

WORKPLACE FLEXIBILITY 2010

Georgetown University Law Center

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Leading by Example:

Making Government a Model for Hiring and Retaining Older Workers

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Mr. Chairman and Members of the Committee, thank you for inviting me to testify before you today.

My name is Chai Feldblum. I am a Professor of Law and Director of the Federal Legislation Clinic at Georgetown Law and the Co-Director of Workplace Flexibility 2010.

I hope to explain in my testimony why increasing workplace flexibility should be a compelling national priority and why opportunities offered by workplace flexibility must be a part of any conversation about the aging Federal workforce.

I. History, Activities, and Reports of Workplace Flexibility 2010

Workplace Flexibility 2010 (WF2010) is a research, outreach and consensus-building effort on national workplace flexibility policy based at Georgetown Law.¹ We are the lead policy component of the Alfred P. Sloan Foundation's National Initiative on Workplace Flexibility, which seeks to make workplace flexibility a standard of the American workplace through a combination of voluntary employer efforts and thoughtful public policy.²

The goal of Workplace Flexibility 2010 is to facilitate the development of consensus-based public policy solutions that increase access to workplace flexibility in ways that work for employers and employees. We define workplace flexibility as including three categories:

- ❑ **Flexible Work Arrangements:** flexible work arrangements (FWAs) alter the time and/or place that work is conducted on a regular basis, in a manner that is as manageable and predictable as possible for both employees and employers. FWAs provide:
 - Flexibility in the scheduling of hours worked, such as alternative work schedules (e.g., nontraditional start and end times, flex time and compressed workweeks);
 - Flexibility in the amount of hours worked, such as part time work, job shares, phased retirement or part year work; and
 - Flexibility in the place of work, such as working at home, at a satellite location or at different locations.³

¹ Workplace Flexibility 2010, Home Page, <http://www.law.georgetown.edu/workplaceflexibility2010/index.cfm>.

² For a description of the Sloan National Initiative on Workplace Flexibility, see Workplace Flexibility 2010, Alfred P. Sloan Foundation National Initiative, <http://www.law.georgetown.edu/workplaceflexibility2010/funding.cfm>.

³ For a more detailed description of FWAs, see WORKPLACE FLEXIBILITY 2010, FLEXIBLE WORK ARRANGEMENTS: THE OVERVIEW MEMO (2006), http://www.law.georgetown.edu/workplaceflexibility2010/definition/general/FWA_OverviewMemo.pdf. The type of FWA that an employee needs and utilizes will depend on the type of job the employee holds. The FWAs most studied in research -- including flexibility in the scheduling of hours worked, such as alternative work schedules (e.g., nontraditional start and end times, flex time and compressed

- ❑ **Time Off:** Time Off provides leave from work for a defined period of time to address unexpected or ongoing personal and family needs. Time off may be needed in short or long increments.

Time Off in Short Increments includes:

- Short-Term Time Off (STO) -- used to address the ordinary predictable and unpredictable needs of life (e.g., a sick employee, a sick child, a child's school conference, a death in the family, a home repair).
- Episodic Time Off (EPTO) -- used to address a recurring predictable or unpredictable need for time off from work (e.g., an employee who has – or cares for a family member who has – an illness or chronic health condition that flares up sporadically, an employee who volunteers regularly in the community, or an employee who is obtaining advanced training).

Time Off in Long Increments includes Extended Time Off (EXTO). EXTO is used to address a need for time away from work for a single reason for an extended period of time (e.g., caring for a newborn or newly adopted child, having a serious health condition or caring for a family member with a serious health condition, or serving in the military).

- ❑ **Career Exit, Maintenance and Reentry:** Career Exit, Maintenance and Reentry addresses the needs of employees who, out of necessity or personal choice, leave the workforce completely for a period of time, but need and/or want to reenter the workforce later.⁴

Over the last five years, Workplace Flexibility 2010 has:

- ❑ *Created a body of significant intellectual work that analyzes how existing laws may support, enhance, or impede workplace flexibility as defined by these components.* For example, over an 18-month period, we convened a Legal Working Group of seven high-level management litigators and seven high-level employee and union litigators to explore these issues. We systematically worked through the various challenges and opportunities posed by existing laws and proposed laws. We also assembled a Phased Retirement Working Group of inter-disciplinary experts (including plan and business representatives, consumer groups, academics, and actuaries) to analyze the obstacles and disincentives for private employers who wish to institute phased retirement programs. Using background materials prepared by Workplace Flexibility 2010 legislative lawyers,

workweeks) -- are often utilized by employees in jobs with traditionally long hours and fixed schedules. By contrast, for employees in jobs with traditionally *less* than full time hours and *unpredictable* scheduling, FWAs would be arrangements that provide such workers with *greater* predictability over their work hours, such as receiving advance scheduling of their hours.

⁴ See APPENDIX A: WORKPLACE FLEXIBILITY 2010, DEFINITION OF WORKPLACE FLEXIBILITY.

these core groups considered and discussed a range of policy options that might increase access to workplace flexibility.

- ❑ *Rooted the conversation on workplace flexibility in sound research.* Workplace Flexibility 2010 has engaged in an interactive dialogue with academics and researchers to create accessible summaries of the quantitative and qualitative research documenting the needs for flexibility and the costs of workplace inflexibility.⁵
- ❑ *Created forums for meaningful bipartisan dialogue on workplace flexibility.* Through a series of bipartisan briefings on Capitol Hill over the course of three years, we have helped educate Congressional staff and other stakeholders on the need for workplace flexibility. These briefings have been examples of initial partnerships on workplace flexibility across party lines. Three examples are a July 18, 2005 briefing co-sponsored by Senators Kohl and Smith on “What an Aging Workforce Can Teach Us About Workplace Flexibility”; a May 1, 2006 briefing co-sponsored by Senators Alexander and Clinton on “Meeting the Need of Today’s Families: The Role of Workplace Flexibility”; and a September 29, 2006 briefing co-sponsored by Senators Dodd and DeWine on “Promoting Children’s Well Being: The Need for Workplace Flexibility.”⁶
- ❑ *Engaged a diverse range of stakeholders to broaden the commitment to workplace flexibility.* We have reached out to a wide range of groups -- including those representing the interests of disability, health, religion, aging, children and others -- to bring new perspectives to the policy debate and to widen the spectrum of groups interested in moving forward effectively in this arena. Workplace Flexibility 2010 has also been getting outside the Beltway, hosting community policy forums on workplace flexibility in cities across the country. Through these forums, we are hearing directly from local employers and community organizations on how they experience the need for flexibility – and we are committed to bringing those insights back to the national policy conversation on workplace flexibility.

II. Workplace Flexibility and Older Workers

At Workplace Flexibility 2010, we believe that workplace flexibility is a compelling national issue. Two converging currents in the American workplace have propelled the

⁵ See, e.g., CHANTEL SHEAKS, MARCIE PITT-CATSOUPHES, MICHAEL A. SMYER, LEGAL AND RESEARCH SUMMARY SHEET: PHASED RETIREMENT, <http://www.law.georgetown.edu/workplaceflexibility2010/definition/documents/PhasedRetirement08-07.pdf> [hereinafter Phased Retirement Fact Sheet]; WORKPLACE FLEXIBILITY 2010, OLDER WORKERS AND THE NEED FOR WORKPLACE FLEXIBILITY (2005), http://www.law.georgetown.edu/workplaceflexibility2010/docs/2005_0718_Event/WF2010_Older_JAZZY_COLOR.pdf [hereinafter WF2010 Older Worker Fact Sheet].

⁶ Materials from these events are available at Workplace Flexibility 2010, News and Events, <http://www.law.georgetown.edu/workplaceflexibility2010/news.cfm>.

need for flexibility to the forefront, and have made it a pressing issue for all workforces, including that of the Federal government.

First, we have experienced broad societal change in our communities: most families today have two earners who must try to balance work and personal responsibilities.⁷ In 1970, almost two-thirds of married couples had one spouse at home to handle family life needs; by 2000, 60% of married couples had both spouses in the workforce.⁸ According to the National Study of the Changing Workforce, nearly 80% of employees—including both men and women—said they would like to have more flexible work options and would use them if there were no consequences at work.⁹ But despite the 21st century change in our work patterns, our laws and policies have failed to keep pace.

Second, the demographics of the workforce are necessarily changing as the Baby Boomers are reaching retirement age. The Center on Aging & Work/Workplace Flexibility at Boston College has graphically illustrated the demographic effect of the Baby Boomers on American society throughout the years, starting with the structure of American education, and continuing with their impact on the American workplace.¹⁰ Studies also indicate that the percentage of workers aged 55-64 in the American workforce will increase by 48% in the next five years; the percentage of workers aged 65 and older will increase by 40%.¹¹ In that same time period, the proportion of workers aged 45-54 will decrease by 10%, and the proportion of younger workers will only increase moderately.¹² This demographic change has already begun to heavily impact the Federal workforce – a large (and growing) percentage of Federal employees are eligible to retire. And when they do retire, these employees will take with them institutional knowledge and experience built up over decades of service.¹³

Despite this anticipated retirement wave, many older workers need or want to work past traditional retirement age.¹⁴ Some will do so seeking economic security.¹⁵ For

⁷ WORKPLACE FLEXIBILITY 2010, MEETING THE NEEDS OF TODAY'S FAMILIES: THE ROLE OF WORKPLACE FLEXIBILITY (2006),

http://www.law.georgetown.edu/workplaceflexibility2010/documents/FF_BW_FI_Fact.pdf.

⁸ *Id.*

⁹ *Id.*

¹⁰ *The Aging Workforce: What Does it Mean for Business and the Economy?: Hearing Before the Senate Special Committee on Aging*, 110th Congress (Feb. 28, 2007) (statement of Dr. Marcie Pitt-Catsouphes, The Center on Aging & Work/Workplace Flexibility at Boston College) [hereinafter *The Aging Workforce*, Pitt-Catsouphes statement].

¹¹ *The Aging Workforce*, Pitt-Catsouphes statement, *supra* note 10.

¹² *Id.*

¹³ *Federal Benefits: Are We Meeting Expectations?: Hearing Before the House Subcommittee on Federal Workforce, Postal Service, and the District of Columbia*, 110th Congress (Aug. 2, 2007) (statement of Linda M. Springer, U.S. Office of Personnel Management). Springer has made numerous references to the impending "tsunami" and the need for agencies to adequately prepare. OPM notes that "[b]y 2015, 40% of the Federal workforce is expected to retire." U.S. Office of Personnel Management, *Career Patterns Initiative: A Guide for Agencies* (2006), at http://www.opm.gov/hcaaf_resource_center/careerpatterns/CPGuideV1.pdf.

¹⁴ WF2010 Older Workers Fact Sheet, *supra* note 5.

¹⁵ Most people over 45 indicate that they plan to, or know they need to, work at least part time in retirement for financial reasons. S.E. Rix, *Aging and Work: A View from the United States* 23 (2004).

example, more than one third of 45-54 year olds and one quarter of 55-64 year olds report that they have not set aside money for retirement on a regular basis.¹⁶ In fact, most people over the age of 45 indicate that they plan to, or know that they will need to, work at least part time once they reach retirement age for financial reasons.¹⁷

Other older individuals may elect to keep working to stay mentally active and healthy in a job they enjoy.¹⁸ A recent survey entitled, “Attitudes of Individuals 50 and Older Toward Phased Retirement,” found that the reasons employees who are at least 66 years old work during “retirement” were the “desire to stay mentally active (72%) and the desire to remain productive and useful (71%).”¹⁹

Whether an older employee keeps working out of economic necessity or to stay active, many will want or need a more flexible work environment.²⁰ And regardless of the reasons that an older worker remains in the workforce, many do not want to keep working in the *same* way that they have worked in the past. Some workers desire flexibility to provide better care to themselves or to a spouse, sibling, child, or grandchild. Other workers may desire flexibility in order to attend a weekly class or a golf match, observe religious practices, or for civil engagement. The structure of the workplace should be one in which, for example, a grandparent is not forced to choose between spending time with his or her grandchildren and continuing in a job that provides financial security and/or personal fulfillment.

III. The Federal Government and Older Workers

A. Creative and Systematic Thinking

If the Federal government is to be successful in tackling the workforce issues of the future, it must engage in affirmative, creative, *advance* thinking about workplace flexibility. The Federal government will need to have a systematic approach for transforming the structure of its workplace from the rigid constructions of its past to the more flexible needs of its future.

Studies confirm that workplace flexibility – when instituted and implemented well – can be beneficial for both employers and employees.²¹ Federal agencies have reported that workplace flexibility programs such as alternative and flexible work schedules are some of the most effective tools they have in managing their workforce to achieve agency

¹⁶ *Id.*

¹⁷ *Id.* at 23.

¹⁸ WF2010 Older Workers Fact Sheet, *supra* note 5.

¹⁹ AARP, Attitudes of Individuals 50 and Older Toward Phased Retirement (March 2005), http://assets.aarp.org/rgcenter/post-import/phased_ret.pdf.

²⁰ WF2010 Older Workers Fact Sheet, *supra* note 5.

²¹ See U.S. Gen. Accounting Office, GAO-07-118, *National Transportation Safety Board: Progress Made, Yet Management Practices, Investigation Priorities, and Training Center Use Should Be Improved* 21 (2006) and U.S. Gen. Accounting Office, GAO 07-438SP, *Highlights of a GAO Forum: Engaging and Retaining Older Workers* 10 (2007).

goals.²² Studies indicate that workplace flexibility should be a central part of any agency's recruitment and retention efforts. For example, a recent GAO survey found that 53% of all Federal employees with dependent care needs said that workplace flexibility options were an important factor in accepting employment with an agency, while 67% said it was an important factor in their decision to continue to work at a particular agency.²³

Workplace flexibility is particularly important for older workers. Such workers cite inflexible work schedules as one of the biggest impediments to working after traditional retirement age.²⁴ A recent study found that "the most common reason for retiring but continuing to work after retirement is that respondents want a work schedule that allows them the flexibility to do other things, such as travel, or develop interests (71% gave this response)."²⁵ To some older workers, flexible work arrangements and other non-monetary characteristics of work may be more important than wages.²⁶

But instituting workplace flexibility programs that will work well for both employers and employees is not always easy. Indeed, as the Federal government itself demonstrates, the will to implement such programs is not always matched by the strategic and advance thought necessary to ensure effective implementation of such programs. If the Federal government is to have the skilled workforce that it needs to meet the human resource requirements of its agencies, it must learn from its past efforts and build on its successes.

B. The Federal Government As a Pioneer in Workplace Flexibility

Increasing workplace flexibility in the Federal government has surfaced as a priority for Congress and the Federal government twice in modern times. The assessments conducted by both Executive and Congressional bodies on such initial attempts also illustrate some of the challenges such policies have encountered.

²² U.S. Gen. Accounting Office, GAO-07-118, *National Transportation Safety Board: Progress Made, Yet Management Practices, Investigation Priorities, and Training Center Use Should Be Improved* 21 (2006).

²³ U.S. Gen. Accounting Office, GAO-07-437R, *An Assessment of Dependent Care Needs of Federal Workers Using the Office of Personnel Management's Survey* 34 (2007).

²⁴ U.S. Gen. Accounting Office, GAO 07-438SP, *Highlights of a GAO Forum: Engaging and Retaining Older Workers* 10 (2007). For facts on older workers preferences see the Center on Aging & Work/ Workplace Flexibility at Boston College, *Fact Sheet on Older Workers' Preferences for Work and Employment* at 1 (2006) (48% of non-retired older workers who worked 44 hours per week on average would prefer to work less hours; older workers are more likely to desire alternative work arrangements as they age).

²⁵ Center on Aging & Work/ Workplace Flexibility at Boston College, *Fact Sheet on Older Workers' Preferences for Work and Employment* at 2 (citing Moen, P., Erickson Aw., Agarwal, M., Fileds, V., & Todd, L. (2000) *Cornell Retirement and Well-Being Study: Final report*. Ithaca, NY: Bronfenbrenner Life Course Center at Cornell University).

²⁶ WF2010 Older Worker Fact Sheet, *supra* note 5 (citing S.E. Rix, *Aging and Work: A View from the United States* 23 (AARP 2004); Haider, S., Loughran, D. *Elderly Labor Supply: Work or Play?* (Santa Monica, CA: RAND Corp. 2001); and Moen, Erickson, Agarwal, Fileds, & Todd, *supra* note 25).

(1) *The First Attempt at Structural Change – A Wave of New Laws in the 1970s*

The influx of women into the workplace in the 1970s, along with an accompanying energy crisis, surfaced the need for a change in the structure of the workplace. During the early 1970's, studies of emerging flexibility practices in both Federal and non-Federal employees provided early evidence that flexible work arrangements might increase productivity and morale.²⁷ As support for the formal establishment of flexibility options within the Federal government grew, Congress enacted two laws in 1978: (1) the Federal Employees Part-Time Career Employment Act;²⁸ and (2) the Federal Employees Flexible and Compressed Work Schedules Act (FEFCWA).²⁹

The first law – the Federal Employees Part-Time Career Employment Act – was passed in response to the enumerated benefits of part-time permanent employment, including increased productivity and the opportunity to better balance work and family needs.³⁰ The Act required the head of each Federal agency to establish and maintain a program for part-time career employment. It also required the Office of Personnel Management (OPM) to advise and assist agencies through initiatives such as research and demonstration programs.³¹

In 1986, a Government Accountability Office (GAO) examination of the status of Federal part-time employment programs found that neither OPM nor the agencies had fulfilled their respective duties under the law.³² Although a later government review concluded that this was “more a result of organizational inertia than . . . a conscious decision not to have such positions,”³³ Congress responded by requiring OPM to establish a formal job-sharing program in 1990.³⁴ In 1994, President Bill Clinton strengthened the part-time initiative with a memorandum that directed executive departments and agencies to establish a program that would encourage and support the expansion of flexible family-friendly work arrangements, including part-time arrangements.³⁵ In 1996, President

²⁷ U.S. Gen. Accounting Office, GAO/GGD-94-55, *Alternative Work Schedules: Many Agencies Do Not Allow Employees the Full Flexibility Permitted by Law* (1994).

²⁸ Pub. L. No. 95-437. See APPENDIX B: WORKPLACE FLEXIBILITY 2010: FEDERAL EMPLOYEES PART-TIME CAREER EMPLOYMENT ACT (providing an overview of the law).

²⁹ Pub. L. No. 95-390. See APPENDIX C: WORKPLACE FLEXIBILITY 2010: FEDERAL EMPLOYEES FLEXIBLE AND COMPRESSED WORK SCHEDULES ACT (providing an overview of the law).

³⁰ See 5 C.F.R. § 340.101 Congressional Findings and Purpose. See also http://www.opm.gov/Employment_and_Benefits/WorkLife/OfficialDocuments/handbooksguides/PT_Employ_JobSharing/pt02.asp for OPM's list of the benefits of part-time and job sharing employment opportunities.

³¹ See 5 U.S.C. § 3402.

³² U.S. Gen. Accounting Office, GAO-GGD-86-103BR, *Federal Personnel – Federal Agencies' Part-Time Employment Programs* 1 (1986).

³³ See U.S. MERIT SYSTEMS PROTECTION BOARD, *BALANCING WORK RESPONSIBILITIES AND FAMILY NEEDS: THE FEDERAL CIVIL SERVICE RESPONSE* 42 (1991).

³⁴ Pub. L. No. 101-136, 103 Stat. 783-809 (1989).

³⁵ Memorandum of President William J. Clinton, *Expanding Family-Friendly Work Arrangements in the Executive Branch*, 30 WEEKLY COMP. PRES. DOC. 1468 (July 11, 1994).

Clinton issued another memorandum directing executive agencies to review and further utilize flexible policies already in place.³⁶

The second law enacted by Congress in 1978 -- the Federal Employees Flexible and Compressed Work Schedules Act (FEFCWA) -- authorized agencies to implement “experiments” involving alternative work schedules (AWS) for a period of three years.³⁷ These experiments empowered agencies to permit Federal employees to designate non-traditional arrival and departure times, centered around core agency hours, and to experiment with four-day workweeks or other compressed schedules.³⁸

While FEFCWA did not require agencies to conduct such experimental programs, nor did it prescribe the form that such experiments would take,³⁹ the law did list six specific areas of improvement anticipated as a result of such experimental changes in scheduling: better efficiency of government operations; more effective management of mass transit facilities and traffic; better control of energy consumption; more quality service to the public; more opportunities for full and part time employment; and better employee job satisfaction, morale, and family life.⁴⁰ The law mandated the Civil Service Commission (the precursor to OPM) to measure the actual effectiveness of changes in scheduling and to report any legislative or administrative recommendations to Congress by 1982.⁴¹

Midway through the experimental period authorized by FEFCWA, the GAO submitted a report to Congress warning that the lack of uniformity in AWS programs, the lack of meaningful agency self-evaluation, and insufficient monitoring by OPM (the successor to the Civil Service Commission) would make a realistic assessment of such programs unlikely.⁴² OPM disagreed with the GAO, insisting that the experiments would “provide meaningful decision-making information.”⁴³ Indeed, in one of its subsequent reports, OPM judged the experiments a success, concluding “that all of the [AWS] types used in the experiment were successful in most situations from the perspective of both the

³⁶ Memorandum of President William J. Clinton, Implementing Federal Family Friendly Work Arrangements in the Executive Branch, 32 WEEKLY COMP. PRES. DOC. 1119 (June 21, 1996).

³⁷ Pub. L. No. 95-221 § 2 (authorizing “carefully designed, controlled, and evaluated experimentation by Federal agencies”). See also § 5 (three-year sunset provision).

³⁸ *Id.* § 2.

³⁹ See, e.g., *id.* Earlier proposals required agencies to conduct experimental AWS programs. Mandatory agency participation proved too controversial and an amendment, negotiated by Representative Edward Derwinski (R-IL) and Representative Stephen Solarz (D-NY), made agency participation voluntary. Compare H.R. REP. NO. 95-912 (1978) (section 4 of the bill as reported out of committee) with 124 CONG. REC. 15434 (1978) (amendment offered by Rep. Solarz and passed by floor vote).

⁴⁰ Pub. Law No. 95-390, Federal Employees Flexible and Compressed Work Schedules Act. See also U.S. Gen. Accounting Office, GAO/GGD-85-63: *Report to the Chair, Task Force on Economic Security, Select Committee on Children Youth and Families of the House of Representatives: Alternative Work Schedules for Federal Employees* (1994).

⁴¹ Pub. L. No. 95-390 § 304.

⁴² U.S. Gen. Accounting Office, *The Alternative Work Schedules Experiment: Congressional Oversight Needed to Avoid Likely Failure*, at 18-19 (FPCD-81-2, 1980) [hereinafter “Congressional Oversight Needed”].

⁴³ Letter of Gary R. Nelson, Assoc. Dir. for Compensation, Office of Personnel Management, Commenting on GAO Report (Aug. 25, 1980), in GAO, *Congressional Oversight Needed*, *supra* note 42, at 62.

experimenting organizations and individuals.”⁴⁴ After also concluding that “careful and complete management assessment is required prior to implementing an AWS program and periodically during its operation,” OPM recommended that Congress enact legislation that would permit the permanent establishment of such flexible scheduling in agencies and that would include “appropriate control and oversight.”⁴⁵

Disagreement regarding the extent of appropriate agency control and oversight of AWS programs prevented permanent authorization of the FEFCWA of 1978 at the end of its initial 3-year experimental phase. Congress passed a 4-month extension of the law while it further debated the future of the law.⁴⁶

During the permanent authorization debate, OPM sought “broad authority to regulate and oversee the use of [AWS]” and recommended that OPM be given the authority to pre-approve all compressed work schedules.⁴⁷ OPM Director Donald Devine, recently appointed by newly-elected President Ronald Reagan, also argued for unilateral agency authority to establish or terminate AWS programs. The Democrats in Congress, with strong support from the unions, argued that agencies should be required to negotiate directly with employee representatives before establishing or terminating an AWS program.⁴⁸

While such disputes, as well as a desire for further evaluation of AWS programs, prevented permanent authorization of the law in 1982, Congress reauthorized the law to allow for another three-year experiment.⁴⁹ The FEFCWA of 1982 allowed agencies to review and terminate existing experimental AWS programs without a requirement to negotiate that termination and with no possibility of review.⁵⁰ However, if an existing program were terminated, an agency or union could bargain over the establishment of a new AWS program. For any continued or newly established AWS programs, however, the FEFCWA of 1982 provided agencies with the authority to terminate AWS programs that had an “adverse agency impact,” but required negotiation with employee representatives for such termination.⁵¹ Any impasse between agencies and unions

⁴⁴ Office of Personnel Management, *Alternative Work Schedules Experimental Program: Interim Report to the President and the Congress*, at 2 (PP 60-19, 1981).

⁴⁵ *Id.*

⁴⁶ Pub. L. No. 97-160, 96 Stat. 21 (1982).

⁴⁷ Letter of Donald J. Devine, Director, Office of Personnel Management, *Accompanying Legislative Recommendations* (Feb. 9, 1982), in *Hearing on H.R. 5366 to Amend Title 5, United States Code, to Provide Permanent Authorization for Federal Agencies to Use Flexible and Compressed Employee Work Schedules, Before the Subcomm. on Civil Serv., Post Office, and Gen. Servs. of the S. Comm. on Governmental Affairs*, 97th Cong. 75 (1982). OPM also recommended more specific limitations on usage of AWS, greater management control over the decision to implement or terminate AWS (especially in the context of collective bargaining agreements), and a requirement that AWS be used “only when they would improve productivity or provide greater service to the public and would not add to the cost of agency operations.” *Id.* See also *id.* at 84 (section analysis of OPM’s proposed legislation, amending organized labor negotiation provisions to grant greater autonomy to management).

⁴⁸ 128 CONG. REC. 5034 (1982).

⁴⁹ Pub. L. No. 97-221, 96 Stat. 227 (1982).

⁵⁰ *Id.* § 4(b)(1).

⁵¹ *Id.* § 2, *amending* 5 U.S.C. § 6131 (a) and (c). The FEFCWA of 1978 had allowed agency termination of AWS programs “but subject to the terms of any [collective bargaining agreement].” The FEFCWA of

regarding the termination of an AWS program based on “adverse agency impact” would be referred to the Federal Service Impasses Panel for resolution.⁵²

By the time FEFCWA came up for consideration at the end of its second 3-year experimental phase, GAO reported widespread support for AWS programs.⁵³ Although permanent authorization of the law was temporarily delayed by peripheral controversies,⁵⁴ FEFCWA was permanently authorized in December 1985 without any substantive changes to the provisions enacted in 1982.⁵⁵

The experience of the Federal government with these various laws demonstrates the ability of the government to be a pioneer in advancing workplace flexibility and the capacity of the government to engage in useful assessment of its efforts. But such assessments also highlight some of the limitations in the existing programs.

For example, while both GAO and OPM reports have indicated growth in the *availability* of FWA policies across the executive branch, actual employee *usage* of FWAs remains difficult to assess. In addition, these reports have consistently identified ongoing barriers to the effective implementation and utilization of AWS programs.

The primary barriers identified in these reports include:

- ❑ The law does not require agencies to offer FWA programs; it only authorizes agencies to implement FWA policies if they wish to do so.
- ❑ Even when an agency chooses to implement an official FWA policy, the agency’s management—from top leadership to individual supervisors—may not support, publicize, emphasize, or encourage the use of FWAs. This may be because they believe use of FWAs will result in lost productivity (despite data to the contrary) or because it is simply not a priority for them.⁵⁶
- ❑ Even if there is support for a program within a particular agency, there is often inconsistent implementation of FWA programs from department to department

1982 allowed an agency to refuse to establish or terminate an AWS “notwithstanding . . . any collective bargaining agreement” but still required negotiation with unions regarding the establishment or termination of an AWS program.

⁵² *Id.*, amending 5 U.S.C. § 6131(c)(2).

⁵³ U.S. Gen. Accounting Office, *Alternative Work Schedules for Federal Employees*, at 3 (July 19, 1985), in *Federal Employees Flexible and Compressed Work Schedules Act: Hearings on H.R. 1534 Before the Subcomm. on Human Resources of the House Comm. on Post Office and Civil Service*, 99th Cong. (1985).

⁵⁴ Pub. L. No. 99-69, 99 Stat. 167 (1985); Pub. L. No. 99-109, 99 Stat. 482 (1985); Pub. L. No. 99-140, 99 Stat. 563 (1985).

⁵⁵ Pub. L. No. 99-196, 99 Stat. 1350 (1985) (striking § 5 of the 1982 law, which contained its sunset provision).

⁵⁶ See Office of Personnel Management, *Achieving a Balance: Meeting Work and Family Obligations*, at 8 tbl.1 (July 2000); Office of Personnel Management, *A Review of Federal Family-Friendly Workplace Arrangements*, at 12-14 (July 1998); GAO, *Many Agencies Do Not Allow Full Flexibility*, *supra* note 27, at 7-9.

(or even from individual supervisor to supervisor).⁵⁷ This can make it difficult for such programs to be fully integrated into the workplace.

- ❑ As a practical matter, some managers are more effective in communicating, encouraging, implementing, and managing such programs than others. The availability of FWAs and/or the ability to schedule flexible hours is often not communicated effectively to employees by their supervisor.⁵⁸
- ❑ FWAs are sometimes made available only to a certain class of employees, excluding those who may need them the most and preventing workplace flexibility from becoming the norm for all workers. Depending on the circumstances, a rational reason may or may not be present for such exclusions.⁵⁹

As a result of these barriers, the availability and utilization of FWA programs remains inconsistent across and within the Federal agencies.

(2) The Aging Workforce Creates A Wave of Renewed Interest: the 2000s

Over the past decade, the aging workforce has served as a catalyst for a renewed focus on workplace flexibility in the Federal government. The government understands that its workforce is changing and that its workplaces should better reflect those changing needs. Congress and the agencies have launched several innovative and interesting programs to respond to those needs.

The Federal government has increasingly used workplace flexibility as a recruitment and retention tool for workers who are needed in critical workforce positions. For example, OPM recently targeted prospective employees at different stages in their career with a Career Patterns Initiative.⁶⁰ Access to certain types of FWAs -- mainly alternative work schedules and other forms of workplace flexibility -- are emphasized in this effort as one of the main approaches for attracting and keeping employees.⁶¹

In 2004, Congress passed the Federal Workforce Flexibility Act of 2004 to “[t]o further improve the Federal government’s ability to recruit and retain a world-class 21st century workforce.”⁶² The law aimed to modernize personnel flexibilities available to employees of Federal agencies, a number of which were having difficulty attracting qualified individuals to fill senior positions. It did so in three primary ways. First, it allowed

⁵⁷ See, e.g., OPM, *Achieving a Balance*, *supra* note 56, at 6 (noting that many organizations leave implementation to the discretion of individual supervisors).

⁵⁸ See OPM, *Review of Workplace Arrangements*, *supra* note 30, at 12; GAO, *Many Agencies Do Not Allow Full Flexibility*, *supra* note 27, at 10-11.

⁵⁹ See OPM, *Achieving a Balance*, *supra* note 56, at 8, 10; OPM, *Review of Workplace Arrangements*, *supra* note 56, at 11, 13; GAO, *Many Agencies Do Not Allow Full Flexibility*, *supra* note 27, at 7-9. Sometimes unionized employees may use AWS while non-unionized employees may not, and sometimes vice versa. *Id.* at 7. AWS have also not tended to be available to supervisory and senior-level staff. OPM, *Achieving a Balance*, *supra* note 56.

⁶⁰ OPM, *Career Patterns Initiative*, *supra* note 13.

⁶¹ *Id.* See also APPENDIX D: WORKPLACE FLEXIBILITY 2010: SOME BACKGROUND INFORMATION ON WORKPLACE FLEXIBILITY IN FEDERAL AGENCIES.

⁶² S. REP. NO. 108-223, at 4 (2004).

agencies to offer higher lump sum or installment bonuses for the recruitment, relocation, and retention of certain employees, and required OPM to submit an annual report to Congress on the use of these new tools.⁶³ Second, it required agencies to regularly evaluate training programs aimed at enhancing career development, while changing annual leave calculation to recognize accrued leave from prior, non-governmental jobs.⁶⁴ Third, the law allowed agencies to offer compensatory time off for time spent in travel status for which the employee would not otherwise be compensated.⁶⁵ In creating this package of employment policies, Congress noted that it was responding to a “recent [GAO] report finding that the most effective [flexibilities] in managing the Federal workforce are those such as time off awards and flexible work schedules. . . .”⁶⁶

Several individual agencies have also developed programs to address the concerns of the changing Federal workplace. For example, the Nuclear Regulatory Commission (NRC) actively advertises its workplace flexibility options.⁶⁷ NRC has received legislative authority to re-hire retired former retirees and to let them receive a full salary and a full pension annuity. Ninety six percent of NRC’s intermittent staff are 50 years of age or older, and many are re-employed annuitants.⁶⁸ Agencies are also increasingly offering the flexible work arrangement of telework.⁶⁹ NASA’s Langley Research Center, the General Services Administration, and other agencies have all established telework programs to meet their workforce needs, with some promising results.⁷⁰ And the General Services Administration reports that telework has been made available to 92% of its 12,205 employees.⁷¹

Public-private partnerships have also become increasingly important in this latest wave of government experimentation. Public-private programs such as the *FedExperience* encourage older workers in the private sector to consider Federal employment both as a

⁶³ Federal Workforce Flexibility Act of 2004, Pub L. No. 108-411 §§ 101 & 201.

⁶⁴ *Id.* § 201.

⁶⁵ *Id.* § 203.

⁶⁶ *Recruiting and Retaining Federal Workers: Hearing Before the Subcomm. on Civil Service and Agency Organization of the Comm of Government Reform*, 108th Congress (2004) (statement of Colleen M. Kelley, National President of National Treasury Employees Union).

⁶⁷ NRC Employment Opportunities Website, at <http://www.nrc.gov/about-nrc/employment/quality-life.html>

⁶⁸ Human Resources Processes, Policies, and Practices, at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2006/secy2006-0164/enclosure3.pdf>; see also PARTNERSHIP FOR PUBLIC SERVICE, A GOLDEN OPPORTUNITY: RECRUITING BABY BOOMERS INTO GOVERNMENT 6 (2008), at <http://www.ourpublicservice.org/OPS/publications/viewcontentdetails.php?id=122> (noting that 96% “of NRC’s intermittent staff are 50 or older”).

⁶⁹ The “official website of the Federal Government’s telework program,” <http://www.telework.gov/>; see also APPENDIX E: WORKPLACE FLEXIBILITY 2010, TELECOMMUTING: A CASE STUDY IN PUBLIC POLICY APPROACHES, at http://www.law.georgetown.edu/workplaceflexibility2010/definition/general/C_Memo_TeleComm.pdf.

⁷⁰ National Aeronautics and Space Administration, Office of Human Capital Management, *Telecommuting*, at <http://ohcm.larc.nasa.gov/familylife/telecommuting.html> and <http://lms.larc.nasa.gov/admin/documents/LPR3900-1.pdf>. See also U.S. Gen. Services Administration, *Telework*, at <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=14>.

⁷¹ *Hearing Before the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia Committee on Homeland Security and Governmental Affairs*, 110th Congress (2007) (statement of Stanley Kaczmarczyk, Deputy Associate Administrator, Office of Governmentwide Policy, U.S. General Services Administration).

matter of civic duty and as a means of obtaining a more flexible work environment. The *FedExperience* is a partnership between IBM, the Partnership for Public Service, and the Department of Treasury, which transitions retiring IBM employees into positions at the Department of Treasury.⁷² The Partnership seeks to match the skills and interests of retirees with mission-critical positions. One of its stated goals is to “encourage flexible work arrangements.”⁷³

For several decades, the Environmental Protection Agency (EPA) has been tapping older workers as a source of skilled employees, partnering with non-governmental organizations to utilize this particular group of employees. The Senior Environmental Employment program (SEE) at EPA was established by Congress in 1984 “to utilize the talents of older Americans”⁷⁴ in providing technical assistance in a variety of environmental projects. The SEE program provides an opportunity to those over the age of 55 who are retired or unemployed to remain active, using their skills in meaningful tasks that support environmental programs.⁷⁵ While the SEE program was established by the EPA and still operates from that agency, it currently places over 1,500 participants in positions throughout government, including the White House, and the Departments of Interior, Army, Commerce, Defense, and Energy.⁷⁶

More recently, the Department of Agriculture has embarked on a similar program. The Agriculture Conservation Enrollees/Seniors (ACES) is a pilot project of the Natural Resources Conservation Service at the Department of Agriculture (USDA).⁷⁷ Through ACES, the USDA uses workers 40 years and older (but targets retired seniors⁷⁸) on a

⁷² See Partnership for Public Service, *FedExperience Transitions to Government Pilot Program*, at <http://www.ourpublicservice.org/OPS/programs/fedexperience/>.

⁷³ *Id.*

⁷⁴ Environmental Programs Assistance Act of 1984, Pub. L. No. 98-313 § 2(a); 42 U.S.C. § 4368(a) note (1984).

⁷⁵ U.S. Environmental Protection Agency, *About See Program*, at <http://www.epa.gov/ohr/see/brochure/backgr.htm>.

⁷⁶ National Older Worker Career Center, *About the SEE Program*, at <http://www.seeprogram.org/About.aspx>; see also Environmental Programs Assistance Act of 1984, Pub. L. No. 98-313 § 2(a); 42 U.S.C. § 4368(a) note (1984) (the statute does not require that workers be placed at the EPA, it only stipulates that they be placed in “programs authorized by other provisions of law” and that they be for “pollution prevention, abatement, and control”).

⁷⁷ The project is a pilot project announced in 2005 and has not yet been statutorily authorized. However, a proposal has been submitted to Congress to broaden the Secretary of Agriculture’s authority to contract services of ACES participants. As of the end of 2006, the USDA spent \$2.6 million on the project and there are 148 ACES positions throughout the agency. See Natural Resources Conservation Service, *USDA Announces New Partnership with the National Older Worker Career Center*, News Release, at <http://www.nrcs.usda.gov/news/releases/2005/aces.html>; Hearing Before the Senate Subcommittee on Forestry, Conservation and Rural Revitalization (2006) (statement of Sara Braasch, Regional Assistant Chief Natural Resources Conservation Service), at http://www.nrcs.usda.gov/ABOUT/legislative/pdf/TSP_Testimony_SARA_BRAASCH_7_25_06_pm.pdf.

⁷⁸ Hearing Before the Senate Subcommittee on Forestry, Conservation and Rural Revitalization (2006) (statement of Sara Braasch, Regional Assistant Chief Natural Resources Conservation Service), at http://www.nrcs.usda.gov/ABOUT/legislative/pdf/TSP_Testimony_SARA_BRAASCH_7_25_06_pm.pdf.

temporary basis through an agreement administered by the National Older Workers Career Center.⁷⁹

Further, in response to a request from Senators Kohl and Smith, as well as a GAO recommendation, the Department of Labor convened an Interagency Taskforce on the Aging of the American Workforce in May 2006.⁸⁰ In February of 2008, the Taskforce issued a report that highlighted the need for Federal action to address the needs of older workers.⁸¹ In one of its recommendations, the Taskforce suggested that the Federal government could become a model employer by “adopting and promoting flexible employment policies to facilitate the recruitment and retention of older workers.”⁸²

Finally, it is worth observing that Congress has taken steps to address certain aspects of workplace flexibility in broader efforts to enhance the Federal workplace. For example, the National Defense Authorization Act of 2004 required agencies to administer an annual survey assessing their employees’ satisfaction with the agency’s management practices and performance.⁸³ Pursuant to regulations, each executive agency was required to include 45 questions in its surveys.⁸⁴ One question specifically addressed workplace flexibility, asking if the employee agreed that “my supervisor supports my need to balance work and family issues.”⁸⁵

While the richness of these various Congressional enactments and governmental programs are impressive, it is noteworthy that they are **not** part of any coordinated and easily accessible set of efforts on enhancing workplace flexibility. For example, even the narrative of the efforts presented in this testimony is not easily available from the Federal government itself. Over the past several years, Workplace Flexibility 2010 has expended significant time and resources reviewing the various laws and programs governing flexibility in the Federal workforce. While we have learned a significant amount, we continue to discover new programs and laws as we proceed. Thus, we are acutely aware of the lack of any centralized resource in this area. Moreover, as we

⁷⁹ ACES enrollees are not considered Federal employees and cannot perform inherently governmental work. See National Resources Conservation Service, *USDA National Bulletin 360-6-5*, at http://www.info.usda.gov/scripts/lpsiis.dll/NB/NB_360_6_5.rtf.

⁸⁰ DEPARTMENT OF LABOR, REPORT OF THE TASKFORCE ON THE AGING OF THE AMERICAN WORKFORCE, at 5 (2008). The Taskforce consisted of 9 Federal agencies: the Departments of Commerce, Education, Health and Human Services, Labor, Transportation, and Treasury; the Equal Employment Opportunity Commission; Small Business Administration; and Social Security Administration. OPM was not a member of the Taskforce.

⁸¹ *Id.*

⁸² *Id.* at 33.

⁸³ The Defense Authorization Act of 2004, Pub. L. No. 108-136, 5 U.S.C. § 7101 (2004).

⁸⁴ 5 C.F.R. § 250.302 (2006).

⁸⁵ *Id.* § 250.302(c) (Employees respond by choosing whether they (1) Strongly Agree, (2) Agree, (3) Neither Agree nor Disagree, (4) Disagree, (5) Strongly Disagree, or (6) Don’t know). Agencies are free to develop and include additional questions in their surveys. Each executive agency is required to post the results of this survey on its website and forward the data to OPM within 120 days of completing the survey. *Id.* § 250.303(b). OPM has no current plans to post comprehensive results from other agencies on its own website. U.S. OFFICE OF PERSONNEL MANAGEMENT, ANNUAL EMPLOYEE SURVEY GUIDANCE 26 (2006), at <http://www.opm.gov/surveys/survey.pdf>.

review the assessments made of the programs that exist, it is clear to us that fundamental questions relating to the utilization and effectiveness of these programs remain unanswered.

Our sense is that the Federal government is uniquely positioned to establish workplace flexibility as a standard for its workforce. But its current myriad, yet dispersed, efforts must become part of a broader, integrated and strategic effort for the power of such efforts to be effectively harnessed.

C. The Federal Government as a Model Workplace of the Future

The Federal workforce is large, varied, and engaged in a wide range of activities. Hence, it represents a rich opportunity for developing creative and innovative workplace structures, for assessing the impact of those structures through data collection, and for using the resources of the Federal government to provide a means of educating and assisting private sector entities who wish to follow its lead in implementing innovative workplace structures that will meet the needs of the 21st century workforce.

(1) Data and Information Collection

A variety of opportunities stem from the government's ability to implement a range of workplace flexibility policies, and then to use its oversight mechanisms to evaluate, critique and improve such policies. This self-assessment power of "government as employer" offers a unique opportunity to enhance the effectiveness of workplace flexibility programs.

With effective data collection and information analysis in place, the utility of existing and new workplace flexibility initiatives can be measured, and the needs of employees, managers, and government entities can be better assessed and met. Comprehensive data collection will also allow Congress and the agencies to determine where gaps in knowledge exist and where additional resources are needed.

But the power of data collection will not be harnessed without a deliberate and focused effort to strategically collect and disseminate performance information. For example, although a number of reports have been published on the range of flexibility programs available in the Federal sector,⁸⁶ an *overall* picture of the benefits of and problems with Federal workplace flexibility programs is not readily available.

Some of this difficulty may be due to the fact that agencies do not have adequate internal processes for collecting and analyzing data on workplace flexibility programs. This, in turn, may leave them ill equipped to identify the successes or problems of those programs.⁸⁷ For instance, in assessing the telework program in the Federal

⁸⁶ See APPENDIX F: WORKPLACE FLEXIBILITY 2010: A SAMPLING OF GOVERNMENT REPORTS ON WORKPLACE FLEXIBILITY.

⁸⁷ U.S. Gen Accounting Office, GAO-08-261T, *Human Capital- Telework Programs Need Clear Goals and Reliable Data* 6 (2007).

government, Bernice Steinhardt of the GAO recently testified that “even where measurement data are collected, they are incomplete or inconsistent among agencies, making comparisons meaningless...”⁸⁸

Another problem with the current data collection is that it is not sharply focused on determining whether there has been greater *utilization* of flexible work arrangements, as compared to whether there is simply greater availability of such arrangements. Moreover, it is also necessary to determine whether employees feel there is no jeopardy in using flexibility, something that requires a targeted and sophisticated research endeavor.⁸⁹

The significant resources being expended by the Federal government today on workplace flexibility programs, and on the assessment of such programs, must be harnessed and focused. Whether the locus of that effort should be OPM, GAO, or some other body is for Congress to decide. The key elements are that the body should have significant and on-going contacts with those private research entities that have developed expertise in this area; it should have sufficient resources to engage in the research; and it should have the authority or leverage to gather the data needed from various agencies.

(2) Education and Training within the Government

FWA systems are not integrated into a workplace by simple auto-pilot. It takes time, effort, education and passion to transform the culture of a workplace so that an FWA works well for both supervisors and employees.

The data indicates that an FWA system ordinarily works well for employers and employees if it provides:

- a) an opportunity for *input* from employees with regard to the possible adoption of FWAs and the type of FWAs they want;
- b) a set of clearly articulated *expectations* from both the employer and the employee regarding the structure and the proposed impact of the FWA;
- c) changes in structures and workloads that allow the employee to *succeed* while on the FWA; and
- d) universal ease in moving *back into jobs* that do not have FWAs, if desired by the employee.⁹⁰

Such a system requires a focused effort on education and training. Because of its supervision over a wide range of large employing agencies, the Federal government has a unique opportunity to be a leader in such training and education. It can leverage

⁸⁸ *Id.*

⁸⁹ The Families & Work Institute in New York City has been a leader in the field, engaging in such sophisticated research activities. See Families & Work Institute, <http://www.familiesandwork.org>.

⁹⁰ See *generally* CATHERINE BENKO AND ANNE WEISBERG, MASS CAREER CUSTOMIZATION: ALIGNING THE WORKPLACE WITH TODAY'S NONTRADITIONAL WORKFORCE (Harvard Business School Press 2007).

its successful experiments with new flexibility programs by efficiently replicating and expanding those programs through education and training throughout the Federal government. With the right energy and passion, these trainings have the potential to change both the culture and structure of the largest workplace in our country.

For example, the Federal government could:

- Educate employees about the range of workplace flexibility options available to them. Despite decades of experiments with and mandates for flexibility options, the GAO has found that a significant portion of the Federal workforce cannot name even one workplace flexibility option provided by their agency.⁹¹
- Improve employee and supervisor expectations about the practical benefits and realities of workplace flexibility. For example, education on high-level government support for flexibility might eliminate employees' fear that they will be penalized for utilizing flexibility options. At the same time, it might eliminate supervisors' suppositions that "part time just won't work here."
- Provide supervisors with the motivation and the tools to adopt workplace flexibility in their offices. GAO has reported that "top management leadership and support of [AWS was] . . . the key reason . . . for its success."⁹² Government-wide seminars could highlight techniques used by successful managers to sell flexibility to both supervisors and employees. And each educated supervisor will then become a source of education to other colleagues.

Hearings of this kind are yet another example of the role that government can play in raising public awareness. Including a specific focus on workplace flexibility in this hearing has helped raise the profile of this issue and has facilitated the collection and dissemination of workplace flexibility data from the largest employer who has tried the greatest number of programs.

(3) *Transforming the Culture of Outside Work*

Perhaps the most dramatic way in which the Federal government can play a role in shaping the culture of work is to leverage its significant data resources and its role as the largest employer in this country to help frame a conversation about the importance of workplace flexibility throughout the country.

There are a number of ways in which the Federal government can play this role. First, the government can provide information on how workplace flexibility can help the private sector. For example, only a small percentage of private employers are taking needed structural steps to address the rapid aging of their workforce.⁹³ Unlike the Federal

⁹¹ U.S. Gen Accounting Office, GAO-07-437R, *An Assessment of Dependent Care Needs of Federal Workers Using Office of Personnel Management's Survey*, at 32 (2007).

⁹² GAO, *Many Agencies Do Not Allow Full Flexibility*, *supra* note 27, at 2.

⁹³ *The Aging Workforce*, Pitt-Catsouphe's statement, *supra* note 10.

government, most private employers are necessarily focused on the short-term realities of their businesses, and they lack the perspective to identify fundamental long-term changes in their workplaces. The Federal government can explain the advantages of workplace flexibility to such private employers and can present to them a menu of the approaches that it has adopted in response to the needs it has faced.

Second, the government can widely and efficiently disseminate vital technical assistance on best practices developed in the Federal government. In fact, many government reports and participants in Workplace Flexibility 2010's community policy forums have urged the Federal government to become a model employer on workplace flexibility and to assist the private sector in crafting workplace flexibility policies for the 21st century.⁹⁴ Third, the government could play an active role in creating public-private partnerships that draw on best practices in the private sector and that use the resources of the Federal government -- in *conjunction* with the private sector -- to disseminate information and technical assistance regarding such best practices.

The Federal workplace is a fertile testing ground for effective policies for the entire American workplace. The government can try new approaches for its huge workforce, collect and analyze data to determine the best practices, and provide an easy access to its experience for private sector, state and local government, and non-profit employers and employees.

IV. Conclusion

Since 2003, Workplace Flexibility 2010 has been engaged in research, education, and consensus building around workplace flexibility. We believe that greater access to and utilization of workplace flexibility is a compelling national issue. Due to societal and demographic changes, workplace flexibility is indeed moving to the forefront of public policy discussions. Discussions on the need for workplace flexibility are occurring among ever larger groups, particularly older workers and their employers.

The Federal government can and should be in the forefront of efforts to develop thoughtful public policies in this area. The Federal government is already a pioneer in this area, but it can become an even better model employer if it engages in a strategic and concerted effort to foster workplace flexibility policies. With its size and resources, with its powerful oversight mechanisms, and with its visibility, the Federal government can help the private sector accomplish what it might not be able to do on its own.

We need to change the culture in today's workplaces so that workplace flexibility becomes a *standard* of the American workplace -- that it becomes the ordinary way of

⁹⁴ There are a range of ways in which the government could disseminate best practices. See, e.g., U.S. U.S. Gen. Accounting Office, GAO-06-08, *Older Workers: Labor Can Help Employers and Employees Plan Better for the Future* (2005) (suggesting that the Secretary of Labor create a public awareness campaign on the aging workforce to surface the challenges that may arise and possible solutions that would promote economic growth and security). GAO also recommended that other agencies become involved to help "employers and employees better plan for the future and by so doing, bridge the gap between employer and employee needs." *Id.* at 32.

doing business, not the extraordinary way. The Federal government can be a leader in this effort. In doing so, it will serve not only its own human resources needs, but it will be a model workplace for all workers in our society -- older workers, workers with caregiving needs, workers with disabilities, and workers who want to advance their training or volunteer in their communities.

Congress and the Federal government can provide the leadership for truly building the model workplace of the 21st century. Workplace Flexibility 2010 looks forward to continuing to work with you in that effort.

Thank you.