agency policies should ensure that telework does not diminish employee performance or agency operations, by establishing that agency policies "shall provide that an employee may not be authorized to telework if the performance of that employee does not comply with the terms of the written agreement between the agency manager and the employee."

In response to our findings, in May 2019, GAO updated existing guidance on its telework intranet site with more specific guidance on unacceptable performance and considerations that should be given to continued telework participation. Specifically, GAO identified telework considerations that should be given by managers when there are performance concerns.<sup>10</sup> GAO has sufficiently addressed our report's finding and recommendation under consideration; therefore, we are not making a recommendation.

**While Manager Discretion Is Provided in Policy, Specific Guidance Is Needed to Ensure That Conduct Is Considered for Continued Participation in Telework**

Misconduct rising to the level of disciplinary and adverse actions appears to have little impact on employees' telework participation. Such misconduct generally did not result in termination of approved telework arrangements or curtailment in telework participation. Managers did not cancel all approved telework arrangements for 10 of the 11 employees in our review formally disciplined for misconduct,<sup>11</sup> and 8 of the 11 employees continued to telework to some extent in calendar year 2017 as the following examples illustrate:

**A finding of time and attendance fraud resulted in temporary cancellation of the approved continuing telework arrangement, and both the episodic and continuing arrangements were renewed:** In a November 2017 letter to the employee, the CHCO cancelled the employee's approved continuing telework arrangement, noting that the decision was not a disciplinary action and the employee may reapply at any time. Following cancellation of the continuing telework arrangement, the employee charged episodic telework on a recurring basis through the end of calendar year 2017. During GAO's March 2018 annual renewal season for telework arrangements, the employee's episodic telework

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<sup>10</sup>GAO, *Telework Considerations: Performance* (May 2019)

[https://intranet.gao.gov/career\\_and\\_life/work\\_and\\_life\\_events/telework/managing\\_employees\\_who\\_telework#ManagementTools](https://intranet.gao.gov/career_and_life/work_and_life_events/telework/managing_employees_who_telework#ManagementTools)

<sup>11</sup>One employee did not have any approved telework arrangements in calendar year 2017; however, the employee did telework.

application request was approved for renewal. In April 2018, GAO suspended the employee from duty, without pay, for 7 days based on the finding of time and attendance fraud. About two months following the suspension for time and attendance fraud, in June 2018, the employee was approved for a continuing/episodic telework arrangement.

**Continuing and episodic telework arrangements were not cancelled after violating imposed leave restriction and being absent without leave (AWOL) for more than 5 days:** The employee received manager approval for both episodic and continuing telework arrangements in calendar year 2017. In late 2017, the employee was placed on leave restriction due to frequent unexpected absences and schedule changes during calendar year 2017. The employee was charged with AWOL for 10 days late in calendar year 2017. The Telework Act stipulates that an employee officially disciplined for being AWOL for more than 5 days is not considered eligible for telework. The employee's approved episodic and continuing telework arrangements remained in effect in calendar year 2017, and the employee charged 4 days to continuing and episodic telework following the imposed leave restriction. During the 4-month leave review in April 2018 to determine whether the leave restriction should be continued or ended, the employee's manager maintained the leave restriction made in calendar year 2017 because the employee's adherence to the approved work schedule and GAO's time and attendance policies had not improved. Since the leave restrictions began in late 2017, the employee was charged with AWOL for over 700 hours.

The Telework Act directly prohibits employee eligibility for telework only when an employee has been officially disciplined for one of these two narrow conduct instances:

- (1) being absent without permission for more than 5 days in any calendar year
- (2) specific standards of ethical conduct violations.

The Telework Act leaves further conduct-related restrictions on telework participation to agency discretion.

Under GAO's bargaining unit and non-bargaining unit telework policies, conduct issues that "would have a negative impact on the telework arrangement" may affect an employee's continued participation in telework. GAO officials told us that the lack of specific conduct-related restrictions on telework participation in its telework policies gives managers the discretion and flexibility in managing staff and their work through telework.

According to GAO officials, this flexibility is needed because of the agency's unique appeals process. The Personnel Appeals Board (PAB) was established by statute to serve as the equivalent of other organizations that protect federal workers from unfair employment practices.<sup>12</sup> The PAB's Office of General Counsel (PAB/OGC) investigates charges of prohibited personnel practices, among other things. If the PAB/OGC believes that a proposed personnel action, such as a removal, arises out of a prohibited personnel practice, the PAB/OGC may seek an order from the PAB requiring GAO to hold the action in abeyance for a 30-day period, which may be extended while the PAB/OGC continues its

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<sup>12</sup>Merit Systems Protection Board, Equal Employment Opportunity Commission, United States Office of Special Counsel, and Fair Labor Relations Authority.

investigation and, if necessary, the parties engage in litigation. GAO officials explained that telework is one of the strategies GAO uses to mitigate the potential disruption of keeping an employee on the rolls during the PAB's process. The officials further explained that GAO implemented this leading practice well before the Administrative Leave Act of 2016, which encourages agencies to use telework as such a strategy.

Officials continued by noting that the agency may opt to allow employees to keep an episodic telework arrangement in situations where continuing arrangements are cancelled. This allows the agency to preserve telework as an available management option in case work at an alternate location becomes necessary to mitigate a potentially disruptive matter. GAO also encourages staff to keep at a minimum an episodic arrangement for workforce readiness in the case of an emergency. In other cases, telework arrangements are not cancelled due to existing reasonable accommodations or ongoing medical issues. Each case is assessed on a case by case basis and management decisions are made to mitigate risk and to minimize agency liability. Regarding management decisions, the officials explained that managers use guidance on the agency's telework intranet page on telework arrangement cancellations to assist them. The guidance gives examples of misconduct that could impact an approved telework arrangement:

- noncompliance with the telework arrangement;
- failure to truthfully report time worked or other misconduct; and
- failure to follow policies and procedures.

Though GAO telework agreement cancellations guidance broadly lays out misconduct considerations, this guidance lacks practical information to assist managers in their consideration of the appropriateness of continued telework participation in misconduct cases where GAO formally disciplined the employee for that misconduct. For example, several considerations could be addressed in the guidance such as

- **The nature and seriousness of the misconduct.** Violations of federal law, regulation, or GAO orders, rules, regulations, and policies that are intentional, committed maliciously or for gain may have an impact GAO's reputation, credibility and erode public trust.
- **The employee's past disciplinary record.** Previous incidents of misconduct may cause questions or concerns about the employee's honesty, accountability, reliability, integrity, trustworthiness, and/or dependability to act appropriately while teleworking.
- **Impact of misconduct.** Individual misconduct may affect unit and team goals, results, and morale, and ability to get along with fellow workers.
- **Equitable and consistent application of telework eligibility policy.** If employees disciplined for misconduct are allowed continued participation in telework, it may affect the equitable and consistent application of telework eligibility policy.

More specific guidance on conduct considerations for continued telework participation would remove ambiguity and increase transparency in the process of determining whether telework is appropriate for an employee with conduct issues. Absent such guidance, GAO

lacks an important internal control to help ensure that decisions made about employee misconduct and telework appropriateness are based on sound business, organizational, and performance management principles.

In response to our work, in May 2019, GAO updated existing guidance on its telework intranet site with more specific guidance on conduct considerations for continued telework participation. Specifically, GAO identified things that managers should consider when determining whether or not to recommend denying, modifying or cancelling a telework arrangement when there is misconduct.<sup>13</sup> Based on our review of the guidance, GAO sufficiently addressed our finding and the recommendation under consideration; therefore, we are not making a recommendation for corrective action.

### GAO Has Not Established Telework Eligibility Criteria for Re-employed Annuitants, Consultants, and Senior Managers

We found gaps in policies and procedures that make it difficult to apply the eligibility requirements to re-employed annuitants, consultants, and senior managers. As a result, re-employed annuitants, consultants, and senior managers teleworked despite the lack of policy establishing eligibility criteria as required by the Telework Act.

The Telework Act requires agencies to establish telework eligibility criteria for their telework program, and notify employees of their eligibility to telework. Generally, agencies have discretion to determine telework eligibility criteria for their employees. In addition, establishing eligibility criteria to ensure that teleworkers are selected on an equitable basis using employee performance is a GAO-identified key best practice for successful federal telework programs.<sup>14</sup> However, GAO has not documented eligibility criteria in its non-bargaining unit telework policy for re-employed annuitants, consultants, or senior managers.

GAO's *Telework for Non-Bargaining Unit Employees* policy establishes eligibility criteria for non-bargaining unit employees. Specifically, employees must perform at "Marginal Performance" or better in all rated competencies on their most recent performance appraisal. Re-employed annuitants and consultants do not receive performance appraisals.<sup>15</sup> Therefore, the documented performance criteria for telework eligibility—at "Marginal Performance" or better—cannot be applied to re-employed annuitants and consultants.

Our analysis of GAO's time and attendance data showed 31 out of 64 re-employed annuitants and consultants employed during calendar year 2017 teleworked to some extent that year.

- 3 annuitants/consultants teleworked less than one day per month
- 1 annuitant/consultant teleworked one day per month

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<sup>13</sup>GAO, *Telework Considerations: Misconduct* (May 2019)

[https://intranet.gao.gov/career\\_and\\_life/work\\_and\\_life\\_events/telework/managing\\_employees\\_who\\_telework#ManagementTools](https://intranet.gao.gov/career_and_life/work_and_life_events/telework/managing_employees_who_telework#ManagementTools)

<sup>14</sup>GAO, *Human Capital: Further Guidance, Assistance, and Coordination Can Improve Federal Telework Efforts*, GAO-03-679 (Washington, D.C.: July 18, 2001).

<sup>15</sup>GAO Order 2553.1, *Reemployment of Annuitants* (April 2016) and GAO Order 2304.1: *Employment of Experts and Consultants* (May 2005).

- 12 annuitants/consultants teleworked one or two days per pay period
- 15 annuitants/consultants teleworked three or more days per pay period

The “Marginal Performance” eligibility criteria for banded employees is difficult to apply to senior managers. The performance management and appraisal criteria, which was updated in the 2017 telework policy, reflects new performance appraisal rating levels for banded employees. The appraisal system for senior executives and senior-level managers was not revised—so they are rated under a different performance management model and performance appraisal rating levels, as shown in table 1.

**Table 1: Comparison of Performance Appraisal Rating Levels for Banded Employees and Senior Managers**

<b>Banded Employees</b>	<b>Senior Executive and Senior-Level Managers</b>
<b>Exceptionally High Quality Performance:</b> Performance that exceeds sustained quality performance.	<b>Role Model:</b> Performance that almost always exceeds all or virtually all standards.
<b>Sustained Quality Performance:</b> Expected level of performance relative to the competency.	<b>Exceeds Expectations:</b> Performance that almost always exceeds more than half of all standards.
<b>Marginal Performance:</b> Performance that is less than sustained quality performance but is not unacceptable performance.	<b>Meets Expectations:</b> Performance that almost always meets all standards, but sometimes exceeds standards.
<b>Unacceptable Performance:</b> Performance that is unacceptable relative to the competency.	<b>Below Expectations:</b> Performance that does not almost always meet all standards.

Source: OIG analysis of GAO policies. (OIG-19-1).

As table 1 shows, the definitions for “Marginal Performance” and “Meets Expectations” (the corresponding rating level for senior managers) are not readily comparable.

Our analysis of GAO’s time and attendance data showed that 132 of 139 senior managers employed by GAO during the calendar year 2017 teleworked to some extent that year.

- 14 senior managers teleworked less than one day per month
- 20 senior managers teleworked one day per month
- 69 senior managers teleworked one or two days per pay period
- 29 senior managers teleworked 3 or more days per pay period

Without eligibility criteria, GAO cannot ensure that it has established and applied telework eligibility criteria consistently throughout its telework program, and notified its employees of the eligibility to telework because re-employed annuitants, consultants, and senior managers lack clear policy standards for telework eligibility. However, re-employed annuitants, consultants, and senior managers continue to participate in the telework program.

In mid-June 2019, GAO issued proposed changes to the non-bargaining unit telework policy, including updates to eligibility requirements for re-employed annuitants/consultants and senior managers. The employee notice and comment period will continue through mid-July 2019.



## Lack of Internal Controls Allowed Some Interns to Participate in GAO's Telework Program

Interns cannot participate in GAO's telework program. However, some interns teleworked in calendar year 2017. At the time of our review, GAO had not established procedures for ongoing monitoring of intern compliance with GAO's telework policies.

Our analysis of GAO's time and attendance data showed that 23 of 124 interns employed by the agency during calendar year 2017 teleworked to some extent.

- 15 interns teleworked less than 1 day per month
- 4 interns teleworked one day per month
- 4 interns teleworked 1 day or more per pay period

GAO officials pointed to the telework policy issued in 2012, which they stated neither allows nor disallows intern eligibility. However, GAO's telework policy for non-bargaining unit employees—issued in 2017—specifically prohibits interns from teleworking. Further, eligibility in the 2012 policy is still based on performance ratings. GAO policy has determined that the use of GAO's performance management and appraisal system is not appropriate for student interns, so there no basis to determine their telework eligibility.<sup>16</sup>

In fiscal year 2018 GAO began monitoring interns charging telework hours on their time and attendance records from bi-weekly time and attendance reports. Later in 2018, GAO began monitoring newly hired interns' telework eligibility designations in the time and attendance reporting system. These actions are positive steps to better identify interns participating in the telework program. GAO also established standard operating procedures to prevent interns from teleworking. Given GAO's timely response to our finding, we are not making a recommendation for corrective action.

## Telework Policy Violations Continue While Planned Improvements to Telework-Related Systems Are Underway

The results of a 2015 internal review of GAO's telework program found areas of opportunity for improved management and oversight of the program, such as the need to make it easier for managers to monitor telework.<sup>17</sup> For example, the review found that the current time and attendance system does not lend itself to easy monitoring for supervisors, and that the lack of integration among telework-related data made it difficult for supervisors to ensure that employee time and attendance information is consistent with approved work schedules and telework arrangements. Additionally, the evaluation found that there were no system checks to ensure telework time charges entered are consistent with approved telework arrangements and work schedules. GAO's internal evaluation identified telework code discrepancies and staff who teleworked without approved arrangements.

### ***Some New Employees Exceeded Telework Limitations***

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<sup>16</sup>GAO's *Framework for Student Experiences* (March 2018).

<sup>17</sup>GAO, *Internal Evaluation of GAO's Telework Program* (June 2015).

A 2013 supplemental agreement to GAO's negotiated agreement with its union specifies the extent to which entry-level employees in the professional development program, also known as PDP employees, can telework. PDP employees can apply for, and participate in, episodic and short-term telework during their first 6 months of employment.<sup>18</sup> In the 6th through 18th months of employment, PDP employees are eligible for continuing telework (up to 2 days per pay period). After 18 months, they are eligible to apply for all available telework arrangements.

We reviewed the biweekly time and attendance telework data for 36 PDP employees with GAO for less than 18 months who exceeded continuing telework limits in at least one pay period in calendar year 2017. According to our analysis of continuing telework charges, the number of days charged to continuing telework ranged from 3 to 10 days per pay period.

GAO collected and analyzed PDP continuing telework hours quarterly. A GAO official explained that HCO quarterly compliance reports identified PDP employees who exceeded continuing telework limits. The official stated that HCO staff met with the liaisons and the individual teams to discuss reports. Through these conversations and review of PDP telework approvals, HCO staff found that:

- Some PDP employees varied their approved continuing telework schedule, and charged the correct number of continuing hours over more than 2 days, with manager approval.
- The majority of PDP employees were approved for episodic telework, and the employees coded the appropriate days and number of telework hours, but incorrectly charged continuing codes when they should have charged episodic.

Employees are responsible for accurately entering the appropriate time and attendance code and hours, including telework, into GAO's time and attendance system. When employees validate their timecards, they are affirming the accuracy of the time charges. If PDP employees are incorrectly reporting continuing telework codes then their managers should be responsible for finding and correcting these errors before certifying the accuracy of their time and attendance records.

### ***Some Employees Teleworked Without Approved Arrangements***

The Telework Act requires a written telework agreement outlining the specific telework arrangement between the employee and agency managers.

GAO has such an agreement available to employees in a web-based telework application and approval system. When we compared biweekly time and attendance telework data for 585 employees included in our review to approved telework arrangements, we found 61 employees teleworked at some time in calendar year 2017 without the appropriate approved telework arrangements for the types of telework charged.

GAO officials cited factors that could result in instances of telework without approved arrangements:

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<sup>18</sup>Memorandum of Agreement (MOA) Between The Government Accountability Office and The GAO Employee Organization, IFPTE Local 1921 (Analysts): *Expanded Telework Implementation, Technology, and PDP Support* (June 2013).

- The volume of applications sent to the unit head/managing director during telework renewal season could cause a backlog.
- Employees may vary their work/telework schedules with approval from managers. This sometimes results in employees, already approved to telework, to inadvertently use the wrong telework code and create the appearance of teleworking without an approved arrangement in the system.
- Employees might begin a new telework arrangement soon after receiving verbal approval from their manager but before their unit head/managing director officially approves the telework arrangement in the system. Before unit heads/managing directors approve applications, they touch base with the employee's manager to confirm eligibility. Managers are fully aware of the incoming request and in most cases are in agreement with the request and intend to approve it.

GAO officials explained that in all cases, managers reviewed and approved the time and attendance record containing the telework instance, which demonstrates management approval of the arrangement. Ensuring all teleworkers have approved arrangements has been an internal control issue that GAO has identified for several years. For example, from 2014 through 2017, HCO monitoring activities consistently identified staff who charged telework without an approved telework arrangement.<sup>19</sup>

In its 2015 internal review, GAO noted that the time and attendance reporting and certification process is critical to ensuring that telework policies are followed and data reported are accurate. It is through this process that employees validate the accuracy of time spent in a telework status on their bi-weekly time and attendance reports and managers review and certify the accuracy of these reports. GAO further noted that the validation and certification process requires knowledge of data from at least three different sources: (1) telework charges in the time and attendance system, (2) approved telework arrangements in the telework application and approval system, and (3) a separate manual analysis that considers approved work schedules.

One recommendation from the 2015 internal review called for GAO to identify and address improvements needed to integrate GAO telework-related systems to allow managers more efficient time and attendance monitoring and to produce timely, accurate, and consistent reports necessary for overall program monitoring.

Recognizing that it needs to make improvements for managers to more easily monitor telework, GAO continues to focus on integrating the various systems the agency uses to track and administer its telework program. For example, managers now have improved access to their employees' work schedules and telework agreements, enabling them to more easily review timesheets. GAO plans to continue to refine these processes as new technology options become available.<sup>20</sup> In light of GAO's efforts to focus on integrating telework-related systems, we are not making any recommendations at this time.

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<sup>19</sup>GAO *Telework Report: Calendar Year 2014*, GAO-15-726SP (Washington, D.C.: June 29, 2015); GAO *Telework Report: Calendar Year 2015*, GAO-16-745SP (Washington, D.C.: June 30, 2016); GAO *Telework Report: Calendar Year 2016*, GAO-17-590SP (Washington, D.C.: June 30, 2017); GAO *Telework Report: Calendar Year 2017*, GAO-18-579SP (Washington, D.C.: June 28, 2018).

<sup>20</sup>GAO Fiscal Year 2018 Performance Plan, [GAO-17-298SP](#) (Washington, D.C.: July 10, 2017).

## Conclusions

Telework is an important tool that supports GAO's objectives, including emergency readiness and continuity planning, and work/life balance for employees. Given that GAO's telework program has grown steadily since the Telework Act, effective telework policies, procedures, and other controls are needed to ensure that employees who telework are eligible to telework under the law and GAO's policies. Establishing and implementing specific guidance—which GAO has done in response to our findings—can help GAO ensure that acceptable performance and conduct are considered for continued telework. Because re-employed annuitants, consultants, and senior managers are participating in the telework program, GAO needs to ensure that it establishes in telework policy the eligibility criteria for them. Establishing procedures—which GAO also has done in response to our finding—can also help the agency ensure that interns do not participate in GAO's telework program.

## Recommendation for Executive Action

We are making 1 recommendation to GAO. GAO should:

Establish and document in telework policies the eligibility criteria for re-employed annuitants, consultants, and senior managers.

## Agency Comments and Our Evaluation

The Inspector General provided GAO with a draft of this report for review and comment. GAO provided written comments, which are reprinted in appendix II. In all instances, management agreed with our recommendations, and has implemented, or is in the process of implementing, them.

GAO takes issue with the “narrow focus” of the report, which “does not reflect GAO's comprehensive approach to creating and sustaining an organizationally sound telework program.” As our report indicates, we evaluated GAO requirements for telework eligibility and continued participation in the program—eligibility to apply; requirements for continued participation; limitations for new employee participation; and approved arrangements for telework. We did not examine other elements of GAO's telework program, which are reported on annually to Congress in the GAO Telework Report.

GAO states that the unique circumstances of each of the unacceptable performance or misconduct cases cited in the report and the discussion process that GAO management used to determine specific courses of action in those cases, were not adequately considered. To evaluate each case and the decisions that GAO management made in the 21 cases included in our review, we considered all information in the employees' official performance- and conduct-based action files that HCO maintains. GAO asserts that “highly interactive” and “rigorous” management discussions occurred, but such discussions were not documented in the case files we were given to review. Unique circumstances and management discussions that were not documented could not be assessed. We recommended, and GAO agreed to implement prior to final report issuance, specific guidance for managers to use in their discussions to help ensure performance requirements are considered for continued telework participation and decisions are transparent, consistent and equitable.

GAO states that our report's assessment of performance-related examples lacks a full explanation of the timing of GAO's performance rating cycle, and implies that managers

are approving telework for unacceptable performers before final ratings are issued. Specifically, GAO stated that employees may have been allowed to telework during the year before the performance level was formally determined during the assessment cycle. However, GAO's performance management and appraisal process requires ongoing performance information and feedback, particularly at certain times, such as when managers have performance concerns, regardless of the timing of the observations in the performance cycle. Once a manager has observed that an employee is not consistently performing at the Sustained Quality Performance level, the manager should, among other things, inform the employee as soon as practicable; identify by name the competency(s) where the performance is below the "Sustained Quality Performance" level; and discuss the specific performance concerns. There is no process requirement to wait until the end of the performance period to consider telework agreement cancellations and restrictions. GAO provided the OIG with the official performance-based action files for 10 employees that substantiated that managers noted performance concerns throughout the performance cycle.

GAO said in 2014/2015 it evaluated its telework program and developed a comprehensive implementation plan to address the issues discussed in the report and implemented most of the recommendations from that evaluation. We recognize in our report improvements to GAO's telework-related systems are under way to address two of our findings—employees' inaccurately entering the appropriate telework time and attendance codes and hours into GAO's time and attendance system, and staff charging telework without an approved telework arrangement. We note that in light of GAO's efforts to focus on integrating telework-related systems, we are not making any recommendations at this time.

However, our report further notes that GAO needs additional controls to strengthen compliance with participation and eligibility requirements of the Telework Act and GAO policies to ensure that employees who telework are eligible to telework under the law and GAO's policies. During the audit, we worked with management to close three recommendations involving establishing clearer guidance for managers to use when deciding whether to cancel telework arrangements, and internal controls to prevent interns from teleworking. While management agreed with our fourth recommendation to establish eligibility criteria for re-employed annuitants, consultants, and senior managers participating in the telework program, we were not able to close the recommendation before we issued the report.

## Appendix I: Objective, Scope, and Methodology

This report addresses the extent to which GAO has established effective controls to comply with the Telework Enhancement Act and GAO's policies regarding telework eligibility and participation requirements for certain employees.

To achieve our objective, we reviewed; the collective bargaining agreement and related memorandums of agreement with the Union; the Telework Act; and GAO's policies on telework, re-employed annuitants, consultants, interns, performance management, and disciplinary and adverse actions. We also compared agency policies to Telework Act requirements to assess compliance. We also interviewed GAO officials from the offices of the Chief Administrative Officer and Human Capital Office (HCO) Employee Relations and Benefits Center to discuss telework policy and program implementation.

To identify the number of employees eligible to telework and the number of employees who teleworked in calendar year 2017, we reviewed GAO's report to Congress, *GAO Telework Report Calendar Year 2017*. We then obtained aggregated telework data for all employees included in the report. These data included the number of telework days and the number of pay periods worked, as well as the level of telework participation. We reviewed GAO's Statistical Analysis System (SAS) programming code used to analyze data from GAO's webTA time and attendance system, and interviewed agency officials about the methodology used to execute, review, and verify the output results. We compared the aggregated telework data to the SAS output results and GAO's telework report to identify any discrepancies. We determined these data to be reliable for the purposes of our report.

We selected individual cases for each aspect of our review—eligibility to apply for telework; requirements for continued participation in telework, new employee participation, and approved telework arrangements—using various characteristics. Specifically, for the eligibility review, we selected a nongeneralizable sample<sup>21</sup> of 327 employees by employee type and pay plan. The sample included 124 interns, 64 re-employed annuitants and consultants, and 139 senior managers.

For the review of participation requirements, we identified and selected 10 employees by performance ratings.<sup>22</sup> These employees were rated at an unacceptable level in any competency, placed in an opportunity period, or demonstrated unacceptable performance at any time during calendar year 2017. We reviewed the employees' official performance-based action files HCO maintains to obtain supporting materials, such as performance appraisals and records of performance reviews, written notices of placement in an opportunity period, and other relevant documents that substantiated the performance appraisal and/or were considered by the proposing and deciding officials. To identify misconduct cases for review, we analyzed HCO's spreadsheets tracking cases of actions ranging from oral and written reprimands and letters of counseling to short suspensions

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<sup>21</sup>Because the sample is nongeneralizable, our results cannot be generalized to the total number of employees GAO reported were eligible to telework and who teleworked in calendar year 2017.

<sup>22</sup>We used performance data from GAO's *Competency Based Performance System (CBPS) Employee Unacceptable or Marginal Ratings Report*, *Competency Based Performance System PDP Appraisals Report (for Analyst, Specialists, Investigators Non-cycle Appraisals)*, and HCO's spreadsheets and management system tracking performance and conduct cases. We included employees who received annual appraisals and non-cycle appraisals (for declining performance, opportunity periods, etc.). We also identified and included, through proposed and final personnel actions, employees who performed at an unacceptable level.

(14 calendar days or less), long suspensions (more than 14 calendar days or indefinite), and removal. We identified and selected 11 employees whose misconduct resulted in a formal disciplinary or adverse action at any time during calendar year 2017.<sup>23</sup> We reviewed the employees' official conduct-based action files HCO maintains for documents used to support the disciplinary and adverse actions, such as records of events related to the offense(s), proposal and decision letters, and webTA data and personnel actions of imposed disciplinary suspensions and resignations or retirements in lieu of removal.

To assess telework participation requirements unique to entry-level employees, we obtained a GAO report that identified entry-level employees with GAO less than 18 months who exceeded specific telework limits in at least one pay period in calendar year 2017. We included 36 entry-level employees in our review. We obtained records from the employees' official personnel folders to confirm their months of employment and extent to which they were allowed to telework. We determined these data to be reliable for the purposes of our report.

In addition, we determined whether employees had approved telework arrangements for program participation. We obtained all available telework arrangements for the employees in our eligibility sample and participation requirement population. We also selected an additional nongeneralizable sample of 386 other employees by employee type and pay plan. The sample included employees assigned to positions currently covered by the Administrative Professional and Support Staff (APSS) pay plan. We selected these employees because they do not yet have a collective bargaining agreement on telework and are not covered by the negotiated agreements with the union on telework. They are the only employees following GAO's 2012 Telework policy.

For all employees we reviewed, we obtained and analyzed webTA data for each pay period in calendar year 2017 to determine the days teleworked, the associated pay periods, and type of telework charged. We compared the webTA data to the aggregated telework data for missing data, outliers, and obvious errors. We determined these data to be reliable for the purposes of our report. For the employees in our eligibility and APSS samples who teleworked at some time in calendar year 2017, we then analyzed telework arrangements to identify the approved telework arrangements the employees had in place for the types of telework charged in calendar year 2017. In total, we analyzed approved telework arrangements for 585 employees. The employees included 31 re-employed annuitants and consultants, 132 senior managers, 36 entry-level employees, and 386 employees assigned to positions covered by the APSS pay plan who teleworked during the calendar year. For the 21 performance and misconduct cases included in our review, we obtained the list from HCO of all cancelled telework arrangements to determine whether managers cancelled their telework arrangements, and if any arrangements were cancelled, the reason(s) why.

We conducted this performance audit from June 2018 through July 2019 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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<sup>23</sup>Three of the 11 employees whose misconduct resulted in a formal disciplinary or adverse action were also rated at an unacceptable level in any competency during calendar year 2017.

## Appendix II: Comments from the U.S. Government Accountability Office



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

### Memorandum

**Date:** July 2, 2019

**To:** Adam R. Trzeciak  
Inspector General  
Office of Inspector General (OIG)

**From:** William J. White *William J. White*  
Chief Human Capital Officer

**Subject:** Telework Participation and Eligibility (OIG-19-1)

Thank you for the opportunity to comment on your draft report on GAO's telework program. While the draft report describes some aspects of our program, the narrow focus on certain employees with performance- and/or conduct-related concerns does not reflect GAO's comprehensive approach to creating and sustaining an organizationally sound telework program. GAO has developed and implemented significant internal control measures to ensure telework eligibility is met and participation is in accordance with the Telework Enhancement Act of 2010 (the Act) and GAO's policies, as reported annually to Congress in the GAO Telework Report. GAO also engages in rigorous management discussions when performance or conduct concerns arise to determine the most appropriate course of action to take regarding telework arrangements, recognizing the need for management discretion as each case under review is specific to an individual set of circumstances. The nuances of each case and the appropriate exercise of management discretion as these situations arise is not adequately considered in your draft report. Moreover, GAO has continually assessed how telework affects GAO employees through annual and targeted surveys to identify areas where enhancements could be made to strengthen telework effectiveness.

The initial part of this draft report focuses on employees with unacceptable performance or misconduct. In 2017, less than one percent of GAO employees had unacceptable performance ratings. The 18 individuals, which represents 22 separate performance and/or conduct cases,<sup>1</sup> cited in the draft report neither account for unique circumstances nor demonstrate the highly interactive discussion process undertaken by GAO management to determine a specific course of action that included not cancelling the telework arrangement. In every instance, GAO management was aware and monitoring the situation and determined what should be done in accordance with the Act and GAO policies. Specifically:

<sup>1</sup> OIG's draft report cited 21 employees with performance or conduct issues during 2017. Agency records indicate that there were 18 employees, spanning 22 performance and conduct cases, during the covered review period. Four employees had both performance and conduct cases over the course of the year.



- In the six unacceptable performance cases referenced – three employees either did not telework in 2017 or did not telework after the performance issue was officially identified and addressed,<sup>2</sup> one employee was provided telework as a reasonable accommodation; one employee was allowed to telework to minimize disruption and safety-related concerns; and one employee was allowed to telework because performance improved soon after the decline in performance was addressed.
- In the eight conduct cases referenced – two employee telework agreements were cancelled; the remaining six continued to telework as none of these conduct cases involved infractions for which management deemed an employee ineligible for telework, consistent with the criteria described in the Act.
- In the four combination unacceptable performance/misconduct cases referenced – all employees were allowed to telework: one employee was under a 30-day Personnel Appeals Board (PAB) stay pending the outcome of a PAB investigation,<sup>3</sup> and management determined that telework was appropriate to minimize disruption; one employee was approved for one day of telework during a performance opportunity period to prevent extending the opportunity period and to comply with a special leave circumstance; one employee did not telework during the performance opportunity period and the manager decided not to renew the telework agreement; one employee was allowed to telework to minimize disruption and safety-related concerns.

All cases were under close supervision and being monitored actively by appropriate parties, including the Human Capital Office, Legal Services, and the respective managers. Also, 13 of the 18 employees are no longer employed by GAO.

The draft report criticizes GAO for cancelling the continuing telework arrangement but not the episodic telework arrangement for some cases cited. For clarification, in 2017, the majority of

<sup>2</sup> The draft report's assessment of performance related examples lack a full explanation of the timing of GAO's performance rating cycle. Final ratings are issued near the end of the year and are not finalized until the feedback session with the employee. In some cases, a determination on the performance level has not been made until the end of the rating cycle. As a result, employees may have been allowed to telework during the year before the performance level was determined. The OIG draft report implies that managers are approving telework for an unacceptable performer when in most cases a performance determination has not been made.

<sup>3</sup> GAO is in a unique situation regarding the available appeal process. The Personnel Appeals Board (PAB) was established by statute to serve as the equivalent of the Merit Systems Protections Board, Equal Employment Opportunity Commission, U.S. Office of Special Counsel, and Fair Labor Relations Authority for GAO employees. The draft report incorrectly states that the PAB is given 5 days to investigate any issue brought to it. The PAB's Office of General Counsel (PAB/OGC) generally is not limited in the amount of time it may take to complete an investigation. However, the PAB/OGC may seek an order from the PAB staying the effective date of a proposed personnel action, including a removal, for 30 days while it conducts an investigation into allegations of prohibited personnel practices concerning the proposed action. The PAB may extend the 30 day stay period while the PAB/OGC continues its investigation. GAO will often take action to mitigate the potential disruption caused by retaining an employee on the rolls during the PAB investigative process after discovering the agency's intent to terminate their employment. Telework is one of those actions used to facilitate the accomplishment of work. GAO implemented this leading practice well before the Administrative Leave Act of 2016. This new law resulted in changes to the Act to encourage agencies to use telework as an action during extended investigations instead of administrative leave or other non-work status.

GAO employees had two separate arrangements. Continuing arrangements allow employees to work at an alternate location on a recurring basis. Episodic arrangements allow employees to work from an alternate location on an ad hoc basis.

Unlike continuing arrangements, employees must request and receive permission to episodically telework before each instance and prior to teleworking. Although an episodic arrangement has been approved, the agency has the discretion to approve and/or deny individual episodic telework requests. GAO encourages staff to keep at a minimum an episodic arrangement for workforce readiness to respond to a variety of situations including those which may invoke the Agency's Continuity of Operations Plan (COOP), partial government shutdowns, or more routine weather or transportation interruptions.

GAO engages in management discussions on each case to determine the best course of action, including whether cancellation is appropriate. Depending on the circumstances, the agency may decide to cancel continuing arrangements only and opt not to cancel episodic arrangements. This is to preserve telework as an available management option in case work at an alternate location is needed to respond to COOP events, weather or transportation interruptions, or to promote the efficiency of the service. In other cases, telework arrangements are not cancelled due to existing reasonable accommodation or ongoing medical issues.

The draft report acknowledges the steps taken by GAO to ensure interns do not telework. At one time, interns were eligible to participate in telework, but management decided to exclude them from telework in 2017. It took some time for this change to be communicated and instituted fully across GAO. As the draft report states, GAO has established standard operating procedures to prevent interns from teleworking.

The one recommendation provided in the draft report relates to the establishment and documentation of eligibility criteria for re-employed annuitants, consultants, and senior managers. GAO's non-bargaining unit Telework policy, GAO Order 2300.5.1, adequately established eligibility criteria for the workforce groups cited by the OIG. In addition to performance, GAO also considers whether or not a position is suitable for telework. Position suitability is covered in GAO's Telework Orders. Both telework and work schedules are approved based on position requirements. Existing policies for these workgroups also provide provisions on work schedule approvals, performance and other employment requirements. For example, eligibility for an appointment as a reemployed annuitant is linked to previous performance ratings received as a federal employee. However, to provide additional clarification, we agreed to amend the existing non-bargaining unit telework policy to specifically describe eligibility for these workgroups.

From an internal controls and assessment perspective, GAO has taken several actions to effectively manage its telework program. GAO has an annual telework renewal season to ensure managers and employees engage in an interactive process to determine telework eligibility, outline duties to be performed, agree upon work schedules, establish alternate work locations, and set expectations for norms of communication and availability when under a telework arrangement. Employees are required to re-submit telework applications at least

annually through the agency's electronic system. This practice creates an annual opportunity for managers to review existing arrangements for effectiveness and to ensure they are still in the agency's best interest. GAO collects information from its on-line telework approval system and sends automated reminders to employees near the end of the renewal system who have not submitted renewal applications.

Lastly, in 2014/2015, we evaluated our telework program to assess whether expanded telework in field locations was meeting its goals, to identify lessons learned from GAO's overall telework program, and to provide recommendations for improvement. GAO developed a comprehensive implementation plan to address the issues discussed in the report and implemented most of the recommendations from this evaluation. We will continue to evaluate our telework program by tracking these efforts, monitor telework program compliance using existing control measures, and look for opportunities for process improvement.

cc: Karl Maschino  
Paul R. Johnson  
William Anderson  
Adebisi Adesina  
Ana Caro

## Text of Appendix II: Comments from the U.S. Government Accountability Office

### Page 1

Memorandum

Date: July 2, 2019

To: Adam R. Trzeciak Inspector General  
Office of Inspector General (OIG)

From: William J. White L  
Chief Human Capital Officer o

Subject: Telework Participation and Eligibility (OIG-19-1)

Thank you for the opportunity to comment on your draft report on GAO's telework program. While the draft report describes some aspects of our program, the narrow focus on certain employees with performance- and/or conduct-related concerns does not reflect GAO's comprehensive approach to creating and sustaining an organizationally sound telework program. GAO has developed and implemented significant internal control measures to ensure telework eligibility is met and participation is in accordance with the Telework Enhancement Act of 2010 (the Act) and GAO's policies, as reported annually to Congress in the GAO Telework Report. GAO also engages in rigorous management discussions when performance or conduct concerns arise to determine the most appropriate course of action to take regarding telework arrangements, recognizing the need for management discretion as each case under review is specific to an individual set of circumstances. The nuances of each case and the appropriate exercise of management discretion as these situations arise is not adequately considered in your draft report. Moreover, GAO has continually assessed how telework affects GAO employees through annual and targeted surveys to identify areas where enhancements could be made to strengthen telework effectiveness.

The initial part of this draft report focuses on employees with unacceptable performance or misconduct. In 2017, less than one percent of GAO employees had unacceptable performance ratings. The 18 individuals, which represents 22 separate performance and/or conduct cases,<sup>24</sup>

cited in the draft report neither account for unique circumstances nor demonstrate the highly interactive discussion process undertaken by GAO management to determine a specific course of action that included not cancelling the telework arrangement. In every instance, GAO management was aware and monitoring the situation and determined what should be done in accordance with the Act and GAO policies. Specifically:

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- In the six unacceptable performance cases referenced - three employees either did not telework in 2017 or did not telework after the performance issue was officially identified

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<sup>24</sup> OIG's draft report cited 21 employees with performance or conduct issues during 2017. Agency records indicate that there were 18 employees, spanning 22 performance and conduct cases, during the covered review period. Four employees had both performance and conduct cases over the course of the year.

and addressed,<sup>25</sup> one employee was provided telework as a reasonable accommodation; one employee was allowed to telework to minimize disruption and safety-related concerns; and one employee was allowed to telework because performance improved soon after the decline in performance was addressed.

- In the eight conduct cases referenced -two employee telework agreements were cancelled; the remaining six continued to telework as none of these conduct cases involved infractions for which management deemed an employee ineligible for telework, consistent with the criteria described in the Act.
- In the four combination unacceptable performance/misconduct cases referenced - all employees were allowed to telework: one employee was under a 30-day Personnel Appeals Board (PAB) stay pending the outcome of a PAB investigation,<sup>26</sup> and management determined that telework was appropriate to minimize disruption; one employee was approved for one day of telework during a performance opportunity period to prevent extending the opportunity period and to comply with a special leave circumstance; one employee did not telework during the performance opportunity period and the manager decided not to renew the telework agreement; one employee was allowed to telework to minimize disruption and safety-related concerns.

All cases were under close supervision and being monitored actively by appropriate parties, including the Human Capital Office, Legal Services, and the respective managers. Also, 13 of the 18 employees are no longer employed by GAO.

The draft report criticizes GAO for cancelling the continuing telework arrangement but not the episodic telework arrangement for some cases cited. For clarification, in 2017, the majority of

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<sup>25</sup> The draft report's assessment of performance related examples lack a full explanation of the timing of GAO's performance rating cycle. Final ratings are issued near the end of the year and are not finalized until the feedback session with the employee. In some cases, a determination on the performance level has not been made until the end of the rating cycle. As a result, employees may have been allowed to telework during the year before the performance level was determined. The OIG draft report implies that managers are approving telework for an unacceptable performer when in most cases a performance determination has not been made.

<sup>26</sup> 3 GAO is in a unique situation regarding the available appeal process. The Personnel Appeals Board (PAB) was established by statute to serve as the equivalent of the Merit Systems Protections Board, Equal Employment Opportunity Commission, U.S. Office of Special Counsel, and Fair Labor Relations Authority for GAO employees. The draft report incorrectly states that the PAB is given 5 days to investigate any issue brought to it. The PAB's Office of General Counsel (PAB/OGC) generally is not limited in the amount of time it may take to complete an investigation. However, the PAB/OGC may seek an order from the PAB staying the effective date of a proposed personnel action, including a removal, for 30 days while it conducts an investigation into allegations of prohibited personnel practices concerning the proposed action. The PAB may extend the 30 day stay period while the PAB/OGC continues its investigation. GAO will often take action to mitigate the potential disruption caused by retaining an employee on the rolls during the PAB investigative process after discovering the agency's intent to terminate their employment. Telework is one of those actions used to facilitate the accomplishment of work. GAO implemented this leading practice well before the Administrative Leave Act of 2016. This new law resulted in changes to the Act to encourage agencies to use telework as an action during extended investigations instead of administrative leave or other non-work status.

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GAO employees had two separate arrangements. Continuing arrangements allow employees to work at an alternate location on a recurring basis. Episodic arrangements allow employees to work from an alternate location on an ad hoc basis.

Unlike continuing arrangements, employees must request and receive permission to episodically telework before each instance and prior to teleworking. Although an episodic arrangement has been approved, the agency has the discretion to approve and/or deny individual episodic telework requests. GAO encourages staff to keep at a minimum an episodic arrangement for workforce readiness to respond to a variety of situations including those which may invoke the Agency's Continuity of Operations Plan (COOP), partial government shutdowns, or more routine weather or transportation interruptions.

GAO engages in management discussions on each case to determine the best course of action, including whether cancellation is appropriate. Depending on the circumstances, the agency may decide to cancel continuing arrangements only and opt not to cancel episodic arrangements. This is to preserve telework as an available management option in case work at an alternate location is needed to respond to COOP events, weather or transportation interruptions, or to promote the efficiency of the service. In other cases, telework arrangements are not cancelled due to existing reasonable accommodation or ongoing medical issues.

The draft report acknowledges the steps taken by GAO to ensure interns do not telework. At one time, interns were eligible to participate in telework, but management decided to exclude them from telework in 2017. It took some time for this change to be communicated and instituted fully across GAO. As the draft report states, GAO has established standard operating procedures to prevent interns from teleworking.

The one recommendation provided in the draft report relates to the establishment and documentation of eligibility criteria for re-employed annuitants, consultants, and senior managers. GAO's non-bargaining unit Telework policy, GAO Order 2300.5.1, adequately established eligibility criteria for the workforce groups cited by the OIG. In addition to performance, GAO also considers whether or not a position is suitable for telework. Position suitability is covered in GAO's Telework Orders. Both telework and work schedules are approved based on position requirements. Existing policies for these workgroups also provide provisions on work schedule approvals, performance and other employment requirements. For example, eligibility for an appointment as a reemployed annuitant is linked to previous performance ratings received as a federal employee. However, to provide additional clarification, we agreed to amend the existing non-bargaining unit telework policy to specifically describe eligibility for these workgroups.

From an internal controls and assessment perspective, GAO has taken several actions to effectively manage its telework program. GAO has an annual telework renewal season to ensure managers and employees engage in an interactive process to determine telework eligibility, outline duties to be performed, agree upon work schedules, establish alternate work locations, and set expectations for norms of communication and availability when under a telework arrangement. Employees are required to re-submit telework applications at least

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and sends automated reminders to employees near the end of the renewal system who have not submitted renewal applications.

Lastly, in 2014/2015, we evaluated our telework program to assess whether expanded telework in field locations was meeting its goals, to identify lessons learned from GAO's overall telework program, and to provide recommendations for improvement. GAO developed a comprehensive implementation plan to address the issues discussed in the report and implemented most of the recommendations from this evaluation. We will continue to evaluate our telework program by tracking these efforts, monitor telework program compliance using existing control measures, and look for opportunities for process improvement.

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## **Appendix III: OIG Contact and Staff Acknowledgments**

### **OIG Contact**

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