Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Bruce Reed and Elena Kagan to the President re: DPC Weekly Report (partial) (1 page)	04/03/99	P5
002. fax	Jim Ivery to Rice re: Talking Points on Prior Approval Issue (3 pages)	02/19/99	P5
003. memo	Terry Coleman to John J. O'Shaughnessy re: Prior Approval for Granting Federal Financial Participation for State Automatic Data Processing System Developments and Application (attachment) (5 pages)	05/08/95	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15428

FOLDER TITLE:
Child Support Enforcement-Computer Systems-Prior Approval

Richard Stalcup

rx15

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

proposed paying off state debt and funding gene therapy research with the funds; and Rhode Island's governor has proposed using the first installment to balance the budget (which has set off a fierce debate in the legislature). In addition, many states purporting to spend the tobacco funds on public health or tobacco use prevention are merely supplanting current spending, effectively freeing these funds for other uses. The public health community so far has been utterly ineffectual on this issue, but we hope participants in the meeting emerged with a better understanding of the political situation we face and some more effective strategies for dealing with it.

5. Tobacco – Oregon Verdict: A jury in Oregon last week ordered Philip Morris to pay $81 million in damages (including $79.5 million in punitives) to the family of a man who died of lung cancer after smoking for 40 years. The verdict was the largest ever against a tobacco company, exceeding the $51.5 million verdict awarded by a California jury against Philip Morris earlier this year. Shares of tobacco companies fell sharply this week as a result of the verdict.

6. Welfare -- Child Support Computer Systems: You recently asked about an HHS policy denying federal reimbursement to states that entered into contracts for child support and child welfare computer systems without first receiving federal approval. HHS has applied this policy strictly, refusing federal payments even when the federal government clearly would have approved the contracts. In the past, HHS has denied federal funds to California, Hawaii, Kansas, Nevada, and Pennsylvania on these grounds. In recently reviewing this policy, however, HHS officials discovered that it is in conflict with the department's current policy on Medicaid computer systems -- even though the two policies are interpretations of the same regulation. When it comes to Medicaid computer contracts, HHS provides reimbursement even in the absence of prior approval if the contract meets departmental requirements and the state institutes controls to ensure that it will seek advance approval in the future. HHS officials are now trying to reconcile the two policies; they probably will decide to adopt an agency-wide policy similar to the policy that now is applied in the Medicaid program.

7. Welfare -- Food Assistance: You recently asked what we could do to ensure that families obtain needed food assistance, in light of some reports that more working families are seeking help from private food banks. We are working to address these issues on two fronts: first, to ensure that states follow the current food stamp law by providing assistance to all eligible individuals who seek assistance; and second, to develop and implement new initiatives to make the food stamp program more accessible to working families.

We have taken numerous steps in recent months to ensure that states follow the food stamp law. USDA has launched a number of investigations of state and local practices, including an inquiry in New York City which found that local welfare offices were not allowing individuals to apply for food stamps on their first visit to the office. (USDA issued a formal warning to New York that it would impose penalties if the city were to continue these practices; around the same time, a federal district court judge issued an injunction prohibiting the practices and requiring the

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Gene Sperling and Sally Katzen to POTUS re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
002. memo	Gene Sperling and Sally Katzen re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
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004. memo	Gene Sperling and Sally Katzen to POTUS re: Bankruptcy Reform Legislation (8 pages)	ca. June, 1998	P5
005. memo	Gene Sperling to POTUS re: Bankruptcy Reform Legislation (6 pages)	ca. June, 1998	P5
006. memo	Gene Sperling to POTUS re: Bankruptcy Reform Legislation (4 pages)	09/22/98	P5
007. report	Bankruptcy Issue (2 pages)	ca. June, 1998	P5
008. report	Bankruptcy Issue (1 page)	ca. June, 1988	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15428

FOLDER TITLE:
Child Support-Bankruptcy Bill [2]

Richard Stalcup

rx8

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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June __, 1998 -- Draft

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MEMORANDUM TO THE PRESIDENT

FROM: **GENE SPERLING**
SALLY KATZEN

RE: **BANKRUPTCY REFORM LEGISLATION**

Last week, the House passed, by a veto-proof majority, a bankruptcy bill that your administration said it "strongly opposes." A better, but still flawed, bill (voted out of committee 16-2) may be taken up by the Senate before the July 4th recess or soon thereafter. Both bills were changed recently to address concerns that you, the First Lady, and others have raised about their impact on debtors' capacity to pay child support and alimony, although some problems still remain.

After an NEC interagency review, your advisors have reached a consensus that some bankruptcy reform is important. These bills contain many provisions that are beneficial, including a cap on state homestead exemptions, debtor education pilots, penalties for unjustified creditor activities, measures to discourage bad-faith repeat filings, and provisions to improve data collection and audit procedures. However, certain controversial provisions of the current bills need significant changes to satisfy our objectives and concerns. **We propose to advance quickly an Administration proposal in hopes of influencing the Senate bill on the floor and giving the Administration greater leverage in conference.** The proposal would address three issues: (1) limitations on access to Chapter 7; (2) new nondischargeable debts and their impact on child support and alimony payments; and (3) new provisions to protect against coercive creditor behavior and to require more responsibility from creditors in extending credit. The group also has identified alternatives to parts of this proposal on which we could compromise, if necessary.

I. BACKGROUND

Rising Consumer Bankruptcies: Despite what Goldman Sachs recently called "the best economy ever," personal bankruptcies have continued to rise sharply, from roughly 800,000 in 1994 to nearly 1.4 million in 1997. Recent figures for the first quarter of 1998 showed another 20 percent increase over 1997's pace.

Disputed Causes: There is much dispute about the cause of this increase, but little definitive

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evidence. Creditors assert that lawyer advertising, reduced social stigma, and increased information about the financial advantages of bankruptcy have encouraged an increasing number of consumers to walk away from debts they could pay back. Consumer advocates argue that lenders have irresponsibly extended too much credit to families who are ill-prepared to handle it, and that most bankruptcies happen when unexpected events push such a family over the financial edge; indeed, rising bankruptcy rates track closely rising levels of unsecured debt, although causation cannot be proven.

Potential for Abuse: Under current rules, some debtors with high incomes walk away from their debts entirely, even when they have the capacity to repay at least a portion of those debts; other debtors file repeatedly without any intention of completing bankruptcy, for the purpose of delaying bona fide collection activities; and generous state exemptions (including unlimited homestead exemptions in eight states and exemptions for items like race horses and silver spoons in Virginia) prompt some to shift assets to exempt categories prior to a bankruptcy filing to avoid making payment to any unsecured creditors. Consumer advocates argue that these cases are not the norm and should not prompt limits on those who genuinely need bankruptcy's fresh start.

Consumer Impact: Regardless of who is to blame, **higher levels of debt charge-offs appear to raise the cost of credit for everyone.** One industry study suggests that bankruptcies cost every American household between $300-400 per year. Higher credit costs disproportionately fall on lower-income families, since they are more likely to carry a balance on their card. While in the past credit card interest rates did not always rise and fall with market rates, the industry is now more competitive, so that reduced bankruptcies are likely to translate to lower interest rates and increased access to credit for those who pay their bills.

Legislative Momentum: The popularity of these bills can be explained by the system's vulnerability to abuse and the apparent consumer costs, as well as an extremely effective and well-financed industry campaign and legislators' fears of being labeled protectors of deadbeats.

II. LIMITATIONS ON ACCESS TO CHAPTER 7 BANKRUPTCY

Current Law: Today, there is little limit on debtor's access to Chapter 7's full and immediate discharge of debt (usually with no payments to unsecured creditors); however, in some circuits, courts find, on their own motion, that it is "substantial abuse" for a debtor with the ability to repay 20% of their unsecured debts over three years, after taking account of all necessary expenses, to go through Chapter 7 rather than a Chapter 13 repayment plan,

House and Senate Bills: Both bills would require those with the capacity to repay a portion of their debt to do so under a Chapter 13 plan. We opposed the House bill because it determines access to Chapter 7 under a rigid "means test" that does not take into account the unique circumstances of individual debtors. The Senate approach is more flexible, building on the abuse test in use in some circuits. The Senate bill would authorize a bankruptcy judge to apply this test to any debtor with income above the median and, for the first time, allow creditors to file the

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motion seeking a determination of abuse. Creditors would have to pay debtors' attorneys fees if their filings were not 'substantially justified' or were brought to coerce a debtor to waive a right.

Administration proposal: We propose a variation on the Senate bill whereby **the bankruptcy court would have discretion to determine whether or not a debtor's use of Chapter 7 is abuse; however, there would be a presumption of abuse if a debtor has an income above the median and the capacity to repay either at least 30% of her debts or some specified amount (such as $5000) over three years.** (No debtor would be denied access to Chapter 7 unless she had the ability to repay a minimum of $50 a month in unsecured, nonpriority debt. Any lesser amount is too small to merit the Chapter 13 administrative costs or to risk the chance that the creditor was pursuing the motion to coerce the debtor to forgo another bankruptcy right.) We also would provide that, if a debtor moved more than $50,000 from nonexempt to exempt assets within one year of the filing, she would be subject to a presumption of abuse, regardless of income. In determining a debtor's capacity to repay, we propose to explicitly exclude luxuries (e.g., expensive cars or boats) from necessary expenses.

These presumptive guidelines could be overcome if the court determined, e.g., that the debtor faced unusual but necessary expenses or could not be expected to maintain reliably her current level of income. Such presumptive guidelines have proven to be highly effective in promoting uniformity and fairness in establishing child support award amounts. Since the average debtor under Chapter 13 repays 20% of her debts and has income below the national median, those who meet this higher threshold are the most likely to succeed under a repayment plan.

III. NONDISCHARGEABLE DEBT AND ITS IMPACT ON CHILD SUPPORT AND ALIMONY

The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with child support, alimony, educational loans, tax obligations, or debts incurred by fraud. The House and Senate bills have provisions that would broaden the categories of nondischargeable credit card debt, although the largest new category has been dropped and the two remaining categories narrowed. These provisions raise two questions: (1) Do the additional debts made nondischargeable by these bills rise to the same level of public priority as other nondischargeable debts? and (2) What impact does the protection of new categories of debt have on the ability of the debtor, post-bankruptcy, to repay existing categories of nondischargeable debt (e.g., child support and alimony, educational loans, and taxes)? They also force us to recognize that consumers use credit cards today for many purposes that were inconceivable only a few years ago (e.g., groceries or paying student loans). This Administration envisions -- and, in fact, encourages -- greater use of electronic commerce.

Debts incurred to pay other nondischargeable debts.

Current law: If a debtor uses a credit card to pay federal taxes, the credit card debt is nondischargeable.

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House and Senate bills: Both make a debt incurred to pay any nondischargeable debt nondischargeable, although the Senate effectively eliminates the provision if the debtor is a single parent or owes child support and/or alimony.

Administration Proposal: We propose that the **current law remain unchanged**; however, if a debtor paid a nondischargeable debt with a credit card, it would be a factor in determining whether the debtor's use of Chapter 7 was abuse.

Debts incurred in the period immediately before bankruptcy.

Current Law: Debts for luxuries over $1000 owed to a single creditor within 60 days of bankruptcy are nondischargeable. There is some evidence that this provision and other anti-fraud provisions do not prevent some debtors from running up debt knowing that a discharge is likely.

House and Senate Bills: Both would make all debts incurred within 90 days of bankruptcy for luxuries be presumptively nondischargeable. In addition, they would make presumptively nondischargeable debt above ($250 in the House; $400 in the Senate) per credit card for necessaries during the same period.

Administration Proposal: We propose to agree to make **debt for luxuries within 90 days of bankruptcy presumptively nondischargeable; however, a cap of $250 or $400 on necessary expenses incurred prior to bankruptcy is inappropriate.** One can easily imagine a family, in the months prior to bankruptcy, paying for rent, school clothes, and even groceries on their credit card. Courts can easily compare current spending patterns to prior spending and determine whether charges are truly for necessary expenses.

Child Support and Alimony Considerations

We should note that the current bills have seven different new provisions designed to either mitigate the impact of the additional nondischargeable debt ~~on payment~~ of child support and alimony or to give child support and alimony additional protections in and after bankruptcy. Some experts we have consulted argue that the benefits provided by these additional provisions outweigh any modest harm to child support and alimony payments that remains from the nondischargeability provisions. On the other hand, the women's groups continue their opposition to these bills. Moreover, these provisions, which focus only on child support and alimony, do not address our policy concern that new nondischargeable debt will now compete with other types of existing nondischargeable debts, such as educational loans. For these reasons, the Administration proposals described above would allow only one small category of new nondischargeable debt (luxuries purchased 90 days before bankruptcy) where there is a policy argument against allowing run-up prior to bankruptcy; for the remaining categories, we would leave current law or address the problem a different way.

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IV. ADDITIONAL CONSUMER PROTECTIONS AGAINST PREDATORY CREDITOR PRACTICES

Your advisors are particularly concerned about the unequal bargaining power of the creditor and debtor and how the changes in bankruptcy rules could further shift the balance and create opportunities for coercion and consumer harm. To address this concern, and to ensure legislation requires responsibility of both debtor and creditor, we propose new consumer protections.

Reaffirmations of Unsecured Debt

Although debtors in Chapter 7 have a right to have their unsecured debts discharged, some debtors reaffirm one or more debts. While there may be some circumstances in which it is in the debtor's best interest to do so (e.g., as a condition of obtaining a line of credit needed for a small business), those cases are few. The risk is real, however, that debtors are pressured into reaffirming their debts by aggressive creditors. After Sears recently paid large penalties for such practices, another Bankruptcy Judge (Fenning) said she scrutinized her court records and found evidence of widespread coercive reaffirmations. Since debts reaffirmed survive bankruptcy, they compete with child support and alimony in a post-bankruptcy world. Eliminating coercive reaffirmations also would help to reduce the current level of competition child support and alimony payments face.

Current Law: Disclosures are required and the court must determine that a reaffirmation does not impose an undue hardship on the debtor or a dependant and is in the debtor's best interest; however, an affirmation of the debtor's attorney to that effect suffices.

House and Senate Bills: No related provisions.

Administration Proposal: We propose to require the court itself to find that there was a compelling reason for the debtor to reaffirm a debt, without reliance on counsel affidavits. We also propose to bar reaffirmation of debts that add attorneys' fees and costs to the debt, to increase penalties on attempts to enforce invalid reaffirmations, and to clarify on that the automatic stay bars threats to file abuse motions and solicitations of reaffirmations.

Credit Card Minimum Payment Disclosure

We also believe that some signal should be sent to creditors about lending practices that entice debtors to get further and further into debt.

Current Law: Most debtors believe that by making the minimum payment on their credit card they are slowing working off their debt. However, depending upon the interest rate, they may be falling further and further behind. Creditors are increasingly offering minimum payment plans that amortize debt over decades, if at all.

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House and Senate bills: No related provisions.

Administration Proposal: We propose a process for subordinating debt if the creditor did not disclose clearly to the debtor the time period over which the debt would amortize at the minimum payment level. The subordinated debt would only be paid, in a Chapter 13 plan or a Chapter 7 liquidation, after all other unsecured, nonpriority debt. It most cases, this will mean it will never be repaid.

Other Non-Bankruptcy Steps to Improve Consumer Credit Practices

We also are exploring whether there are other non-bankruptcy steps we can take to clamp down on predatory lender practices and better help consumers to understand their own borrowing. We have consensus on a proposal that requires all lenders to disclose the time period over which debt is amortized by minimum payments. This proposal, and others under review, fall under the jurisdiction of other committees. Thus, it is not feasible to insist that Congress include these proposals in the bankruptcy bill at this time. However, we might unveil these proposals in connection with a campaign to educate consumers about the use of credit, using the bully pulpit the way we have done to encourage retirement savings.

V. ADVISORS' RECOMMENDATIONS

All your advisors recommend we proceed as described, including CoS, NEC, Counsel, OPL, OLA, OMB, CEA, DPC, First Lady, DoJ, Treasury, Commerce, and Education.

- The NEC believes that requiring greater responsibility of both creditors and debtors is the best way to address the "unclean hands" of some of the legislation's proponents.
- Treasury and CEA emphasize that needs-based reform will decrease the cost of, and increase access to, credit for those debtors who do pay their bills by limiting opportunistic bankruptcy among those higher income debtors who do not.
- DoJ supports the plan and stresses that other provisions of these bills, like the cap on state homestead exemptions, measures to discourage bad faith repeat filings, and provisions to improve data collection and audit procedures, are important reforms.
- OPL believes that, while consumer advocates oppose any bill, reforms limiting access to Chapter 7 and stemming coercive reaffirmations appear valid. OPL wants to see us fight for aspects of our proposal that protect against any impact on child support (before or after bankruptcy) of new nondischargeable credit card debt.
- The First Lady's Office strongly supports advancing proposals that achieve more balanced reform by calling for responsibility on the part of the creditor as well as the debtor, and recommends that we continue to focus on the child support issue to ensure that protections in this area are as strong as possible.
- OLA stresses the popularity of bankruptcy reform and advises that we advance proposals that have a realistic prospect of inclusion, or we may find ourselves faced with overwhelmingly popular legislation that fails to satisfy our announced concerns.

VI. DECISION

____ PROCEED AS DESCRIBED

____ LET'S DISCUSS

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Nicole added

June __, 1998 -- Draft

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SALLY KATZEN

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Last week, the House passed, by a veto-proof majority, a bankruptcy bill ~~that your administration said it "strongly opposes~~despite an Administration statement of strong opposition.~~"~~ A better, but still flawed, bill (voted out of committee 16-2) may be taken up by the Senate before the July 4th recess or soon thereafter. Both bills were changed recently to address concerns that you, the First Lady, and others have raised about their impact on debtors' capacity to pay child support and alimony, although some problems still remain.

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Disputed Causes: There is much dispute about the cause of this increase, but little definitive evidence. Creditors assert that lawyer advertising, reduced social stigma, and increased information about the financial advantages of bankruptcy have encouraged an increasing number of consumers to walk away from debts they could pay back. Consumer advocates argue that lenders have irresponsibly extended too much credit to families who are ill-prepared to handle it, and that most bankruptcies happen when unexpected events push such a family over the financial edge; indeed, rising bankruptcy rates track closely rising levels of unsecured debt, although ~~causation cannot be proven~~debt burdens have actually dropped due to lower interest rates.

Potential for Abuse: Under current rules, some debtors with high incomes walk away from their debts entirely, even when they have the capacity to repay at least a portion of those debts; other debtors file repeatedly without any intention of completing bankruptcy, for the purpose of delaying bona fide collection activities; and generous state exemptions (including unlimited homestead exemptions in eight states and exemptions for items like race horses and silver spoons in Virginia) prompt some to shift assets to exempt categories prior to a bankruptcy filing to avoid making payment to any unsecured creditors. Consumer advocates argue that these cases are not the norm and should not prompt limits on those who genuinely need bankruptcy's fresh start.

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Legislative Momentum: The popularity of these bills can be explained by the system's vulnerability to abuse and the apparent consumer costs, as well as an extremely effective and well-financed industry campaign and legislators' fears of being labeled protectors of deadbeats.

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Administration proposal: We propose a variation on the Senate bill whereby **the bankruptcy court would have discretion to determine whether or not a debtor's use of Chapter 7 is abuse; however, there would be a presumption of abuse if a debtor has an income above the median and the capacity to repay either at least 30% of her unsecured, nonpriority debts or some specified amount (such as $5000) over three years.** (No debtor would be denied access to Chapter 7 unless she had the ability to repay ~~a minimum of~~at least $50 a month in unsecured, nonpriority debt. Any lesser amount is too small to merit the Chapter 13 administrative costs or to risk the chance that the creditor was pursuing the motion to coerce the debtor to forgo another bankruptcy right.) We also would provide that, if a debtor moved more than $50,000 from nonexempt to exempt assets within one year of the filing, she would be subject to a presumption of abuse, regardless of income. In determining a debtor's capacity to repay, we propose to explicitly exclude luxuries (e.g., expensive cars or boats) from necessary expenses.

These presumptive guidelines could be overcome if the court determined, e.g., that the debtor faced unusual but necessary expenses or could not be expected to maintain reliably her current level of income. Such presumptive guidelines have proven to be highly effective in promoting uniformity and fairness in establishing child support award amounts. Since the average debtor under Chapter 13 repays 20% of her debts and has income below the national median, those who meet this higher threshold are the most likely to succeed under a repayment plan.

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~~inconceivable only~~These concerns are balanced by a ~~few years ago (e.g., groceries or paying student loans)~~competing concern: This Administration envisions -- and, in fact, encourages -- greater use of electronic commerce. ~~This Administration envisions -- and, in fact, encourages -- greater~~As consumers use credit cards for purposes that were recently inconceivable (e.g., groceries or paying student loans), we are presented with new opportunities for abuse of ~~electronic commerce~~the bankruptcy system.

Debts incurred to pay other nondischargeable debts.

Current law: ~~If a debtor uses a credit card to pay federal taxes, the~~A credit card debt incurred to pay federal taxes is nondischargeable, to prevent "gaming" by paying off nondischargeable debts with a credit card which will be discharged.~~.~~

House and Senate bills: Both make a debt incurred to pay any nondischargeable debt nondischargeable, although the Senate effectively eliminates the provision if the debtor is a single parent or owes child support and/or alimony.

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mitigate the impact of the ~~additional~~new nondischargeable debt on ~~payment of~~ child support and alimony or to give child support and alimony additional protections in and after bankruptcy. Some experts ~~we have consulted~~ argue that the benefits provided by these additional provisions outweigh any modest harm to child support and alimony payments that remains from the nondischargeability provisions. ~~On the other hand, the women's groups continue their opposition~~Indeed, if needs-based reform is done right and shifts only those with the capacity to repay, it will likely enhance the collection of these ~~bills~~payments, as debts are repaid under the supervision of the bankruptcy court. ~~Moreover, these provisions, which focus only on child support and alimony, do not address our policy concern that new nondischargeable debt will now compete with~~On the other ~~types of existing nondischargeable debts, such as educational loans~~hand, the women's groups still oppose these bills. ~~For~~Moreover, these ~~reasons~~provisions, ~~the Administration proposals described above would allow~~which focus only ~~one small category of new nondischargeable debt (luxuries purchased 90 days before bankruptcy) where there is a policy argument against allowing run-up prior to bankruptcy; for the remaining categories, we would leave current law or~~on child support and alimony, do not address ~~the problem a different way~~our policy concern that new nondischargeable debt will compete with other existing nondischargeable debts, such as education loans.

For these reasons, our proposals would allow only one category of new nondischargeable debt (luxuries purchased 90 days before bankruptcy) where there is a policy argument against allowing run-up prior to bankruptcy; for the remaining categories, we propose to leave current law or address the problem a different way.

IV. ADDITIONAL CONSUMER PROTECTIONS AGAINST PREDATORY CREDITOR PRACTICES

Your advisors are particularly concerned about the unequal bargaining power of the creditor and debtor and how the changes in bankruptcy rules could further shift the balance and create opportunities for coercion and ~~consumer~~ harm. To address this concern, and to ensure that legislation requires responsibility of both debtor and creditor, we propose new consumer protections.

Reaffirmations of Unsecured Debt

Although debtors in Chapter 7 have a right to have their unsecured debts discharged, some debtors reaffirm ~~one or more~~ debts. While there may be some circumstances in which ~~it~~that is in the debtor's best interest ~~to do so~~ (e.g., as a condition of obtaining ~~a line of~~ credit ~~needed for~~to keep open a small business), those cases are few. The risk is real, however, that debtors are pressured into reaffirming their debts by aggressive creditors. After Sears recently paid large penalties for such practices, another Bankruptcy Judge (Fenning) said she scrutinized her court

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records and found evidence of widespread coercive reaffirmations. Since debts reaffirmed survive bankruptcy, they compete with child support and alimony ~~in a post-bankruptcy world~~after bankruptcy. Eliminating coercive reaffirmations also would help to reduce the current level of competition child support and alimony payments face.

Current Law: Disclosures are required and the court must determine that a reaffirmation does not impose an undue hardship on the debtor or a dependant and is in the debtor's best interest; however, an affirmation of the debtor's attorney to that effect suffices.

House and Senate Bills: No related provisions.

Administration Proposal: We propose to require the court itself to find that there ~~was~~is a compelling reason for the debtor to reaffirm ~~a~~an unsecured debt, without reliance on counsel affidavits. We also propose to bar reaffirmation of debts that add attorneys' fees and costs to the debt, to increase penalties on attempts to enforce invalid reaffirmations, and to clarify ~~on that the automatic stay bars threats~~that creditors may not threaten to file ~~abuse~~ motions ~~and solicitations~~alleging abuse of ~~reaffirmations~~Chapter 7 or solicit a reaffirmation after the automatic stay is imposed.

Credit Card Minimum Payment Disclosure

We also believe that some signal should be sent to creditors about lending practices that entice debtors to get further and further into debt.

Current Law: Most debtors believe that by making the minimum payment on their credit card they are ~~slowing~~slowly working off their debt. However, depending upon the interest rate, they may be falling further and further behind. Creditors are increasingly offering minimum payment plans that amortize debt over decades, if at all.

House and Senate bills: No related provisions.

Administration Proposal: We propose a process for subordinating unsecured, nonpriority debt if the creditor did not disclose clearly to the debtor the time period over which the debt would amortize at the minimum payment level. The subordinated debt would ~~only~~ be paid, in ~~a Chapter 13 plan or a~~ Chapter 7 ~~liquidation,~~or 13, only after all other unsecured, nonpriority debt. It most cases, this ~~will mean~~means it will ~~never~~not be repaid.

Other Non-Bankruptcy Steps to Improve Consumer Credit Practices

CLINTON LIBRARY PHOTOCOPY

We also are exploring whether there are other non-bankruptcy steps we can take to clamp down on predatory lender practices and better help consumers to understand their own borrowing. We have consensus on a proposal that requires all lenders to disclose the time period over which debt is amortized by minimum payments. This proposal, and others under review, fall under the jurisdiction of other committees, so it is not feasible to insist that Congress include these proposals in the bankruptcy bill at this time. ~~Thus, it is not feasible to insist that Congress include~~However, we might unveil these proposals in ~~the bankruptcy bill at this time~~connection with a campaign to educate consumers about the use of credit, using the bully pulpit as we have done to encourage retirement savings. ~~However, we might unveil these proposals in connection with a campaign to educate consumers about the use of credit, using the bully pulpit the way we have done to encourage retirement savings.~~

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V. ADVISORS' RECOMMENDATIONS

All your advisors recommend we proceed as described, including CoS, NEC, Counsel, OPL, OLA, OMB, CEA, DPC, First Lady, DoJ, Treasury, Commerce, and Education.

- The NEC believes that requiring greater responsibility of both creditors and debtors is the best way to address the "unclean hands" of some of the legislation's proponents.
- Treasury and CEA emphasize that needs-based reform will decrease the cost of, and increase access to, credit for those debtors who do pay their bills, by limiting opportunistic bankruptcy among those higher income debtors who do not.
- DoJ supports the plan and stresses that other provisions of these bills, like the cap on state homestead exemptions, measures to discourage bad faith repeat filings, and provisions to improve data collection and audit procedures, are important reforms.
- OPL believes that, while consumer advocates oppose any bill, reforms limiting access to Chapter 7 and stemming coercive reaffirmations appear valid. OPL wants to see us fight for aspects of our proposal that protect against any impact on child support (before or after bankruptcy) of new nondischargeable credit card debt.
- The First Lady's Office strongly supports advancing proposals that achieve more balanced reform by calling for responsibility on the part of the creditor as well as the debtor, and recommends that we continue to focus on the child support issue to ensure that protections in this area are as strong as possible.
- OLA stresses the popularity of bankruptcy reform and advises that we advance proposals that have a realistic prospect of inclusion, or we may find ourselves faced with overwhelmingly popular legislation that fails to satisfy our announced concerns.

VI. DECISION

____ **PROCEED AS DESCRIBED**

____ **LET'S DISCUSS**

CLINTON LIBRARY PHOTOCOPY

June __, 1998 -- Draft

MEMORANDUM TO THE PRESIDENT

FROM: **GENE SPERLING**
SALLY KATZEN

RE: **BANKRUPTCY REFORM LEGISLATION**

Last week, the House passed, by a veto-proof majority, a bankruptcy bill that your administration said it "strongly opposes." A better, but still flawed, bill (voted out of committee 16-2) may be taken up by the Senate before the July 4th recess or soon thereafter. Both bills were changed recently to address concerns that you, the First Lady, and others have raised about their impact on debtors' capacity to pay child support and alimony, although some problems still remain.

After an NEC interagency review, your advisors have reached a consensus that some bankruptcy reform is important. These bills contain many provisions that are beneficial, including a cap on state homestead exemptions, debtor education pilots, penalties for unjustified creditor activities, measures to discourage bad-faith repeat filings, and provisions to improve data collection and audit procedures. However, certain controversial provisions of the current bills need significant changes to satisfy our objectives and concerns. **We propose to advance quickly an Administration proposal in hopes of influencing the Senate bill on the floor and giving the Administration greater leverage in conference.** The proposal would address three issues: (1) limitations on access to Chapter 7; (2) new nondischargeable debts and their impact on child support and alimony payments; and (3) new provisions to protect against coercive creditor behavior and to require more responsibility from creditors in extending credit. The group also has identified alternatives to parts of this proposal on which we could compromise, if necessary.

I. BACKGROUND

Rising Consumer Bankruptcies: Despite what Goldman Sachs recently called "the best economy ever," personal bankruptcies have continued to rise sharply, from roughly 800,000 in 1994 to nearly 1.4 million in 1997. Recent figures for the first quarter of 1998 showed another 20 percent increase over 1997's pace.

Disputed Causes: There is much dispute about the cause of this increase, but little definitive

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evidence. Creditors assert that lawyer advertising, reduced social stigma, and increased information about the financial advantages of bankruptcy have encouraged an increasing number of consumers to walk away from debts they could pay back. Consumer advocates argue that lenders have irresponsibly extended too much credit to families who are ill-prepared to handle it, and that most bankruptcies happen when unexpected events push such a family over the financial edge; indeed, rising bankruptcy rates track closely rising levels of unsecured debt, although causation cannot be proven.

Potential for Abuse: Under current rules, some debtors with high incomes walk away from their debts entirely, even when they have the capacity to repay at least a portion of those debts; other debtors file repeatedly without any intention of completing bankruptcy, for the purpose of delaying bona fide collection activities; and generous state exemptions (including unlimited homestead exemptions in eight states and exemptions for items like race horses and silver spoons in Virginia) prompt some to shift assets to exempt categories prior to a bankruptcy filing to avoid making payment to any unsecured creditors. Consumer advocates argue that these cases are not the norm and should not prompt limits on those who genuinely need bankruptcy's fresh start.

Consumer Impact: Regardless of who is to blame, **higher levels of debt charge-offs appear to raise the cost of credit for everyone.** One industry study suggests that bankruptcies cost every American household between $300-400 per year. Higher credit costs disproportionately fall on lower-income families, since they are more likely to carry a balance on their card. While in the past credit card interest rates did not always rise and fall with market rates, the industry is now more competitive, so that reduced bankruptcies are likely to translate to lower interest rates and increased access to credit for those who pay their bills.

Legislative Momentum: The popularity of these bills can be explained by the system's vulnerability to abuse and the apparent consumer costs, as well as an extremely effective and well-financed industry campaign and legislators' fears of being labeled protectors of deadbeats.

II. LIMITATIONS ON ACCESS TO CHAPTER 7 BANKRUPTCY

Current Law: Today, there is little limit on debtor's access to Chapter 7's full and immediate discharge of debt (usually with no payments to unsecured creditors); however, in some circuits, courts find, on their own motion, that it is "substantial abuse" for a debtor with the ability to repay 20% of their unsecured debts over three years, after taking account of all necessary expenses, to go through Chapter 7 rather than a Chapter 13 repayment plan,

House and Senate Bills: Both bills would require those with the capacity to repay a portion of their debt to do so under a Chapter 13 plan. We opposed the House bill because it determines access to Chapter 7 under a rigid "means test" that does not take into account the unique circumstances of individual debtors. The Senate approach is more flexible, building on the abuse test in use in some circuits. The Senate bill would authorize a bankruptcy judge to apply this test to any debtor with income above the median and, for the first time, allow creditors to file the

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motion seeking a determination of abuse. Creditors would have to pay debtors' attorneys fees if their filings were not 'substantially justified' or were brought to coerce a debtor to waive a right.

Administration proposal: We propose a variation on the Senate bill whereby **the bankruptcy court would have discretion to determine whether or not a debtor's use of Chapter 7 is abuse; however, there would be a presumption of abuse if a debtor has an income above the median and the capacity to repay either at least 30% of her debts or some specified amount (such as $5000) over three years.** (No debtor would be denied access to Chapter 7 unless she had the ability to repay a minimum of $50 a month in unsecured, nonpriority debt. Any lesser amount is too small to merit the Chapter 13 administrative costs or to risk the chance that the creditor was pursuing the motion to coerce the debtor to forgo another bankruptcy right.) We also would provide that, if a debtor moved more than $50,000 from nonexempt to exempt assets within one year of the filing, she would be subject to a presumption of abuse, regardless of income. In determining a debtor's capacity to repay, we propose to explicitly exclude luxuries (e.g., expensive cars or boats) from necessary expenses.

These presumptive guidelines could be overcome if the court determined, e.g., that the debtor faced unusual but necessary expenses or could not be expected to maintain reliably her current level of income. Such presumptive guidelines have proven to be highly effective in promoting uniformity and fairness in establishing child support award amounts. Since the average debtor under Chapter 13 repays 20% of her debts and has income below the national median, those who meet this higher threshold are the most likely to succeed under a repayment plan.

III. NONDISCHARGEABLE DEBT AND ITS IMPACT ON CHILD SUPPORT AND ALIMONY

The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with child support, alimony, educational loans, tax obligations, or debts incurred by fraud. The House and Senate bills have provisions that would broaden the categories of nondischargeable credit card debt, although the largest new category has been dropped and the two remaining categories narrowed. These provisions raise two questions: (1) Do the additional debts made nondischargeable by these bills rise to the same level of public priority as other nondischargeable debts? and (2) What impact does the protection of new categories of debt have on the ability of the debtor, post-bankruptcy, to repay existing categories of nondischargeable debt (e.g., child support and alimony, educational loans, and taxes)? They also force us to recognize that consumers use credit cards today for many purposes that were inconceivable only a few years ago (e.g., groceries or paying student loans). This Administration envisions -- and, in fact, encourages -- greater use of electronic commerce.

Debts incurred to pay other nondischargeable debts.

Current law: If a debtor uses a credit card to pay federal taxes, the credit card debt is nondischargeable.

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House and Senate bills: Both make a debt incurred to pay any nondischargeable debt nondischargeable, although the Senate effectively eliminates the provision if the debtor is a single parent or owes child support and/or alimony.

Administration Proposal: We propose that the **current law remain unchanged**; however, if a debtor paid a nondischargeable debt with a credit card, it would be a factor in determining whether the debtor's use of Chapter 7 was abuse.

Debts incurred in the period immediately before bankruptcy.

Current Law: Debts for luxuries over $1000 owed to a single creditor within 60 days of bankruptcy are nondischargeable. There is some evidence that this provision and other anti-fraud provisions do not prevent some debtors from running up debt knowing that a discharge is likely.

House and Senate Bills: Both would make all debts incurred within 90 days of bankruptcy for luxuries be presumptively nondischargeable. In addition, they would make presumptively nondischargeable debt above ($250 in the House; $400 in the Senate) per credit card for necessaries during the same period.

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As we thought

Child Support and Alimony Considerations

We should note that the current bills have seven different new provisions designed to either mitigate the impact of the additional nondischargeable debt on payment of child support and alimony or to give child support and alimony additional protections in and after bankruptcy. Some experts we have consulted argue that the benefits provided by these additional provisions outweigh any modest harm to child support and alimony payments that remains from the nondischargeability provisions. On the other hand, the women's groups continue their opposition to these bills. Moreover, these provisions, which focus only on child support and alimony, do not address our policy concern that new nondischargeable debt will now compete with other types of existing nondischargeable debts, such as educational loans. For these reasons, the Administration proposals described above would allow only one small category of new nondischargeable debt (luxuries purchased 90 days before bankruptcy) where there is a policy argument against allowing run-up prior to bankruptcy; for the remaining categories, we would leave current law or address the problem a different way.

CLINTON LIBRARY PHOTOCOPY

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Your advisors are particularly concerned about the unequal bargaining power of the creditor and debtor and how the changes in bankruptcy rules could further shift the balance and create opportunities for coercion and consumer harm. To address this concern, and to ensure legislation requires responsibility of both debtor and creditor, we propose new consumer protections.

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Although debtors in Chapter 7 have a right to have their unsecured debts discharged, some debtors reaffirm one or more debts. While there may be some circumstances in which it is in the debtor's best interest to do so (e.g., as a condition of obtaining a line of credit needed for a small business), those cases are few. The risk is real, however, that debtors are pressured into reaffirming their debts by aggressive creditors. After Sears recently paid large penalties for such practices, another Bankruptcy Judge (Fenning) said she scrutinized her court records and found evidence of widespread coercive reaffirmations. Since debts reaffirmed survive bankruptcy, they compete with child support and alimony in a post-bankruptcy world. Eliminating coercive reaffirmations also would help to reduce the current level of competition child support and alimony payments face.

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We also are exploring whether there are other non-bankruptcy steps we can take to clamp down on predatory lender practices and better help consumers to understand their own borrowing. We have consensus on a proposal that requires all lenders to disclose the time period over which debt is amortized by minimum payments. This proposal, and others under review, fall under the jurisdiction of other committees. Thus, it is not feasible to insist that Congress include these proposals in the bankruptcy bill at this time. However, we might unveil these proposals in connection with a campaign to educate consumers about the use of credit, using the bully pulpit the way we have done to encourage retirement savings.

V. ADVISORS' RECOMMENDATIONS

All your advisors recommend we proceed as described, including CoS, NEC, Counsel, OPL, OLA, OMB, CEA, DPC, First Lady, DoJ, Treasury, Commerce, and Education.

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VI. DECISION

_____ PROCEED AS DESCRIBED

_____ LET'S DISCUSS

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June __, 1998 -- Draft

MEMORANDUM TO THE PRESIDENT

FROM: **GENE SPERLING**
SALLY KATZEN

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The Bankruptcy Code makes debts nondischargeable only where there is an overriding public purpose, as with child support, alimony, educational loans, tax obligations, or debts incurred by fraud. ~~The House and Senate~~Both bills have provisions that would broaden the categories of nondischargeable ~~credit card debt, although the largest new category has been dropped and the~~debt, raising two ~~remaining categories narrowed.~~questions: (1) Do the additional debts made nondischargeable rise to the same level of public priority as other nondischargeable debts? and (2) What impact does nondischargability of new categories of debt have on the ability of the debtor, post-bankruptcy, to repay existing categories of nondischargeable debt (e.g., child support and alimony, educational loans, and taxes)? ~~These provisions raise two questions: (1) Do the additional debts made nondischargeable by these bills rise to the same level of public priority as other nondischargeable debts? and (2) What impact does the protection of new categories of debt have on the ability of the debtor, post-bankruptcy, to repay existing categories of nondischargeable debt (e.g., child support and alimony, educational loans, and taxes)?~~ They also force us to recognize that consumers use credit cards today for many purposes that were inconceivable only a few years ago (e.g., groceries or paying student loans). ~~This Administration envisions -- and, in fact, encourages -- greater use of electronic commerce.~~

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Debts incurred to pay other nondischargeable debts.

~~***Current law***~~***Rationale:*** ~~*If a debtor uses a credit card to pay federal taxes,*~~ A consumer anticipating bankruptcy can 'game the ~~credit card debt is~~system' by paying off nondischargeable debts with a credit card, which will be discharged in bankruptcy.

Current law: A credit card debt incurred to pay federal taxes is nondischargeable.

House and Senate bills: Both make a debt incurred to pay any nondischargeable debt nondischargeable, although the Senate effectively eliminates the provision if the debtor is a single parent or owes child support and/or alimony.

Administration Proposal: We would propose that ~~the~~ **current law remain unchanged**; however, if a debtor paid a nondischargeable debt with a credit card, ~~it~~that would be a factor in determining whether the debtor's use of Chapter 7 was abuse. Our fallback position would be that if a consumer uses a credit card to pay off a nondischargeable debt, the credit card debt becomes nondischargeable only if the transaction happened shortly before the bankruptcy filing so that the consumer could plausibly have been trying to 'game the system.'

Debts incurred in the period immediately before bankruptcy.

Rationale: A debtor anticipating bankruptcy has strong incentives to borrow as much as possible from dischargeable sources like credit cards because bankruptcy will wipe out all such debt.

Current Law: Debts for luxuries over $1000 owed to a single creditor within 60 days of bankruptcy are nondischargeable. ~~There is some evidence that this provision and other anti-fraud provisions do not prevent some debtors from running up debt knowing that a discharge is likely.~~

House and Senate Bills: Both would make all debts incurred within 90 days of bankruptcy for luxuries be presumptively nondischargeable. In addition, they would make presumptively nondischargeable debt above ($250 in the House; $400 in the Senate) per credit card for necessaries during the same period.

Administration Proposal: We propose to agree to make **debt for luxuries within 90 days of bankruptcy presumptively nondischargeable; however, a cap of $250 or $400 on necessary expenses incurred prior to bankruptcy is inappropriate.** One can easily imagine a family, in the months prior to bankruptcy, paying for rent, school clothes, and even groceries on their credit card. ~~Courts~~Our fallback position would be to increase the cap and to incorporate legislative

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language exempting people from the cap if they can ~~easily compare current~~demonstrate that the spending ~~patterns to prior spending and determine whether charges are truly~~was for necessary ~~expenses~~items and reflected either their usual spending patterns or special circumstances beyond their control.

Child Support and Alimony Considerations

~~We should note that the~~The current bills have seven ~~different~~ new provisions designed to either mitigate the impact of the ~~additional~~added nondischargeable debt on ~~payment of~~ child support and alimony or to give child support and alimony additional protections in and after bankruptcy. Some experts ~~we have consulted~~ argue that the benefits ~~provided by~~of these ~~additional~~ provisions outweigh any modest harm to child support and alimony payments that remains from ~~the~~ nondischargeability ~~provisions~~. On the other hand, the women's groups ~~continue their opposition to~~still oppose these bills. Moreover, these provisions~~, which~~ focus only on child support and alimony~~,~~ and do not address our policy concern that new nondischargeable debt will ~~now~~ compete with other types of existing nondischargeable debts, such as ~~educational~~education loans. ~~For these reasons~~Hence, ~~the Administration~~our proposals described above would allow only one small category of new nondischargeable debt (luxuries purchased 90 days before bankruptcy) where there is a policy argument against allowing pre-bankruptcy run-up ~~prior to bankruptcy~~; for the remaining categories, we would leave current law or address the problem a different way.

If some compromise is necessary, our fallback positions insist that we can accept increased nondischargability only for circumstances where a strong case can be made that the debtor was trying to 'game the system.'

IV. ADDITIONAL CONSUMER PROTECTIONS AGAINST PREDATORY CREDITOR PRACTICES

Your advisors are particularly concerned about the unequal bargaining power of the creditor and debtor and how the changes in bankruptcy rules could further shift the balance and create opportunities for coercion and consumer harm. To address this concern, and to ensure that legislation requires responsibility of both debtor and creditor, we propose new consumer protections.

Reaffirmations of Unsecured Debt

Although debtors in Chapter 7 have a right to have their unsecured debts discharged, some debtors reaffirm one or more debts. While there may be some circumstances in which it is in the debtor's best interest to do so (e.g., as a condition of obtaining a line of credit needed ~~for~~to continue running a small business), those cases are few. The risk is real, however, that debtors ~~are~~may be pressured into reaffirming their debts by aggressive creditors. After Sears recently paid large penalties for such practices, another Bankruptcy Judge (Fenning) said she scrutinized her court records and found evidence of widespread coercive reaffirmations. Since debts

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reaffirmed survive bankruptcy, they compete with child support and alimony in a post-bankruptcy world. Eliminating coercive reaffirmations also would help to reduce the current level of competition child support and alimony payments face.

Current Law: Disclosures are required and the court must determine that a reaffirmation does not impose an undue hardship on the debtor or a dependant and is in the debtor's best interest; however, an affirmation of the debtor's attorney to that effect suffices.

House and Senate Bills: No related provisions.

Administration Proposal: We propose to require the court itself to find that there was a compelling reason for the debtor to reaffirm a debt, without reliance on counsel affidavits. We also propose to bar reaffirmation of debts that add attorneys' fees and costs to the debt, to increase penalties on attempts to enforce invalid reaffirmations, and to clarify on that the automatic stay bars threats to file abuse motions and solicitations of reaffirmations.

Credit Card Minimum Payment Disclosure

We also believe that some signal should be sent to creditors about lending practices that entice debtors to get further and further into debt.

Current Law: Most debtors believe that by making the minimum payment on their credit card they are slowing working off their debt. However, depending upon the interest rate, they may be falling further and further behind. Creditors are increasingly offering minimum payment plans that amortize debt over decades, if at all.

House and Senate bills: No related provisions.

Administration Proposal: We propose a process for subordinating debt if the creditor did not disclose clearly ~~to the debtor~~ the time period over which the debt would amortize at the minimum payment level. The subordinated debt would only be paid, in a Chapter 13 plan or a Chapter 7 liquidation, after all other unsecured, nonpriority debt. It most cases, this will mean it will never be repaid.

Other Non-Bankruptcy Steps to Improve Consumer Credit Practices

We also are exploring whether there are other non-bankruptcy steps we can take to ~~clamp down on~~deter predatory ~~lender practices~~lending and better help consumers to understand their own borrowing. ~~We have consensus on a~~One proposal ~~that requires~~would require all lenders to disclose the time period over which debt is amortized by minimum payments. This proposal, and others under review, fall under the jurisdiction of other committees, so it is not feasible to insist that Congress include these proposals in the bankruptcy bill. ~~Thus, it is not feasible to insist that Congress include these proposals in the bankruptcy bill at this time.~~ However, we might unveil

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these proposals in connection with a campaign to educate consumers about the use of credit, using the bully pulpit ~~the way~~as we have done to encourage retirement savings.

V. ADVISORS' RECOMMENDATIONS

All your advisors recommend we proceed as described, including CoS, NEC, Counsel, OPL, OLA, OMB, CEA, DPC, First Lady, DoJ, Treasury, Commerce, and Education.

- The NEC believes that requiring greater responsibility of both creditors and debtors is the best way to address the "unclean hands" of some of the legislation's proponents.
- Treasury and CEA emphasize that needs-based reform will decrease the cost of, and increase access to, credit for those debtors who do pay their bills by limiting opportunistic bankruptcy among those higher income debtors who do not.
- DoJ supports the plan and stresses that other provisions of these bills, like the cap on state homestead exemptions, measures to discourage bad faith repeat filings, and provisions to improve data collection and audit procedures, are important reforms.
- OPL believes that, while consumer advocates oppose any bill, reforms limiting access to Chapter 7 and stemming coercive reaffirmations appear valid. OPL wants to see us fight for aspects of our proposal that protect against any impact on child support (before or after bankruptcy) of new nondischargeable credit card debt.
- The First Lady's Office strongly supports advancing proposals that achieve more balanced reform by calling for responsibility on the part of the creditor as well as the debtor, and recommends that we continue to focus on the child support issue to ensure that protections in this area are as strong as possible.
- OLA stresses the popularity of bankruptcy reform and advises that we advance proposals that have a realistic prospect of inclusion, or we may find ourselves faced with overwhelmingly popular legislation that fails to satisfy our announced concerns.

VI. DECISION

____ **PROCEED AS DESCRIBED**

____ **LET'S DISCUSS**

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THERE WILL BE A BANKRUPTCY WORKING GROUP MEETING TOMORROW AT 10:00 am in Room 239 TO DISCUSS THE ATTACHED DRAFT. IN PARTICULAR, SEE THE ISSUES HIGHLIGHTED FOR DISCUSSION.

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NOTE TO REVIEWERS. THIS EXCEEDS 4-PAGE LIMIT BY A PAGE. ALL ADDITIONS MUST BE MATCHED BY DELETIONS OF EQUAL LENGTH. ADDITIONAL EDITS TO SAY SAME IN FEWER WORDS WOULD BE MUCH APPRECIATED.

June __, 1998 -- Draft #2

MEMORANDUM TO THE PRESIDENT

FROM: GENE SPERLING

RE: BANKRUPTCY REFORM LEGISLATION

Last week, the House passed, by a veto-proof majority of 306-118, a bankruptcy reform bill that your administration said it "strongly opposes." A better, but still flawed, bill (voted out of committee 16-2) may be taken up by the Senate before the July 4th recess. Both bills were changed recently to address concerns that you, the First Lady, and others have raised about their impact on debtors' capacity to pay child support and alimony; however, some problems remain in this regard.

After a comprehensive, NEC-led, review of all the issues, your advisors have reached a consensus that some bankruptcy reform is not only appropriate, but important. However, the current bills need significant changes to satisfy our objectives and concerns. We propose to advance quickly an Administration plan in hopes of influencing the Senate bill on the floor and giving the Administration greater leverage in conference to shape the final legislation. The proposal would address three issues: (1) limitations on access to Chapter 7; (2) new nondischargeable debts and their impact on child support and alimony payments; and (3) new provisions to protect against coercive creditor behavior and to require more responsibility from creditors in extending credit.

I. BACKGROUND

During the 1996 campaign, Senator Dole was able to point (without effective rebuttal) to only one blemish on your economic record -- rising consumer bankruptcies. Despite what Goldman Sachs recently called "the best economy ever," personal bankruptcies have continued to rise sharply, from roughly 300,000 per year in the early 1980s [**replace w/ number from early 90s**] to nearly 1.4 million in 1997.

There is much dispute about the causes of this increase. Growing levels of consumer debt make consumers more vulnerable to unexpected events that push a family over the financial edge. Rising bankruptcy rates track closely rising levels of unsecured debt. However, one cannot assign proportional responsibility for higher debt levels between, on the one hand, consumer taste for consumption and willingness to live with greater debt and, on the other hand, the practices of creditors offering credit to even heavily leveraged and unsophisticated borrowers. Nor do we know what role, if any, lawyer advertising or reduced social stigma play in

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bankruptcy filings.

An effective industry campaign, including contributions exceeding those made by tobacco and highway bill interests, as well as legislators' fears of being labeled protectors of deadbeats, partially explain the popularity of reform legislation. However, these bills also garnered support because the bankruptcy system is vulnerable to abuse. Under current rules, debtors with significant income can walk away from their debts entirely, even when they have the capacity to repay at least a portion of those debts; debtors can file repeatedly without any intention of completing bankruptcy, for the purpose of delaying bona fide collection activities; and generous state exemptions (including unlimited homestead exemptions in eight states and exemptions for items like race horses and silver spoons in Virginia) prompt some to shift assets to exempt categories prior to a bankruptcy filing to avoid making payment to any unsecured creditors.

However, regardless of who is to blame, **higher levels of debt charge-offs raise the cost of credit for everyone.** One study suggests that bankruptcies cost every American household between $300-400 per year. While in the past credit card interest rates did not always rise and fall with market rates, the industry is now competitive, so that reduced bankruptcies will translate to lower interest rates and increased access to credit for those that pay their bills. The median income of families that have a balance on their credit cards is below the national median. Thus, higher credit costs disproportionately fall on lower income families.

II. LIMITATIONS ON ACCESS TO CHAPTER 7 BANKRUPTCY

Both the House and Senate bills would limit access to Chapter 7's full and immediate discharge of debt (usually without any payments to unsecured creditors) and would require those with the capacity to repay a proportion of their debt to do so under a Chapter 13 plan. We reject the House bill because it determines access to Chapter 7 under a rigid and inflexible "means test" which is unable to take into account the unique circumstances which debtors in bankruptcy may face.

The Senate approach has more promise. It builds on a test already in use in some circuits which says that it is "abuse" of the system to file for a Chapter 7 discharge if one has the capacity to repay, over three years, 20% of one's unsecured debts, after taking account of all necessary expenses. The Senate bill would authorize a bankruptcy judge to apply this test to any debtor with income above the median and, for the first time, allow creditors to file the motion seeking a determination of abuse. Creditors would have to pay debtors' attorneys fees if their filings were not substantially justified or brought to coerce a debtor to waive a right.

Under the Administration's proposed variation on the Senate bill, the bankruptcy court would have discretion to determine whether or not a debtor's use of Chapter 7 is "abuse"; however, if a debtor has an income above the median and the capacity to repay either at least 30% of their debts or some specified amount (such as $5000) over three years, use of Chapter 7 would be presumed to be abuse. (We would offer higher thresholds initially, for negotiating purposes, to

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achieve this outcome.) These presumptive guidelines could be overcome, for example, if the court determined that the debtor faced unusual but necessary expenses or could not be expected to maintain reliably his or her current level of income. Such presumptive guidelines have proven to be highly effective in promoting uniformity and fairness in establishing child support award amounts. Since the average debtor under Chapter 13 repays 20% of their debts and has income below the national median, those who meet this higher threshold are those who are most likely to be able to succeed under a repayment plan.

We also would provide that, if a debtor moved more than $50,000 from nonexempt to exempt assets within one year prior to the bankruptcy filing, she would be subject to a presumption of abuse, regardless of income. However, no debtor would be denied access to Chapter 7, unless she had the ability to repay a minimum of $50 a month in unsecured, nonpriority debt. Any lesser amount would be insufficient to merit the Chapter 13 administrative costs or to risk the chance that the creditor was pursuing the motion to coerce the debtor to forego another bankruptcy right. (Additional new protections against coercive reaffirmations also would be required. See Part IV below.)

III. NONDISCHARGEABLE DEBT AND ITS IMPACT ON CHILD SUPPORT AND ALIMONY

The Bankruptcy Code generally makes debts nondischargeable only where there is an overriding public purpose, as with debtors for child support and alimony, educational loans, tax obligations, or debts incurred by fraud. The House and Senate bills still have provisions that would expand current law to broaden the categories of nondischargeable credit card debt, although the largest new category has been dropped. These expanded categories of nondischargeable debt raise two questions: (1) Do the additional debts made nondischargeable by these bills rise to that same level of public priority? (2) What impact does the protection of new categories of debt have on the ability of the debtor, post-bankruptcy, to repay existing categories of nondischargeable debt (e.g., child support and alimony, educational loans, and taxes)?

The first category expanded is debts incurred to pay other nondischargeable debts. Under current law, if a debtor uses a credit card to pay federal taxes, the credit card debt is nondischargeable. The House and Senate bills make a debt incurred to pay any nondischargeable debt nondischargeable, although the Senate effectively eliminates the provision if the debtor is a single parent or owes child support and/or alimony. We would propose instead that the current law provision remain unchanged; however, if a debtor paid a nondischargeable debt with a credit card, it would be a factor in determining whether the debtor's use of Chapter 7 was abuse. **[Carroll advocates instead that if the debt were incurred with a 6 or 3-month period of the bankruptcy it be nondischargeable. Need follow-up discussion.]**

The second category expanded is debts incurred in the period immediately before bankruptcy. Under current law, debts for luxuries over $1000 to a single creditor within 60 days of bankruptcy are nondischargeable. There is some evidence that this provision and other anti-fraud

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provisions do not adequately combat abuse, as debtors run up debt knowing that a discharge is likely. Even the pro-debtor Bankruptcy Review Commission recommended making all debts incurred within 30 days of the filing nondischargeable. The House and Senate bills would make all debts incurred within 90 days of bankruptcy for luxuries be presumptively nondischargeable. In addition, these bills would make presumptively nondischargeable debt above ($250 in the House; $400 in the Senate) for necessaries during the same period. It seems reasonable to make debt for luxury goods and services within 90 days of bankruptcy presumptively nondischargeable; however, the cap of $250 or $400 on necessary expenses incurred prior to bankruptcy is inappropriate. **[Some want to say no cap is appropriate -- others that this is too low.]** One can easily imagine a family, in the months prior to bankruptcy, paying for rent, school clothes, and even groceries on their credit card. Courts can easily compare current spending patterns to prior spending and determine whether charges are truly for necessary expenses. **[Gruber proposes that we consider advancing, or at least agreeing as a bottom line, that some aggregate level of credit within 90 days, even for necessaries, should be a factor in considering whether there is abuse in using chapter 7. The argument is that it would address the problem of bankruptcy courts with tight definitions of luxuries, and thus find a range rover a necessity. Carroll wants us to consider a presumption that the debt is dischargeable which could be rebutted by evidence of usual spending patterns. Reactions?]**

We should note that the current bills have seven different provisions designed to either mitigate the impact of the additional nondischargeable debt on payment of child support and alimony or to give child support and alimony additional protections in and after bankruptcy. The women's groups continue their opposition to this bill; however, some experts we have consulted argue that the benefits provided by these additional provisions far outweigh any residual harm to child support and alimony payments that remains from the modest nondischargeability provisions. While there is no reason for us to share this assessment, we should be careful to balance our comments so we do not jeopardize the beneficial provisions nor loose credibility.

what?

IV. ADDITIONAL CONSUMER PROTECTIONS AGAINST PREDATORY CREDITOR PRACTICES

Your advisors are particularly concerned about the unequal bargaining power of the creditor and the debtor and how the changes in bankruptcy rules could further shift the balance and create opportunities for coercion and consumer harm. The greatest risk is that debtors will be pressured into reaffirming their debts, despite a right to have them discharged in bankruptcy. Although current law has some protections against coercion, a recent survey reported that 52% of debtors reaffirmed one or more debts. After recent litigation against Sears for coercing reaffirmations, Judge Fenning said she scrutinized her court records and found evidence of widespread coercive reaffirmations. The National Bankruptcy Review Commission recommended precluding reaffirmation of unsecured debt. We would propose **[there are two options here -- fran's initial paper described additional scrutiny for reaffirmations; DoJ has refined their list of options and now would support an absolute ban of reaffirmations of unsecured debt. Need to discuss.]** as well as increased penalties on attempts to enforce invalid reaffirmations and

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clarification that the automatic stay bars threats to file abuse motions and solicitations of reaffirmations. Since debts reaffirmed survive bankruptcy, they compete with child support and alimony in a post-bankruptcy world. This provision would help to reduce the current level of competition these payments face from reaffirmed debt.

We also believe that some signal should be sent to creditors that it is abusive to offer credit to borrowers who have no capacity to repay. Some have suggested offering a provision that would subordinate debt owed to a creditor who offered it without an application or evaluation of the debtor's capacity to repay. **[This proposal from the First Lady is new, but not unlike the Watt amendment that was in the House bill, which limited the debt made nondischargeable if the person didn't have a reasonable ability to repay, to only apply if the debt was incurred after an application and an evaluation of the debtor's capacity to repay. In practice -- most credit card lenders ask credit agencies for list of all debtors meeting x criteria, but they do not know income. We would want to specify precisely what steps a creditor would be required to do, so there was certainty, and not suggest that any level of risk was too high, as long as there was an evaluation of risk of that debtor. -- Need to discuss.]** In addition, we would propose also subordinating debt (incurred after implementing regulations are adopted) if the creditor did not disclose clearly to the debtor the time period over which the debt would amortize at the minimum payment level. (Creditors are increasingly offering minimum payment plans that amortize debt over decades, if at all. Most debtors believe that by paying the minimum payment they are slowing working off their debt. However, depending upon the interest rate, they may be falling further and further behind.) The subordinated debt would only be paid, in a Chapter 13 plan or a Chapter 7 liquidation, after all other unsecured, nonpriority debt. It most cases, this will mean it will never be repaid.

We also are exploring whether there are other non-bankruptcy steps we can take to clamp down on predatory lender practices and better help consumers to understand their own borrowing. We have consensus on a proposal that requires that lenders disclose the period of time over which debt is amortized by minimum payments. This proposal, and others under review, are not germane to the bankruptcy bills and fall under the jurisdiction of other committees. Thus, it is not feasible to insist that Congress include these or similar proposals in the bankruptcy legislation at this time. However, we might unveil these proposals in connection with an administration campaign to educate consumers about the use of credit, using the bully pulpit much the way we have done to encourage retirement savings.

V. ADVISORS' RECOMMENDATIONS

[KEY AGENCIES AND WH OFFICES MAY DRAFT A NO MORE THAN TWO-LINE PHRASE TO GIVE THE PRESIDENT A BETTER SENSE OF YOUR REASONING. LANGUAGE BELOW IS ILLUSTRATIVE ONLY, MY ATTEMPT TO CHARACTERIZE YOUR VIEWS. FEEL FREE TO REPLACE OR EDIT.]

All your advisors recommend we proceed as described, including CoS, Counsel, Public Liaison,

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Legislative Affairs, OMB, DoJ, Treasury, Commerce, and Education (???). I (Gene Sperling) believe that offering a plan that requires greater responsibility of both creditors and debtors is the best way to address the "unclean hands" of some of the legislation's proponents. Treasury and CEA emphasize that needs-based reform will increase the cost of, and access to, credit for those debtors who pay their bills by limiting opportunistic bankruptcy among those higher income debtors who do not. DoJ supports the plan and stresses that other provisions of these bills, like the cap on state homestead exemptions, measures to discourage bad faith repeat filings, and provisions to improve data collection and audit procedures, are important reforms. The WH Office of Public Liaison warns that we will not win the support of consumer advocates that oppose any reform, but by insisting there is no harm to child support and alimony payments, we remain faithful to a core priority of your Administration. Finally, Legislative Affairs stresses the popularity of bankruptcy reform and advises that we advance proposals that have a realistic prospect of inclusion, or we may find ourselves faced with overwhelmingly popular legislation that fails to satisfy our announced concerns.

VI. DIRECTION

____ **PROCEED AS DESCRIBED**

____ **LET'S DISCUSS**

CLINTON LIBRARY PHOTOCOPY

September 22, 1998 -- DRAFT

Child Support - Bankruptcy

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING

RE: BANKRUPTCY REFORM LEGISLATION

In June, you approved an Administration bankruptcy reform proposal. We shared that proposal with key Senators and were successful in influencing the Senate bill. Today, the Senate passed, by a vote of ___ - ___, a bankruptcy bill that reflects almost all of the major elements of the Administration's proposal. While further improvements could be made, the Senate bill reflects a significant step in the direction of balanced bankruptcy reform.

The House bill is far more problematic. That bill, which passed by a veto-proof majority over the Administration's strong opposition, uses a rigid formula to decide who should be denied use of Chapter 7's full and immediate discharge of unsecured debt, creates new categories of nondischargeable debt that will compete with child support and alimony post-bankruptcy, and is heavily slanted to ending perceived abuse by debtors with no effort to end abuse by creditors.

Your advisors concur that:

(1) our goal is legislation that includes the important elements of the Administration proposal now in the Senate bill;
(2) the House bill, in its current form, is unacceptable; and
(3) we should send a strong signal to the conferees in order to increase our leverage.

Your advisors disagree, however, about the bottom line. It is likely that conference will produce a bill somewhere between the House and Senate bills. Many of your advisors will recommend that you veto a bill without the moderation and balance of the Senate bill; Treasury and CEA, however, will recommend that you sign a bill, even if it falls short of our goals, because they believe the reforms still represent a marked improvement over the current system. We seek guidance from you on this issue, so that we can best reflect your views in conference negotiations.

Background

Consumer bankruptcies continue to rise sharply despite strong economic conditions. Although there is much debate about the cause of the rise, there is evidence that both debtors and creditors abuse the current system to some degree. Regardless of who is to blame, higher levels of debt charge-offs raise the cost of credit for everyone.

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Both bills contain desirable provisions that are not the subject of this memorandum, including a cap on state homestead exemptions, debtor education pilots, penalties for unjustified creditor activities, measures to discourage bad-faith repeat filings, and provisions to improve data collection and audit procedures.

Prospects for Conference

Work on compromising the two bills will begin immediately. We expect Senator Grassley to fight hard to preserve the Senate approach. Senator Hatch, however, has been clear that he expects the Senate approach to be compromised in conference. House Republicans have stated that their intent is not to compromise significantly with the Senate.

On the other hand, the legislative calendar works in our favor. A more extreme approach in conference risks trouble on the Senate floor and a direct or pocket veto from you. Some Democratic Senators supported the Senate bill because of its balance and moderation. In the face of your strong opposition, the Senate [is not certain to/ is not likely to] override your veto of a House-like final bill. [NEED TO SEE FINAL VOTE ON PASSAGE BEFORE DECIDE ON VIEW HERE.] Of course, some Republicans may relish the prospect of a veto, eager only for the campaign issue.

Legislative Affairs recommends that we send a clear message about what you would sign and what you would veto, if we hope to have any influence over the outcome of conference. The best we can expect to get from conference is the minimum the Republicans think they need to give in order to get your signature. However, making our position clear is no guarantee that the conference will not favor the House bill approach, as Republicans may not believe you would veto a bill in the face of such strong bipartisan support or may believe a veto could be overridden. The most likely outcome is a bill somewhere between the House and Senate approaches, with watered down versions of key Administration provisions.

Message to Conferees

Your advisors propose that we send a letter to conferees that says:

(1) You would veto the House bill in its current form.

(2) You strongly believe that bankruptcy reform should enhance, and certainly must protect, the collection of debtors' child support and alimony obligations.

(3) You will not sign a bill if it includes:
   (a) a rigid, arbitrary approach to determining whether it is appropriate for a debtor to use Chapter 7; and

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(b) new, nondischargeable debts that could inappropriately put credit card debt in competition post-bankruptcy with child support, alimony, and other societal priorities like educational loans and taxes.

(4) You believe that the reforms incorporated in the Senate bill are **essential,** including:
   (a) a discretionary approach to, and higher thresholds for, shifting borrowers from Chapter 7 to Chapter 13; and
   (b) limitations on the new categories of nondischargeable debt so that they only cover debt that was incurred with an intent to defraud.

(5) To gain your signature, a bankruptcy reform bill **must** contain balanced provisions that ask both debtors and creditors to behave more responsibly, including:
   (a) adequate protection against coercive reaffirmations; and
   (b) disclosure requirements to ensure that consumers get the information that they need to manage their budgets.

This approach leaves the Administration some flexibility to negotiate an acceptable package. It would preclude you, however, from signing a bill that uses the strict means-test approach to Chapter 7 that is contained in the House bill.

Negotiations Bottom Line -- Two Views

Hold Firm for Moderation and Balance

It is unlikely that we will be presented with a bill without any aspects of the Administration's proposal; instead, we can anticipate some watered-down provisions so that the Republicans can say that they have addressed our concerns. Perhaps they will do so sufficiently. If not, the majority of your advisors (NEC, Leg Affairs, CoS (Echaveste), OPL -- Women's Office, OVP, OMB, WH Counsel, Office of the First Lady, Commerce, Office of Thrift Supervision, and DoJ) will recommend that you veto a bill that fails in significant ways to meet the test in the conferees letter -- i.e., if it does not include in some reasonable form the reforms we declared "essential" and the balancing provisions we said "must" be included. (See (4) and (5) above.)

These advisors feel strongly that:

(1) We should not sanction use of a rigid "means test" that does not take into account the unique circumstances of individual debtors. The use of any test to exclude from Chapter 7 those with the capacity to repay is a significant change in our bankruptcy system. We should err on the side of caution when implementing that change, so we do not inadvertently deny access to bankruptcy to those who need it most.

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(2) We must insist on balance -- creditors as well as debtors should be expected to act responsibly. We have recently seen dramatic changes in how credit issuers decide to grant credit -- broadening the spectrum of consumers who have a chance to get in over their heads. These changes make it imperative that we improve the information disclosed and enhance protections against coercion, especially if we are going to limit access to bankruptcy's "fresh start" for those who make a mistake.

[need to confirm positions of DPC, HHS, DoEd, USDA, CPSC.]

Accept, if necessary, less ideal reform as an improvement over the status quo.

On the other hand, Treasury and CEA believe that bankruptcy reform that falls short of some of the Administration's goals -- which the conference bill almost certainly will do -- would still represent a marked improvement over the current sustem. Thus, they believe that you should sign a bill that makes any reasonable compromise between the House and Senate approaches, and that meets our goals for the protection of child support and alimony payments.

Treasury and CEA emphasize that, even under the House approach, only 10% of filers would be affected by the means-test formula, all with above-median income. Under the current system, these debtors escape their obligations entirely, even though many are likely to have the ability to repay at least part of what they owe. Reducing their debt charge-offs would lower the cost of credit for all consumers -- a cost that is particularly important for lower- and middle-income Americans who depend on consumer credit for significant house hold purchases.

Finally, Treasury and CEA argue that any compromise bill is likely to improve payment of child support and alimony (provided that it creates no new post-bankruptcy obligations in ocmpetition with these payments). Under the bill, more debtors will enter Chapter 13 court-supervised repayment plans where child support and alimony receive first priority and court supervision and other authorities make child support and alimony payment more likely.

Decision

While no guidance you give us now will bind you in considering any bill produced by the conference, the guidance will allow staff to negotiate with a clearer sense of your objectives.

HOLD FIRM FOR MODERATION AND BALANCE _____

ACCEPT A BILL (IF NO HARM TO CHILD SUPPORT AND ALIMONY) AS AN IMPROVEMENT OVER THE STATUS QUO _____

LET'S DISCUSS _____

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phillip Caplan to President Clinton re: Long-Term Care Initiative (9 pages)	08/31/98	P5

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P1 National Security Classified Information [(a)(1) of the PRA]
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P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Copied
Sperling
Reed
Jennings
Bowles

THE WHITE HOUSE
WASHINGTON
August 31, 1998

THE PRESIDENT HAS SEEN
9/1/98

ORANDUM FOR THE PRESIDENT

FROM: PHILLIP CAPLAN

CLINTON LIBRARY PHOTOCOPY

SUBJECT: Long-term care initiative

The attached Sperling/Reed/Jennings memo seeks your approval of a package of recommendations on a long-term care initiative. At your request, NEC/DPC ran a policy process to explore how such a package could be added to the Administration's tax cut package. The initiative would be fully paid for by postponing or modifying some of our tax cut proposals, or adding additional offsets.

All of your advisors agree on the components of the initiative, which include:

Long-term care tax credit: broad-based, non-refundable $500 tax credit for people with long-term care needs (defined as those having two or more limitations, *e.g.* bathing, dressing, toileting, etc.), or for families who house and care for such relatives. The credit would be given on the basis of illness, rather than expenses, in order to capture people who receive unpaid long-term care and would help 3.4 million people and cost $3.9 billion over five years. The memo includes a discussion of whether the credit should be (i) larger ($1000) and cover less people, and/or (ii) refundable, but your advisors agree on the credit as outlined.

Tax credit for impairment-related work expenses for people with disabilities: $5000 tax credit for personal and medical care expenses incurred at the workplace -- such expenses are often a pre-condition for the disabled to leave home for work.

Private long-term care insurance for federal workers: there would be no government contribution for this coverage, but OPM would set standards for the plans and sort them into benefit classes to facilitate informed choice. This would be viewed as a small but symbolic step.

✓ Approve ____ Disapprove ____ Discuss

OK

Timing: There is a question of whether to announce this package in mid- to late-September, or to hold it ~~for sometime later~~ (NEC/DPC prefer to hold the $5000 impairment-related tax credit component for the State of the Union). While announcing the package soon would put you in a leadership position on this issue, it could also generate momentum for the Republican tax cut efforts; Hill Democrats think that inaction on the tax cut front is a good thing at this point. The memo includes a lengthy discussion of whether to announce now or wait, but bottom line: your advisors will come back to you on the timing issue in a couple of weeks once they have a better sense of how it would play on the Hill.

THE WHITE HOUSE

WASHINGTON

THE PRESIDENT HAS SEEN
9/1/98

'98 AUG 11 P1:07

August 11, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING
BRUCE REED
CHRIS JENNINGS

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SUBJECT: LONG-TERM CARE INITIATIVE

cc. THE VICE PRESIDENT, ERSKINE BOWLES, ROBERT RUBIN, JACK LEW, SYLVIA MATTHEWS, JANET YELLEN, MARIA ECHAVESTE, JOHN PODESTA, RON KLAIN, LARRY STEIN, RAHM EMANUEL, PAUL BEGALA, ELENA KAGAN

Per your request, an interagency NEC/DPC process examined long-term care policy options, specifically how long-term care options could be added to our tax cut package. This memo summarizes our recommendations on both the best policy and the advisability of announcing such an initiative in August or September or waiting until the State of the Union.

We developed a long-term care initiative that both assists people who provide or pay for long-term care and encourages workers to purchase high-quality, private long-term care insurance. The centerpiece of the initiative is a broad-based, non-refundable tax credit for people with long-term care needs or for families who house and care for such relatives. The credit could help defray the costs of formal care (e.g., home health care) and informal care (e.g., assisting parents who are bed-ridden). Second, to complement the ongoing work of your Task Force on the Employment of Adults with Disabilities, we could introduce a tax credit of up to $5,000 for impairment-related work expenses incurred by disabled individuals. Third, we could announce support for offering private long-term care insurance to Federal employees, which would have virtually no costs and bipartisan support. The long-term care tax options cost a total of $4 billion over 5 years and $14 billion over 10 years, and would be fully funded by savings from postponing or modifying our budget revenue proposals, plus a few offsets that were in the Senate IRS bill, but that were not included in the final bill, or in your FY 1998 budget.

The timing of an announcement of a long-term care initiative in a modified tax package depends on a number of factors that will be discussed later in the memo.

BACKGROUND

This policy initiative is motivated by an interest to address long-term care and issues facing the chronically ill, particularly the elderly.

Unlike Social Security and Medicare, long-term care has received little attention. Republicans have begun to raise policy options (e.g., MSAs for long-term care in their Patient Protection Act), but not aggressively. Along with the lack of coverage of prescription drugs, the poor coverage of long-term care represents a major concern for the elderly and their families. Medicare pays for only a limited amount of long-term care, and private insurance even less -- only 10 percent of home health care and 5 percent of nursing home care. As a result, long-term care costs account for nearly half of all out-of-pocket health expenditures for Medicare beneficiaries.

Concern about long-term care costs is not limited to the elderly and people with disabilities. Their children, other relatives and friends provide a large amount of formal and informal long-term care. According to an HHS study that has not yet been released, one in three Americans voluntarily provide some unpaid informal care to an ill or disabled family member or friend. Over 90 percent of people with three or more limitations in activities of daily living (ADLs) living in the community receive some kind of informal care, most often from a spouse or relative. This means that middle-class families may find themselves caring both for their parents and their children.

A second motivation for this initiative is to make our targeted tax cut package include a more progressive, senior-focused tax option. Most people with long-term care needs have lower incomes. For example, the poverty rate for the elderly with two or more limitations in ADLs is twice as high as the rate for all elderly.

POLICIES

The proposed long-term care initiative would consist of three policies: two new tax credits plus offering quality private long-term care insurance to federal workers. Savings to pay for this initiative would come from new offsets and savings from postponing or modifying our existing tax cut proposals.

1. Long-term care tax credit

The centerpiece of the long-term care initiative would be a tax credit for people with long-term care needs or the families who house and care for such relatives. A $500, non-refundable credit would cost $3.9 billion over 5 years and $12.4 billion over 10 years (according to preliminary Treasury estimates) and would help a total of 3.4 million chronically ill individuals (described below). People with long-term care needs are defined as having two or more limitations in ADLs (bathing, dressing, eating, toileting, transferring and incontinence management) lasting for longer than six months or severe cognitive impairment, as certified by a doctor. Virtually all people who meet these criteria need some type of long-term care. The credit would be given on

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the basis of illness rather than expenses because, otherwise, it would not help people who receive unpaid long-term care. For example, a wife who cares for her husband herself rather than paying someone to do it would not receive a credit if it were based on receipts for long-term care expenses. This approach is also easier to administer than alternatives. About 1.7 million chronically ill individuals would directly get this credit on their own tax returns.

Certain families with "dependents" with long-term care needs could also receive the credit. Under current law, adults can be claimed by tax filers as dependents if they are related, have very low income, and receive at least half of their support from the tax payer (among other criteria). Adult dependents are generally not required to file tax returns themselves. For the purpose of this credit, we would broaden the definition of a "dependent" to include a person who needs long-term care (described above), lives with the family member, and generally does not have any income tax liability. Because by definition they live in the community, dependents are rarely nursing home residents. Simply stated, this allows families (other than spouses) who house and care for relatives needing long-term care to apply for the credit on their behalf. This improves the ability of the credit to help people who do not have enough income to file tax returns, although it does not help the elderly with no tax liability living alone or outside of their relatives' homes. Another 1.7 million families would get the credit in this way.

Over half of the chronically ill individuals benefiting from this credit are elderly, since the need for long-term care increases with age. Preliminary conversations with aging advocates suggest that this tax credit would be well received. However, private long-term care insurers could oppose the credit for fear that it will decrease interest in insurance since people may think that the credit protects them against long-term care costs.

Key Issues

Should the credit be refundable? A large proportion of people with long-term care needs are low-income and do not have tax liability. Refundability could improve the effectiveness of this policy at reaching its target population.

Pro:

- An additional several hundred thousand people would benefit from the credit if it were refundable, and, for those with a low tax liability, they would get the full amount of the credit.

Cons:

- It adds complexity to the policy because it creates a need to exclude certain groups. A large number of non-filers with long-term care needs are already receiving assistance through SSI and Medicaid if in a nursing home. Because a refundable credit would count against their eligibility for these programs, it makes sense to exclude them from the credit. However, this would be difficult, administratively and politically.

- It could jeopardize the initiative. Although we have been successful in our support for

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the refundability of the E.I.T.C. despite the strong Republican opposition, adding another refundable credit could risk the passage of the initiative and potentially undermine support for existing refundable credits as well.

- This proposal, as a refundable credit, may not be administrable at acceptable levels of compliance and intrusiveness.

Should we give a larger credit to few people or a smaller credit to more people? If we make the definition of needing long-term care stricter (i.e., three or more ADL limitations as opposed to two), fewer people would be eligible but we could increase the credit amount within the budget constraints.

Pros:

- Raising the credit amount to $1,000 would make the amount more meaningful. For example, it is enough to purchase a few hours of respite care per week.

- Eligibility based on two or more limitations in ADLs could be more subject to fraud, since it is a less strict standard.

Con:

- Even with $500 credit and the broader definition of needing long-term care, the policy helps a subset of the people who need long-term care or their families. According to one estimate, about 50 million Americans provide some type of informal long-term care to family and friends.

- Because most people meeting the stricter definition (three plus limitations in ADLs) are ill enough to require institutionalization, even a $1,000 may be perceived as being too small relative to the larger costs incurred by these people and their family.

2. Tax credit for impairment-related work expenses for people with disabilities

To complement the work of the Task Force on Employment of Adults with Disabilities, people with disabilities could receive a new tax credit of up to $5,000 for their impairment-related work expenses. This credit could be used to offset expenses for personal care in the workplace, for example, which is often a pre-condition for leaving home for work. A similar credit was in the Health Security Act and a Republican "return-to-work" proposal this year. It costs about $500 million over 5 years, $1.2 billion over 10 years, and helps about 300,000.

Key Issue

Should this credit remain as part of the long-term care initiative or be saved for a separate announcement? Although this credit can be considered a long-term care policy, it also fits in the context of return-to-work policies for people with disabilities and could be announced by itself or in the State of the Union.

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Pro:

- Omission of a policy for people with disabilities within a long-term care initiative would be noticed. There is a heightened attention to disability issues both in Congress and the community, and especially close attention is being paid to Administration actions. Even the aging advocates support including people with disabilities to avoid this criticism.

Cons:

- The disability community seems happy with the Administration's work on the Jeffords-Kennedy legislation, so that an additional policy at this point may not be needed.

- Since we do not exclude people under age 65 from the long-term care tax credit, we would be helping people with more severe disabilities even if we dropped this specific credit. The overlap between the two credits, however, may be low.

3. Offering private long-term care insurance to Federal workers

The third piece of the initiative is the small but symbolic non-tax option to offer Federal employees and annuitants a range of high-quality private long-term care insurance policies. There would be no Federal contribution for this coverage, but Office of Personnel Management (OPM) would set standards for the plans and sort them into benefit classes (e.g., "core" policy plus several types of "enhanced" policies) to facilitate informed choice. A seriously flawed bill to allow a open-ended long-term care insurance option was introduced by Representative Mica (R-FL) last week. Democratic members of the Civil Service Subcommittee, plus some Republicans (e.g., Connie Morrella), have expressed interest in a substitute. Proposing an alternative would add to our series of policies for Federal workers that demonstrates our leadership as a responsible employer.

Key Issues. None on policy grounds, although it is not a tax policy like the others. However, your advisors recommend that we act on this as soon as possible to preempt the Republicans from claiming the policy.

4. Offsets

This long-term care initiative would cost about $4 billion over 5 years and $14 billion over 10 years. It could be offset by modifying our existing tax package and adding a few new policies. First, we would postpone the effective date of our proposed tax initiatives until January 1, 2000. Given the Year 2000 problem, we would probably have to do so regardless. Second, we would scale back the child and dependent care credit (make it a 40 percent credit as opposed to 50 percent and slow the phase-down). Third, we would add two new policies that were in the Senate IRS package, but weren't included in the final bill and that were in your FY 1998 budget. The first is to modify the Foreign Tax Credit carryover rules; the second is to reform the treatment of Foreign Oil and Gas Income and dual capacity taxpayers.

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Key Issues. None on policy grounds, although like any offsets, they are not universally liked.

RECOMMENDATIONS. Your advisors (Chief of Staff, Office of the Vice President, NEC, DPC, CEA, Legislative Affairs, Treasury and OMB) generally agree on all of the components of this long-term care initiative. On the issue of refundability of the long-term care tax credit, we recommend against it. In particular, NEC, DPC Treasury and Legislative Affairs fear that making the credit refundable could spur an overall attack against refundability and jeopardize the gains that we have made on the E.I.T.C. It does, however, leave us somewhat vulnerable to criticisms that it is regressive. We suggest responding to this concern by stating that we are willing to work with Congress to make this credit more progressive. There is also agreement choose a broader definition of eligibility (two plus limitations in ADLs) even though we would have to lower the credit to make it affordable. This could help broaden the base of support for the initiative. Finally, even though the credit for people with disabilities could be part of the long-term care package, we recommend making it a separate announcement. NEC/DPC think that this credit might be best announced in the State of the Union, since it is likely to be recommended by the Task Force's November report and such an announcement would be viewed as acting on that recommendation.

Long-term care tax credit:

____ Include refundable credit
____ Include non-refundable credit (RECOMMENDED)
____ Do not include in the package

Tax credit for impairment-related expenses for people with disabilities:

____ Include tax credit for people with disabilities
____ Do not include in the package (RECOMMENDED)

Offering private long-term care insurance to federal employees:

____ Include in package (RECOMMENDED)
____ Do not include in the package

_____ Discuss some or all options further

ISSUES RELATED TO THE TIMING OF AN ANNOUNCEMENT

Assuming that the long-term care initiative and modified tax cut package are acceptable on policy grounds, the next question is about timing of an announcement. The following outlines the pros and cons of announcing this initiative in August or early September.

Pros:

- **Secures ownership of the long-term care issue**. A strong, affirmative long-term care message would not only be popular amongst the elderly, people with disabilities and most

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advocacy groups, but it would probably be well received by validators who think that this is the great, untouched baby-boom issue. This could complement and affirm your leadership on major, societal issues facing the country in the next century.

- **Provides an alternative to private long-term care insurance and MSAs as the only solution to the problem.** In September, the Republicans will probably take up the Mica federal employees' private long-term care insurance proposal and the Senate Patient Bill of Rights legislation that expands MSAs to include long-term care expenses. The mainstream advocates are concerned about the singular focus on private long-term care insurance and MSAs, since they will not come close to covering the costs of long-term care. Even the insurance industry, in its most optimistic projections, does not foresee that private insurance will cover even half of long-term care costs in thirty years. However, in the absence of alternatives, some may feel some pressure to support the Republicans' proposals.

- **Confirms our support for responsible tax cuts.** Presenting a tax cut package with explicit offsets would reaffirm that we support tax cuts, so long as they are paid for. As such, it could complement our Save Social Security First message. These credits also are attractive alternatives to some of the Republican proposals, since they focus on the elderly and people with disabilities who have lower income.

Cons:

- **Could provide impetus for an unacceptable tax cut this year.** The proposal would come at a time when Congressional Democrats, especially in the House, see the Social Security First message as strong and simple. They would probably perceive a new tax package as clouding that message. Also, Gingrich has been musing about settling for a tax cut this year of $70 billion or even less, so that our announcement of a revised tax package of about $30 billion could be read as a sign that we are willing to deal with the Republicans on their tax package in September and make our rule of not using the surplus less clear as well. Finally, given that our revenue raising provisions are unpopular on the Hill, an announcement with an attractive set of options could increase the chances of a tax cut that taps the surplus.

- **Democrats may prefer marriage penalty regardless.** The new package could have somewhat limited value for Congressional Democrats because it does not include marriage penalty relief, which is their main concern.

- **May appear political and not receive the attention and validation that it deserves.** Since it is unusual to propose policies with budget implications outside of the State of the Union and Budget process, the timing of the announcement, rather than the substance of it, may be what the press focuses on.

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RECOMMENDATIONS. Your advisors generally do not recommend an August or early September announcement. The importance of this initiative to your overall policy agenda would probably be obscured by a media focused on the timing. Moreover, Republicans could seize on the announcement to generate momentum in September for their tax package or one that uses the surplus. It appears, at this point, that Democrats think that inaction on the tax front is a good outcome for them.

However, we think that the question of timing should be revisited in mid-September. At that point, we will have a better sense of the potential ramifications of the announcement for Congress. We can also assess when and how we can make this announcement so it clearly gets the attention it deserves and puts you in a leadership role on this important issue.

____ Announce in August or early September

____ Revisit timing decision in mid-September (RECOMMENDED)

____ Discuss further

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Cynthia A. Rice from Barry J. Toiv (partial) (1 page)	09/23/97	P6/b(6)
002. email	To Bruce N. Reed from Cynthia A. Rice re: Federal Hiring Update (1 page)	09/22/97	P5, b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15458

FOLDER TITLE:
Welfare-Work-Federal Hiring Updates [2]

Rhonda Young
2009-1414-F
ry761

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Cynthia A. Rice 09/22/97 06:41:37 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP
bcc: Records Management
Subject: Re: Federal Hiring Update

One way to avoid embarrassing him too much and preventing possible leaks is for you to send the note only to poor performers, who had not as of Aug 22nd --

Met at least 5% of their hiring goal (Commerce, HUD, Justice, State, EPA, NASA); or
Met at least 10% of their hiring goal (Commerce, Defense, Education, Energy, HUD, Interior, Justice, State, Transportation, Treasury, EPA, NASA)

(SEC has met 0% of its commitment, but since they are an independent agency, we would have to have communication approved by the Counsel's office).

Revising the note to say something like:

I thought you would be interested to see that as of August 22nd, the Office of Personnel Management shows your agency as having met less than __% of its federal welfare hiring commitment. As you may know, agencies have been asked to report fiscal year 1997 welfare hires by November 15th. If you have any questions, please contact Susan Valaskovic at the National Performance Review at 632-0354.

Bruce N. Reed

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Bruce N. Reed
09/22/97 09:11:17 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
Subject: Re: Federal Hiring Update

(b)(6)

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	WAVES Confirmation (partial) (3 pages)	12/16/98	P6/b(6), b(6)
002. draft	Minimum Due Process Guidelines (10 pages)	ca. October, 1998	P5
003. email	WAVES Confirmation (partial) (2 pages)	10/27/98	P6/b(6), b(6)

WD Sheet?

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15429

FOLDER TITLE:
Child Support-Interagency Group

Richard Stalcup

rx33

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

MINIMUM DUE PROCESS GUIDELINES: DENIAL OF FEDERAL FINANCIAL ASSISTANCE PURSUANT TO EXECUTIVE ORDER 13,019

The following minimum due process guidelines are issued by the Attorney General, in consultation with the Secretary of Health and Human Services and the Secretary of the Treasury, and are to be included in the procedures or regulations promulgated by Executive departments and agencies for the denial of federal financial assistance pursuant to Executive Order No. 13,019, 61 Fed. Reg. 51,763 (1996). Existing procedures or regulations may be utilized so long as they comport with these minimum due process guidelines.

Section 1. Purpose.

Executive Order 13,019 provides that Executive departments and agencies shall deny federal financial assistance to any person whose delinquent child support obligations are subject to collection by administrative offset. A person who is determined by a state to have delinquent child support obligations subject to collection by offset shall be denied such assistance pursuant to agency procedures or regulations which comport with these minimum due process guidelines.

Section 2. Definitions.

(a) Agency. Any Executive department, military department or defense agency or other agency of the Executive Branch that provides federal financial assistance as defined in these guidelines.

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(b) Delinquent child support obligations. The amount of support determined under a court order, or an order of an administrative procedure established under state law, for the support and maintenance of a child, or of a child and parent with whom the child is living, which has not been paid.

(c) Delinquent child support obligations subject to collection by administrative offset. A "delinquent child support obligation" that has been submitted to the Department of the Treasury for collection by offset pursuant to the provisions of 31 U.S.C. § 3716(h) and 31 C.F.R. § 285.1. Before a delinquent child support obligation is submitted, the person owing the obligation is notified, pursuant to 31 C.F.R. § 285.1(h), of the amount owed and the state's intention to submit the obligation for collection by administrative offset. The person is notified of his or her right to an administrative review by the state referring the obligation or, upon the request of the person, by the state with the order upon which the referral was based, of the state's determination that delinquent child support is owed, the amount of such support, as well as any other rights available under state law.

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(d) Denying official. An official authorized to deny federal financial assistance as defined in these guidelines. The denying official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(e) Federal financial assistance. Federal financial assistance means any federal loan (other than a disaster loan), loan guarantee, or loan insurance.

(f) Notice. A written communication served in person or sent by mail to the last known address of a person, his/her identified counsel, or his/her agent for service of process. Notice shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(g) Person. An individual who has been ordered to make child support payments.

(h) Respondent. A person who has applied for federal financial assistance or is currently receiving such assistance and who has received a notice of proposed denial of such assistance.

(i) State. Any of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a state.

Section 3. Coverage.

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These guidelines apply to all persons who apply for federal financial assistance or who are currently recipients of federal financial assistance.

Section 4. Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to deny federal financial assistance to those persons whose delinquent child support obligations are subject to collection by administrative offset.

(b) Denial of federal financial assistance is a serious action which shall be used only in the public interest. Agencies will impose a denial of federal financial assistance for the causes and in accordance with the procedures set forth in these guidelines.

(c) When more than one agency has an interest in the proposed denial of federal financial assistance to a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their denial actions.

(d) Nothing in these guidelines is intended to imply that a Federal agency has any authority to determine whether a person owes a delinquent child support obligation or the amount of such obligation.

Section 5. Denial of federal financial assistance.

Except as set forth in Section Six, a person whose delinquent child support obligations are subject to collection by

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administrative offset shall be denied federal financial assistance so long as his/her obligations are subject to collection by offset.

Section 6. Exceptions.

(a) A person whose delinquent child support obligations are subject to collection by administrative offset will not be denied federal financial assistance when such person falls within a class of persons eligible to receive federal financial assistance where it has been determined by the agency head that denial of federal financial assistance to persons in such a class:

(1) is not permitted by law; or

(2) would likely result in valid legal claims for damages against the United States; or

(3) would be inconsistent with the best interests of the child or children with respect to whom a child support obligation is owed; or

(4) should be waived.

(b) Upon making a determination as set forth in subsection (a), the head of each agency shall provide written notification of his/her determination to the Secretary of the Treasury.

Section 7. Continuation of existing federal financial assistance.

(a) An agency must continue federal financial assistance extended to a person prior to notification that the person has delinquent child support obligations subject to collection by administrative offset where discontinuance or termination of the

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federal financial assistance would likely result in valid legal claims for damages against the United States.

(b) An agency shall not renew or extend federal financial assistance to a person (where such failure to renew or extend would not likely result in valid legal claims for damages against the United States) once the agency has been notified that the person has delinquent child support obligations subject to collection by administrative offset.

Section 8. Denial of federal financial assistance.

The denying official may deny federal financial assistance to a person for the causes set forth in Section Nine, using the procedures set forth in Sections Ten to Twelve.

Section 9. Causes for denial of federal financial assistance.

Federal financial assistance must be denied to a person when:

(a) The agency has obtained from the Secretary of the Treasury, or other authorized source, information that the person has delinquent child support obligations and that these obligations are subject to collection by administrative offset; and

(b) The person does not fall into a class of persons which has been excepted from denial of federal financial assistance as set forth in Section Six.

Section 10. Notice of proposed denial of federal financial assistance.

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The denying official shall initiate a denial of federal financial assistance by written notice to the person who has applied for such assistance or who is presently receiving such assistance (hereafter the "respondent"). The notice shall include the following statements or information:

(a) The agency has been informed that the respondent has delinquent child support obligations and that these obligations are subject to collection by administrative offset;

(b) Pursuant to Executive Order 13,019 and other applicable law, the person's application for federal financial assistance must be denied, or that, if the respondent is presently receiving such federal financial assistance, such assistance will not be renewed or extended.

(c) An explanation of the person's opportunity to contest the proposed denial as described in Section Eleven.

Section 11. Opportunity to contest proposed denial.

(a) Within 30 days, or such greater time as permitted by the head of the agency, after receipt of the notice of proposed denial of federal financial assistance, the respondent may submit to the denying official, in person, in writing, or through a representative, information and argument in opposition to the proposed denial.

(b) The respondent shall be afforded an opportunity for a proceeding where the respondent's information and opposition to the proposed denial is reviewed. This review may consist of a "paper" review of the record or may involve an oral hearing. In

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determining whether to grant an oral hearing, the agency may consider whether: 1) agency statutes or regulations require an oral hearing; 2) issues of credibility or veracity are involved; 3) other factors make an oral hearing necessary for a complete review of the issues. Unless otherwise required by law, an oral hearing is not required to be a formal evidentiary-type hearing, although the agency should carefully document all significant matters discussed at the hearing.

(c) The sole purpose of such a proceeding, whether "paper" or "oral," shall be to determine:

(1) Whether the respondent has a delinquent child support obligation subject to collection by administrative offset; and

(2) If so, whether the respondent belongs to a class of persons excepted from denial of federal financial assistance pursuant to Section Six.

(d) The respondent shall not request a determination by the agency whether the respondent owes a delinquent child support obligation or the amount of such obligation.

Section 12. Denying official's decision.

(a) The denying official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the denying official extends this period for good cause.

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(b) If the denying official decides to deny federal financial assistance to the respondent, the denying official shall give the respondent prompt notice:

(1) referring to the notice of proposed denial; and

(2) specifying the reason for denial;

(c) If the denying official decides not to deny federal financial assistance to the respondent, the denying official shall give the respondent prompt notice of that decision. A decision not to deny federal financial assistance shall be without prejudice to a subsequent denial of federal financial assistance by any other agency.

Section 13. Reversal of denial decision.

(a) The respondent may request that the denying official reverse the denial decision. Such a request shall be in writing and supported by documentation. The denying official may grant such a request for the following reasons:

(1) Information received by the agency from the Secretary of the Treasury or other authorized source that the respondent has no child support obligations subject to collection by administrative offset.

(2) Information that the agency head has excepted the class of federal financial assistance recipients to which respondent belongs from the operation of the Executive Order pursuant to Section Six.

Section 14. No private rights created.

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These guidelines do not create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the failure of an agency to comply with any of these guidelines, or regulations implementing these guidelines, be available to any debtor as a defense.

JANET RENO
ATTORNEY GENERAL

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Our weekly on child support and SC [South Carolina] (partial) (1 page)	12/17/99	P5
002. draft	Welfare Weekly Report Drafts (partial) (3 pages)	12/02/99	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15429

FOLDER TITLE:
Child Support-South Carolina

Richard Stalcup

rx28

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
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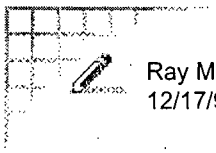
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



Ray Martinez
12/17/99 09:52:18 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP

cc:
Subject: Re: Our weekly on child support and SC

Cynthia:

I've been on the road for the past few days...sorry I hadn't responded. No phone call has been made from Hodges to the President on this issue, although the issue remains at the top of the governor's list, so I'm told. His DC rep -- Michael Tecklenburg, assured me a few days ago that the governor did not intend to bring the subject up with the President when the DGA governors convene with him this afternoon (I'll be in the meeting) although Michael did not rule out a call to the President on this subject in the future. In any case, Michael said if such a call is ever made, he would give me a heads-up before the call.

My understanding is that Beth Nolan has briefed the President that if the subject does come up, the President should refrain from discussing it (insofar as possible) pursuant to WH policy.

Ray.
6-2375

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Welfare Weekly Report – 12/02/99 Revised

Substance Abuse Treatment Grants: We thought you would be pleased to know about another budget win that didn't get a lot of attention amidst all the other good news. Our budget negotiators, with significant support from the Congressional Black Caucus, managed to more than double funding for SAMHSA's Targeted Capacity Expansion Grants that provide competitive grants to help communities address emerging substance abuse issues and unmet treatment needs, including HIV/AIDS, women moving from welfare to work, and high levels of substance abuse among Native Americans. Your FY 2000 budget proposed $110 million (double the FY 1999 level of $55 million), and the final budget deal included $114 million.

Child Support – South Carolina: In response to a memo from Intergovernmental Affairs, you asked us to look into concerns raised by Governor Hodges of South Carolina regarding his state's child support program. South Carolina has not yet put in place a statewide child support computer system, which was required by the 1988 Family Support Act to make child support collection more efficient. Because of the difficulties a handful of states were having in completing their systems, last year we proposed and Congress enacted a provision to make the penalties more fair – rather than lose 100 percent of federal child support payments, states that missed the deadline would lose 4 percent of funds the first year, with penalties rising in subsequent years. States must opt for this alternative penalty, and must complete a corrective compliance plan to qualify. Other states, such as California, which have not yet completed its systems have opted for the alternative penalty. South Carolina, however, has chosen to appeal its penalty, and the matter is under review at the HHS administrative appeals board.

The governor, who met recently with Secretary Shalala to discuss the matter, has asked for the opportunity to have his counsel make the state's case to the White House. White House counsel has informed us that it is White House policy that once an executive department issue reaches the adjudicatory or investigative phase, then no one from the White House may have substantive discussions about the issue, and IGA has relayed this to the state.

Unfortunately, HHS has little discretionary authority to provide relief to the state if it does not opt for the alternative penalty. As Secretary Shalala told the governor, the law does not allow for a "good faith" exception that state is seeking (South Carolina, like California, hired a private contractor that failed to produce a workable system). Secretary Shalala offered to provide technical assistance to the state in developing a corrective compliance plan so the state could opt for the alternative penalty. We believe the state's best option is to take the alternative penalty – by appealing a case that the state seems to be unlikely to win, the state risks triggering the 100 percent penalty, losing $21.5 million this year. Even if the state then opts for the alternative penalty, it would lose some funds irrevocably if it had not prepared a corrective compliance plan in time to immediately qualify for the alternative.

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losing $21.5 million this year,

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Encls draft

Child Support – South Carolina. In response to a memo from Intergovernmental Affairs, you asked us to look into a situation in South Carolina where Governor Hodges met with Sec. Shalala to discuss the status of the State's child support system. The Governor was hoping that the Secretary would intervene in the state plan disapproval process so that the State would not be penalized for failing to implement a statewide automated child support program. The penalty the State faces is a suspension of all federal payments for South Carolina's child support program, which is approximately $21.5 million. In addition, TANF funding could be jeopardized ($99.9 million). The State could, however, request an alternative penalty. Last year, you signed the Child Support Performance and Incentive Act, in light of the fact that many states were at risk of State Plan disapproval and subsequent termination of all federal child support funding, which provides for substantially lesser penalties.

The State is appealing the HHS decision on the basis that they made a "good faith" effort to get a new computer system in place but that their contractor (Unisys) did not deliver a usable computer network. Currently, 42 state systems have been certified by HHS and are operational. Eight states have chosen the alternative penalty, including California, which has similar – although more severe – problems than South Carolina, scrapping a $100 million investment in a computer system.

The Secretary told the Governor that she did not have the legal authority to provide relief from the State Plan disapproval process and HHS OGC concurred that the State's "good faith" effort is not a basis of relief under the law or regulations. By not choosing the alternative penalty, the State is risking the loss of a significant amount of federal funding. Although the alternative penalty has a fiscal impact as well, Sec. Shalala offered to provide technical assistance to the State on developing a corrective compliance plan, which is required under the alternative penalty. Unfortunately, there is little discretionary authority to provide relief from the State Plan disapproval process.

White House counsel has informed us that it is White House policy, that once an executive department issue reaches the adjudicatory or investigative phase, then no one from the White House may have substantive discussions about the issue with the parties involved.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	Concerns about the impact of IRS policies on the IV-D Program (6 pages)	ca. March, 1999	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15429

FOLDER TITLE:
Child Support-Privacy-IRS Info

Richard Stalcup

rx27

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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CONCERNS ABOUT THE IMPACT OF IRS POLICIES CONCERNS ABOUT THE IMPACT OF IRS POLICIES ON THE IV-D PROGRAMON THE IV-D PROGRAM

Issue 1: IRS has defined "child support enforcement agency" to include only governmental agencies and to exclude full-service "privatized" enforcement agencies.

Issue 2: IRS requires that all "tax information" must be subject to the same high level of safeguarding requirements without distinguishing data on the basis of its sensitivity.

Issue 3: IRS is imposing expansive new safeguarding requirements for systems based upon its interpretation of recent "anti-browsing" legislation which imposes new penalties but no new substantive safeguarding provisions.

Issue 4: IRS no longer furnishes Employer Identification Numbers in response to Federal Parent Locator Service matches based upon a legal opinion which defines "employer name and address."

RECOMMENDATIONS

Recommend that IRS:

1) Recognize the existing security and safeguarding provisions inherent in the child support program and to balance its safeguarding requirements so as not to have an adverse impact upon the program's use of the data.

2) Reconsider its legal opinions and consider possible alternative readings of the Internal Revenue Code which would permit more effective use of the data.

3) Consult with HHS in the future development of legal guidance which may have an impact upon the child support program.

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Discussion

Child Support Concerns
Department of the Treasury and the
Department of Health and Human Services

Background

The Department of Health and Human Services(DHHS) and the Department of the Treasury have been partners in promoting the collection of child support through the cooperative Federal-State title IV-D program since its inception in 1975. Through the full-IRS collection service (26 U.S.C. 6305), the Federal Parent Locator Service (FPLS) operated by the Office of Child Support Enforcement within HHS , and the Tax Refund and Administrative Offset Programs,[1] the Federal government has been a pro-active partner with State and local IV-D agencies in our effort to promote parental responsibility and ensure self-sufficiency of families.

During the early years of the program, IV-D agencies relied heavily on tax return information obtained through the FPLS[2] to open their case files, locate absent parents, and establish paternity and secure support orders.[3] Through the Tax Refund Offset Program (TROP) IV-D agencies also obtained confirmation of the taxpayer's address and were advised whether or not the refund offset was attributable to a joint return.[4]

Enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) strengthened the HHS-Treasury partnership by giving Treasury (and the Social Security Administration) access to new Federal data bases. These new data bases are the National Directory of New Hires (NDNH), which contains information on all new hires and wage data from state unemployment insurance programs, and the Federal Case Registry (FCR), which

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[1]Processing year 1998 collections under the Tax Refund Offset Program (TROP) were in excess of $756 million for TANF cases and $377 million for non-TANF cases. Collections under the Treasury's administrative offset program during 1998 totaled over $765,000 in combined TANF and non-TANF cases.

[2]The IRS provided the taxpayer's address from his/her last tax return and employment and wage information was obtained from SSA. Starting in 1984, IRS also provided asset information obtained from 1099 forms, and, for several years, mortgage and debt information obtained from 1098 forms.

[3]Locate information was also obtained from DoD/OPM, the Veterans Administration, State Employment Security Agencies, and formerly from the Selective Service administration.

[4]Distribution of the tax refund offset in such cases may be deferred for six months to permit the non-debtor spouse to claim her/his share of the refund. Such "injured spouse" returns may actually be submitted within six years, in which case the State may be obliged to return the portion of the refund attributable to the spouse's income.

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contains information on parents and children with child support orders and on parents and their children who are using the services of the IV-D system. These systems will be able to serve Treasury's efforts to curb Earned Income Tax Credit abuses and will permit the Social Security Administration to verify eligibility for SSI benefits.

While these PRWORA provisions have substantially diminished the extent to which State IV-D programs must rely upon tax data for location of absent parents, Treasury remains an important partner in child support collection efforts through the operation of the TROP and Administrative Offset programs. In fiscal year 1998, over $1 billion dollars was collected through TROP, and, while the Administrative Offset Program is still in the early stages of implementation, it holds promise for increasing the efficiency and effectiveness of certain child support collection efforts. In addition, tax data provided to IV-D agencies through Project 1099 will continue to be important, especially for obligors who are self-employed or who have substantial unearned income and other financial assets.

Given this strong and continuing partnership in the exchange of information and data between the two Departments, HHS is concerned that there has been a recent lack of communication and coordination of efforts. Recent IRS audits and disclosure policy interpretations have imposed new restrictive privacy and anti-disclosure requirements on OCSE and State IV-D agencies that will make collection of child support more difficult. The IV-D program has a strong history of protecting sensitive personal data from any wrongful access or improper non-program use. There are statutory safeguarding requirements imposed upon Federal, State, and local agencies under title IV-D. IV-D caseworkers are accustomed to dealing with the most sensitive personal and financial information necessary for the establishment and enforcement of child support orders, including paternity accusations, divorce settlements, custody determinations, visitation disputes and detailed information on family income, assets, and debt. While we agree that protections against the unauthorized release of tax data must remain strong in order to protect taxpayer confidence in the integrity of the tax system, we believe that the child support enforcement system can address IRS' privacy concerns.

Child Support Enforcement Concerns

Definition of Child Support Enforcement Agency. The IRS Disclosure Litigation Division, Office of Chief Counsel, issued an opinion on July 3, 1997, concerning the definition of the term "Child Support Enforcement Agency," in the Social Security Act (the Act) and the Internal Revenue Code (IRC). The IRS Office of Chief Counsel concluded that a Child Support Enforcement Agency must be a governmental entity in order to receive and use tax return information. The Office of General Counsel, HHS, was given a copy of the opinion on January 5, 1999, and has concluded that the IRS' opinion is inconsistent with the HHS' definition of a "Child Support Enforcement agency." Historically, title IV-D has blended public and private child support enforcement operations, and cooperative agreements with public and private entities are encouraged under long-standing IV-D statutory and regulatory provisions. Full-service privatized title

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IV-D agencies, designated to perform IV-D services under the IV-D State Plan, conduct virtually every aspect of the IV-D program in certain jurisdictions. Their activities qualify for federal funding under title IV-D and are subject to all of the privacy and anti-disclosure provisions within the statute. We are concerned that the IRS opinion is based upon an incomplete understanding of the title IV-D statute and its legislative history, and that the IRS definition will have unintended adverse consequences on child support enforcement program activities. Before any IRS policies are implemented based upon this definition of a child support enforcement agency, we believe that there should be a high level policy discussion concerning our mutual goals, and that OGC, HHS and the IRS Chief Counsel's Office should then be directed to work together to determine the range of possible legally supportable options which are available.

Disclosure of IRS Tax Refund Collection Information. The IRS considers all information disclosed to States through the tax refund offset program to be tax return data, which is subject to safeguarding and disclosure limitations specified under the IRC. The primary data elements obtained by States from TROP are the amount of the tax refund offset[5] and the filing status (i.e. whether or not it is a joint return). This information about a child support collection must be disclosed to the State Disbursement Unit (which may be a private entity) for purposes of distribution in accordance with Federal requirements under 42 U.S.C. 657.[6] The custodial parent is also entitled to know, as a matter of due process, that a collection has been made, and, if it is derived from a tax refund interception, that distribution of the payment may be made to the IV-D agency rather than to the family.

Recent IRS audits of State IV-D programs have criticized State security procedures for incorporating the fact of a tax refund offset and the amount of the collection into basic

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[5]This amount does not necessarily reflect the amount of the tax refund. The offset amount may be less than the refund, and in the case of multiple States' claims against the same refund, a portion of the refund may go, for instance, to pay a TANF debt in one State and the second State may obtain a partial refund to apply against the non-TANF debt which it certified for collection.

[6]Tax refund offsets are distributed, in current and former TANF cases, to reimburse assistance payments made to the family. Such collections are required to be shared with the Federal government. In joint return cases, distribution may be delayed for up to six months to permit the non-debtor spouse to file an amended return to claim her/his share of the refund

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case file data, and not limiting access to those employees who have a specific need to know and a statutory right to access such tax offset information. OCSE believes that such precautions, which may be warranted for 1099 information, should not apply to tax offset data. The tax offset data essentially reports the fact of a collection, not information which is intrinsically derived from tax records. Existing safeguarding and security requirements under title IV-D should be considered adequate to protect this information. Because the method of collection must be known to correctly implement distribution requirements under the Act, treating it as protected tax information would require extensive changes to States' automated data processing (ADP) systems including the newly enacted requirements for a State Disbursement Unit. The IRC expressly provides that information obtained through the tax refund offset program may be used to update IV-D case files, which are subject to HHS' requirements, and extensive and expensive changes in child support procedures do not seem necessary. A clarification to the IRS auditors on this issue would be helpful.

Anti-browsing provisions. A new "anti-browsing" provision has been added to the IRC. 26 U.S.C. 7213A. This law is similar to existing requirements at 7213 which prohibit wrongful use or disclosure of tax data, but extend new penalties for unauthorized browsing. In its implementation of these new provisions, IRS is requiring new safeguards which would necessitate tracking every caseworker's access to and use of such data. Given that the primary data elements at issue are collection information based on the tax refund offset process and that the IV-D statute already has extensive protections for information maintained in the IV-D case files, application of these additional IRC safeguards seems to be unnecessary. The additional safeguards and restrictions IRS would impose would require drastic and unwarranted modifications of State ADP systems with no real additional protections of tax data.

Restrictions on Other Data Sharing. In the past, the Department of Treasury, through the IRS, has taken a more expansive view of the IRC and has provided IV-D agencies access to important tax data which is no longer furnished. Due to recent restrictive policy interpretations, the IRS has stopped furnishing 1098 debt information and no longer provides Employer Identification Numbers (EINs) to IV-D agencies. The EIN information in particular is essential to child support collections activities for purposes of tracking non-custodial parents' assets. The rationale given for limiting disclosure does not seem adequate to warrant the imposition of new restrictions on information that was previously made available for IV-D purposes. . OCSE would like to reopen discussion of these policy changes to see if Treasury and HHS could find a mutually satisfactory justification for reinstating IV-D agency access to these vital data elements.

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3) Consult with HHS in the future development of legal guidance which may have an impact upon the child support program.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Judith Miller to Cynthia Rice re: Drivers and Professional Licenses Authorized by the Department of Defense (partial) (1 page)	03/01/98	P5
002. fax	Colonel Daniel Dell'Orto to Cynthia Rice re: Response on the subject of Child Support Enforcement Request (partial) (1 page)	03/02/98	P5
003. email	David Ross to Cynthia Rice re: Federal Licenses (1 page)	02/27/98	P6/b(6), b(6)

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15429

FOLDER TITLE:
Child Support-Licenses [1]

Richard Stalcup

rx24

RESTRICTION CODES

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handling/material handling equipment, construction, and railroad equipment. This includes equipment such as forklifts, cranes, conveyors, railroad locomotives, and off-road construction heavy equipment. The Navy authorizes health care privileges for physicians, nurses, and dentists, certifies judge advocates as trial and defense counsel, and accords warrants to contracting officers. It grants permission to operate nuclear power plants, pilot aircraft, and carry weapons. Numbers of licenses and permits issued by the Navy, along with authorizing citations, are not currently available.

5. The Department of the Army reports yearly warrants accorded to 150 contracting officer representatives in the Army Acquisition Corps and yearly certification of 200 Army aviators, 50 Marine warrant officers, and 200 military air traffic controllers in the Training and Doctrine Command. It issues 75,000 military drivers licenses per year, and certifies annually 1,500 medical officers, 225 dental officers, 175 judge advocates as trial and defense counsel, and 125 chaplains. The Army has not yet provided authorizing citations for each type of license.

We are of the opinion that those licenses authorized by regulation could be regulatorily denied people who owe child support. We are not yet aware whether some licenses accorded by DoD, other than that listed on the attachment, are provided for by statute. If they are, and the statutes in question mandate the granting of licenses if certain requirements are met, then the denial of such licenses would require legislative change.

The agency point of contact for coordination on policy in this area is Mr. Francis M. Rush, Acting Assistant Secretary of Defense, Force Management Policy, who may be reached at (703)697-2121.

We will furnish you with additional information as it becomes available. If this office can provide additional assistance, please contact Marsha Mouyal of my staff at (703)695-3657.

Judith A. Miller

Attachment

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Judith A. Miller

Attachment

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	Signing Statement on HR 3811 Felony Violations for Failure to Pay Child Support (partial) (1 page)	06/11/98	P5
002. note	President Announces the Deadbeat Parents Punishment Act of 1997 (partial) (1 page)	ca. June, 1997	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15428

FOLDER TITLE:
Child Support-Felony to Cross State Lines [2]

Richard Stalcup

rx21

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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STATEMENT BY THE PRESIDENT

Today, I am pleased to approve H.R. 3811, the "Deadbeat Parents Punishment Act of 1998." The Act is based upon an Administration proposal to strengthen Federal law to prevent an individual from moving to another State or country to avoid paying child support. It sends a strong message to parents who have a moral and legally-established duty to support their children -- fulfill your financial obligations or face severe consequences.

H.R. 3811 strengthens existing child support enforcement law in several ways. Most importantly, the Act establishes two felony offenses for egregious non-payment of child support. First, it makes it a felony for a parent to travel to another State or country with the intent of evading the payment of child support, if the obligation has remained unpaid for more than one year or is greater than $5,000. Second, it makes it a felony to willfully fail to pay child support to a child residing in another State, if the obligation has been unpaid for more than two years or is greater than $10,000. Persons convicted of either offense will be subject to a jail term of up to two years and a fine. This is a reasonable consequence for an inexcusable act.

Although States and localities have the primary responsibility for child support enforcement, the Federal Government plays an important role in holding fully accountable parents who neglect their most basic responsibility to provide financial support to their children. H.R. 3811 is an appropriate step to encourage such parental accountability. It is based on bipartisan agreement that the Federal Government will not tolerate "deadbeat" parents who shirk their parental responsibilities. I am glad to sign this legislation into law.

for the success I wish

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(1) The President today called upon the House of Representatives to pass the Deadbeat Parents Punishment Act and send it to him for signature. The Act, which has passed the Senate but not the House, makes it a felony offense to cross state

PRESIDENT ANNOUNCES THE DEADBEAT PARENTS PUNISHMENT ACT OF 1997

The President Calls upon the Federal Government to Strengthen Child Support Enforcement

Don't trust

The President stated in a directive to the Attorney General on July 21, 1996 that, "[w]hile State and local agencies have and must have primary responsibility for child support enforcement, the Federal Government has a crucially important role to play." The President asked that the Attorney General take several specific steps to strengthen child support enforcement efforts.

Current Law Regarding Failure to Pay Child Support Obligations

Current law makes it a federal offense to willfully fail to pay a child support obligation with respect to a child who lives in another state if the obligation has remained unpaid for longer than a year or is greater than $5,000. A first offense is subject to a maximum of six months of imprisonment, and a second or subsequent offense to a maximum of two years. The current law, by providing for a maximum punishment of just six months in prison for a first offense, makes violations only a misdemeanor. Police officers and prosecutors have used the current law effectively, but they have found that current misdemeanor penalties are not strict enough to adequately deal with more serious cases, those cases in which parents move from State to State, or internationally, to intentionally evade child support penalties.

The President Proposes Stiffer Penalties For Those Who Fail to Meet Support Obligations

The Deadbeat Parents Punishment Act addresses the law enforcement and prosecutorial concern that the current statute does not adequately address more serious instances of nonpayment of support obligations.

The Act amends Federal criminal law to prescribe criminal penalties ***(including mandatory restitution)*** for willful failure to pay child support obligations.

An offender who lacks the ability to pay a support obligation due to legitimate, changed circumstances occurring after the issuance of a support order has state civil means available to reduce the support obligation and thereby avoid violation of the federal criminal statute in the first instance.

President Creates Two New Categories of Felony Offenses, Subject to a Two-Year Maximum Prison Term

The first offense is: Traveling in interstate or foreign commerce with the intent to evade a support obligation regarding a child residing in another State if the obligation has remained unpaid for a period longer than one year or is greater than $5,000.

The second offense is: Willfully failing to pay a support obligation regarding a child residing in another State if the obligation has remained unpaid for a period longer than two years or is greater than $10,000.

Congressional Sponsors

Senate Sponsor- Senator Herb Kohl (R)-Michigan
House Sponsor- Representative Steny H. Hoyer (D)-Maryland

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. list	List of biographies re: Child Support Enforcement "Success Stories" (2 pages)	ca. September, 1998	P6/b(6), b(6)
002. note	Information re: Sonia Evans (1 page)	ca. September, 1998	P6/b(6), b(6)
003. email	Rice WAVES confirmation (partial) (1 page)	07/16/97	P6/b(6), b(6)
004. fax	Geraldine Jensen to Cynthia Rice re: 7/29/97 Meeting (partial) (1 page)	07/16/97	P6/b(6), b(6)
005. letter	Geraldine Jensen to Donna Shalala re: Personal Responsibility and Work Opportunities Act (partial) (1 page)	ca. July, 1997	P6/b(6), b(6)
006. note	Notes re: Child Support "Success Stories" (1 page)	ca. July, 1998	P5
007. note	Notes re: Potential Child Support "Success Stories" (5 pages)	ca. July, 1998	P5
008. note	Notes re: Potential Child Support "Success Stories" (6 pages)	ca. July, 1998	P6/b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15428

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FOLDER TITLE:
Child Support-Felony-Success Stories

Richard Stalcup

rx19

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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Freedom of Information Act - [5 U.S.C. 552(b)]

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BR Read bfr

(1) → Someone helped by New Hire Database
→ someone [redacted] began collecting this year

(2) → Bill Clinton the worst
Kids starving
→ prosecutor story
→ high priced plea

(3) white person

→ make it about an a

(4) Talk to Melissa
→ look #s for Jay 06

Tina Hepburn

Tyna Hepburn – D.C.-

Af Amer

Daughter owed $15,000

Father goes bet. N.C + S.C.

Geri Jensen

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Did have an interstate case

2 sons were owed $12,000

Lesley Sorkhe – Spotsylvania VA

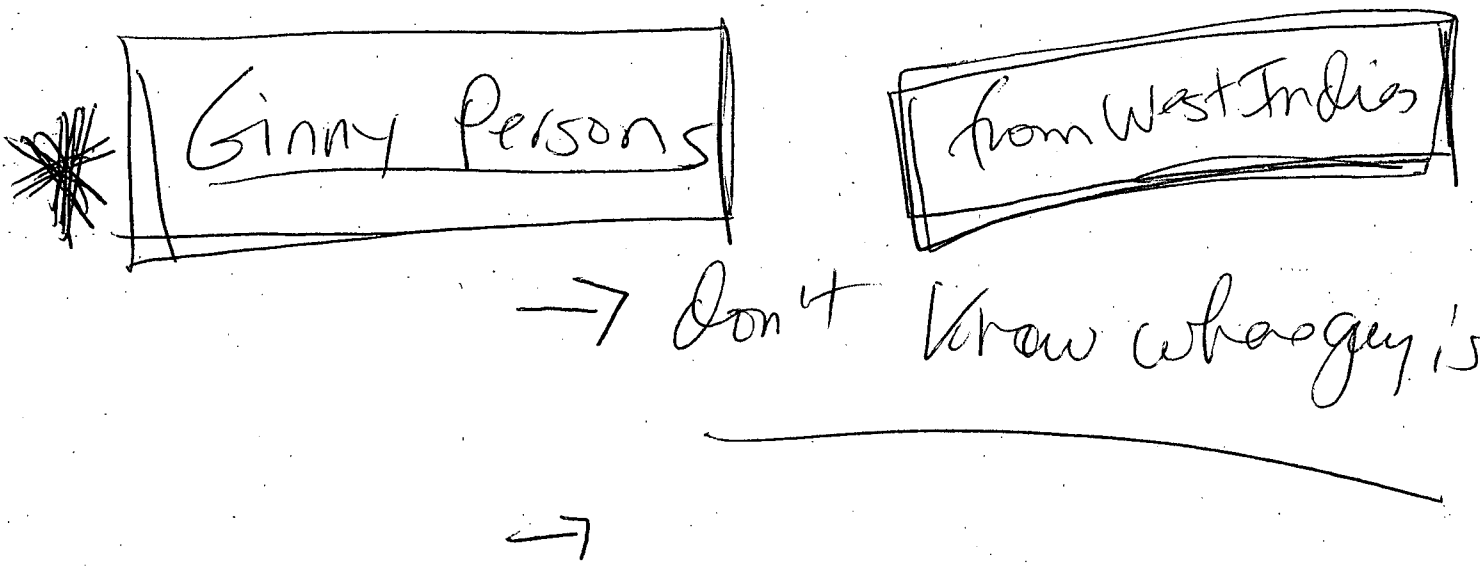
White

→ is getting child support

→ worked very hard on the case

* Janice Pitts – Prince William, VA

– Has a story



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Rahm

→ Which stories we had in 1996

→ First choice

Qs

→ what would have happened before mid

→ New hire # → how many months til one million

→ paternity leave?

This bill says

**

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Marilyn Nichols

→ Don't think it would be a good idea

→ ~~[redacted]~~ Not happy about prosecution of case

→ ongoing

Passage of law not enough

→ Sentencing Commission must update Fed guidelines

→ won't happen Wednesday

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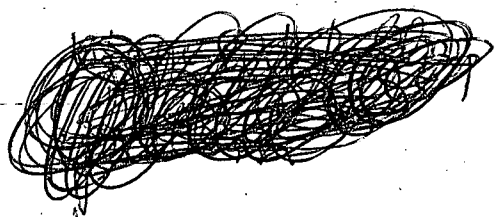
Kim Ryan

6/22

Hasher own chapter
She is the lead chapter



Yes-and a half ago

he was was paying
c/d to

Took two month leg til it go to her
6 ~~weeks~~ in check
delay in processing
She's fought for
→ evening hours
Working on ~~d~~ draws 115c renovation
→ making 30 day delay
for
(not 60)
" Huge problem all over the country "

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Bruce Reed and Elena Kagan to the President re: DPC Weekly Report (partial) (1 page)	04/03/99	P5
002. fax	Jim Ivery to Rice re: Talking Points on Prior Approval Issue (3 pages)	02/19/99	P5
003. memo	Terry Coleman to John J. O'Shaughnessy re: Prior Approval for Granting Federal Financial Participation for State Automatic Data Processing System Developments and Application (attachment) (5 pages)	05/08/95	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15428

FOLDER TITLE:
Child Support Enforcement-Computer Systems-Prior Approval

Richard Stalcup

rx15

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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TALKING POINTS ON PRIOR APPROVAL ISSUE

The State of Arkansas executed 2 contracts and three contract amendments without seeking prior approval as required by ACF regulations. The amount disapproved is $7.2 million total or the loss of about $5.7 million Federal reimbursement if they sought 80% FFP.

Our regulations preclude providing FFP for work already incurred. If there is work yet to be performed, ACF can provide contract approval and FFP funding approval for those prospective costs.

This is a long standing policy that has been in effect since 1985 and has been reiterated by OCSE and ACF in Regulations, Action Transmittals, conferences and workshops.

This policy is HHS-wide (Child Welfare, Child Care, HCFA) and is also followed by Food Stamps. The basis for the requirement of prior approval is that HHS pays between 50% and 90% of the costs of these contracts and DHHS's desire to assure early participation in these system development efforts.

ACF has applied this position consistently. Arkansas is not the only State to have FFP denied because they failed to submit contracts for prior approval.

The Office of General Counsel reviewed the statute, regulations, Grant Appeals Board decisions and did not find any authority for the Secretary to reverse this long-standing policy.

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ADMINISTRATION FOR CHILDREN AND FAMILIES DATE: February 12, 1999

SUMMARY STATEMENT

SUBJECT: The Governor of Arkansas, Huckabee, has requested a meeting on February 22, 1999, with Secretary Shalala, OCSE Commissioner Ross, and members of the Arkansas Congressional delegation regarding Federal funding approval that was denied by OCSE. The FFP that was denied was for the portions of three contract amendments related the child support automated system that the State failed to submit to ACF for prior approval in accordance with 45 CFR Part 95 611(b). The Governor and the Arkansas Congressional delegation want to urge Secretary Shalala to find authority to overturn ACF's decision and retroactively approve the contracts that would total about $7.2 million.

PURPOSE: To recommend that the Secretary uphold ACF/OCSE decision on disapproving costs that were incurred prior to the State submitting the contract or contract amendments for prior approval.

SUMMARY: Arkansas failed to submit several contracts and contract amendments for prior approval as required by Federal regulation. When the contracts were submitted to OCSE, six months later, we did approve the contracts and the FFP for any costs that may be incurred prospectively.

Since our September 15, 1998 letter, the State of Arkansas has appealed to Commissioner Ross on October 2nd and November 13, 1998. In addition, they apparently sought the assistance of the National Governor's Association, OCSE, with the Office of Intergovernmental Affairs, briefed the NGA representative on the Arkansas prior approval of contracts issue, we also have briefed, with the Office of Secretary for Legislation, Senator Blanche Lincoln's office, and have a pending response to a letter from Senator Tim Hutchinson on the same subject.

The Arkansas Governor and Congressional delegation are not citing any error or misuse of DHHS/ACF discretion in denying the FFP for these contracts. The State is saying that they were caught up in a last minute flurry of activity related to their implementing their statewide automated child support system and because of this intense activity the requirements to submit the contract amendments was overlooked. The State is effectively asking the Secretary to grant retroactive prior approval based on the merits of the State's action, irrespective of whether the State followed procedures required by HHS regulation. Prior to 1986, HHS OPDIV's occasionally did grant approval to Advance Planning Documents and contract-related documents even if these documents were submitted after the OPDIV program regulations.

However HHS stopped this practice in 1985-1986 after a Grants Appeals Boards decisions 238 and 271 concluding that prior approval requirement in part 956 is a prerequisite to the receipt by a State of any FFP for ADP acquisitions. . In 1985, the Assistant Secretary for Management and Budget at HHS, sent a letter to the heads of all State public assistance agencies to clarifying that regulations do not permit waiving this requirement and States should not expect HHS to fund retroactively system development that were not submitted for prior approval. The OGC in 1985 looked at whether the Department could deny enhanced funding, but permit regular rate FFP, they found no evidence to support this position. The OGC stated that "they were compelled to reach this result fully aware that such a view would foreclose any FFP for State ADP systems that have not had prior Federal approval even though they indisputably provide some benefit in the administration of the problems they serve." After a thorough legal analysis, HHS concluded that it did not have the authority under its regulations to grant approval retroactively. HHS chose not to

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revise its regulations to permit such retroactive prior approval. Instead, in 1986, HHS issued regulations which provided for: (1) expedited approval in emergency situations of items requiring prior Federal approval; and (2) a time-limited transition period which expired on December 1, 1985 during which HHS would ratify State activities initiated without prior Federal approval. Since 1986, HHS publicly stated policy has been to deny FFP in activities where a State failed to obtain the required Federal approval prior to undertaking the activity. The Department's rationale for not revising the prior approval requirement as stated in the preamble to the January 1986 regulations was that the "Department's policy is to require prior approval as a means of assuring its early participation in State system development and acquisitions. To establish a broad waiver of this prior approval requirement would defeat this purpose. "The basic requirements for Federal prior approval date from at least 1978 and are largely unchanged, except for periodic increase in the dollar threshold of activities requiring prior approval. Indeed, in reviewing OCSE systems regulations last summer, the Office of Management and Budget insisted that OCSE include provisions that tighten our oversight and monitoring responsibilities for reviewing RFP's, contracts and contract amendments related to State system development.

Where ever OCSE has had discretion under regulations and policies we have exercised it in Arkansas favor. (as we do for any other State). For example , the contract in question was a sole source contract with IBM Global for $7.2 million, which we approved. Then to mitigate the costs not eligible for FFP we set the effective date earlier than the normal date of ACF's approval letter. For example, for the IBM Global contract, we used the authority in 45 CRF Part 95. 611(d) to let the State assume provisional approval of their contracts 60 days after submission, if ACF has not responded to the request, rather than the date of our approval letter which was much later. On the Protech Solutions contract, we used the date that Arkansas sent a one page "contract" which did not provide sufficient information to base an approval decision, but we deemed that we had deferred approval and OCSE approved the Protech contract amendment back to that earlier date. We also approved FFP for any contractor costs not yet incurred. However, OCSE could find no legal basis for approving the costs incurred prior to those dates.

CONCERNS: Accommodating Arkansas would reverse the regulation and set a precedent for all other States which would effectively negate the prior approval requirements. In the last year, OCSE has denied FFP for the portion of the contract amendments prior to date of our approval in at least 12 States, although the amount of FFP denied for those States was not as high as Arkansas FFP denial. Child Welfare has a similar number of States whose FFP for the portion of the contract prior to approval was denied. This precedent would affect all other programs under 45 CFR Part 95, such as HCFA, Child Welfare, Child Care as well as Child Support and may also impact the Food and Nutrition Service Food Stamp regulations were have similar prior approval requirements.

RECOMMENDATIONS: That the Secretary advises the Governor that DHHS is unable to find a legal basis for providing retroactive prior approval for contract costs.

CONTACT: Norm Thompson
Associate Commissioner for Automation and Special Projects,
Office of Child Support Enforcement
Administration for Children and Families
(202) 401-9238

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
I-1525 OMAS
The General Counsel
Washington, D.C. 20201

May 8, 1985

MEMORANDUM

TO : John J. O'Shaughnessy, Assistant Secretary for Management and Budget

FROM : Terry Coleman
Acting General Counsel

SUBJECT: Prior Approval for Granting Federal Financial Participation for State Automatic Data Processing System Developments and Acquisitions

You have asked us to consider whether a State is entitled to Federal financial participation (FFP) for the costs it incurs for automatic data processing (ADP) system development or acquisition where the State has not received prior approval of that system from the Department. This inquiry apparently stems from a lack of uniformity among the Department's operating divisions in treating State requests for FFP where there has been no federal prior approval of State ADP acquisitions.

As we understand it, there have been some cases in which the Department has refused all matching to States if they have failed to receive prior federal approval of their ADP acquisitions, and yet others in which the Department has only denied States enhanced matching for their ADP acquisitions while still allowing matching at the various statutory rates for regular administrative costs. For the reasons set forth in more detail below, we believe that federal regulations governing the approval ADP systems dictate that prior approval is a precondition to any matching that a State may expect to receive under the categorical programs of the Social Security Act.

As you indicate in your memorandum, the pivotal regulations that govern the conditions under which FFP is available for ADP acquisition are set forth at 45 C.F.R. §§95.601-.643. 45 C.F.R. §95.611, in particular, unambiguously provides that a State must seek prior written approval from the Department whenever it intends to acquire ADP equipment or services that exceed specified

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expenditure thresholds. 1/ While the text of the regulation is silent as to the consequences to a State should it fail to seek the prior approval that 45 C.F.R. §95.611 describes, there is no evidence to suggest, as you have posed in your memorandum, that the lack of prior approval only deprives a State of enhanced matching 2/ rather than all matching for its ADP system. Indeed, the contrary appears to be true.

The heading to the "prior approval" regulation, as well as the subsequent requirements pertinent to the development and usage of ADP systems 3/, provides that this series of requirements constitute "SPECIFIC CONDITIONS FOR FFP." Similarly, the heading for Subpart F, in which all Department-wide ADP requirements in Part 95 are set forth provides:

> Subpart F - Automatic Data Processing Equipment and Services - Conditions for Federal Financial Participation.

The plain meaning of these descriptive phrases is that the prior approval procedures constitute a precondition to any FFP, whether enhanced or at the regular rate, available for administrative costs under the programs that are subject to Part 95.

1/ 45 C.F.R. §95.611(a) provides, in part.

> §95.611 Prior approval conditions.
>
> (a) General-Acquisition requirement. A State shall obtain prior written approval from the Department when it plans to acquire ADP equipment or services that it anticipates will have total acquisition costs of $100,000 or more in Federal and State funds over a twelve-month period, or $200,000 or more in Federal or State funds for the total acquisition.

2/ See, e.g., Section 1903(a)(3) of the Social Security Act which provides for matching at 90 percent and 75 percent for various aspects of mechanized claims processing and information retrieval systems for use in the Medicaid program.

3/ 45 CFR §§95.612 -.623.

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We believe that this conclusion is bolstered by examining the genesis of the Part 95 ADP regulations --former 45 C.F.R. Part 74, Appendix C. Under this authority, also issued as OMB Circular A-87, it was quite evident that prior approval of ADP system acquisition expenditures was a precondition for any matching sought by a State. 4/ Specifically, Appendix C, Part II, C.1. provided that the costs of data processing services were allowable, but

> The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency. (Emphasis added.)

We believe that this language provides the clearest possible indication that, on the one hand, States were obliged to seek prior Federal approval of ADP acquisitions if they were to expect any FFP for those acquisitions and, on the other, that the Department was constrained from providing any FFP unless it had specifically provided such approval. 5/ That Part 95, Subpart F, was intended only to "consolidate" and "codify" the principles set forth in the OMB Circular 6/, and not to substantively modify them, should leave no doubt as to the import of the prior approval requirements now codified in Part 95.

4/ We distinguish this from the purchase by States of certain ADP services or the rental of ADP equipment for which the rules are different. See Grant Appeals Board Decision Nos. 316 and 329.

5/ Indeed, it would follow that once a State had failed to seek prior Federal approval for any particular ADP acquisition, it was forever precluded from receiving any FFP for the costs of that acquisition. It is true that the Department's Grant Administration Manual, chapter 1-105, B.1., authorizes the retroactive approval of certain grantee costs that otherwise would require prior approval. However, as the pertinent language used in the Manual is the same language explicitly modified by the final ADP regulations in 1978 (see discussion at pp. 4-5), we believe that this Manual provision has no application in the context of ADP acquisitions.

6/ See 43 Federal Register 44851 (September 29, 1978).

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Thus, in order to read Part 95 in harmony with the matching provisions otherwise set forth in the Social Security Act, we read the former as a gloss on those matching provisions which must be satisfied as a threshold matter before considering the various matching possibilities available under the Act. Under the Medicaid program, for example, a State wishing to receive enhanced matching for an ADP system that qualifies for the 90 percent match set forth in Section 1903(a)(3)(A)(i) or the 75 percent match set forth in Section 1903(a)(3)(B), or the 50 percent regular administrative cost match under Section 1903(a)(7), would have to receive prior approval of its proposed ADP acquisition under the procedures set forth at 45 C.F.R. §§95.611-613 in order to become eligible for matching under any of those three statutory provisions. 7/ In this fashion, a State would have to satisfy the prior approval requirements of Part 95 before one of the Department's operating divisions could determine the "applicable rate" of FFP for the ADP system at issue. 45 C.F.R. §95.601. We are compelled to reach this result fully aware that such a view would foreclose any FFP for State ADP systems that have not had prior Federal approval even though they indisputably provide some benefit in the administration of the programs that they serve. 8/

The waiver authority at 45 C.F.R. §95.623 to which you refer in your memorandum does not in our view alter this analysis. This section provides:

> §95.623 Waiver of prior approval requirements.
>
> ADP equipment and services acquired by a State agency prior to the effective date of these regulations may qualify for FFP provided the Department waives the prior approval requirement. The Department will waive the prior approval requirement when it determines that the ADP equipment or services would have received prior approval had a request for such approval been made by the State agency.

7/ An identical approach would be applicable to the enhanced and regular matching provisions found at Sections 403(a) and 455(a) of the Act for the AFDC program and Child Support Enforcement Program, respectively.

8/ You should be aware that while it has not been asked to review the precise issue raised in your memorandum, the Grant Appeals Board on at least two occasions has concluded that the prior approval requirement in Part 95 is a prerequisite to the receipt by a State of any FFP for ADP aquisitions. See, GAB Decision Nos. 238 and 271.

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The question that you seem to be raising implicitly with respect to this provision is whether it may be applied as a basis for providing FFP to a State ADP system for which no prior Federal approval was sought but which was acquired by the State after promulgation of the Part 95 regulations. We do not believe that it can be so applied.

When the waiver regulation first appeared as a proposed rule, on its face it provided very broad authority for the Department to waive the prior approval requirement if it was determined that the ADP system at issue "would have received prior approval had a request for such approval been made by the State agency." 41 Federal Register 8066 (February 24, 1976). When the ADP regulations were published as a final rule, however, the waiver provision appeared in the form set out above and clearly limited waivers of the prior approval requirement to cases in which ADP acquisitions had occurred prior to the effective date of the Part 95 regulations. This revision in the final rule was characterized in the preamble as "clarifying", thus clearly indicating that no substantive shift in policy was intended from the proposed rule. 9/ As such, we can only conclude that the Department intended to tie any prior approval waiver to an ADP system that was in use by a State before December 28, 1978, the effective date of the final regulations. To argue that the two sentences of 45 C.F.R. §95.623 can be read separately, and thereby create authority to waive the prior approval requirement any time that the Department believes a State ADP system to be worthy of approval, runs directly counter to the intent of the "clarifying" change in the final rule and, indeed, would render that change meaningless.

Please let me know if we can be of further assistance.

9/ 43 Federal Register 44853 (September 29, 1978).

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	Draft CSE Systems Policy (partial) (1 page)	ca. August, 1997	P5
002. fax	John Monahan to Rice re: Background for meeting on child support systems (partial) (1 page)	08/21/97	P5

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Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
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FOLDER TITLE:
Child Support Enforcement-Computer Systems-General [2]

Richard Stalcup

rx13

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

- o focusing the State's attention and resources on the problem
- o clarifying circumstances under which ACF will conditionally certify a State's system
- o informing States that ACF is available to provide on-site reviews or assistance.

The triage plans will build on work that ACF has already completed in the nine States at risk of missing the deadline. In these States, we have already conducted six Functional (pre-pilot) reviews and have scheduled two pilot reviews and four technical assistance visits in the next two months. To start this triage process, the RO/CO systems staff have developed individualized plans for each at-risk State. The plans will be further refined during the next week(s), as Central and Regional office staff discuss the strategy on conference calls.

Action Date: August-December 1997

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IV. Issue An Action Transmittal Establishing a Corrective Action Plan (CAP) Process

OGC has advised informally that while a corrective action plan process is not explicitly contemplated by statute or regulation, we could establish such a process via an Action Transmittal. Essentially, this process would involve our holding in abeyance the initiation of action to disapprove a State's plan on the condition that the State enter into and carry out a CAP, approved by ACF, to correct its systems problems. [**NOTE**: The Secretary has decided not to pursue this approach separately from a legislative strategy. Rather, we'd include it as part of any legislative discussion. See Section V.]

This process would involve the following steps:

A. Based on our certification review, notify the State of our intent to disapprove the State's plan. [NOTE: For States with very troubled system development efforts, e.g., CA, we may consider suspending the project.]

B. Give the State the option, via our AT, of establishing a corrective action plan prior to making the decision to ask for a hearing or a reconsideration of the decision.

C. Develop a corrective action plan with the State as a step before the notice of nonconformity which would trigger rights under 45 CFR Part

- o clarifying circumstances under which ACF will conditionally certify a State's system

- o informing States that ACF is available to provide on-site reviews or assistance.

The triage plans will build on work that ACF has already completed in the nine States at risk of missing the deadline. In these States, ACF has already conducted six Functional (pre-pilot) reviews and have scheduled two pilot reviews and four technical assistance visits in the next two months. To start this triage process, the RO/CO systems staff have developed individualized plans for each at-risk State (See attached). The plans will be further refined during the next week(s), as Central and Regional office staff discuss the strategy on conference calls. In some States, ACF may seek to elevate the issues (e.g. having Secretary Shalala call the Governor), so long as that heightened scrutiny will move the State closer to the goal of implementing a system and not produce the unintended consequence of slowing progress toward the goal.

Action Date: August-December 1997

IV. Issue An Action Transmittal Establishing a Corrective Action Plan (CAP) Process

OGC has advised informally that, while a corrective action plan process is not explicitly contemplated by statute or regulation, ACF could establish such a process via an Action Transmittal (AT). Essentially, this process would require ACF to hold in abeyance the initiation of action to disapprove a State's Plan, on the condition that the State enter into and carry out a CAP, approved by ACF, to correct its systems problems.

This process would involve the following steps:

A. Based on our certification review, notify the State of our intent to disapprove the State's Plan. [NOTE: For States with troubled system (i.e. CA) ACF may consider suspending the project.]

B. Give the State the option, via AT, of establishing a corrective action plan prior to making the decision to ask for a hearing or a reconsideration of the decision.

C. The CAP would involve at a minimum:

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Gene Sperling and Sally Katzen to POTUS re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
002. memo	Gene Sperling and Sally Katzen re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
003. memo	Gene Sperling and Sally Katzen re: Bankruptcy Reform Legislation (7 pages)	ca. June, 1998	P5
004. memo	Gene Sperling and Sally Katzen to POTUS re: Bankruptcy Reform Legislation (8 pages)	ca. June, 1998	P5
005. memo	Gene Sperling to POTUS re: Bankruptcy Reform Legislation (6 pages)	ca. June, 1998	P5
006. memo	Gene Sperling to POTUS re: Bankruptcy Reform Legislation (4 pages)	09/22/98	P5
007. report	Bankruptcy Issue (2 pages)	ca. June, 1998	P5
008. report	Bankruptcy Issue (1 page)	ca. June, 1988	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15428

FOLDER TITLE:
Child Support-Bankruptcy Bill [2]

Richard Stalcup

rx8

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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Cynthia - Here's the bankruptcy paper that went to Elena as revised by Nicole. -Diana

Bankruptcy Issue

The NEC is seeking Agency/WH views to incorporate into a memo to the President that lays out a proposal for the Administration to advance to the Congress on bankruptcy reform. The House passed its bill (which we "strongly opposed") by a veto-proof margin, and the Senate version also enjoys wide-spread support in that chamber.

Issues DPC cares about:

- Protect child support and alimony collection.
- Ensure that any Administration alternative is balanced -- i.e., demands responsibility from both the debtors and creditors (many argue that the current bills crack down only on debtor abuse; however, because of Committee jurisdiction issues, the NEC working group has been struggling with this area).

Positive Developments on Child Support -- under pressure from us and others, the House and/or the Senate have agreed to several "sweeteners", including:

- Elevate priority of child support and alimony in bankruptcy distributions under Chapter 7, making it more likely the child support will be paid in the 5 percent of Chapter 7 liquidations that have assets to distribute.
- Make an exception for child support to general rule that bankruptcy creates an automatic stay on liens, (California district attorneys praise this provision because it would make it easier for local agencies that have paid welfare, for example, to recoup their payment from parents that owed child support or alimony).
- Clarify that child support obligations surviving bankruptcy are collectable from exempt assets.
- Require debtor to be current on family obligations before Chapter 13 plan confirmation and discharge.

I had 13, which is wrong

Also, many experts argue that the "means testing" provisions that would move debtors with a capacity to repay debt from Chapter 7 to Chapter 13 may actually help child support collection, as these debtors would be repaying their debt under a supervised repayment plan.

What the Hill Still Wants to Do that Might Threaten Child Support:

- Put the following debts in potential competition with child support (particularly post-bankruptcy) by making them nondischargeable:
  1. luxury purchases made 90 days before declaring bankruptcy;
  2. necessary purchases above a set amount incurred 90 days before declaring bankruptcy; and
  3. credit card debt incurred to pay nondischargeable debt (i.e., child support, student loans).

NEC Proposal for Administration Alternative:

- Agree to make presumptively nondischargeable all luxury purchases incurred 90 days prior to declaring bankruptcy.
- Advance strong restrictions on reaffirmations, making it harder for credit card companies to coerce people into agreeing to repay debts they don't have to repay, that would compete with child support post-bankruptcy.
- Subordinate debt (i.e., make it a very low priority) of credit card companies that fail to

make clear to consumers how long it would take to pay off their debt by following the "minimum monthly payment" plan.

- Advance our own version of "Needs Based" reform (giving bankruptcy courts significant discretion, but supplying presumptive guidelines for ineligibility for Chapter 7 -- a person with over 100 percent of median income and an ability to repay 30 percent of unsecured debt).

Underlying question for us to answer:

- How do we best preserve our stance of not harming child support as a part of bankruptcy reform? Expanding the categories of nondischargeable debt may endanger child support, particularly post-bankruptcy, and there is no way to eliminate fully that danger. On the other hand, many argue that the new protections for child support in these bills could make reform a net plus for child support collections. However, it is very hard to know whether the pluses of these changes will outweigh the minuses in the real world. The NEC has been sensitive to this point and has determined that this is as far as we can go; still, in the memorandum to the President, we might want to weigh in that we should stand firm (as outlined in the memo) on nondischargeability and not back down in negotiations and allow the provisions to broaden further, putting the President in the position of receiving a bill that is pretty good, but that could be seen as backing away from his on-record promise of protecting child support collection.

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Bankruptcy Issue

Should the Administration:

- Continue to oppose current bankruptcy legislation in the House and Senate? or
- Advance an Administration alternative, in recognition of the veto-proof margin of approval in the House or widespread support in the Senate? (The NEC is seeking clearance on a memo to the President that advocates this course.)

Issues DPC cares about:

- Protect child support payments
- Ensure that any Administration alternative is balanced -- i.e., if we make it harder to declare bankruptcy, we should also ensure that consumers are protected from fraudulent or deceptive practices by credit card companies
- Others?? Do we care about cracking down on bankruptcy?

Positive Developments on Child Support -- Under pressure from us and others, the House and/or the Senate have agreed to:

- Move child support from 6th or 7th priority to 1st priority under Chapter 13, making it more likely the child support will be paid.
- Make an exception for child support to general rule that bankruptcy creates a stay on liens (i.e., your house could be repossessed to pay your child support, but for no other purpose)
- Both the House and Senate would move people from the easier Chapter 7 process to the tougher Chapter 13 process. Many experts think this significantly help on child support.

What the Hill Still Wants to Do that Might Threaten Child Support:

- Put the following debts on the same footing as child support:
  1. luxury purchases made shortly before declaring bankruptcy;
  2. necessary purchases made shortly before declaring bankruptcy
  3. credit card debt that is used to pay non-dischargeable debt (i.e., those debts on the same footing as child support -- taxes, student loans)

NEC Proposal for Administration Alternative:

- Agree to put luxury purchases on same footing as child support (#1 above), but don't agree to #2 or #3
- Make it harder for credit card companies to coerce people into "reaffirming" debts -- i.e., agreeing to repay debts they don't have to repay, that would compete with child support
- Subordinate debt (i.e., make it a very low priority) of credit card companies that fail to make clear to consumers what level of minimum monthly payment will allow them to pay off their debts
- Many other things (e.g., move people from easy Chapter 7 to tough Chapter 13)

Underlying Question for us to answer:

- Are we ready to compromise? Any compromise may endanger child support. Perhaps we should continue to use the bully pulpit to build public support against these proposals. On the other hand, many argue that the new protections for child support in these bills make these bills a net plus for child support collections. However, it is very hard to know whether the pluses of these changes will outweigh the minuses in the real world.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. report	HUD-Preliminary Community Empowerment Initiatives for FY2000 (2 pages)	09/02/98	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
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FOLDER TITLE:
Budget-2000-FY-New Ideas-10/98 [1]

Richard Stalcup

rx6

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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ADMINISTRATIVE MARKING
INITIALS: RPS DATE: 08/02/05 ~~CONFIDENTIAL~~ DRAFT * CLINTON LIBRARY PHOTOCOPY

HUD - Preliminary Community Empowerment Initiatives for FY2000
For DPC-NEC Working Group (9-2-98)

New ideas:

responds to intent to aging pop- to have in place

1. **Elderly Housing Initiative** in 3 parts: (a) *Housing Modernization* grants to existing elderly housing projects for modernization, physical redesign, and/or conversion to assisted living; (b) *Expanded and More Flexible Service Coordinator* grants to meet needs of increasingly frail population in public and assisted housing; and (c) *Authority* for PHAs to use vouchers for the housing component of assisted living costs.

link to work??

2. **Metro Jobs/CDC Job Links** would target job-poor but CDC-served central-city neighborhoods to create or strengthen a welfare-to-work infrastructure that is place-based but people-focused and regional in orientation (where the jobs are). Would build on HUD's Bridges to Work and complement DOL and HHS efforts, focusing on concentrations of assisted housing run by CBOs. have Jobs Plus, Neighborhood Networks. [Excedits?]
3. **Regional Affordable Housing Initiative** - targeting regions with severe jobs-housing imbalance and established partnerships for regional collaboration, HUD would provide grants and loan guarantees to support planning, regulatory streamlining across jurisdictions, and development.

Trying draft for mtg #2

Important enhancements:

1. **Community Empowerment Fund** - to (a) include targeting for welfare-to-work projects (e.g., successful Cessna Aircraft project); (b) allow links to venture capital focused on minority-owned or small biz in distressed areas (e.g., SBA-certified SBICs qualify as CBDOs and would thus be eligible to receive HUD Section 108 funds); and (c) eliminate the mandatory pledge of CDBG $ for CEF loans.

2. **Vouchers** - an expanded request will focus on incrementals, welfare-to-work, and homeless.

3. **Homeownership Vouchers** - already authorized, would apply rental subsidies to mortgage-related expenses for first-time homebuyers who were Section 8 tenants. wd prefer flexibility rather than mandate as currently authorized

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Xavier / HUD

Neighborhood Jobs Initiative
→ satisfying results in defined neighborhoods of concentrated joblessness
→ close, Rockefeller w/ little
→ 2 year demo

Jobs Plus
→ in public housing

Metro Jobs
→ would focus on TANF
→ ~~and together~~ housing keys

$25 mi in FY '00

50-100 CDCs

2 levels of service provision
→ ~~full~~ full time staff
→ coordinating

How much up front planning

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Welfare to Work (4 pages)	ca. July, 2005	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15427

FOLDER TITLE:
Budget-1998-Conference-VIP Documents-Administrative Position-Summary

Richard Stalcup

rx5

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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Welfare to Work (update from earlier memo bolded)

The House Republicans continue to meet and exchange offers, without the input or support of the Democrats, but they have not engaged the Administration in any meaningful negotiations. We are hopeful that dynamic will change after this weekend. The Senate staff send a counter offer back to the House on Wednesday. It still contains highly objectionable provisions as described below and highlights that there continue to be differences between the House and Senate republicans on some important issues.

FLSA/minimum wage -- **The latest Senate offer would strike the objectionable House language.** The House offer contained the objectionable House-passed provisions, despite the House motion to instruct conferees to take them out. We strongly oppose them and we believe the language will be knocked out under a Byrd Ruling. Hilley has told Democratic and Republican members that this could hold up the whole bill if it is not resolved favorably. There are efforts underway to ensure that we will have the support of 41 Senators to support a Byrd Rule point of order.

The Republicans remain at odds over the Senator Nickles provision on sanctions which would permit cutting the benefit regardless of the minimum wage law. There is no similar provision in the House. We are working to develop compromise language.

Non-Displacement/Worker Protection -- **The Senate offer would recede to the House which expands protections to all of TANF which we support. However, it does not contain protections against partial displacement or promotional line infringement. It picks up the additional gender protections in the House bill. We would like to see religious protections added. The offer also contains Senate protections related to health and safety, and impairment language (but limited to the new $3 billion). The Senate offer also includes objectionable House grievance procedures.** The Senate bill has greater protections (partial displacement, promotion displacement and impairment of labor contracts) but applies them only to the new $3 billion. We would like the additional protections in the Senate bill expanded to all of TANF, not just the new $3 billion. DOL is also working on language not in either bill to add protections for gender and religion discrimination and safety and health. DOL is also working reluctantly -- at the direction of Hilley -- to try to come up with an alternative grievance procedure that could be acceptable to the Republicans (meaning it would not go to DOL for resolution at the federal level). Two options being explored: letting a Governor designate an independent state agency and requiring the use of the UI appeals process.

Program Administration -- **The Senate offer contains language from the Senate-passed bill which we oppose, calling for HHS to administer the program. It is our understanding that the House Republicans may counter this with Labor running the formula part of the program and HHS administering the competitive grants, or that they will go with HHS which will make us have to fight for DOL.** The Senate offer does not permit local program administration by the PICs. The House offer contained language in the House-passed bill which we support. It calls for program administration by DOL and the PICs. The Senate bill has

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administration by HHS and other local entities including Community Development Centers. We believe the House approach will ensure more of the money flows to cities.

Distribution of Funds -- **The Senate offer contains a 80/20% split and includes PICs and CDCs and other non-profit organizations as eligible for the competitive grants. The Senate offer contains the Senate 30% rural set aside (the House was 25%) and the Senate language on the small state minimum. There is no set aside of competitive funds for the 100 poorest cities, consistent with the Senate bill. We have heard that the House Republicans may try to push the distribution back to 90/10. They have indicated a willingness to go to 85/15 with no set asides for rural or cities, with a reduced small state minimum of 25%.**

The House offer had a 95/5 formula/competitive split with a 65% set aside for the poorest cities. The two House Committee bills had splits of 50/50 and 95/5. The Senate split is 75/25, but it contains no targeting to poor cities. We agreed with the House Democrats that we are sticking with our support for the 50/50 formula/competitive split with 65% of the competitive funds targeted to the poorest cities. Our goal is to get as much money to cities and mayors as possible. It will be important to ensure targeting to the poorest cities, particularly if the split drops the percent competitive. (i.e. a 50/50 split with 65% targeted to cities may actually get more money to the cities than a 75/25 split with no targeting. The House Democrats do not see eye to eye with us on this. DOL is working on actual numbers.) We learned that the Republicans explicitly limited the amount of the discretionary grant money to 5% in their offer to prevent the President from having that authority in an election year. Mr. Clay and Mr. Fazio and Tom Kahn indicated an interest in preserving a rural set aside. The Senate will want to preserve the rural set aside and a small state minimum.

Use of funds/workfare -- **The Senate offer accepts the last House offer which added new legislative language explicitly permitting the new money to be used for workfare (we believe they have this authority under the current language).** While mayors support using money for workfare, the House Democrats oppose it. We explained to the Democrats that we are fighting to remove the explicit language, but it is not as high a priority as FLSA/minimum wage and others. We said we would trade it for something if we were forced to accept it. Mr. Levin has expressed tacit agreement, noting that if we start off in the same place -- opposing it -- that will be helpful.

Performance Bonus -- **The Senate offer states that the issue of performance bonus is still open. Senate staff seem concerned about a performance bonus on a time-limited program. The House Republicans have indicated a willingness to accommodate the Senate Republicans by taking their language.** We support the commitment in the House offer to work with the Administration's proposal to establish a performance bonus for states that place more of the hardest-to-serve in lasting unsubsidized jobs.

Targeting -- We believe we can support the offer's provisions on targeting to eligible individuals, but have not reviewed the exact language.

Immigrants

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The Senate offer sticks to the Senate language on immigrants coverage which we support. The House offer contained the House-passed grandfather provision -- which does not cover future disableds -- which we oppose as a violation of the Agreement and the President has said he would not sign. The provision is $.7 billion short of the $9.7 billion contained in the Agreement. We are in agreement with the House Democrats that getting the grandfather and future disableds coverage in the Senate bill is the preferred position and that the issue will need to be engaged with the Leadership. The Senate bill costs $11.4 billion, $1.7 billion more than the Agreement (If we include the Kennedy amendment and Medicaid coverage for children the total cost is $11.7 or $2.0 billion more than the Agreement). There has been discussion about using money from a cost allocation on TANF programs to fund the cost of the additional coverage in the Senate bill. **The Senate offer contains the Kennedy amendment** to allow severely disabled immigrants who cannot naturalize to obtain coverage. The cost is estimated at $41 million. Mr. Levin said the House Republicans are strongly opposed to this provision.

The Senate offer contains language we support regarding Cuban-Haitan entrants and Amerasians. We have heard that the House Republicans may be willing to accept this.

Other issues

Vocational Education in TANF -- **The Senate offer lists as "agreed to" the Voc Ed language. It would accept compromise House language which would narrow the base of eligible recipients for vocational education against which the cap applies and sets the cap at 25%. It also does not exempt teen parents from the cap.** The Senate bill contained a larger base of eligible recipients but removed teen parents and set the cap at 20%. We have urged dropping this provision because we do not want to reopen TANF. The provision is probably Byrdable, but interest from the Senate Democrats has made striking it under Byrd impossible.

Repeal of State SSI MOE -- **The Senate offer proposes to drop this language.** The House offer retained the objectional language. There is no Senate language. We agree with the House Democrats that we strongly oppose this.

Family Violence -- **The Senate offer accepts the House proposed compromise language** to drop Senate language and calls for a GAO study. An amendment adopted by unanimous consent on the Senate floor (offered by Mr. Wellstone) would exempt victims of domestic violence from the work participation rates and would not count these individuals toward the 20% exemption. Women's groups have been lobbying hard to say this exemption is permissible under current law. We have said we do not believe it is and that there is amply flexibility for states to deal with this within current law. Some estimates suggest that under this provision about 50% of the population would be exempt prompting concerns that it would gut the work requirement.

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TANF Transfers to Title XX -- **The Senate offer proposes to drop this objectionable language.** The House offer contained objectionable House-passed language which allows States to divert TANF funds away from Welfare-to-Work efforts to other Title XX social service activities. The Senate has no such language. We understand this could fall on a Byrd Rule violation.

State SSI Administration Fees -- **The Senate offer proposes to recede to the House language but does not categorize the issue as closed. We have concerns that as drafted the House language will not give appropriators an incentive to give SSA the additional funding as called for in the Budget Agreement.** The House offer contained the provisions from the House-passed bill that would raise the fees that the Federal Government charges States for administrating their State supplemental SSI payments and make this increase available for SSA administrative expenses. However, it credits the savings to the authorizing committee.

UI Integrity -- The Senate offer closes two issues where the language in the House and Senate bills was identical, consistent with the Budget Agreement, to adjust the Unemployment Trust Fund ceiling and provide for special distribution to the States. Additionally, the Senate offer accepts language in the House bill, that was part of the Agreement, that achieves $763 million by authorizing an increase in discretionary spending for unemployment insurance "program integrity." **However, the House Labor HHS appropriations subcommittee did not provide the requrested funding ($89 million) for UI Integrity activites as explicitly cited in the Budget Agreement. They are necessary to achieve the mandatory savings.**

Pennington -- The Senate offer terms this issue "open." The House offer contained the House-passed language which would give states complete authority to determine "base periods" for purposes of measuring a claimant's covered wages for eligibility determinations. We think they will continue to push for this language. The Administration has not taken a position. DOL has remained neutral. We understand that it may fall on a Byrd Rule violation.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Diana Fortuna to Bruce Reed re: Food Stamp fix legislation (1 page)	03/03/97	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15427

FOLDER TITLE:
Budget-1998-Appropriations-FY-Welfare

Richard Stalcup

rx4

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

CLINTON LIBRARY PHOTOCOPY

Diana Fortuna 03/03/97 12:10:37 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc:

Subject: Food stamp fix legislation

OMB and USDA have drafted legislation to implement the President's proposed "fix" to the food stamp 18-50 work requirement. I was surprised to discover that the current draft includes 2 changes to the welfare law that seem unrelated to the basic goal (which is changing the ban from "3 months in 36" to "6 months in 12," and setting up a real work program for these folks). These 2 changes are:

- changing the criteria for getting waivers from the fs work requirement. Now the law allows 2 ways to get waivers: (1) areas with an unemployment rate over 10%, or (2) areas with insufficient numbers of jobs. This draft changes the 10% to 8%. It turns out that most of the areas that would helped by such a change are areas that would already qualify under method 2. So why should we create a target for criticism when it doesn't even make much difference?
- allowing job search to count for 10 of the 20 hours of work activities. Under current law, you can avoid the cutoffs if you are engaged in work activities for at least 20 hours a week, but none of this can be job search. We fought against this during the debate. But, now that the law is passed, it's not clear to me we would want to reopen this. I don't know how different this area is from TANF, where we clearly wouldn't allow this. But this was not part of what we advertised on this "fix", so I don't see why we should reopen old wounds. It will be tough enough to get Congress to look at this in the first place!

→ did we release this policy (Ken Sunp)

The "rush" here is that Raines is very anxious to get the Administration bill up to the Hill by the end of the week. I have told OMB to hold this because we may have problems. Should I tell them we want these changes deleted?

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft	Administration announcement re: Child Support Collections, with notes (15 pages)	ca. December, 1998	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15429

FOLDER TITLE:
Child Support-Law Enforcement [1]

Richard Stalcup

rx36

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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CLINTON LIBRARY PHOTOCOPY

Administration Announces Child Support Collections Are Up a Record 80 Percent and Proposes New Efforts to Prosecute the Most Egregious Child Support Violators
December 31, 1998 -- DRAFT 12/29 3:20pm

Today, the U.S. Department of Health and Human Services announced that child support collections have gone up a record 80 percent during the Clinton Administration, from $8 billion in 1992 to an estimated $14.4 billion in 1998, and that the federal government collected a record $1.1 billion of delinquent child support from federal tax returns this year. Despite these record child support collections, there are still too many parents who flagrantly ignore their obligations to their children, and today the Administration unveiled a new law enforcement initiative to prosecute the most egregious child support violators. In his new budget, the President will propose $XX million in new funds to identify, investigate, and prosecute egregious child support violators. This effort will be part of a challenge to law enforcement in every state to join our national effort to ensure America's children receive the support that they need and deserve.

Willful Failure to Pay Child Support is a Felony

In June, the President signed into law the Deadbeat Parents Punishment Act, creating two new categories of felonies for the most egregious child support violators, a proposal he had made in the 1997 State of the Union. Many prosecutors say they would be able to prosecute even more child support cases if they had legal staff dedicated to child support issues and if they received referrals after a complete financial investigation had been conducted.

New Child Support Law Enforcement Initiative

New Investigative Resources: Under this new initiative, the U.S. Department of Health and Human Services will establish investigative teams in five regions of the country to identify, analyze, and investigate cases for prosecution. States will refer child support cases to these sites, where trained investigative staff will locate the violator, determine exactly how much he owes, and document information needed for prosecution. The investigated case will then be referred to federal or state prosecutors as appropriate. The first five screening sites will be set up in Columbus, New York, Baltimore, Dallas, and Sacramento serving 17 states plus D.C. which have XX percent of the nation's child support cases.

New Prosecutorial Resources: To ensure US Attorneys' offices have the skilled legal staff they need to prosecute more ~~child support felons~~, the President's new budget will include $XX million for paralegals dedicated to child support cases. The U.S. Department of Justice has found that having paralegals dedicated to child support cases ~~will~~ can increase prosecutions ~~by XX percent~~.

A Challenge to Law Enforcement in Every State: More and more law enforcement officials ~~realize~~ that failure to pay court ordered child support is a crime and can be a major contributor to juvenile delinquency ~~and crime~~. Now, the Department of Health and Human Services and the U.S. Department of Justice will work in every state to encourage law enforcement to join the fight for child support by ~~developing and~~ disseminating a model cooperative agreement as well as best practices on how law enforcement and child support officials can work together on behalf of America's children.

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Audrey Smolkin 12/30

OSE

$4 mi over 5 years

500,000 / 500,000 / + + + +

IG

1.5 mi for one year

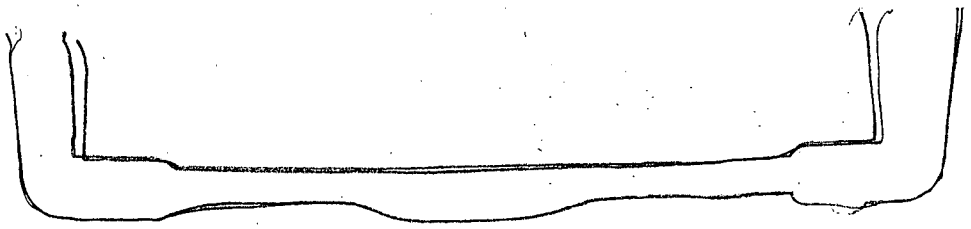
→ total same each year

total 11.5 mi for HHS

112 million"

32

44



Michael

Amy says =
Mimi Hall's WH correspondent
703/276-5491

(1) Options → (a) go to Rich Wolf's editor
Caroline Pesce ( )
703/276-3673
(b) Laura Meckler AP

(2) Columbus #s

Illinois
Indiana
Michigan
Minnesota
Ohio

- DOJ
- IGs office @ HHS

His #s come from IG office

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Judge Ross

12/29

12,017,886 in those states

19,833,836 total casinos

Fund screening sites

→ 2% budget

$100,000/year per site

"special agents of FPCS"

→ IG pays for its portion

→ experience pool

? $6 m.

Audrey Smolkin
640-7796

Jack Hardwick, HHS-IG
619-3208

Chief of Criminal Investigations

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Allyson SI-

12/29

Myron ~~Myron~~ Marlin

DOJ spokesperson

616-1189 (direct)

616-2777 (main)

Karen Schreier

605|330-4400 x105

US Attorney S. Dakota

Chair of Attorney General Advisory Cmte for DOJ

Paralegals 38 districts
10 aboard

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12/29

Michele Ahern

PRWORA setasides

$14 mi 1% of collections
training + tech assistance

$28.8 mi 2% operation of FPLS

In order to get law enforcement personnel covered, have to have MOU ????

John M.

12/29

(1) Directive // MOUs + Task Forces

Direct AG + HHS
to ensure no later than ____
~~MOUs~~ take all St

IUD + US Attys Office
Develop + promulgate model MOU

(2) Propose in Dir. Budget
New positions

(3) Centers → 5 sites covering 18 states
w/ report to Dir

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Allyson Stollenwerk 12/29

① → train 10 paralegals
→ best practices
→ nuts + bolts
} in next couple months

→ then distribute to all US Attnys Offices

② Information sharing w/ IUD districts

③ Regional trainings

Expert to ~~[illegible]~~ achieve increased prosecutions

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Karen S.

→ gives the defense a new defense to raise

→ that's the problem with a separate #

→ could we use overall #s
→ # parents who owe
→ 90 are interstate cases
→ take 1% are those that should be prosecuted
→ huge #

→ we expect

→ 250 cases last year (at FY 1998 ((prosecutions))

→ How mo

Estimate from 10 districts

→ historically how many cases they def

→ how many more

→ range of increase

10 - 40%

→ in past when

→ That's why

→

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Jan 95 – May 98 3½ years

(1.85)
less than 1 conviction every 6 months
2 5,428 collateral every 6 months

6 convictions
$178,000 in restitution

Task Force
5/98 – 12/29/98

federal
16 convictions w/ sentencing
2 convictions not yet sentenced

federal
20 fold increase in prosecutions

out of 170 total (includes)

$478,541 fed → [redacted] from cases when convicted

plus $3.15 m State collections

CLINTON LIBRARY PHOTOCOPY

Mimi Hall
703/276-5491

I Initiative II #s

→ small $ big results 2/3 of cases
→ tried in Columbus
→ increase collations
→ prosecutions
→ Think we can replicate

170 in 6 months
18 fold increase in federal convictions

~~→ only in first 6 months~~
→ small $ big results

Gives you this history because we have
→ 2 #s
great success but need to do more
→ that's why coordinator

TOTAL 170 conviction settlement
Fed ones # X %
→ that includes both federal state
but on federal side
about 20 × collection
and conviction

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Idan 514-2121 /DOS

legal support personnel

child support recovery act advocate

→ gathering fact

→ assist in drafting necessary pleadings

→ legal research

→ financial investigation

→ fact-finding, legal research, and financial investigations assist with the drafting of necessary court papers

assist in any necessary financial investigation

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p/30

Matt K.

Meeting May 98

than offers opened up } increases since May

Columbus

- Colocated a/cse and offer
15 minutes from investigative offices

FBI also investigates

$163 convictions → now 167

17 are federal

past 3 years were 4

CLINTON LIBRARY PHOTOCOPY

President Clinton Proposes New Child Support Crackdown and Announces a Record 80 Percent Increase in Child Support Collections
December 31, 1998 -- DRAFT 12/30 10:00am

Today, President Clinton announced a new child support crackdown aimed at the nation's most egregious child support violators. Despite record child support collections, there are still too many parents who flagrantly ignore their obligations to their children, and in his new budget, the President will propose to earmark $[44] million to identify, investigate, and prosecute these deadbeat parents. The President took this action today as he released new evidence that his Administration's child support efforts are working: child support collections have gone up a record 80 percent since he took office, from $8 billion in 1992 to an estimated $14.4 billion in 1998, and the federal government captured a record $1.1 billion of delinquent child support from federal tax returns this year.

Willful Failure to Pay Child Support is a Felony

In June, the President signed into law the Deadbeat Parents Punishment Act, creating two new categories of federal felonies for the most egregious child support violators, a measure he had called for in his 1997 State of the Union address. Many prosecutors say they would be able to prosecute even more child support cases if they had legal staff dedicated to the issue and if they received referrals after a complete financial investigation had been conducted.

New Child Support Law Enforcement Initiative

New Investigative Resources: Under this new initiative, the U.S. Department of Health and Human Services will establish investigative teams in five regions of the country to identify, analyze, and investigate cases for prosecution. These sites will serve 17 states plus D.C. which have 63 percent of the nation's child support cases. States will refer child support cases to these criminal child support screening sites, where trained investigative staff will locate the violator, document information needed for prosecution, and refer the investigated case to federal or state prosecutors as appropriate. These sites will be based upon a model law enforcement effort established in Columbus, Ohio earlier this year which has already resulted in 163 convictions or settlements and over $3 million ordered to be paid. Additional sites will be established in New York, Baltimore, Dallas, and Sacramento. $12 million in funds will be earmarked for this effort over the next five years, from the federal share of child support collections the law provides to the HHS Office of Child Support Enforcement for locating deadbeat parents, and the funds the HHS Office of Inspector General collects from its criminal investigations.

New Prosecutorial Resources: To ensure U.S. Attorney's offices have the skilled legal staff they need to prosecute deadbeat parents, the President proposes to provide new funds for paralegals dedicated to the issue. His new budget will include $[32] million over 5 years, $5 million in FY 2000, for these staff. The U.S. Department of Justice expects to increase child support prosecutions significantly with these additional staff resources.

A Challenge to Law Enforcement in Every State: More and more law enforcement officials recognize that failure to pay court ordered child support is a crime and can be a major contributor to juvenile delinquency. Now, the Department of Health and Human Services and the U.S. Department of Justice will work in every state to encourage law enforcement to join our national effort to ensure America's children receive the support that they need and deserve by disseminating a model cooperative agreement as well as best practices on how law enforcement and child support officials can work together on behalf of America's children.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. fax	Lisa Brown to Cynthia Rice and Cecilia Rouse re: BRIDGE Draft (8 pages)	10/21/98	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15429

FOLDER TITLE:
Disability-BRIDGE I [1]

Richard Stalcup

rx37

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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October 20, 1998 DRAFT

MEMORANDUM FOR NEC-DPC DEPUTIES

FROM: "BRIDGE" WORKING GROUP

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SUBJECT: The Proposed BRIDGE Program

On March 13, 1998 the President issued Executive Order 13078 directing the federal agencies to create a coordinated and aggressive national policy to increase employment of adults with disabilities. The "Building Resources for Individuals with Disabilities to Gain Employment" ("BRIDGE") program is one of several new proposals to grow out of this effort. BRIDGE is a competitive grant program designed to increase the employment rate of adults with disabilities by fostering integration at the local level of employment-related services and support services to adults with disabilities.

The purpose of this meeting is to: 1) review the overall structure of the BRIDGE program developed by the interagency working group; 2) consider two design issues: a) the proposal to create a strong federal interagency coordinating process while providing all, or nearly all, funding to one agency; and b) which state and local agencies should be a required members of the applicant consortium; and 3) consider the possibility of announcing the President's support for this effort in December at the next meeting of the President's Task Force on Employment of Adults with Disabilities.

I. Program Need

According to the 1998 Harris Survey of Americans with Disabilities, 66% of individuals with disabilities between the ages of 16 and 64 are not working. Only 30% of working-age adults with disabilities are employed full or part-time. Seventy-five percent of those non-employed adults with disabilities have indicated that they would prefer to be working (Harris Survey, 1998.) The vast majority of these individuals receive income support and other services through federal, state, and local programs. However in many areas, needed services such as health care are unavailable and those services that do exist are fragmented and difficult to access.

II. Proposed BRIDGE Program Structure

BRIDGE will encourage states and localities to create seamless service

systems for adults with disabilities seeking to find and keep jobs. Every adult with a disability should be able learn about, receive advice about, and gain access to all of the necessary services with the least effort possible, preferably with a single call or office visit. Each of the services provided should be sufficiently integrated with others so that they collectively ~~accomplish~~ the common goal of long-term employment and permanent attachment to the workforce.

BRIDGE will build on current demonstration grant programs funded by the SSA, Labor, Education, and HHS which are designed to increase program coordination for people with disabilities and will enhance the new workforce system infrastructure being expanded under the Workforce Investment Act's One Stop system.

BRIDGE funds will be available on a competitive basis to consortia of state and local agencies serving individuals with mental or physical disabilities. Grant proposals will be encouraged to enhance service delivery with expanded wrap-around counseling, provision of information that can maximize scarce resources and employment outcomes, and other approaches that address barriers to employment by integrated and coordinated service delivery. While the program is designed primarily to encourage state and local efforts to assist all people with disabilities, efforts targeted to assist certain specific groups of people with disabilities, e.g., youth, mentally ill.

will also

BRIDGE grants would be awarded from a national account of $150 million in FY 2000. Grants would last for up to five years with funding beyond the first year contingent upon subsequent appropriations. Up to 5 percent of the grant amount would be reserved for rigorous evaluation. Current funding for tradltional disability employment programs would not be supplanted by this initiative

Should it be also make clear that will not be used for direct services (other than pre-service assistance)?

Can we be stronger here -- Don't we need, at minimum, all agencies providing services provided by consortium in order to review applications?

III. Particular Program Design Issues to Consider

A. Interagency Structure

Agency representatives involved in the working group consider it critically important that this new program be a true interagency effort. Reasons include: 1) the federal government can and should set an example; 2) multi-program expertise will help in judging proposals quality and in helping the consortia access needed federal assistance. Options include:

each

(1) Create an inter-agency board to review applications and provide on-going policy guidance, but fund the program through one agency.

(2) Fund the program through one agency, but require the Secretary (or Director) of that agency to make the BRIDGE grants in consultation with the Secretaries (or Directors) of the other agencies.

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CLINTON LIBRARY PHOTOCOPY

(3) Fund several agencies and require them to work together in awarding grants.

If funding is provided solely to one agency, the Department of Labor is the working group's consensus choice. If some funds are allocated to other agencies as well, then the Department of Education and SSA would also want to be considered for funding.

specified

B. Mandatory Members of the Applicant Consortia

To be considered for a BRIDGE grant, consortia must include [redacted] five public agencies which must contribute resources to the work of their consortia:

Local and/or district offices of SSA
Medicaid/state medical assistance agencies
Department of Veterans Affairs (VA) Regional Offices
State Vocational Rehabilitation agencies
Local Workforce Investment Boards/One-Stop Centers

Applicants will receive additional credit in the selection process for other members of the consortia. An unresolved question is whether State TANF agencies should be:

(1) A required member of the applicant consortia, meaning that a consortia that did not include the state TANF agency would be ineligible for BRIDGE funds.

(2) An optional member of the applicant consortia, meaning that a consortia including the TANF agency would get extra points in the selection process.

[redacted] [Are we going to raise the issue of whether inclusion of TANF agency could be voluntary, but gets you extra points bcz points for inclusion other voluntary agencies, eg, 10 points for TANF + 5 for all others or is this not an option

IV. Timing of the Announcement

We may wish to announce support for the BRIDGE program before final FY 2000 budget decisions have been made, particularly if the President speaks to his Task Force on Employment of Adults with Disabilities' meeting in December. In that circumstance we may seek to either:

(1) Announce support for the program concept, without committing to a

dollar amount.

(2) Announce support for the program funded at a certain minimum stated dollar amount.

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Appendix of "Non-Controversial" Program Design Issues

Eligible Applicants

Each applicant must be a consortium of state and/or local agencies that provide or could provide a range of supports and services to adults with disabilities which lead to finding and keeping employment. The agencies must have the legal authority to provide the services they propose. Consortia may include not-for-profit providers of employment, assistive technology, health and other related services to adults with disabilities.

To be need to
Successful applicants would demonstrate that they have identified the means to integrate and coordinate the services provided across agencies and to remove barriers to employment for adults with disabilities. Further, ~~successful applicants~~ may would demonstrate that they consulted with diverse elements within the community of adults with disabilities in the planning, implementation, and evaluation of the project. In addition, successful applicants would demonstrate that they will match BRIDGE funds with appropriate federal, state, and/or local funds or in-kind services. Finally, preference will be given to applicants that demonstrate how they would ensure the continuation of health care coverage to persons with disabilities after the return to work.

To be considered for a BRIDGE grant:

- Consortia must include the following five public agencies which must, in turn, contribute resources to the work of their consortia over the span of the grants: local and/or district offices of SSA, Medicaid/state medical assistance agencies, Department of Veterans of Affairs (VA) regional offices, state vocational rehabilitation agencies, and local workforce investment boards/One-Stop Centers.

- Applications will be given substantial additional credit in the selection process if the consortium includes any of the following entities that demonstrate a commitment of resources to the work of the consortia: state TANF agencies, independent Living Centers, state developmental disability agencies, state mental retardation agencies, state mental health agencies, vocational rehabilitation centers for the blind and deaf, state/local transportation agencies, public transit authorities, and metropolitan planning organizations.

- Applications will be given some additional credit in the selection process if the consortium includes the following entities as formal partners (e.g., through MOUs or other types of formal agreements): educational institutions,

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agencies, and boards of education, consumer organizations, economic development agencies, labor organizations, private non-profit service providers, protection advocacy agency, public housing authorities, small business administration offices and/or small business development centers.

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Allowable Activities

Allowable activities include those needed to achieve program integration and improved coordination of existing local, state and federal programs in the delivery of services to adults with disabilities and their achievement of self-sustaining employment and economic independence. Allowable activities include:

- Planning, development and implementation of cooperative agreements, including service system planning, and development, planning and creation of core services structures;
- Establishing partnerships among entities to provide integrated income assistance, health and other benefits, job training and placement, and other employment-related services, such as transportation assistance;
- Providing training among consortium partners and required partners under the Workforce Investment Act to increase knowledge and awareness of incentives, available services, and health care waiver provisions, and to promote equal opportunity for the effective participation of individuals with disabilities in the workforce investment system;
- Providing comprehensive pre-service assistance, including counseling on benefits and incentives under the Social Security Act and information on the array of available services to individuals with disabilities that increase the ability to obtain and retain employment;
- Developing and implementing procedures that promote a "single point of entry" or "one-stop service delivery" such as common intake, coordination of customer data bases, customer service hotlines, and access to information resources through technology or staff assistance;
- Establishing linkages of consortium partners with services provided through One-Stop Center system, under the Workforce Investment Act of 1998, to ensure comprehensive and coordinated delivery of employment-related services to individuals with disabilities;
- Establishing linkages with other providers of services that people with disabilities may need to find and keep gainful employment, including local public agencies, not-for-profit service providers, community based organizations, and educational institutions;
- Implementing accessible information technology linkages between programs and infrastructures, such as provided in One-Stop Centers that provide labor market, skill requirements, job listings and available training providers.

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Available funding for information technology infrastructure development and implementation will be limited to 20%, with any additional support funded by respective consortium partners; and of the consortia's grant

- Evaluating programs or activities funded by BRIDGE grants.

With the exception of pre-service assistance, BRIDGE funds cannot be used for direct services and direct services must be provided by the local, state and/or federally funded program available for that purpose.

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Richard Stalcup

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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
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b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
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"Strand, Mary" <MASTRAND @ opm.gov>
05/15/99 06:11:08 PM

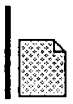
Record Type: Record

To: Andrea Kane/OPD/EOP, Cynthia A. Rice/OPD/EOP

cc:
Subject: Next Week

I'm going to be in Atlanta next week. If anything comes on w2w, model plan, or mental health and one of you need to reach me, here's my pager number: 1-800-759-8888, pin 1251167

Cynthia, both Mark Hunker and Suzanne Seiden can also help you with the EO or model plan. Both of them can be reached at 606-1000.

 - att1.unk

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People With Disabilities in the Federal Government

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AN EMPLOYMENT GUIDE

United States
Office of
Personnel
Management

Employment
Service

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INTRODUCTION

The Federal Government must strive to create and maintain a sound, diverse, and cooperative work environment. Equal opportunity in employment for all people, regardless of race, color, sex, age, religion, national origin, sexual orientation, or disability should be the common goal across government. However, persons with disabilities are often overlooked as a source of employable talent.

On March 13, 1998, President Clinton addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities. The Task Force was charged with creating a coordinated and aggressive national policy to bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general adult population.

This guide and its companion piece, *"Accessing Opportunity: A Model Plan for Employment of People with Disabilities in the Federal Government,"* was developed in support of the Task Force's efforts and recommendations. The purpose of this guide is to provide guidance, information, and references to aid Federal employers in their efforts to hire and advance employees with disabilities.

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LEGAL FRAMEWORK

There are several laws which support and encourage the employment, retention, and advancement of people with disabilities.

1) **Section 501 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in Federal employment. The law:

- Requires employers to make "reasonable accommodations" to employ disabled individuals. Such accommodations may involve restructuring the job, modifying work schedules, adjusting or modifying examinations, providing readers or interpreters, and acquiring or modifying equipment and/or facilities (including the use of adaptive technology such as voice recognition software).

- Prohibits selection criteria and standards which tend to screen out disabled persons, unless such procedures have been determined through a job analysis to be essential for the job in question.

- Requires Federal agencies in the Executive branch to develop affirmative employment action programs for hiring, placement, and advancement of persons with disabilities. Affirmative action should be an integral part of ongoing agency personnel management programs. Persons with disabilities should be employed in all grade levels and occupational series commensurate with their qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of job structure or design, or because of architectural, transportation, communication, procedural, or attitudinal barriers.

2) **The Vietnam Era Veterans' Readjustment Assistance Act of 1974.** In furtherance of the policy of promoting "the maximum of employment and job advancement opportunities within the Federal Government for disabled veterans and certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement," this act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans' Readjustment Appointment (VRA). The act also ensures that all veterans are considered for employment under merit system rules and requires a separate affirmative action plan for the hiring, placement, and advancement of disabled veterans. (Please note, however, that this law does not provide any preferences to disabled veterans or to veterans of the Vietnam era.)

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3) **The Civil Service Reform Act of 1978** requires "fair and equitable" treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for privacy and constitutional rights.

4) **The Americans with Disabilities Act (ADA) of 1990** covers employers in the private sector but was amended in 1992 to make certain provisions of the Act applicable to the Federal government. The sections of the ADA that are applicable to the Federal government can be found at 42 U.S.C. §§ 12111 *et. seq.* and 42 U.S.C. §§ 12201-204 and 12210.

5) **The Veterans Education and Employment Program Amendments of 1991** require expanded job opportunities for veterans and disabled veterans through the Veterans Readjustment Appointment (VRA) Authority.

6) **The Architectural Barriers Act**, enforced by the Architectural and Transportation Barriers Compliance Board (the Access Board), requires that buildings and facilities be accessible to people with disabilities if they were designed, built, or altered with certain Federal funds, or leased for occupancy by Federal agencies after 1968. When individuals with disabilities are unable to use a building because there are no accessible parking spaces, no curb ramps, no ramps at the entrance, no accessible rest rooms, no accessible drinking fountains, no raised lettering on signs, or other barriers exist, they may file a complaint with the Access Board.

7) **The Pregnancy Discrimination Act** amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. This amendment requires that employers treat pregnancy and related conditions as any other short-term disability.

8) **Title 5, United States Code, Sections 3312 and 3318** require that any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management before the position can be filled. This includes an agency medical disqualification of a 30 percent or more disabled veteran for assignment to another position in a reduction in force.

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ROLES AND RESPONSIBILITIES

The following Federal and State entities have responsibilities concerning the employment of people with disabilities:

Equal Employment Opportunity Commission (EEOC)

The EEOC is responsible for regulating and enforcing the Federal program for equal employment opportunity, oversight of the development and implementation of Federal agencies' affirmation action programs, and adjudicating claims of disability discrimination in the Federal government. Instructions on affirmative action plans for the disabled may be found in EEOC's Management Directives 712 and 713.

EEOC's Management Directive 713 requires that Federal agencies submit Annual Affirmative Action Program Plans and accomplishment reports. This directive is pursuant to the EEOC's obligation and authority under Section 501 of the Rehabilitation Act of 1973.

EEOC is also responsible for approving or disapproving each agency wide affirmative action program plan; rating the accomplishments of each agency; and communicating results of evaluations to each agency with instructions for submission of a revised agency wide plan if required. EEOC will work closely with Federal Government personnel to assist in creating and implementing effective affirmative employment programs.

Guidelines on reasonable accommodation and non-discrimination of people with disabilities are published by the EEOC. In addition, EEOC issues an annual report on employment of individuals with disabilities in the Federal Government to the Congress of the United States.

U.S. Office of Personnel Management (OPM)

OPM provides nationwide program leadership, development, and coordination for the employment of people with disabilities, including veterans with service-connected disabilities. This includes providing direction, guidance, and technical support to agency heads, directors of personnel, agency personnel offices and officials; developing recruitment policy and appointing authorities; providing information on employment methods and program development to departments and agencies; developing publications for use in promoting employment; developing, monitoring, and modifying examining procedures to facilitate the employment

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consideration of qualified applicants with disabilities; and developing medical policy and realistic medical and suitability standards.

OPM takes the lead role in promoting reemployment of employees with or recovered from compensable injuries or illnesses, and fostering research and demonstration projects on disability related issues. Further, OPM maintains consistent liaison with national offices of Federal, private organizations, community agencies, and other organizations concerned with the employment of people with disabilities.

President's Committee on Employment of People with Disabilities

The President's Committee on Employment of People with Disabilities (PCEPD) is a small Federal agency whose mission is to communicate, coordinate, and promote public and private efforts to enhance the employment of people with disabilities. The PCEPD provides information, training, and technical assistance related to the employment of people with disabilities. Some of the projects and resources developed by the PCEPD include:

- The Job Accommodation Network (JAN), a toll-free information service on workplace accommodations and the employment provisions of the Americans with Disabilities Act. Anyone may call JAN at (800) 232-9675 or (800) 526-7234. One can also obtain information from the JAN Website at http://www.jan.wvu.edu/english/homeus.htm.

- The Workforce Recruitment Program (WRP) for college students with disabilities, a joint venture with the Department of Defense which identifies college and university students with disabilities seeking summer and permanent jobs. Federal employers may access the candidate database by calling the PCEPD's Job Accommodation Network (JAN) at 1-800-526-7234.

- Education Kits containing fact sheets on timely disability employment issues. An Education Kit and a list of available publications may be requested by calling (202) 376-6200.

- The PCEPD's Website on the Internet http://www.pcepd.gov which provides visitors direct access to their publications, speeches, press releases, statistical data, workplace laws, and other related topics affecting the employment of persons with disabilities.

Federal Employers

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Federal agency managers and supervisors are responsible for the employment and advancement of people with disabilities. This includes recruitment, hiring, training, career development, mentoring support and providing reasonable accommodations when requested.

Career development and promotion opportunities, training, awards, and other similar programs should be an integral part of an agency's responsibilities towards employees with disabilities. Further, Federal employers should make reasonable accommodations, when requested, to the known physical or mental limitations of a qualified employee with a disability, unless the agency can demonstrate that the accommodation(s) would impose an undue hardship on the operation of its program.

Federal employers are encouraged to establish procedures to ensure that the employment and advancement of people with disabilities meet affirmative action program objectives, diversity planning, emphasis, and accountability. Action should be taken to eliminate discrimination against applicants or employees with disabilities due to barriers in agency facilities. Federal employers should also ensure that there are no personnel or management policies, practices or procedures which restrict hiring, placement and advancement of people with disabilities.

It is illegal for a Federal agency to discriminate in employment against qualified individuals with disabilities. Anyone who believes he or she has been subjected to discrimination on the basis of disability may file a complaint with the employing agency's equal employment opportunity (EEO) office. Departments and agencies should refer to EEOC's MD-110 and 29 CFR, Part 1614, for additional guidance on the EEO complaint process.

State and Other Rehabilitation Service Resources

Vocational rehabilitation counselors are available at State Vocational Rehabilitation Agencies (SVRAs) and their local offices. They can be easily reached by phone. The extent and types of services offered may vary from State to State, but most SVRA counselors are able to do some or all of the following:

- Explain disabilities;
- Prepare certification documents;
- Refer qualified applicants and provide follow-up assistance for placements made;
- Provide assistance when individuals with disabilities employed under excepted appointing authorities are upgraded or downgraded or when problems arise in

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regard to these employees;
- Evaluate the rehabilitation needs of Federal employees who become disabled and advise managers and supervisors about services available;
- Purchase special equipment that individuals with disabilities need to perform their jobs;
- Locate readers for persons who are visually impaired, interpreters for persons who are hearing impaired, and personal assistants for individuals with disabilities;
- Advise about modification(s) needed to overcome architectural, transportation, and communication barriers;
- Participate in training programs for Federal employees, managers and supervisors relating to subjects such as reasonable accommodations, modification of jobs or worksites, and other related subjects;
- Arrange for Federal employees, managers, and supervisors to tour rehabilitation centers, workshops, campus facilities for students with disabilities, and independent living centers.

While State vocational rehabilitation agencies are a primary source of rehabilitation services, a number of other organizations can also be helpful. For example:

- U.S. Department of Education, Rehabilitation Services Administration;
- U.S. Architectural and Transportation Barriers Compliance Board;
- U.S. Department of Transportation;
- U.S. Department of Veterans Affairs, Vocational Rehabilitation Program;
- President's Committee on Employment of People with Disabilities and their Job Accommodation Network (JAN);
- General Services Administration;
- Local and State Committees on Employment of People With Disabilities;
- University medical centers and counseling programs;
- Gallaudet University (Washington, DC); and
- Advocacy organizations for persons with disabilities.

Also, employees with disabilities within the agency are another vital resource. Many of them are active in advocacy groups, serve on agency advisory committees, and are experts on various aspects of disability and rehabilitation.

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DEFINITIONS

Person with a disability: The Rehabilitation Act of 1973, as amended, defines a "person with a disability" as an individual who:

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities (such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). A "physical or mental impairment" means:

  1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculosketal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genito-urinary, hemic and lymphatic, skin, and endocrine; or

  2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- Has a record of such an impairment (this means that the person has a history of, or has been classified -or misclassified- as having a mental or physical impairment that substantially limits one or more major life activities); or

- Is regarded as having such an impairment; this includes individuals who are perceived to have disabilities.

Qualified person with a disability: A qualified person with a disability refers to a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question without harming themselves or others.

Invisible (hidden) disabilities: These are disabilities that are not readily apparent, such as migraine headaches, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, and learning disabilities.

Targeted disabilities: Targeted disabilities, as defined by the Equal Employment Opportunity Commission (EEOC), are disabilities "targeted" for emphasis in affirmative action planning. These are: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine. EEOC

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recognizes that some disabilities that are not targeted are nevertheless just as severe or more severe than some disabilities that are targeted.

Drug addicts and alcoholics: Drug addicts and alcoholics are classified as "people with disabilities" under Section 504 of the Rehabilitation Act of 1973. However, the Americans with Disabilities Act of 1990, amended the Rehabilitation Act definition of an individual with disabilities to **exclude** "individuals currently engaging in the illegal use of drugs" regardless of whether it can be shown to adversely affect job performance or safety. Federal employers are no longer required to offer a firm choice or last chance agreement[s].

Human Immunodeficiency Virus (HIV)-Infected people: Before June 1998, only people with full-blown AIDS were covered under the Americans with Disabilities Act. As a result of a Supreme Court ruling in June 1998, people infected with HIV are also covered, even those with no overt symptoms of the disease. Protection under the disabilities law begins the moment they become infected.

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REASONABLE ACCOMMODATION

Federal departments and agencies are required, **when requested**, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency. An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation.

A reasonable accommodation is an adjustment or alteration made to a job and/or the work environment that enables people with disabilities to perform the duties of the position. There are many types of accommodations such as worksite modifications; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, readers, personal assistants; and reassigning or retraining employees.

Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, his/her specific disability and the existing limitations, the essential duties of the particular job, the work environment, and the reasonableness of the proposed accommodation. In all cases, the applicant or employee should be consulted before an accommodation is made. Accommodations are highly individualized and what may be successful for one individual with a disability may not be appropriate for another. The value and nature of a particular accommodation may be clarified by considering questions such as:

- Is the accommodation necessary for the performance of duties?
- What effect will the accommodation have on the agency's operations and on the employee's performance?
- To what extent does the accommodation compensate for the person with a disability's limitations?
- Will the accommodation give the person the opportunity to function, participate, or compete on an equal basis with co-workers?
- Are there alternatives that would accomplish the same purpose?

In determining undue hardship, consider the following factors:

- Overall size of the agency, with respect to the number of employees, number and type of facilities, and size of budget;

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- Type of agency operation; and
- Nature and cost of the accommodation.

Reasonable accommodations are as varied as the needs of the individuals involved, the type of position in question, and ingenuity of the agency. Some examples are provided below:

Special Testing

Federal employers may not use any test or other selection criterion that screens out or tends to screen out people with disabilities, unless the test is job-related for the position in question and there is no alternative. They are required to select and administer tests to insure that the scores of applicants or employees who have disabilities that impair sensory, manual, or speaking skills accurately reflect the ability of the applicant to do the job in question rather than disabilities of the applicant. The following factors merit additional attention:

Modifying Written Examinations: The objective is to eliminate any artificial barriers which would prevent persons with disabilities from demonstrating their capabilities in the examination process. Modification of examination procedures can include modifying test administration methods. Consideration should be given to scheduling individual or small group testing, allowing extra time, and using examiners specifically trained for this task. Accommodations may include: braille, large-print, or tape-recorded tests for persons who are visually impaired; reading to individuals who are blind or persons with reading disabilities; writing for persons who have difficulties using their hands; providing sign language interpreters to explain test procedures and directions for taking tests; and waiving verbal portions of some tests for individuals who are hearing impaired.

Modifying exam content: If an applicant's disability causes some part of a test to be unusable or inappropriate, it may be necessary to modify exam content or to develop alternate materials which measure the same knowledge, skills, and abilities that do not screen out people with disabilities. OPM has modified certain examinations for persons who are hearing and visually impaired and may be able to offer advice about types of modifications.

Accessible Examination Facilities: Examinations must be offered in accessible facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible parking, etc.), steps should be taken to remove those barriers or, when this is not feasible, to arrange for use of an alternate location.

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Many people with disabilities, even those with severe disabilities, do not need special testing. As a rule, persons who are visually or hearing impaired will require special testing. Others for whom special arrangements often are made include persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons whose arms or hands are paralyzed or spastic, persons with brain damage, and persons with learning disabilities such as dyslexia.

Restructuring Jobs

Job restructuring is one of the principal means by which qualified people with disabilities can be accommodated. Job restructuring, however, does not alter the essential function of the job. Federal employers should identify which factors make a job incompatible with an individual's disability and, if possible, eliminate them so that the capabilities of the person may be used to the best advantage. This may involve changing job content by isolating and eliminating non-essential duties through reassignment, or altering the method of task accomplishment.

Two things must occur before job restructuring:

- Federal employers must understand the capabilities of individuals and identify limitations prior to job restructuring. The person with a disability should be consulted first. Supplemental information can be obtained through consultation with specialists in the field of vocational rehabilitation.

- Careful job analysis to determine the exact demands of positions must also precede job structuring. Inputs by those with intimate knowledge of the tasks involved, such as supervisors and persons who currently perform the tasks or have performed them in the past, should be included in the analysis process. This enables the most accurate differentiation to be made between basic functions and those which are non-essential and can be reassigned.

The restructuring and job analysis processes should also be used in creating positions, modifying existing position descriptions, developing recruitment strategies, determining selection criteria, designing performance plans, determining training needs, and other human resource initiatives.

Modifying Worksites

Changes in the work environment enable people with disabilities to more effectively perform job duties. Alterations may consist of: rearranging files or shelves for

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accessibility to wheelchair users; braille labeling for the visually impaired; raising or lowering equipment to provide comfortable working heights; installing special holding devices on desks, machines, or benches; using adaptive technology such as voice recognition systems; or providing special heating or air conditioning units for persons who are sensitive to environmental temperature.

Work locations should be reviewed by supervisors; Disability Employment Program Managers, SVRA counselors; building managers; and persons with disabilities to identify needed worksite modifications.

Accessible Facilities

Reasonable accommodation is different from architectural accessibility and program accessibility. For buildings not covered by existing accessibility statutes, provisions of accessibility may be an aspect of reasonable accommodation. In such cases, reasonable accommodation might include physical modification of facilities or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by people with disabilities.

Accommodations that may need to be made involve eliminating barriers in the physical design of the environment. This is a broader concern than modification of the worksite environment. It consists of eliminating major obstacles in the way of people with disabilities getting to and from the worksite. Physical and/or structural changes should be made in order to create as barrier-free an environment as practicable. Eliminating architectural barriers through such means as ramps, wider doorways, elevators, work platforms, and handrails often make the work facility more usable by all employees, not just those with disabilities.

Adjusting Work Schedules

Some people with disabilities possess great productive potential which is not utilized because they cannot meet the requirements of a standard 40-hour work week. By taking advantage of the flexibility of alternative work schedules, accommodations can be made for various disabilities. For example, people with mobility impairments may find it difficult to maneuver during peak periods on public transportation systems and may require an earlier or later work day. In another instance, employees requiring medical treatments may need a flexible schedule on certain days of a week. Employees requiring shorter hours may be accommodated by use of a part-time schedule or a job sharing arrangement.

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Assistive Devices

Many assistive devices are available to people with disabilities. Such devices can ensure successful job performance, enabling people with disabilities to perform tasks they would not otherwise be able to do or to increase the quantity, quality, or efficiency of their work. Before purchasing any special equipment, the individual requesting a reasonable accommodation should be consulted as to what is needed and/or wanted.

In certain cases, the Department of Veterans Affairs or State vocational rehabilitation office may provide the assistive device to the individual requesting a reasonable accommodation.

Federal employers are authorized to purchase equipment if it is determined that the use of the equipment is necessary in transaction of the official business of the agency. In determining whether the purchase of a device should be authorized, consideration should be given to how well the employee could perform the job without the equipment and whether the principal benefit would be better job performance by the employee.

Readers and Interpreters

Readers: Many Federal employers have found that the best way of providing reading assistance to employees who are blind or have visual impairments is to have other employees provide this service as needed. In most cases, this amounts to a relatively small fraction of an employee's workday. Federal employers have the administrative authority to assign employees to provide reading services on a part-time or "as required" basis. This service can be classified under "other duties as assigned."

Federal employers may also hire readers for blind employees. Generally, a reader will be assigned to provide reading assistance to a specific employee. For this reason, the blind or visually-impaired employee should be involved in the selection process.

Providing reading assistance to a blind or visually-impaired employee in no way relieves the agency of the responsibility to provide clerical, secretarial, and/or administrative support to that employee in those instances where the employee's position entitles or requires such assistance. In most cases, the person providing clerical, secretarial, or administrative support will also provide reading assistance.

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Interpreters: Much of the day-to-day communication may be accomplished by employees who have learned basic sign language. Many co-workers of persons who are deaf or have hearing impairments have taken it upon themselves to learn sign language and some Federal employers offer courses for their employees. When employees have gained sufficient skill in sign language, they may provide day-to-day communication services for their co-workers who are deaf or those who have hearing impairments.

Federal employers have the authority to assign other employees to provide these services on a part-time or "as required" basis. Individuals may also be hired to provide interpreter assistance on a full-time, part-time, or intermittent basis.

There are some instances where employees would not be expected to possess the high degree of interpreting skills which might be necessary for the individual who is deaf or hard of hearing to communicate effectively. Thus, service contracts may be used to obtain interpreting services from outside sources in situations such as conferences, training courses, meetings, or court appearances.

Federal employers may make excepted appointments of readers, interpreters, and other personal assistants 5 CFR 213.3102(ll). This and other special hiring authorities applicable to persons with disabilities are explained in later sections of the handbook (see section on hiring options).

Flexible Leave Policies

Federal employers have the authority to adopt flexible leave policies that will accommodate people with disabilities. While the administration of the leave system is subject to certain laws and regulations, departments and agencies can adopt flexible leave policies that will accommodate people with disabilities. Instances may include the following:

(1) When extreme weather conditions make it difficult for mobility-impaired employees to get to or from work. For example, employees are generally expected to report for work after snow removal has been accomplished. However, in many cases, snow removal equipment makes travel by mobility-impaired individuals even more difficult by creating snow drifts at the curb cuts. Federal employers can adopt separate leave policies for situations such as this but should identify in advance employees who would be covered by the extended policy.

(2) When temporary building conditions adversely affect performance or health,

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such as extremes of heat or cold which could affect persons with neurological disorders or respiratory ailments.

Leave policies may also include granting extended leave without pay for illness or disability. Whatever flexibility is used, they should be carefully detailed to prevent misunderstanding and should be consistently applied for all appropriate employees.

Reassigning, Retraining and Detailing Employees

In cases of current Federal employees who become disabled after employment, or whose disabilities are aggravated during their careers, Federal employers have a responsibility to make every effort for their continued employment. An employee who, because of illness or injury, is unable to continue to perform the duties of his or her current position may have other options available than applying for disability retirement. The first step should be to explore the possibility of accommodating the disabled employee in his or her accustomed position. Minor job modifications or changes in the physical environment are often all that is needed to allow a disabled employee to continue working productively. If that is not enough, then retraining, reassignment, or use of a detail should be considered.

Reassignment: The employee's work experience and education may indicate that he or she can perform satisfactorily in another position. Under certain circumstances, an exception may be made to normal qualification standards to facilitate reassignment. Reassignment need not necessarily be limited to positions of the same grade or series. The possibility that the employee would be willing to accept reassignment to a lower grade position (with save pay) with less strenuous physical or mental demands should be explored.

Retraining: Federal employers should consider retraining disabled employees for positions for which they have the basic qualifications and capabilities. Although there are initial expenses involved, the result will justify the expenditure if the employee and the position are matched carefully beforehand.

Details: In instances where the employee's ability to perform the duties of an available position are in question, or to encourage an employee to accept a voluntary reassignment, the use of a temporary detail assignment may help. If performance in the position is acceptable, consideration can then be given to making the reassignment permanent.

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Disability Retirement

Before an employee can qualify for disability retirement, the employee's agency must attempt to reasonably accommodate the employee. The specific type of accommodation can vary depending on the position and the medical condition. If the employee cannot be accommodated in his or her current position, the agency must consider reassignment, with accommodation if needed, to a vacant position at the same grade or pay level and in the same commuting area. If an employee refuses to accept a reasonable accommodation in the current or reassigned position, the employee loses eligibility for disability retirement. Agencies may also consider the possibility that the employee would be willing to voluntarily accept reassignment to a position at a lower grade (with save pay) or outside the commuting area. However, the employee is under no obligation to accept such an offer.

Eliminating Transportation Barriers

One of the most difficult problems people with disabilities face is transportation to the worksite. Federal employers can do a great deal to help people with disabilities solve their personal transportation problems. Such assistance can consist of helping employees form car pools, helping people with disabilities locate co-workers with whom they may car pool; or allocate parking spaces to employees with disabilities.

Drivers who provide transportation to Federal employees with disabilities may make use of parking privileges for people with disabilities who ride with them. The General Services Administration has ruled that Federal employers are to give these persons the same priority in assignment of parking spaces that they give persons with disabilities.

Minimal Cost Accommodations

In many cases, the cost of a job or work environment accommodation can be minimal. A few examples are as follows:

- To accommodate a person who uses a wheelchair, reasonable accommodations may include the ability to access the building, the office, and files. The desk must be the right height to accommodate the wheelchair. This may be accomplished by raising the desk using wooden blocks to prop it up, and then moving furniture so that the employee may freely move around the office. Files can be placed to make them easily accessible.

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- An individual with arthritis experiencing difficulty with maintaining stamina during the workday may be accommodated by providing flexibility in work hours, and a recliner to allow change in body positions to cut down on fatigue.

- Visual aids, screen readers, and enlargers; voice activated software; and braille computers may assist people who are blind or visually impaired. Initial contact should start with the office responsible for information technology (IT) management.

The concept of reasonable accommodation also applies to recruitment, training, promotion, reassignment, and developmental assignments. For example, merit promotion vacancy announcements could be brailled or taped to provide equal access to employees or applicants who are blind or visually impaired. In order to give people with disabilities opportunities to attend formal training programs, Federal employers are authorized to use training funds to provide special services, such as interpreters, readers, and brailling or taping of course materials.

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HIRING OPTIONS

Agency personnel offices work with State vocational rehabilitation agencies (SVRAs), the Department of Veterans Affairs, Gallaudet University and other various organizations to locate and identify qualified people with disabilities. In addition, many Federal employers participate in focused job fairs and campus recruitment visits to identify qualified people with disabilities. Hiring may be accomplished through the competitive hiring process or, if the qualifications are met, through the use of excepted service appointment authorities.

Federal employers may use a variety of hiring options to bring people with disabilities into their workforce. Descriptions of key options are listed below.

Competitive Appointments

Most Federal employees obtain jobs competitively. Applicants apply directly to the hiring departments and agencies for most positions. Federal employers use a variety of assessment tools in evaluating applicants and conducting hiring. If passing a written test is required, special testing arrangements are available, if requested. Once this process is completed, an agency may select from a list of qualified people from the appropriate list of eligible candidates to fill vacancies. The agency may then interview and make a selection for the vacancy. Special interview "reasonable accommodation" arrangements may be made, if requested.

Time-limited Appointments

An agency may fill a position using a temporary or term appointment when the need for an employee's services is not permanent. Temporary appointments are made not to exceed one year, with one 1-year extension. The work must not be permanent in nature. In contrast, term appointments are made for a period of more than one year but not to exceed four years.

Term appointments are appropriate when there is project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

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Student Employment Programs

The Student Educational Employment Program helps Federal employers find the right people to fill current and future hiring needs. The program also gives students the opportunity to get hands-on experience in their chosen career field. The program has two major components; Student Temporary Employment and Student Career Experience.

Student Temporary Employment opportunities range from summer jobs to positions that can last as long as the student is enrolled. The Federal job does not have to be related to the student's academic field of study.

Student Career Experience opportunities include formal periods of work and study while the student attends school. This requires a commitment by the student, the school, and the Federal employer. Work experience is directly related to the student's academic field of study. After successfully completing the educational and work requirements, the student is eligible for permanent job opportunities.

Presidential Management Intern (PMI) Program

The PMI Program is designed to attract to the federal service outstanding graduate students from a wide variety of academic disciplines who have an interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals eligible to be nominated for the PMI Program are graduate students completing a master's or doctoral-level degree from an accredited college or university during the current academic year.

Students are nominated for the PMI Program by the appropriate dean, director or chairperson of their graduate academic program. All nominees are evaluated by an OPM-developed structured assessment process. Selection as a PMI finalist is based on review of the PMI application and the structured assessment process.

PMIs receive an initial two-year appointment. During the two-year internship, PMIs experience structured orientation and graduation training programs facilitated by OPM, as well as seminars, briefings, conferences, on-the-job training, rotational assignments, and other developmental opportunities arranged by participating Federal employers.

After successfully completing the two-year program, PMIs may be eligible for conversion to a permanent position and further promotional opportunities.

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Appointment Under Special Authorities

The Federal Government's hiring options include excepted service special appointing authorities for people with disabilities. Federal employers are authorized to use these authorities when considering certain people with disabilities (those who have a severe physical, cognitive or emotional disability or a history of having such disabilities or are perceived as having such disabilities). The authorities provide a unique opportunity to demonstrate the potential to successfully perform the essential duties of a position with or without reasonable accommodation in the workplace.

- **Schedule A, 5 CFR 213.3102(t) for Hiring People with Mental Retardation.** This authority is used to appoint persons with cognitive disabilities (mental retardation) who meet the eligibility requirements. Upon completion of 2 years of satisfactory performance the employee may qualify for conversion to the competitive service.

- **Schedule A, 5 CFR 213.3102(u) for Hiring People With Severe Physical Disabilities.** This authority is used to appoint persons with severe physical disabilities who (1) under a temporary appointment have demonstrated their ability to perform duties satisfactorily; or (2) have been certified by a counselor from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affair's Vocational Rehabilitation Office as likely to succeed in performance of duties. Upon completion of two years of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

- **Schedule B, 5 CFR 213.3202(k) for Hiring People Who Have Recovered from Mental Illness.** This authority permits appointments at Grades GS-15 and below when filled by individuals who: (I) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; (2) are certified to a specific position by a State vocational rehabilitation counselor or a Department of Veterans Affairs counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the position to which they will be appointed, and that any residual disability is not job related. Employment under this authority may not exceed 2 years following each significant period of mental illness.

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In addition, Federal employers can use the following authority to provide assistance to employees with disabilities:

- **Schedule A, 5 CFR 213.3102(ll) for Hiring Readers Interpreters, and Other Personal Assistants.** This authority permits appointments of readers, interpreters, and personal assistants for employees with severe disabilities when filled on a full-time, part-time, or intermittent basis. Upon completion of at least one year of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

Disabled Veterans

- **30 Percent or More Disabled Veterans.** Federal employers may give a noncompetitive temporary appointment of more than 60 days (see 5 CFR 316.302(b)(4)) or a term appointment (see 5 CFR 316.402(b)(4)) to a veteran:

  - retired from active military service with a disability rating of 30 percent or more; or

  - rated by the Department of Veterans Affairs (VA) within the preceding year as having a compensable service-connected disability of 30 percent or more.

  There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement.

  The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment.

- **Disabled Veterans Enrolled in VA Training Programs, 5 CFR 315.604.** Disabled veterans eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a Federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA. The training is tailored to individual needs and goals so there is no set length. If the training is intended to prepare the individual for eventual appointment in the agency rather than just work experience, the agency must insure that the training will enable the veteran to meet qualification requirements for the position.

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Upon successful completion, the VA and the host agency give the veteran a Certificate of Training showing the occupational series and grade level of the position for which trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

Certification

An individual who is physically disabled is considered to have met OPM qualification standards for either a temporary competitive service appointment or an excepted service Schedule A appointment when an appropriate certification is received from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affairs. The certification is prepared by a counselor on the basis of job-site inspection, analysis of job tasks, and evaluation of the proposed appointee's abilities and disabilities. The certification must state that in the counselor's judgement the proposed appointee is able to perform the duties of the position and is physically qualified to do the work safely. The certification must be supported by a medical report and a narrative statement documenting the counselor's conclusions. Factors to be discussed include training, education, work history, modification of job or worksite if needed, and limitations of the proposed appointee.

The certification required for an excepted service Schedule A appointment of an individual who is mentally retarded need only state that the individual has the ability to perform the duties of the position; is physically able to do the job safely; and can maintain himself or herself in the work environment. No medical report is required.

The certification required for appointment of individuals with psychiatric disabilities under an excepted Schedule B appointment must include documentation of a history of mental illness which includes periods of hospitalization or outpatient treatment within the previous two years; a statement by a psychologist or psychiatrist as to the individual's capability to function in the work setting; and a statement indicating that the individual is currently unemployed or has had a significant period of substantially disrupted employment within the previous two years.

Any certificate issued under the authority of an SVRA or Department of Veterans Affairs counselor and other related medical records must be maintained in a medical folder, rather than the official personnel folder (OPF) for persons with disabilities.

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DEALING WITH DIFFERENT DISABILITIES

Mobility Impairments

Countless injuries, diseases, and conditions can cause mobility impairments that affect an individual's ability to find and keep a job. Some disabilities are acquired at birth. Others stem from accidents or illnesses later in life. Basic mobility, coordination and balance, strength and endurance, and other aspects of body function may be affected.

Many people who have mobility impairments use adaptive equipment of one kind or another. Mobility aids are especially common, and the most ordinary are canes, crutches, walkers, and wheelchairs. Artificial limbs (arms and legs), and body braces are also used.

Persons who have mobility impairments can hold physically demanding jobs. They need not be confined to desk jobs. These individuals can be very independent, not necessarily relying on others for assistance in daily activities. They may or may not do things differently or more slowly than others. One may wish to consider the following suggestions when interacting with individuals who have mobility impairments:

- When scheduling a job interview or meeting, make sure the location is wheelchair accessible.

- Do not hold the person's wheelchair or assume the individual wants to be pushed; always ask first.

- A wheelchair is considered part of the person's personal space. Offer assistance but do not insist. If the person needs help, he or she will accept the offer and tell exactly what will be helpful.

- Put yourself at the wheelchair user's eye level, whenever possible.

- Do not be surprised if the person transfers from a wheelchair to a piece of furniture or gets out of the wheelchair to move about. Not all wheelchair users are paralyzed; many can walk with the aid of canes, braces, or crutches.

- If a person uses crutches, a walker, or some other assistive equipment, offer assistance with coats, bags, or other belongings.

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- Ensure non-slip floor coverings for the safety of a person who uses crutches and extra maneuvering space.

- Do not be sensitive about using words like "walking" or "running." People in wheelchairs use the same words.

- Treat a person who has a mobility impairment as a healthy person. A functional limitation does not mean the person is sick.

- Keep in mind that most people with disabilities have the same activities of daily living as anyone else. They maintain households, shop, go to restaurants, travel, marry, raise children, and, in general, occupy their time in the usual ways.

Blindness and Visual Impairments

The term "blindness" should be reserved for complete loss of sight, even with the best corrective lenses. For lesser disabilities, "visual impairment" is a better description. In visually impaired persons overall sight may not be affected, only the edges or a part of the visual field may be obscured, or there may be no central vision although side or peripheral vision still exists. A person's visual acuity may also change under different light conditions.

Most blind persons get around on their own by using a guide dog or cane. Visually impaired persons may not need mobility aids. For many jobs, vision simply is not necessary. Successful employment of blind and visually impaired individuals depends upon thorough job analysis, enlightened employer acceptance, and proper management support. One may wish to consider the following suggestions when interacting with individuals who have blindness or visual impairments:

- If the person seems to need assistance, offer one's services. If a person who is blind needs guidance through a door or to a chair, let the person take one's arm and follow the motion of one's body. Guide his or her hand or arm to the back of the chair. If one approaches steps, mention how many and the direction.

- Speak directly to the individual who is blind or visually impaired. Speak in a normal tone of voice.

- Introduce other people in the room or have them introduce themselves. This will assist the individual in orienting himself or herself to the room and its occupants.

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- Never touch or distract a service guide dog without first asking the owner.

- When giving directions, do not use references a person cannot see. "Over there" is not a good way of describing a location. When using directional words, use them with the orientation of the person who is blind or visually impaired.

- Tell the individual when one is leaving the room.

- When guiding a person into a new or strange surrounding, one may want to describe special features or decorations.

- One should be prepared to read aloud information that is written, or ask the person if he or she would like a reader.

- When interviewing or meeting with people with visual impairments, ensure a well lit area and avoid sharp contrasts of light and dark areas.

- If offering a seat, place the individual's hand on the back or arm of the chair and let him or her sit down by him or herself.

Deafness and Hearing Impairments

Electronic devices can often compensate for partial hearing impairment. Individuals who are hard of hearing usually speak clearly and communicate in the usual manner. They may be placed in almost any type of position, except those for which acute hearing is a safety requirement.

Extra time and interest may be required during oral communications settings, such as interviews and meetings. Communication problems should not be regarded as indicative of more extensive impairments and should not be allowed to obscure an applicant's knowledge, skills and abilities. In complex situations, it is desirable to obtain the services of a professional sign language interpreter.

Many persons who are deaf or hard of hearing can speak understandably. Those that do not speak well may communicate by sign language, writing notes, using gestures, and demonstrating concepts or problems. One may wish to consider the following suggestions when interacting with individuals who are deaf or hard of hearing:

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- When speaking with someone who is deaf or hard of hearing, face the person directly. Gain his or her attention before starting a conversation by a gentle touch.

- When speaking to persons who are deaf or hard of hearing, use meaningful facial expressions and gestures to emphasize one's intent and attitude. This substitutes for voice tone. Try to find a quiet place away from computers, telephones, and other sources of noise.

- Not all people who are deaf or hard of hearing know or use sign language. Do not assume they need an interpreter.

- If using a sign language or oral interpreter, speak directly to the person who is hearing impaired, not the interpreter. Face the light, speak clearly, in a normal tone of voice, and keep one's hands away from one's face.

- If one cannot understand the person with a hearing impairment, do not be afraid to ask him or her to repeat. If this approach does not work, one can ask if it would be helpful to communicate by writing or using a computer terminal.

Invisible (Hidden) Disabilities

There are many invisible disabilities such as asthma, arthritis, heart disease, environmental illness, AIDS, chronic fatigue, psychiatric or mental illnesses, attention deficit hyperactivity disorder, and learning disabilities.

If an applicant brings the condition to the prospective employer's attention, one may ask whether the condition might have an impact on his or her work and if there are any necessary accommodations. During an interview setting, if the applicant mentions seizures due to epilepsy or symptoms related to other invisible disabilities, the selecting official may ask whether the symptoms are under control and, if not, what fellow co-workers in the office need to know in the event of occurrence. This information, however, is not usually needed until after a person is hired.

A person who has recovered from a heart attack may be able to resume arduous work to which he or she previously was accustomed or may be so weakened that even administrative work is too stressful. Managers and supervisors do not need to be overcautious, as fitness for duty can be determined only by a medical specialist.

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Some people with learning disabilities have adapted to their limitations, through classes, counseling sessions, or through life itself. Many can compensate for their problems so well that it is barely noticeable. A strong match between the person's strengths and the work to be performed is particularly important to the learning disabled individual. A careful job analysis is essential in determining the task and competency requirements of the job. Rehabilitation counselors can be very helpful to candidates by assisting them in assessing their strengths and finding jobs that utilize their strong points.

For additional information regarding a description of invisible disabilities, please see the resources section of this handbook.

Mental Retardation

Many people with mental retardation have average or superior abilities in some respects. While it is true that some people who are mentally retarded may not be able to think, reason or remember as well as other people, it is important to remember that they are proficient in some ways and deficient in others. Mental retardation should not be confused with mental illness or behavioral and emotional problems. The effect of the disability can be lessened, and skills and abilities increased, through rehabilitation, special education and experience on the job.

People who have mental retardation usually want to be independent and responsible for their own support. When appropriately placed and supervised, they can be assets to a workforce. The object should be to reduce the need for learning details, exercising judgment, and finding new solutions to problems.

Success on the job often depends upon the willingness of others to devote reasonable time and interest to helping the individual adjust initially and meet new challenges as they arise. One of the greatest obstacles to equal employment opportunity for these individuals is persistent lack of employer confidence in, and lowered expectations of their capabilities. One may wish to consider the following suggestions when interacting with individuals with mental retardation:

- For the most part, one should talk to the individual in the same manner as anyone else, but be more specific.

- In an interview setting, ask questions and occasionally repeat responses to insure effective communication.

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- Provide information as to where things are located, such as time clock, lockers, restroom, cafeteria, drinking fountain, supply room, etc.

- Take care to explain about working hours, proper dress for the job, work station location, rate of pay, reporting official, and transportation options.

People with Psychiatric Disabilities and Mental Illness

People with psychiatric disabilities have skills, experiences and abilities that are not affected by their illness. For the purposes of employment, a person with a psychiatric disability is one who has experienced a mental or emotional difficulty that currently is under control to the extent that the individual is able to function effectively and satisfactorily in a specific job. The qualifications of people with psychiatric disabilities must be given the same consideration as those of other applicants. One may wish to consider the following suggestions when interacting with individuals who have a psychiatric disability:

- Talk to the individual as one would to anyone else.

- Through personal demeanor, show that one trusts the individual's ability to control his or her behavior.

Muscular or Neurological Limitations

Muscular or neurological disabilities may affect motor ability and/or speech. Intelligence is not affected. Some involuntary or halting movement or limitation of movement in one or more than one appendage may be observed, as well as some lisping, indistinct speech or flatness of tone due to lack of fine motor control of the tongue and lips. The severity and functional effects of the disability vary from person to person. Unless the person is severely disabled, or has the involvement of other disabilities, no accommodation may be needed during an interview setting or meeting.

If the person's speech is difficult, one should ask him or her to repeat what was said. Some people who have severe cerebral palsy, for example, find it more effective to communicate by writing, typing or using communication boards or electronic devices.

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INTEGRATING PEOPLE WITH DISABILITIES INTO THE WORKFORCE

The President's Committee on Employment of People with Disabilities has a six-step process for integration. It consists of:

1) Commitment - Let the people in the agency know of the commitment to employ, advance and retain people with disabilities. Workforce diversity includes people with disabilities.

2) Recruitment - Let the Personnel/Human Resource office and Disability Employment Program Managers know that one is aggressively seeking job candidates with disabilities. Send agency vacancy announcements to disability-related organizations and Federal employers. State the agency's interest in receiving applications from people with disabilities on the job announcement.

3) Interviewing - Look at the essential functions and competency requirements of the job, the qualifications of the individual, and the availability of reasonable accommodations. Do not let the disability distract from evaluating the candidate's qualifications.

4) Placement - Test accommodations and adaptations once the person is on the job. Ask the employee with a disability to help in the process.

5) Training - Any employee's success hinges on proper orientation and training. Insure that all such agency programs are available and accessible to employees with a disability. This includes training programs that may lead to upward mobility and career advancement.

6) Awareness/Sensitivity - Train managers, supervisors, and employees about disability myths and misconceptions. An educated workforce will be better able to ensure the success of employees with disabilities.

Interviewing

Interviewing people with disabilities is the same as interviewing people who are not disabled. In general, the selecting official should ask all applicants about their qualifications, experience, and skills for doing the job.

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However, there are some guidelines that are specific to people with disabilities. Unless an individual is seeking appointment under one of the special excepted appointment authorities, a selecting official should **only** ask questions about the person's ability to do the job. The office should make sure that all questions are job-related. The focus of the interview should be on the individual's ability to successfully perform the essential functions of the job and demonstrating the competencies or knowledge, skills, and abilities needed to perform the job. "Essential functions" are the tasks that are fundamental and intrinsic to the job. Understanding essential functions and the competencies required to perform those functions is particularly important to prepare for applicant interviews.

If the person indicates that he or she has a disability which makes it difficult to perform particular functions of a job, or if the selecting official believes that a person's disability may make it difficult to perform certain job functions, the selecting official may ask job-related follow-up questions, such as: describe how you can perform the job. The answer to such questions will indicate whether a reasonable accommodation is needed to enable the individual to perform the essential functions of the job. Allow the applicant to request reasonable accommodation. **It is the responsibility of the job applicant to inform the employer of any accommodation needs.** However, employers should not make a general assumption that an individual with a disability will be unable to do a certain part of the job, or that a reasonable accommodation will be needed.

Career Development

One of the major problems facing people with disabilities is underutilization of their knowledge, skills, and abilities. Developmental details and reassignments can be used as a means of providing on-the-job training which will enhance opportunities for promotion. In addition, it is easy to fall into the trap of isolating employees with disabilities from others. Make sure employees with disabilities have opportunities not only to work with others on group projects, but, when appropriate, to take on leadership roles.

Federal employers should ensure that employees with disabilities are given full consideration for inclusion in upward mobility programs, and that they are aware of career counseling. Recognize that people with disabilities have career goals. Agency managers should sit down with employees and talk about goals. Identify role models and mentors for disabled employees or encourage them to do so. Every effort should be made to ensure that disabled employees reach their maximum potential.

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Performance Evaluation

People with disabilities should be held accountable for their work performance. Supervisors are responsible for communicating performance expectations to their employees and monitoring and appraising their work. When the individual with a disability begins a job, he or she should be given a clear description of the job, and the specific duties. Employees should be provided with encouragement and feedback regarding their work performance. It is important to ensure that when evaluating a person with a disability, aspects of their physical or mental disability are not held against them. They should be evaluated for their ability to do a job with the appropriate accommodations. For example, it would be inappropriate to negatively evaluate an individual who uses a wheelchair for not attending a meeting, when the meeting was held in a physically inaccessible building.

If an employee with a disability cannot perform satisfactorily after a full and fair trial period, then his or her employment should be terminated. No supervisor or manager owes a job to any person with a disability. The goal and the only obligation is equal employment opportunity. The same job-related performance criteria should be applied to disabled employees that is applied to all other employees. If it becomes necessary to terminate the appointment of a disabled employee, the Human Resources or Personnel Office will help in making this decision and taking appropriate action.

Awards

People with disabilities should have equal opportunity to receive incentive awards (special achievement/act or performance), quality step increases and all other agency-sponsored or non-agency sponsored awards. Efforts should not be limited to special awards programs geared specifically to those who are disabled.

Training

Give employees with disabilities an equal chance to benefit from training and development opportunities. Ensure that classes are held in accessible facilities, and as necessary, that materials are available in large print for persons who are visually impaired, interpreters are provided for participants who are hearing-impaired, or other accommodations are made. Any training which would provide growth opportunities that will allow disabled employees to advance in their careers should be encouraged. Such training could include developmental detail assignments, lateral reassignments, and leadership training.

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PROMOTING THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

Communication is the key to increasing organizational understanding and support for the employment of people with disabilities. The positive portrayal of employees with disabilities can greatly affect the public's perception, and enhance self worth of affected employees. What one says and writes can enhance their dignity and promote positive attitudes about their abilities. There are a number of target groups to be reached: the disabled community, the rehabilitation establishment, the agency workforce, students, and community groups.

Communicating messages or events such as planned initiatives, programs or exhibits, employee success stories, activities and accomplishments, and training and career development opportunities will enhance the employment and advancement of people with disabilities. One of the most effective and efficient media for some messages are internal memorandum or personal contact with the organization head, managers, supervisors and employees. Messages may also be integrated into existing media, such as an agency newsletter.

Other communications media may also be considered:

- Agency publications
- Bulletin boards
- Press releases
- Film or slide-tape presentations
- Local newspapers
- Local radio and television stations
- Chambers of Commerce
- Trade and technical magazines
- Community organizations newsletters
- Flyers
- Web sites

An agency's public affairs office may be able to assist in preparing professional copy or in maximizing one's communication tools. Outside organizations such as the President's Committee on Employment of People with Disabilities, Veterans' service organizations (VSOs), Federally Employed Women, State Vocational Rehabilitation Centers, and local news media may be able to help in the preparation of materials.

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Experience has shown that programs and initiatives require dedicated and sustained support from departmental and agency leadership to achieve success. Thus, a clearly articulated commitment of agency leadership to achieving the goal of greater inclusion for adults with disabilities in the Federal workforce is critical to transforming such an aim into reality at the agency level.

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APPENDIX 1: STATISTICAL INFORMATION

The Office of Personnel Management (OPM) published a *Statistical Profile of People with Disabilities in the Federal Workforce* in 1998. Copies of the report can be obtained by calling OPM's Office of Diversity at (202) 606-1059. Some of the findings are listed below:

- Despite downsizing and employment changes, the representation of persons with disabilities in the Federal Government since 1992 has remained fairly stable near 7% of the workforce. In 1997, the approximately 127,076 employees with disabilities represented 7.2% of the Federal Executive Branch workforce.

- The average pay of Federal employees with disabilities lags below the overall average Federal employee pay. A higher proportion of Federal employees with disabilities are in lower grade occupations.

- Nearly two thirds of our Federal employees with disabilities are in professional, administrative and technical occupations. This is a positive factor given that, in 1992, 40% of Federal employees with disabilities were in blue-collar and clerical occupations; jobs with more limited pay and advancement opportunities. However, other employment indicators merit further scrutiny.

- Of the 195,903 new hires in FY 1997, only 11,847, or 5.7% were people with disabilities.

- Over half (55%) of all new FY 1997 hires with disabilities were hired into blue-collar and clerical occupations. While these occupational groups have constituted traditional employment vehicles for persons with disabilities, these employment pipelines offer limited career advancement opportunities and will continue shrinking due to changes in Federal agency operations.

- From FY 1992 thru FY 1997, there has been some decline in the use of special non-competitive hiring authorities, such as Schedule A, for severely physically handicapped and mentally retarded persons, and Schedule B, for persons recovered from mental illness. During FY 1997, five special hiring authorities for persons with disabilities accounted for 11 percent of all new hires of employees with disabilities.

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APPENDIX 2: FEDERAL RESOURCES

1) **President's Committee on Employment of People with Disabilities (PCEPD)**
1331 F Street, NW
Washington, DC 20004-1107
Phone: (V) (202) 376-6200
(TDD) (202) 376-6205

Website: http://www.pcepd.gov
EMAIL: info@pcepd.gov

2) **President's Committee Job Accommodation Network (JAN)**
918 Chestnut Ridge Road, Suite 1
West Virginia University - PO Box 6080
Morgantown, WV 26506-6080
Phone: (V) (800) 526-7234
(TDD) (800) 232-9675

Website: http://www.pcepd.gov and click on JAN or go directly to JAN at http://janweb.icdi.wvu.edu/english/homeus.htm

3) **Equal Employment Opportunity Commission**
1801 L St. NW (Federal Sector Programs)
Washington, DC 20507
Phone: (V) (800) 669-4000
(TDD) (800) 669-6820
(FAX) (513) 489-8692

For specific Federal employment questions, call the "ATTORNEY OF THE DAY" at (202) 663-4691.

4) **Department of Labor: Office of Federal Contractor Compliance Programs (OFCCP)** [administers Federal contractor compliance for affirmative action in the employment of people with disabilities]
Department of Labor
Frances Perkins Building,
200 Constitution Avenue NW
Washington, DC 20210
Phone: (V) (888) 376-3227
(V) (202) 219-9475
(TDD) (202) 208-0452

Website: http://www.dol.gov/dol/esa>

5) **U.S. Office of Personnel Management**
[for Federal employment information]
1900 E St, NW.
Washington, DC 20507
Phone: (V) (202) 606-2700
(TDD) (912) 744-2299

Website: http://www.opm.gov

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APPENDIX 3: STATE VOCATIONAL AND REHABILITATION AGENCIES

State Vocational and Rehabilitation Agencies provide a number of services for persons with disabilities. Services include counseling, evaluation, training, and job placement. For more information, call or write the office nearest you. Internet addresses for each agency can be accessed at:

www.nchrtm.okstate.edu/ncrtm_links/state_VR.html

ALABAMA
Dept. of Rehabilitation Services
P.O. Box 11586
Montgomery, AL 36111-0586
(334) 281-8780
Toll free: (800) 441-7607

ALASKA
Division of Vocational Rehabilitation
801 W. 10th St., Suite 200
Juneau, AK 99801-1894
Voice/TDD: (907) 465-2814
Toll Free: (800) 478-2815

ARIZONA
Rehabilitation Services Admin. (930A)
1789 West Jefferson, N.W. (2nd Floor)
Phoenix, AZ 85007
(602) 542-3332
Voice/TDD: (602) 542-6049

ARKANSAS
Department of Education
Arkansas Rehabilitation Services
Div. of Vocational & Technical Education
P.O. Box 3781
Little Rock, AR 72203
(501) 296-1616
Toll Free: (800) 330-0632

CALIFORNIA
Department of Rehabilitation
830 K Street Mall
Sacramento, CA 95814
Voice/TDD: (916) 445-3971

COLORADO
Division of Vocational Rehabilitation
110 16th Street, 2nd Floor
Denver, CO 80202
Voice/TDD: (303) 620-4153

CONNECTICUT
State Department of Social Services
Bureau of Rehabilitation Services
Division of Client Services
10 Griffin Road North
Windsor, CT 06095
(860) 298-2000
Toll Free: (800) 537-2549
TDD: (860) 298-2231

DELAWARE
Department of Labor
Division of Vocational Rehabilitation
4425 North Market Street
P.O. Box 9969
Wilmington, DE 19809-0969
(302) 761-8300
Voice/TDD: (302) 761-8349

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DISTRICT OF COLUMBIA
Department of Human Services
D.C. Rehabilitation Services Administration
800 9th Street, S.W., Fourth Floor
Washington, D.C. 20024
(202) 645-5703

FLORIDA
Dept. of Labor and Employment Security
Division of Vocational Rehabilitation
2002 Old St. Augustine Road, Building A
Tallahassee, FL 32399-0696
(850) 488-6210
Voice/TDD: (850) 488-2867

GEORGIA
Department of Human Resources
Division of Rehabilitation Services
2 Peachtree Street, N.W., 23rd Floor
Atlanta, GA 30330-3166
Voice/TDD: (404) 657-3000

GUAM
Department of Vocational Rehabilitation
122 Harmon Plaza, Room B-201
Harmon Industrial Park, GU 96911
011-671-475-4645
001-671-475-4635 (Consumer Information)

HAWAII
Department of Human Services
Division of Vocational Rehabilitation
and Services for the Blind
P.O. Box 339
Honolulu, HI 96809
(808) 586-5355
(808) 586-5366

IDAHO
Division of Vocational Rehabilitation
650 West State-L. B. Jordan Bldg, Rm 150
Boise, ID 83720-0096
Voice/TDD: (208) 334-3390
Toll Free: (800) 856-2720

ILLINOIS
Department of Rehabilitation Services
623 East Adams Street
Springfield, IL 62794
(217) 785-0218
Toll Free: (800)ASK-DORIS
TDD: (217) 782-5734

INDIANA
Division of Disability, Aging and
Rehabilitation Services
402 West Washington Street, Rm W-451
P.O. Box 7083
Indianapolis, IN 46207-7083
(317) 232-1147
Toll free: (800) 545-7763
TDD Toll free: (800) 962-8408

IOWA
Department of Education
Div. of Vocational Rehabilitation Services
510 East 12th Street
Des Moines, IA 50319
Voice/TDD: (515) 281-4311
Toll free: (800) 532-1486

KANSAS
Dept. of Social and Rehabilitation Services
300 S.W. Oakley-Biddle Building, 1st Floor
Topeka, KS 66606
(913) 296-3911
TDD: (913) 296-7029

KENTUCKY
Department of Vocational Rehabilitation
209 St. Clair
Frankfort, KY 40601
Voice/TDD: (502) 564-4440
Toll free: (800) 372-7172
TDD: (502) 564-6742

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LOUISIANA
Department of Social Services
Louisiana Rehabilitation Services
8225 Florida Blvd.
Baton Rouge, LA 70806-4834
(504) 925-4168
Toll free: (800) 737-2958
Voice/TDD: (504) 925-4179

MAINE
Department of Labor,
Division of Vocational Rehabilitation
35 Anthony Avenue
Augusta,, ME 04333-0150
(207) 624-5300
Toll free: (800) 332-1003
Voice/TDD: (207) 624-5322

MARIANA ISLANDS
Vocational Rehabilitation Division
Comm. of Northern Mariana Islands
P.O. Box 1521
Saipan, Mariana Islands 96950
011-670-234-6538

MARYLAND
State Department of Education
Division of Rehabilitation Services
2301 Argonne Drive
Baltimore, MD 21218
(410) 554-9385
TDD: (410) 554-9412

MASSACHUSETTS
Massachusetts Rehabilitation Commission
4 Point Place, 27-43 Wormwood Street
Boston, MA 02210
(617) 727-2172
TDD: (617) 727-9063

MICHIGAN
Michigan Rehabilitation Services
Michigan Jobs Commission
P.O. Box 30010
Lansing, MI 48909
(517) 373-3390
Toll free: (800) 605-6722
TDD: (517) 373-4035

Family Independence Agency
Disability Determination Service
P.O. Box 30011
Lansing, MI 48909
(517) 373-7830
(517) 373-4533
Toll free: (800) 366-3404

MINNESOTA
Michael Coleman, Assistant Commissioner
Department of Economics and Security
Rehabilitation Services Branch
390 North Robert Street, 5th Floor
St. Paul, MN 55101
(612) 296-1822
TDD: (612) 296-3900

MISSISSIPPI
Nell C. Carney, Executive Director
Department of Rehabilitation Services
Vocational Rehabilitation Division
1281 Highway 51
P.O. Box 22806
Madison, MS 39110
(601) 853-5100
Toll free: (800) 443-1000

MISSOURI
Don Gann, Assistant Commissioner
State Department of Education
Division of Vocational Rehabilitation
3024 W. Truman Blvd.
Jefferson City, MO 65109
Voice/TDD: (573) 751-3251

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MONTANA
Dept. of Public Health & Human Services
Disability Services Division
P.O. Box 4210
Helena, MT 59604-4210
Voice/TDD: (406) 444-2590

NEBRASKA
State Department of Education
Div. of Vocational Rehabilitation Services
P.O. Box 94987
Lincoln, NE 68509
(402) 471-3649
Voice/TDD: (402) 471-3659

NEVADA
Nevada Rehabilitation Division
505 East King Street, Room 502
Carson City, NV 89710
Voice/TDD: (702) 687-4440

NEW HAMPSHIRE
State Department of Education
Division of Adult Learning & Rehabilitation
78 Regional Drive, Bldg. 2
Concord, NH 03301
Voice/TDD: (603) 271-3471

NEW JERSEY
Div. of Vocational Rehabilitation Services
135 East State Street, CN 398
Trenton, NJ 08625-0398
(609) 292-5987
Voice/TDD: (609) 292-2919

NEW MEXICO
Department of Education
Division of Vocational Rehabilitation
435 St. Michaels Drive, Bldg. D
Santa Fe, NM 87505
Toll free: (800) 235-5387
Voice/TDD: (505) 827-3500

NEW YORK
New York State Education Department
Office of Vocational and Educational
Services for Individuals with Disabilities
One Commerce Plaza, Room 1606
Albany, NY 12234
(518) 474-2714
Toll free: (800) 222-JOBS
TDD: (518) 486-3773

NORTH CAROLINA
Department of Human Resources
Div. of Vocational Rehabilitation Services
P.O. Box 26053
Raleigh, NC 27611
(919) 733-3364
Voice/TDD: (919) 733-5924

NORTH DAKOTA
Department of Human Services
Division of Vocational Rehabilitation
Dacotah Foundation Bldg.
600 S. Second Street, Suite IB
Bismarck, ND 58504-5729
(701) 328-8950
Toll free: (800) 755-2745
TDD: (701) 328-8968

OHIO
Rehabilitation Services Commission
400 East Campus View Blvd.
Columbus, OH 43235-4604
Voice/TDD: (614) 438-1210
Toll free: (800) 282-4536, ext. 1210

OKLAHOMA
Department of Rehabilitation Services
3535 NW 58, Suite 500
Oklahoma City, OK 73112
(405) 951-3400

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OREGON
Department of Human Resources
Division of Vocational Rehabilitation
Human Resources Bldg.,
500 Summer St., N.E.
Salem, OR 97310-1018
(503) 945-5880
TDD: (503) 378-3933

PENNSYLVANIA
Office of Vocational Rehabilitation
Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17120
(717) 787-5244
Voice/TDD: (717) 783-8917
Toll free: (800) 442-6351

PUERTO RICO
Administration for Vocational Rehabilitation
P.O. Box 191118
San Juan, PR 00919-1118
(809) 725-1792

RHODE ISLAND
Department of Human Services
Office of Rehabilitation Services
40 Fountain Street
Providence, RI 02903-1898
(401) 421-7005
TDD: (401) 421-7016

SOUTH CAROLINA
Vocational Rehabilitation Department
1410 Boston Avenue
P.O. Box 15
West Columbia, SC 29171
(803) 896-6504
Voice/TDD: (803) 896-6635

SOUTH DAKOTA
Department of Human Services
Division of Rehabilitation Services
East Highway 34, Hillsview Plaza
c/o 500 E. Capitol
Pierre, SD 57501-5070
Voice/TDD: (605) 773-3195
Toll free: (800) 265-9684

TENNESSEE
Rehabilitation Services
Department of Human Services
Citizens Plaza State Office Bldg.
400 Deaderick Street, 15th Floor
Nashville, TN 37248-0060
Voice/TDD: (615) 313-4714

TEXAS
Texas Rehabilitation Commission
4900 North Lamar
Austin, TX 78751
(512) 483-4001
Toll free: (800) 628-5115

UTAH
Utah State Office of Rehabilitation
250 East Fifth South
Salt Lake City, UT 84111
Voice/TDD: (801) 538-7530
Toll free: (800) 473-7530

VERMONT
Vocational Rehabilitation Division
103 South Main Street
Waterbury, VT 05671-2303
Voice/TDD: (802) 241-2186

VIRGIN ISLANDS
Virgin Islands Dept. of Human Services
Div. for Disabilities and Rehabilitation Services
1303 Hospital Ground, Hansen Complex
St. Thomas, VI 00802
(809) 774-0930

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VIRGINIA
Department of Rehabilitation Services
4901 Fitzhugh Avenue
P.O. Box 11045
Richmond, VA 23230
(804) 367-0316
Voice/TDD: (804) 367-0315
Toll free: (800) 552-5019

WASHINGTON
Department of Social and Health Services
Division of Vocational Rehabilitation
P.O. Box 45340
Olympia, WA 98504-5340
Voice/TDD: (360) 427-2135
Toll free: (800) 637-5627

WEST VIRGINIA
Division of Rehabilitation Services
State Capitol Complex
P.O. Box 50890
Charleston, WV 25305-0890
(304) 766-4600
Voice/TDD: (304) 766-4970
Toll free: (800) 642-3021

WISCONSIN
Department of Workforce Development
Division of Vocational Rehabilitation
2917 International Lane, 3rd Floor
P.O. Box 7852
Madison, WI 53707-7852
(608) 243-5600
TDD: (608) 243-5601

WYOMING
Department of Employment
Division of Vocational Rehabilitation
1 East Herschler Building
Cheyenne, WY 82002
(307) 777-7385
Voice/TDD: (307) 777-7389

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APPENDIX 4: REFERENCES AND REGULATIONS

I. General Medical Personnel Guidance

Law:

A. The Americans with Disabilities Act of 1990 - 42 U.S.C. §§ 12101 et seq.

B. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq.; See also, 29 U.S.C. §§ 791(g), 794(d) (Incorporating standards of Americans with Disabilities Act into the Rehabilitation Act)

C. The Family and Medical Leave Act of 1993, Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, et seq. Title I of the Act applies to non-Federal employees and certain Federal employees and is administered by the Department of Labor. Title II of the Act applies to most Federal employees and is administered by the Office of Personnel Management.

Regulation:

A. 5 CFR 339, Medical Qualification Determinations, March 8, 1989

B. 29 CFR 1614, Equal Employment Opportunity Commission

NOTE: Part 1614 of the Federal sector Equal Employment Opportunity (EEO) complaint processing regulations replace part 1613, with the objective of promoting greater administrative fairness in the investigation and consideration of Federal sector EEO complaint by creating a process that is quicker and more efficient. Every Federal employee and applicant for Federal employment has the right to use the administrative EEO discrimination complaints process.

C. For most Federal employees, 5 CFR Part 630, Subpart L, Family and Medical Leave.

NOTE: The final rule became effective on January 6, 1997.

D. For certain Federal employees, including Postal Service employees, 29 CFR Part 825, The Family and Medical Leave Act of 1993.

NOTE: The final rule became effective on February 6, 1995.

Information:

A. Equal Employment Opportunity Commission (EEOC)

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1. EEOC - ADA Enforcement Guidance: Preemployment Disability Related Questions and Medical Examinations, October 10, 1995

   NOTE: This document provides the EEOC's position under the Americans with Disabilities Act of 1990, on preemployment disability-related questions and medical examinations.

2. EEOC - EEOC Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities, March 25, 1997

   NOTE: This guidance is designed to facilitate the full enforcement of the ADA with respect to individuals alleging employment discrimination based on psychiatric disabilities; respond to questions and concerns expressed by individuals with psychiatric disabilities regarding ADA; and answer questions posed by employers about how principles of ADA analysis apply in the context of psychiatric disabilities.

3. EEOC - The Family and Medical Leave Act, The Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964

   NOTE: This fact sheet was prepared by the Equal Opportunity Commission's (EEOC) Office of Legal Counsel. It is intended to provide technical assistance on some common questions that have arisen about the Americans with Disabilities Act of 1990 (ADA) and Title VII of the Civil Rights Act of 1964 (Title VII) when the Family and Medical Leave Act of 1993 (FMLA) also applies.

B. U.S. Office of Personnel Management (OPM)

1. OPM - Operating Manual - Qualification Standards for General Schedule Positions, August, 1994, prepared by OPM's Washington Service Center

   NOTE: This operating manual replaces the Qualification Standards Handbook for General Schedule Positions.

3. OPM - The Role of the Agency Medical Review Officer (MRO[1]), March, 1996, prepared by OPM's Staffing Reinvention Office

4. OPM - Guide for Administering Written Employment Examinations to Persons with Disabilities, December, 1994, prepared by OPM's Personnel Resources and Development Center

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[1] See Section VI, Information (E, F) for HHS Drug Testing Medical Review Officer Source List and Manual for Federal Workplace Drug Testing Programs

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5. OPM - Developing and Conducting the Structured Situational Interview: A Practical Guide, January, 1994, prepared by OPM's Personnel Resources and Development Center

6. OPM - Family-Friendly Leave Policies for Federal Employees: Employee Brochure, November 1997, prepared by OPM's Workforce Compensation and Performance Service

7. OPM - Federal Employee Entitlement Under the Family and Medical Leave Act of 1993, December 1996, prepared by OPM's Workforce Compensation and Performance Service

C. Social Security Administration (SSA)

1. U.S. Department of Health and Human Services, Social Security Administration - Disability Evaluation Under Social Security, January, 1995

   NOTE: This new publication replaces the October, 1992 edition of *Disability Evaluation Under Social Security*. It is intended to provide physicians and other health professionals with an understanding of the disability programs administrated by the Social Security Administration, how each program works, and the kinds of medical information a health professional can furnish to help ensure sound and prompt decisions on disability claims.

II. Aeromedical-FAA Medical Standards and Certification

Law:

A. 49 U.S.C. 106 (G), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45303.

Regulation:

A. 14 CFR Part 67, Federal Aviation Regulations, Medical Standards and Certification, recently revised, March, 1996, See 61 Federal Register 11256, March 19, 1996

   NOTE: This establishes medical standards for airman (e.g., pilots) who have to hold an FAA issued medical certificate.

Information:

A. U.S. Department of Transportation, Federal Aviation Administration, Office of Aviation Medicine, FAA Guide for Aviation Medical Examiners, Revised 1992

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NOTE: This 1992 revision supersedes previous editions of the FAA Guide which should now be discarded.

III. Conduct or Performance Problems Involving Medical Considerations

NOTE: See Section I, Information (A) for information regarding an Agency's right to order/offer a medical or psychiatric examination.

IV. Excepted Service Appointing Authorities for Persons with Disabilities

Schedule A:

A. 5 CFR 213.3102(ll) - This hiring authority applies to readers, interpreters and other personal assistants for other employees with a severe disability(ies).

B. 5 CFR 213.3102(t) - This hiring authority applies to persons with mental retardation.

C. 5 CFR 213.3102(u) - This hiring authority applies to persons with severe physical disabilities.

Schedule B:

A. 5 CFR 213.3202(k) - This hiring authority applies to persons who are mentally restored.

Veteran Specific:

A. 5 CFR 316.402(b)(5) - This hiring authority applies to 30 percent or more Disabled Veterans.

Information:

A. OPM - People with Disabilities in the Federal Government - A Statistical Profile, July, 1998, prepared by OPM's Office of Diversity

B. OPM - Guide for Administering Written Employment Examinations to Persons with Disabilities, (PRDC-94-11), December, 1994, prepared by OPM's Personnel Research and Development Center

NOTE: This publication replaces the 1980 Guide for Administering Examinations to Handicapped Individuals for Employment Purposes.

V. Disability Retirement (CSRS and FERS)

Regulation:

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A. CSRS - 5 CFR Part 831, Civil Service Retirement System, Disability Retirement, September 22, 1993

Information:

A. CSRS - Documentation in Support of Disability Retirement Application, July, 1984

B. CSRS - OPM Pamphlet Information for Disability Annuitants, March, 1995

C. CSRS - Application for Immediate Retirement, January, 1990

Regulation:

A. FERS - 5 CFR Part 844, Federal Employees Retirement System - Disability Retirement, 1995

Information:

A. FERS - Documentation in Support of Disability Retirement Application, August, 1987

B. FERS - OPM Pamphlet Information for FERS Disability Annuitants, October, 1995

C. FERS - Application for Immediate Retirement, March, 1988

VI. Drug and Alcohol Testing[2]

Executive Order:

A. Drug-Free Federal Workplace, Executive Order 12564, 51 Federal Register 32,889 (1986)

NOTE: Executive Order 12564 requires that the Head of each Executive Agency establish a program to test for the use of illegal drugs by employees in safety or security-sensitive positions.

Law:

[2] See Section IX, Information (A) for information regarding the role of OPM in the adjudication of medical objections to preference eligibles who test positive on a preemployment drug screen.

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A. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 468, codified at 5 U.S.C. § 7301 note (1987)

B. The Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143, Title V, 105 Stat. 952 (1991)

NOTE: This Act requires that a program be established to test for the use of alcohol or controlled substances. This program is mandated for Federal Aviation Administration (FAA) employees whose duties include responsibility for safety-sensitive functions and for any other Federal employee whose position requires a Commercial Drivers License (CDL) under Federal Highway Administration (FHWA) regulations.

C. Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 42 U.S.C. § 290ee-1 et seq., as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. § 290dd et seq., Pub. L. 102-321, 106 Stat. 367 (1992) (codified at 42 U.S.C. § 201 note)

D. Federal Employee Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570, Title VI, 100 Stat. 3207-157 (1986)

NOTE: This Act requires agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.

Regulation:

A. 5 CFR Part 792, Federal Employees' Health and Counseling Programs

B. 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing

NOTE: This regulation is issued by the Federal Highway Administration (FHWA) and contains the requirements applicable to positions requiring Commercial Drivers' License (CDL).

C. 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

NOTE: This regulation is issued by the U.S. Department of Transportation (DOT) and contains the technical procedures designed for use when testing is required pursuant to 49 CFR Part 382.

Mandatory Guidelines:

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A. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Register Vol. 59, No. 110, June 9, 1994

NOTE: This establishes mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to Executive Order 12564.

Information:

A. National Institute on Drug Abuse - Model Plan for a Comprehensive Drug-Free Workplace Program, 1990

B. U.S. Department of Transportation - Alcohol & Drug Rules - An Overview, February, 1994

C. U.S. Department of Health and Human Services - Substance Abuse and Mental Health Services Administration - Basic Information on Breath Alcohol Testing for Implementation of the DOT Rules, February, 1995

D. U.S. Department of Health and Human Services - An Overview of HHS Division of Workplace Programs (Federal Drug and Alcohol Program Oversight Responsibility)

E. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Medical Review Officer Manual for Federal Workplace Drug Testing Programs, 1997

NOTE: This manual applies to Federal agency drug testing programs that come under Executive Order 12564 and the Department of Health and Human Services (HHS) Mandatory Guidelines. The Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) programs have drug testing program requirements that may differ from those required by HHS. Therefore, Medical Review Officers (MROs) must be aware of those differences in reviewing results for other Federally regulated programs.

F. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Medical Review Officer (MRO) Source List, March 3, 1996

VII. Hearing Conservation

Regulation:

A. 29 CFR 1910.95, Occupational Noise Exposure Standard, U.S. Department of Labor, Occupational Safety and Health Administration

Information:

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A. U.S. Department of Labor, OSHA Guideline Occupational Noise Exposure Compliance Assistance Guideline, 1991

B. U.S. Department of Labor, Occupational Safety and Health Administration, Hearing Conservation, (OSHA Publication 3074), 1995

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are exposed to excessive/high noise levels that could cause hearing loss.

VIII. Infectious Diseases (HIV/AIDS, Hepatitis, Tuberculosis, etc.) Involving Employee Relations

Regulation:

A. 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogens, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: A bloodborne pathogen's protection program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are potentially exposed to infectious blood or body fluids as part of their employment.

Information:

A. OPM - HIV/AIDS Policy Guidelines, August 30, 1995, prepared by OPM's Office of Employee Relations

NOTE: These guidelines replace FPM letter 792-21, "Acquired Immune Deficiency Syndrome (AIDS) in the Workplace."

B. U.S. Department of Health and Human Services, Social Security Administration - A Guide to Social Security and SSI Disability Benefits for People with HIV Infection, May, 1997

C. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, September 8, 1995/Vol. 44/No. RR-11, Essential Components of a Tuberculosis Prevention and Control Program, Screening for Tuberculosis and Tuberculosis Infection in High-Risk Populations

D. U.S. Department of Labor, Occupational Disease - Claims for Pulmonary Tuberculosis, FECA Bulletin No. 95-20, June 21, 1995

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E. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, October 28, 1994/Vol. 43/No. RR-13 1994, Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities

IX. Medical Disqualifications of Veterans Preference Eligibles (TP, CP, CPS, XP)

Law:

A. 5 U.S.C., Sections 3312 and 3318, Preference Eligibles

Regulation:

A. 5 CFR 339.306 Medical Qualification Determinations

B. 5 CFR 351.702(d) Reduction in Force

Information:

A. Interagency Advisory Group, Memorandum for Directors of Personnel, dated March 14, 1997, "OPM Adjudication of Medical Disqualifications to Preference Eligibles"

NOTE: This is a reminder that in accordance with Title 5, United States Code, Sections 3312 and 3318, and 5 CFR 339, Medical Qualification Determinations, any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management (OPM) before the position can be filled.

B. OPM - Procedures Guide in Processing Medical Objections to Preference Eligibles, March, 1996, prepared by OPM's Staffing Reinvention Office

C. OPM - Typical Reasons for Not Sustaining Agency Medical Passover Requests, March, 1996, prepared by OPM's Staffing Reinvention Office

X. Medical Records

Law:

A. Privacy Act of 1974, 5 U.S.C. 552a

Regulation:

A. 5 CFR Part 293, Subpart E, Employee Medical File System Records, prepared by OPM's Office of Workforce Information

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B. 5 CFR Part 297, Privacy Procedures for Personnel Records, prepared by OPM's Office of Workforce Information

C. 29 CFR 1910.1020(d)(l) (1990) Access to Employee Exposure and Medical Records, U.S. Department of Labor, Occupational Safety and Health Administration

D. 29 CFR 1904 (June 1986), A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics

E. 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient's Records (This regulation applies only to Employee Assistance Program (EAP) records)

Information:

A. OPM/GOVT-10 "Employee Medical File System Records," 57 Federal Register, 35,722, (August 10, 1992), prepared by OPM's Office of Workforce Information

B. OPM Medical Record Procedures, (covered in OPM's Operating Manual) The Guide to Personnel Recordkeeping, prepared by OPM's Office of Workforce Information

C. U.S. Department of Labor, Occupational Safety and Health Administration, Access to Medical and Exposure Records, (OSHA Publication 3110), 1993

XI. Mental Health Issues

NOTE: See Section I, Regulation (A), for specific information regarding an Agency's right to order/offer a medical or psychiatric examination.

XII. OWCP Issues

Law:

A. 5 U.S.C. 8101 et seq. The Federal Employees Compensation Act, as amended

Regulation:

A. 20 CFR Parts 1 to 25, Federal Employees Compensation Act

B. 5 CFR Parts 353, Restoration to Duty from Uniform Service or Compensable Injury (Interim Regulations, September 1, 1995)

Information:

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A. OPM - Pamphlet Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses, January, 1992, prepared by OPM's Staffing Reinvention Office

B. U.S. Department of Labor - Injury Compensation for Federal Employees (A Handbook for Employing Agency Personnel), (Publication CA-810), February, 1994

C. U.S. Department of Labor, Questions and Answers About the Federal Employees' Compensation Act, (Publication CA-550), September, 1988

D. U.S. Department of Labor, Resource Book - Training for Federal Employing Agency Compensation Specialists, 1994

XIII. Pregnancy Related Issues

Law:

A. Pregnancy Discrimination Act, P.L. 95-555, October 31, 1978, 92 Stat. 2076, 42 U.S.C. § 2000e(k)

Regulation:

A. 29 CFR § 1604.10(b), See also, 29 CFR Pt. 1604 App. (Questions and Answers on the Pregnancy Discrimination Act)

XIV. Respiratory Protection Program

Regulation:

A. 29 CFR 1910.134, Respiratory Protection, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers must wear respirators to protect themselves from actual or potential airborne hazards.

B. 29 CFR Part 1910.1001, Occupational Exposure to Asbestos, June 29, 1995, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

C. 29 CFR Part 1910.1200, Hazard Communication, March 11, 1994, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

XV. Safety and Occupational Health Programs

Law:

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A. Occupational Safety and Health Act of 1970, 84 Stat. 1590, Public Law 91-596, Section 19, Federal Agency Safety Programs and Responsibilities, December 29, 1970

NOTE: This act is to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; and by providing for research, information, education and training in the field of occupational safety and health.

Federal Regulation:

A. 29 CFR 1910.151, Medical Services, U.S. Department of Labor, Occupational Safety and Health Administration

B. 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, U.S. Department of Labor, Occupational Safety and Health Administration

C. 29 CFR 1910.1200, Hazardous Communication, U.S. Department of Labor, Occupational Safety and Health Administration

D. 5 CFR Part 339.205, Medical Evaluation Programs, Medical Surveillance Program

XVI. Veterans and the Civil Service

Information:

A. OPM - VetGuide, Federal Employment Policy Handbook: Veterans and the Civil Service, December, 1998, prepared by OPM's Employment Service

NOTE: VetGuide explains the special rights and privileges that veterans enjoy in Federal civil service employment. The guide conveniently summarizes in one place material from many laws and regulations that affect the employment of veterans. The guide will help Federal personnel specialist ensure that veterans receive the advantages they have earned.

B. The Office of Personnel Management (OPM) administers entitlement to veterans' preference in employment under Title 5, United States Code, and oversees other statutory employment requirements in Titles 5 and 38. (Title 38 also governs veterans' entitlement to benefits administered by the Department of Veterans Affairs (VA).)

XVI. Violence in the Workplace

Information:

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A. OPM - Dealing with Workplace Violence: A Guide for Agency Planners, written by the Office of Workforce Relations, February 1998

B. U.S. Department of Labor, Occupational Safety and Health Administration - Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers, (OSHA Publication 3148), 1996

C. U.S. Department of Justice, United States Marshals Service - Security in the Workplace: Improving the Safety of Federal Employees, (USMS Pub. No.61) September, 1995

D. U.S. Department of Justice - Combating Workplace Violence: Guidelines for Employers and Law Enforcement, International Association of Chiefs of Police (publication funded by Office of Justice Programs, Bureau of Justice Assistance)

E. U.S. Department of Justice, National Institute of Justice - Understanding and Preventing Violence, February, 1994

F. U.S. Department of Justice, National Institute of Justice - Psychoactive Substances and Violence, February, 1994

G. U.S. Department of Justice, National Institute of Justice - The Cycle of Violence, September, 1992

H. ADA Information Brief, Volume 1, Number 4, Violence and Workers with Psychiatric Disabilities: Myths and Facts[3]

Worldwide Web Information:

A. Partnership Against Violence Network (PAVNET). The Departments of Justice, Agriculture, Education, Housing and Urban Development, and Labor. A database of programs dealing with violence. Access through the Web at www.pavnet.org.

[3] Listed with permission of the Washington Business Group on Health

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U.S. Office of Personnel Management

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Purpose

The purpose of this plan is to develop, for position vacancies at all levels, applicant pools that include qualified Hispanic candidates. Generally the Plan focuses on three strategies: recruit openly, nurture academic relations, and develop employees.

OPM will recruit as broadly as required to ensure a diverse applicant pool, while providing current employees with as many advancement and development opportunities as possible.

Employment

1. OPM will recruit from all sources, for all position vacancies, including positions in the Senior Executive Service and managerial positions at GS-13-15, except when the Director approves a request to restrict eligibility to status candidates, Interagency Career Transition Assistance Program eligibles or OPM employees.

2. OPM will recruit at the entry level for positions covered by the Luevano consent decree, except when the Director approves a request to recruit at higher grade levels.

3. OPM will establish an intern program to recruit and develop groups of professional and administrative trainees who are willing to relocate to OPM field locations or Headquarters.

4. OPM will monitor monthly the composition of its workforce, by Office.

5. OPM will establish and recruit from all sources a full-time Hispanic Employment Program Manager in Washington,

DC. In addition, OPM will designate one employee in areas where OPM has a high concentration of employees, to serve as Hispanic Employment Program Managers on a collateral duty basis. The HEP managers will establish contacts with the Hispanic media in these and other locations and, as appropriate, use paid advertising to assist in the recruitment for occupations with significant hiring opportunities.

6 OPM will establish an annual budget for recruitment literature, limited travel to recruitment sites and a contract for Hispanic Association of Colleges and Universities (HACU) National Interns.

Student Employment and Academic Relations

7 OPM's HEP managers will establish contacts and maintain relations with local high schools and institutions of higher learning that are members of HACU. HEP managers will recommend appropriate ways OPM can help schools with significant Hispanic enrollments.

8 OPM will use high school and college cooperative education opportunities to bring students from diverse backgrounds into the workforce and establish eligibility for non-competitive conversion. OPM will recruit Hispanic students and recent graduates who are interested in participating in student employment programs at OPM, especially the Presidential Management Intern Program and the Federal D.C. Summer Employment Initiative.

Career Development

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9 OPM will invite its employees to apply directly for career development programs, in addition to being nominated by managers. OPM will establish formal mentoring programs and ask OPM employees to volunteer to serve as mentors for graduates of career development programs, and other interested OPM employees. OPM will ensure that Hispanic employees at grades GS 13, 14, and 15 receive full consideration for developmental opportunities to enhance their leadership skills and for career advancement.

10 OPM will develop a program for its new supervisors to raise awareness of their roles and responsibilities for meeting OPM's strategic goals, including the recruitment and development of a diverse workforce. OPM will arrange for periodic meetings with all OPM supervisors to review developments and progress related to OPM's strategic goals.

OPM will incorporate the specific elements of this plan into its Affirmative Action Plan and its Federal Equal Opportunity Recruitment Plan.

- Download plan as a WordPerfect for Windows Document
- Download plan as an Adobe Acrobat PDF Document

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Page created 30 November 1998

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U. S. Office of Personnel Management

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September 1997

1. Support and implement the White House Initiative on Educational Excellence for Hispanic Americans.

It is especially critical during this time of downsizing that Federal agencies recognize that the education pipeline will continue to be a major source of our future workforce. Developing approaches to implement Executive Order 12900, the *White House Initiative on Educational Excellence for Hispanic Americans*, is one means of addressing our future workforce needs. The Office of Personnel Management (OPM) will issue guidance on recruiting strategies for Hispanic students. We will work with Federal agencies in identifying job opportunities and those Hispanic-serving institutions whose curricula prepare students to fill those jobs.

2. Provide employment information to students, faculty, and the Hispanic community.

Agencies can reach out to broader numbers of candidates for our future workforce by sponsoring Federal Employment Information (Touch Screen) Computer kiosks and placing them in Hispanic-serving institutions that feed your occupations. These computers provide federal *job vacancies nationwide*, and are updated daily. OPM has taken the lead in placing Federal Employment Information (Touch Screen) Computer kiosks in five Hispanic Association of Colleges and Universities (HACU) institutions and is working with other agencies to do the same.

3. Use the Presidential Management Intern (PMI) Program for recruiting, converting and advancing Hispanic college graduates.

OPM will expand the Presidential Management Intern (PMI) Program recruitment activities, to include more of those institutions graduating significant numbers of Hispanics. Our purpose is to expand the diversity of academic disciplines and the racial and ethnic background of our applicants. We will visit more Hispanic-serving institutions as a way of heightening the interest in those schools of the PMI program.

4. Participate in the HACU National Internship Program.

The intern program is a paid 10-week program that is administered by the

Hispanic Association of Colleges and Universities (HACU) for Federal agencies. Through this program, participating agencies are able to hire students for summer internships as part of the Student Employment Program. HACU interns are college students who are active in academic and community activities, possess grade point averages of 3.0+ and are recommended by their advisors or professors.

OPM will provide assistance to HACU in coordinating the placement of interns across Federal agencies. We will work with Federal agencies to identify occupational needs and work with HACU to identify available students.

5. Use the flexibilities of the Student Employment Program to bring Hispanic students into federal shortage category occupations, as well as other occupations.

Agencies are encouraged to use the Student Employment Program appointing authorities to develop additional student, intern, or fellowship programs to meet their specific business needs. OPM has consolidated the Cooperative Education, Stay-in-School, Federal Junior Fellowship, and Summer Aid Programs into a more effective new program so agencies can tailor programs to attract Hispanic students enrolled in: high school, vocational and technical, associate degree, baccalaureate degree, graduate degree, and professional degree programs.

6. Develop mentoring programs to motivate young people to pursue higher education and Federal careers.

Hispanic youth could greatly benefit from the advice and direction provided to them by Federal mentors. A mentoring experience can have a positive, long-term impact on students both personally and in their career development. There is a great need for role models and "shadowing opportunities."

7. Promote participation of Hispanic employees in career development programs.

Agencies are encouraged to develop, implement, and monitor career development programs and intergovernmental rotational programs for senior executives and mid-level management (e.g. general management occupational series) and professional/technical occupations so that the pool of candidates includes a representative number of Hispanics.

8. Assess agency needs for full-time, part-time, or collateral Hispanic Employment Program (HEP) Managers and assure that HEP Managers are integral members of the agency's management team.

Agency executives and managers are urged to work closely with the Hispanic Employment Managers to develop recruitment strategies for Hispanics and to explore career development opportunities for those Hispanics already on board. We will assist agencies in identifying best practices in this area.

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9. Incorporate these activities into your agency's Federal Equal Opportunity Recruitment Program (FEORP) accomplishment report to OPM.

OPM will continue to report agencies' specific progress and successes in recruiting, employing, and training Hispanics in our Annual Report to Congress on the Federal Equal Opportunity Recruitment Program (FEORP).

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Updated 9 December 1998

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'VICE PRESIDENT GORE EMBRACES REPORT FROM TASK FORCE AND TAKES STEPS TO INCREASE EMPLOYMENT OF PEOPLE WITH DISABILITIES
December 14, 1998

Today, the Vice President accepted "Re-charting the Course," the first report of the Presidential Task Force on Employment of Adults With Disabilities. According to the 1998 Harris Survey of Americans with Disabilities, less than 30 percent of working-age adults with disabilities are employed full or part-time, although 75 percent indicate they would prefer to work. The Vice President commended the Task Force for its powerful and thorough recommendations to create critically needed employment opportunities for people with disabilities. He applauded these proposals and called on the Administration to implement specific recommendations right away.

The Vice President called on the Administration to immediately implement specific recommendations of the Task Force report. While many of the recommendations made by the Task Force will require legislation and new funding, the Vice President took steps to immediately implement some of the Task Force's recommendations. The Vice President:

- **Asked the Office of Personnel Management (OPM) to develop a model plan to increase representation of adults with disabilities in the Federal workforce.** To help address this problem, the Vice President asked OPM to develop -- by March 1, 1999 -- a model plan for all federal agencies to increase representation of adults with disabilities in its workforce. This plan will include ways to involve more students with disabilities in federal internship programs, give employees with disabilities options to enhance their leadership skills and advance their careers, and recruit more people with disabilities at all levels of the federal workforce.

- **Requested that the Small Business Administration (SBA) launch a new outreach campaign to help Americans with disabilities start their own businesses.** People with disabilities have higher rates of self-employment and small business experience than the rest of America, yet they too often do not know what assistance they may be eligible for. The Vice President asked SBA to begin implementing right away the Task Force's recommendation to educate people with disabilities who want to start their own business. This major nationwide campaign will provide greater access to entrepreneurial development programs, financial assistance incentives, and government contracting opportunities, including the Section 8 (a) program, HUB Zones, the small disadvantaged business program.

- **Gave the Hammer Award to the Computer/Electronic Accommodation Program (CAP) and committed the Administration to assuring that all Federal employees have access to accessible technology.** The Vice President gave the Hammer Award to the Department of Defense's CAP program, which provides assistive technology to DoD employees with disabilities to ensure that they have the telecommunications and computer technology they need to perform their jobs. Since its inception, CAP has filled over 14,500 requests for accommodations. The Vice President also committed the Administration to assuring the Federal government is a model employer by finding ways to assure that these kinds of assistive technology programs are available to all Federal employees.

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- **Reiterated the Administration's commitment to passing a strong enforceable patients' bill of rights to improve the quality of care for people with disabilities.** The Vice President also reiterated that a top priority when Congress returns should be to pass a strong enforceable patients' bill of rights that includes critical patient protections for people with disabilities, including access to the specialists they need, continuity of care protections to assure people with disabilities do not have an abrupt disruption in care, and an independent external appeals process to assure people with disabilities can address grievances with health plans.

These efforts build on the Administration's longstanding commitment to improving opportunities for people with disabilities. The Administration has demonstrated a longstanding commitment to improving health, employment, and other opportunities for people with disabilities. The Administration fought hard for the Health Insurance Accountability Act of 1996, which helps people with disabilities keep health insurance by limiting preexisting condition exclusions; the Mental Health Parity Act of 1996, which limits insurance discrimination based on mental illness; and a new state option in the Balanced Budget Act of 1997 that helps people with disabilities to purchase Medicaid when they return to work. The Administration also fought hard for the Jeffords-Kennedy legislation in last fall's budget negotiations that would eliminate some of the health insurance barriers to help people with disabilities return to work and has made a commitment to saving Social Security First. The Vice President is also hosting a summit on January 12th on "21st Century Skills for 21st Century Jobs" which will bring together leaders from business, education, labor, and government to discuss how to help working Americans --including those with disabilities -- get the skills needed to get, keep, and succeed in good jobs.

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The Task Force recommends that:

The President direct Office of Personnel Management and other appropriate agencies to explore measures aimed at eliminating the stricter standards currently applied to adults with psychiatric disabilities and to extend to these individuals opportunities currently available to individuals with mental retardation and severe physical disabilities.

There are three excepted appointment authorities explicitly applicable to individuals with disabilities. Excepted appointing authorities exempt individuals from the competitive appointment process. Schedule B excepted appointments for individuals with psychiatric disabilities are more stringent than Schedule A excepted appointments.

The Task Force recommends that:

The President direct agencies and departments to implement a model plan to be developed by the Office of Personnel Management to increase the representation of adults with disabilities in the federal workforce.

While the federal government has made significant hiring gains, the percentage of adults with severe disabilities in the federal workforce still lags far behind their availability. The Task Force urges the President to direct the Office of Personnel Management to develop a model plan to increase representation of adults with disabilities in the federal workforce that: 1) helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs; 2) encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers; 3) urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including at the GS-13 to 15 and senior executive service levels, and 4) collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce.

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft	Draft Management Directive 715 (52 pages)	06/24/99	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
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FOLDER TITLE:
Disability-Management Directive

Richard Stalcup

rx41

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

MANAGEMENT DIRECTIVE 715

1. **SUBJECT.** Federal Affirmative Programs of Equal Employment Opportunity.

2. **PURPOSE.** To prescribe to Federal agencies instructions, policies, procedures, guidance, and formats for the design, development, and maintenance of:

   a. Equal employment opportunity/affirmative employment programs;
   b. Multi-year (three year cycles) affirmative employment plans; and
   c. Annual affirmative employment progress reports (including plan modifications when required).

3. **EFFECTIVE DATE.** [date]

4. **ORIGINATOR.** Equal Employment Opportunity Commission (hereinafter EEOC), Office of Federal Operations, Federal Sector Programs.

5. **OBSOLETE DATA.** This Management Directive supersedes three EEOC Management Directives. Parts A and C and the appendices supersede EEO MD-714, dated October 6, 1987. Parts B and C and the appendices supersede EEO MD-712 and EEO MD-713, dated March 29, 1983 and October 6, 1987, respectively.

6. **AUTHORITY.** This Directive is prepared pursuant to the EEOC's authority under Section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16; Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791; Reorganization Plan 1 of 1978, issued pursuant to 5 U.S.C. § 901 *et seq.*; Executive Order 11478 (3 C.F.R. 1966-1970 Comp., p. 803), as amended by Executive Order 12106 (3 C.F.R. 1978 Comp., p. 263); Executive Order 13087 (63 Fed. Reg. 30097, May 29, 1998); and 29 C.F.R. Part 1614.

INTRODUCTION

Both Title VII of the Civil Rights Act of 1964 and the Rehabilitation Act of 1973 require federal agencies to make affirmative efforts to prevent and correct discrimination and to open employment opportunities for all qualified people. Section 717 of Title VII, which bans discrimination based on race, color, sex, national origin, and religion, requires each agency to "maintain an affirmative program of equal employment opportunity for all . . . employees and applicants for employment." Section 501 of the Rehabilitation Act requires that each agency submit to the EEOC "an affirmative action program plan for the hiring, placement, and

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advancement of individuals with disabilities," which, among other things, provides adequate employment opportunities for such individuals and describes the ways in which an agency will meet the needs of its employees with disabilities.

Certain fundamental principles apply to agency programs under both of these laws. First, both laws were passed in response to Congressional findings that federal employers' actions had, even if unintentionally, resulted in substantial discrimination against, and exclusion of, minorities, women, and people with disabilities.[1]

Second, although there has been improvement over time, the problems Congress intended to address persist in the work force. For example, women and minorities continue to be concentrated at the lower grade levels, and their representation still falls as grade level rises. In addition, people with specified targeted disabilities comprised only 1.16% of the federal work force in Fiscal Year 1997 -- a decline of more than 13% from their representation of 1.24% of the federal work force in Fiscal Year 1993.[2] Moreover, pursuant to ~~in~~ complaints brought by federal employees, agencies are still frequently found to have discriminated against minorities, women, and/or people with disabilities.

Agency affirmative employment and affirmative action programs remain a critical tool to address work force conditions that limit opportunities for minorities, women, and people with disabilities. This is because both Title VII and the Rehabilitation Act anticipate that agencies will do more than simply respond when evidence of discrimination is brought to their attention after the fact. Under both laws, agencies are expected to take lawful proactive steps to promote equal employment opportunity, and to diagnose and respond to potential problems of exclusion *before* those problems develop into discrimination as a legal matter. Both laws also recognize that many of the actions taken to open opportunities - among them trying to attract the broadest possible pools of qualified applicants and removing barriers that restrict the ability of employees to achieve their fullest potential - will also improve the quality of the work force and the functioning of the government overall.

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[1] *See, e.g.*, H.R. Rep. No. 238, 92d Cong., 1st Sess. 22, 23 (1971) (setting forth data showing exclusion of women and minorities); S. Rep. No. 415, 92d Cong., 1st Sess. 14 (1971) (noting need for corrective measures to address systemic barriers disadvantaging minorities and women); S. Rep. No. 318, 93rd Cong., 1st Sess. ___ (1973), *reprinted in* 1973 U.S.C.C.A.N. 2122 (stating that hearings on vocational rehabilitation showed that federal employment policies for individuals with disabilities "continued to be found wanting").

[2] *See generally* EEOC Annual Report on the Employment of Minorities, Women, and People with Disabilities in the Federal Government, Fiscal Year 1997.

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Toward these ends, this Directive sets forth agency obligations and explains how to do the following:

- **Assure an adequate commitment to agency programs.** Agencies must devote sufficient resources to maintain their programs and must ensure that their personnel are adequately trained. (*See* pp. __-__, *infra.*)

- **Conduct work force analyses.** Agencies must systematically monitor the participation of minorities, women, and people with disabilities in their work forces and track the effects of specified employment decisions on these groups. (*See* pp. __-__, *infra.*)

- **Evaluate agency policies and practices.** Guided by the results of their work force analyses, ~~If an agency's work force analyses show substantial disparities in participation rates or in the impact of particular types of employment decisions,~~ agencies are to review relevant policies and practices to assess whether those policies discriminate against, or arbitrarily limit employment opportunities for, any work force group~~minorities, women, or people with disabilities~~. Agencies must ~~also review specified policies to evaluate their impact on people with disabilities, and must~~ take appropriate action to eliminate or modify any artificial barriers that they find. (*See* pp. __-__, *infra.*)

- **Based on these analyses and evaluations, take action as necessary to open employment opportunities, including:**

  - engaging in outreach and targeted recruitment to reach the broadest possible pool of qualified applicants and taking steps, as appropriate, to improve the skills of those not yet qualified for particular jobs (*see* pp. __-__, *infra*);

  - improving training and employee development programs for all employees, including employees at the lower grade levels (*see* pp. __-__, *infra*);

  - setting goals for the employment of individuals with the targeted disabilities identified in this Directive (*see* pp. __-__, *infra*);

  - adopting procedures to facilitate granting requests for reasonable accommodation by individuals with disabilities, including written procedures for handling such requests (*see* pp. __-__, *infra*);

  - using excepted appointing authorities for specific groups of individuals with disabilities and~~/or~~ developing other mechanisms to increase the

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~~exclusion of people with disabilities in the group from which regular competitive appointments are made expand employment opportunities for individuals with disabilities~~ (*see* pp. __-__, *infra*); and

- where warranted under strict scrutiny analysis, considering taking race, national origin, or gender into account in selection decisions. Such decisions will be warranted where there is strong evidence that an agency has engaged in employment discrimination and has yet to correct the effects of that discrimination, or where there is an operational need for diversity that has not been met by race-neutral means. Section V sets forth additional questions that agencies should ask in making this determination. (*See* pp. __-__, *infra*.)

- **Prepare required records and reports.** Agencies and identified components of those agencies must maintain records and report to the EEOC on a specified timetable about the results of their work force analyses, and about their plans and actions to implement their affirmative programs.

COMPONENTS OF AGENCY PROGRAMS

I. MAKING A COMMITMENT TO THE AFFIRMATIVE EMPLOYMENT PROGRAM[3]

All agencies must commit sufficient resources to maintain active and up-to-date affirmative employment programs under both Title VII and the Rehabilitation Act. Moreover, the commitment to affirmative employment principles must start at the top of the agency.

To make an adequate commitment to their affirmative employment programs, agencies must undertake the analyses and prepare -- and make available to employees -- the multi-year and annual reports required by this Directive. Agencies must also do at least the following.

A. Issue and Disseminate a Written Equal Employment Opportunity Policy and Accountability Statement

A written policy statement is a crucial internal guidance document for the affirmative employment program. The policy statement must:

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[3] The language of Title VII, which addresses affirmative "employment" programs, differs from the language of the Rehabilitation Act, which requires agencies to maintain affirmative "action" plans. For ease of reference, this Directive uses the terms "affirmative employment programs" or simply "affirmative programs" where it jointly discusses agency programs under both laws.

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1. Describe the agency's legal obligations and commitment to equal employment opportunity and affirmative employment;

2. Prohibit all forms of unlawful discrimination in the workplace, including retaliation against employees or applicants because they have opposed an unlawful employment practice or participated in any way in a proceeding concerning employment discrimination;

3. Establish procedures to prevent address incidents of harassment, ~~before they amount to a violation of federal law;~~ as well as procedures to correct any harassment that occurs before it amounts to a violation of federal law;

4. Set forth the agency's EEO complaint processing procedures; and

5. Explain that managers, supervisors, EEO officials, and personnel officers will be held accountable for the implementation and management of the EEO and affirmative employment programs.; ~~and~~

~~6. Emphasize that it is unlawful to retaliate against employees or applicants because they have opposed an unlawful employment practice or participated in any way in a proceeding concerning employment discrimination.~~

This policy statement should be reissued at least every three years. If the agency head changes within that period, (s)he should reissue the policy document.

The policy statement should be disseminated to all agency employees, for example ~~EEO personnel and to all managers and supervisors;~~ through employee handbooks, intranet services, or the agency's website. In addition, ~~all employees should have access to the policy statement and to the plans and analyses prepared under this Directive. The~~ an agency should make the policy statement and the plans and analyses prepared under this Directive ~~should make these documents~~ available in designated locations such as its library, its EEO office, and/or its personnel offices.

B. Appoint a Senior Official to Manage the Program

The agency head must appoint a senior manager to serve as the chief EEO official and to take charge of the agency's affirmative programs under both Title VII and the Rehabilitation Act. The official must be objective and unbiased and be in a position to conduct ongoing independent reviews of agency personnel practices and actions. (S)he must have the same level of authority as other senior agency managers; (s)he also may not be the official responsible for executing and approving personnel actions.

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Agencies should also evaluate their need for additional managers who can help to implement their affirmative programs. Such managers could, for example, advise an agency on means to improve its outreach and targeted recruitment, or serve as liaisons with particular work force groups within the agency's existing work force.

C. Provide Adequate Resources

Agencies must establish, and allot adequate resources to, complaints processing and affirmative employment units. These units must be adequately staffed, and employees must be qualified and knowledgeable. Additionally, agencies must provide sufficient space and administrative, analytical, or information systems support for all non-discrimination and affirmative employment functions.

D. Ensure the Quality and Efficiency of EEO Complaint Processing

Agencies must ensure that the EEO complaint process is efficient and effective. Agencies must review each stage of the complaints process to make certain that complaints are properly and timely handled and tracked and that results are consistent with applicable laws and regulations. Agencies should also evaluate whether EEO offices maintain appropriate records and have access to all relevant EEOC and agency regulations, policies, and procedures. Agencies must inform all agency employees about complaint procedures and the locations of EEO counselors.

E. Provide Training and Other Support Necessary to Ensure Implementation of the Affirmative Employment Program

Training should be conducted as necessary to familiarize all employees with their rights and responsibilities under the EEO laws. In particular, adequate training and technical assistance must be provided to all management and supervisory employees, as well as others involved in personnel decisions, to ensure that they are knowledgeable about, and able to fully implement, the agency's non-discrimination and affirmative employment obligations. This includes training on agency policies and programs for providing reasonable accommodation to employees and applicants with disabilities.

II. CONDUCTING WORK FORCE ANALYSES

The first step in developing an affirmative employment program is to monitor the participation of minorities, women, and people with disabilities in agency work forces. Through the work force analyses set forth below, agencies can assess the representation of minorities, women, and people with disabilities in various occupational categories, as well as at different grade levels, and can evaluate the rates at which these groups are selected for particular employment opportunities.

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In general, these analyses are a starting point for an agency to determine whether ~~The fundamental question underlying each of these analyses is the following: is~~ the rate at which minorities, women, and people with disabilities are represented in the work force or selected for particular employment opportunities is the rate the agency would expect given the presence of those groups among those who are available and qualified for the jobs. ~~If not -- if there is~~ A substantial disparity between actual and expected representation is a signal that something in an agency's practices may be artificially limiting employment opportunities for particular work force groups. ~~then agencies must investigate to assess why the disparity exists, and must take appropriate action to address any problems that are found.~~

In some instances -- and particularly with regard to the representation of people with disabilities -- the data are unavailable to make some of these determinations. In addition, none of these analyses are designed to identify when discrimination exists as a legal matter. Some of the additional questions necessary to make that determination are set forth in Section V, *infra*. Instead, these analyses provide a "red flag" of potential problems. ~~that *something* in an agency's practices may be limiting employment opportunities for minorities, women, and/or people with disabilities.~~ It is only through further investigation that agencies will be able to identify the causes of any limitations that exist, and will be able to determine what responsive action, if any, is required.

A. Obtaining and Handling Information on Agency Employees

1. Title VII

Title VII sets ~~There are~~ no explicit limits on an agency's ability to request and maintain information about the race, national origin, or gender of its employees or applicants. For purposes of these work force analyses, therefore, agencies may request employees and/or applicants to provide demographic information. Agencies may use Standard Form 181, issued by the Office of Personnel Management ("OPM"), or other appropriate forms approved by the Office of Management and Budget, to collect such information from employees. ~~Agencies may also obtain~~ Demographic data on the federal work force are also available in ~~from~~ the ~~Civilian~~ Central Personnel Data File, which is an automated file compiled from personnel action information submitted by agencies to OPM.

In order to prevent misuse of this information, agencies should do the following:

- **Make responses voluntary.** Agencies should notify employees and applicants that response to requests for information on race, national origin, or gender is voluntary and that the information will be used only for statistical purposes or to implement the agencies' affirmative employment program responsibilities.

- **Keep information separate.** Agencies should keep information on a person's race, national origin, or gender separately from that person's employment

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application and personnel file. Decision makers should not have access to this information unless it is lawful to take the information into account in making a selection decision.

2. Rehabilitation Act

a. Limits on requests for information

The Rehabilitation Act explicitly limits the circumstances in which agencies may request information about the disabilities of their employees or applicants.[4] Consistent with those limitations, agencies may, for purposes of these work force analyses, identify individuals with disabilities in any of the following ways:

- Agencies may rely on observation of visually apparent disabilities or on information that individuals with disabilities choose to disclose about the existence of hidden disabilities.

- Agencies may use information obtained from approved government forms which invite federal employees to self-identify as individuals with disabilities.[5] ~~Standard Form 256, the "Self-Identification of Handicap" form (SF 256) issued by OPM and intended to be given to each federal employee as (s)he enters the work force. A copy of SF 256 is attached as Appendix __.~~

- Agencies tracking applications from individuals with disabilities or considering the use of excepted appointing authorities or other affirmative action programs may invite applicants to indicate whether and to what extent they have the types of disabilities that are covered by the program at issue.

Whenever an agency invites individuals to provide information about their disabilities to compile their work force analyses or for other affirmative action purposes, the agency must clearly notify the applicants and employees that:

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[4] For a discussion of those ~~limitations circumstances~~, *see* 29 C.F.R. pt. 1630 app. §§ 1630.13, .14 (1998); *ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (10/95); and *EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities*, No. 915.002 (3/25/97) at pp. 15-17. All EEOC guidance cited in this Directive may be found on the EEOC's website at www.eeoc.gov.

[5] ~~The government currently uses Standard Form 256, the~~ "Self Identification of Handicap" form issued by OPM. A copy of SF 256 is attached as Appendix __.

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- response to the invitation is voluntary and refusal to provide the information will not lead to any adverse employment consequences;

- the information will be kept confidential and used only for affirmative action purposes; and

- individuals may self-identify at any time during their employment, and failure to provide the information initially will not excuse the agency from Rehabilitation Act requirements.

Further, agencies may request only the information that is necessary to achieve the particular purpose justifying the request. Thus, for example, an agency may not request that individuals with disabilities give their names if the agency is seeking merely aggregate data (*e.g.*, representation of people with disabilities in the applicant pool) and does not need to identify specific individuals.

b. Limits on disclosure of information

Agencies must keep medical and disability-related information about individual employees and applicants confidential in accord with EEOC regulations. Such information must be collected and maintained on separate forms and kept in separate files. It may be disclosed *only* as follows:

1. supervisors and managers may be informed about necessary work restrictions or accommodations;

2. first aid and safety personnel may be told if the disability might require emergency treatment;

3. government EEO officials investigating compliance with the Rehabilitation Act should be provided information on request;

4. ~~state~~ workers' compensation offices, ~~state~~ second injury funds, and workers' compensation insurance carriers may be provided information as required by relevant ~~state~~ laws; and

5. agencies may use the information for insurance purposes.[6]

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[6] *See* 29 C.F.R. pt. 1630 app. § 1630.14(b), (c) (1998); *ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (10/95) at p. 21. There may be other, very limited, situations in which federal law directs disclosure of disability-related information to certain agency supervisors for specific purposes. *See* Executive Order 10450, 18 Fed. Reg. 2489 (Apr. 27, 1953) (requiring disclosure of disability-related

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In addition, for affirmative action purposes alone, medical and disability-related information may be disclosed to managers and others involved in a selection process, as well as to those responsible for the agency's affirmative action program, ~~employment activities~~, where, for example, the information indicates that an applicant may be eligible for excepted appointment. ~~or other affirmative action benefits.~~ Moreover, disability-related information may be used to manage, evaluate, and report on EEO and affirmative programs; data generated from government forms ~~from SF 256~~ may, for example, be provided to those who conduct the work force analyses required by this Directive.

To preserve maximum confidentiality, these disclosures should be restricted to as narrow a group as possible consistent with serving the affirmative action purposes at issue. Moreover, all individuals to whom information is disclosed must be informed about confidentiality requirements and instructed not to disclose the information further than necessary to satisfy those purposes.

B. Work Force Analyses

For each of their work force analyses, ~~Except as otherwise noted below,~~ agencies should count all permanent employees -- that is, any member of the permanent work force serving under either a competitive or excepted appointment, including permanent employees who work full-time, ~~permanent~~ part-time, or ~~permanent~~ intermittent work schedules. For individuals with disabilities, this count should include all employees serving under the excepted appointing authorities for individuals with specified types of disabilities. Except as explicitly required by specific subsections below, agencies need not include employees serving under temporary appointment in their work force analyses. In analyzing its total work force representation, however, each agency should state the percentage of that work force that is comprised of temporary employees.

For the Title VII portion of these analyses, agencies should track Whites, Blacks, Hispanics, Asian American/Pacific Islanders, and American Indians/Alaskan Natives, further broken down between men and women.[7]

~~information about applicants for certain federal positions when necessary in the interests of national security).~~

[7] These racial and ethnic categories are subject to change based on the *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, 62 Fed. Reg. 58782, issued by the Office of Management and Budget on October 30, 1997. If these changes require modification to the requirements of this Directive, the EEOC will issue updated guidance. ~~as appropriate.~~

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The Rehabilitation Act portion of these analyses distinguishes between (a) targeted disabilities, and (b) all other reported disabilities. The targeted disabilities have been identified in prior EEOC Management Directives, and remain targeted for purposes of this Directive as well. These disabilities are currently identified by their code numbers on ~~along with the codes that identify them on~~ Standard Form 256 (attached), and, for reporting purposes, are: deafness (16 and 17); blindness (23 and 25); missing extremities (28 and 32 through 38); partial paralysis (64 through 68); complete paralysis (71 through 78); convulsive disorders (82); mental retardation (90); mental illness (91); and distortion of limbs and/or spine (92). The reported disabilities are those *other* impairments that meet the definition of disability as set forth in the Rehabilitation Act, and include those disabilities (beyond those identified as targeted disabilities) that are listed on SF 256.[8]

While each agency's affirmative program should address the needs of all employees and applicants with disabilities, this Directive requires separate reporting on those with targeted disabilities because individuals with these disabilities have traditionally encountered especially significant barriers to employment. Therefore, for each of the analyses listed below -- and wherever the work force analyses require information on individuals with "disabilities" -- agencies should track targeted and other reported disabilities separately.

The groups for whom tracking must be done, under both Title VII and the Rehabilitation Act, are referred to collectively as the "work force groups." Each group individually, *e.g.*, Hispanics ~~men~~, Asian women, or people with disabilities, is referred to as a "work force group."

Except as otherwise explained below, the same analysis is required under Title VII and the Rehabilitation Act. Unless otherwise noted, moreover, agencies should report the results of these work force analyses to the EEOC.

1. Work Force Demographics

a. Total Work Force Representation

(i) Title VII

Under Title VII, agencies should compare representation of each work force group in its total work force to representation of that group in the Civilian Labor Force ("CLF"). The EEOC has provided agencies with data, derived from the 1990 CLF, needed to make these comparisons. It will provide updated CLF data upon completion of the next decennial Census.

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[8] SF 256 is subject to change. Should a new government form be issued to collect disability data, the EEOC will issue updated guidance as appropriate.

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Total agency work force representation should be compared with national CLF percentages. Work force representation in regional or field offices should be compared to representation in the national, regional, state, local, or Metropolitan Statistical Area (MSA) CLF that best reflects the actual recruitment area for the majority of the office's non-clerical jobs.

Under Title VII, this analysis serves purely informational purposes for the agency, and will help the EEOC to prepare its required annual reports to the President and Congress. Comparisons involving the total work force should not be used for decision making purposes under Title VII.

(ii) Rehabilitation Act

There are currently no comprehensive CLF or other data that track the participation of individuals with disabilities in the U.S. labor force. ~~As a result, in order to permit useful analyses of agency work forces,~~ The EEOC has previously estimated that 5.95% of the available work force is comprised of individuals with targeted disabilities.[9] This Directive does not, however, require agencies to use this estimate in evaluating the representation of people with disabilities in their work forces. First, this estimate is based on data that substantially predated enactment of the Americans with Disabilities Act, and thus may well understate the current availability of people with disabilities in the labor force at large. Second, the federal government is developing new estimates, based on more current and comprehensive data, that will enable agencies to compare actual and expected representation of individuals with disabilities with greater precision than is now possible. ~~This estimate is approximate, and should not be used to assess availability for any particular job. Nonetheless, by comparing the representation of individuals with targeted disabilities in their overall work forces to this 5.95% availability figure, agencies will gain a reasonably reliable sense of whether they are providing adequate employment opportunities for individuals with targeted disabilities.~~

The EEOC will issue updated guidance once new estimates have been derived of the availability of people with disabilities in the labor force. Until then, ~~For individuals with other reported disabilities,~~ agencies should ~~simply~~ record the representation of people with reported and targeted disabilities in their own work forces. No comparisons are required. Agencies are, however, required to set goals for the employment of individuals with targeted disabilities that will enable them to evaluate their progress in opening employment opportunities for such individuals. *See* Section IV(B)(1), *infra*.

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[9] *See, e.g.*, EEOC Annual Report on the Employment of Minorities, Women, and People with Disabilities in the Federal Government, Fiscal Year 1997, at p. 251.

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b. Work Force Representation by Occupational Category

(i) Title VII

CLF data are categorized by occupation, and federal jobs can be matched with their corresponding CLF occupation(s). In addition, OPM has further classified all federal jobs -- as well as the comparable CLF occupation(s) -- into one of six occupational categories: Professional, Administrative, Technical, Clerical, Other, and Blue Collar ("PATCOB" categories). As detailed below, agencies must identify the PATCOB category in which each of their jobs belongs and then make certain comparisons based on those categorizations.[10] The EEOC has previously provided to agencies data that identify CLF availability for each work force group in each of the PATCOB categories.

Some of these comparisons require agencies to identify their "major occupations." ~~within the occupational categories.~~ This term means those agency occupations that are heavily populated and that have advancement potential to upper level positions. ~~The EEOC has no specific numerical definition of "major occupations." However,~~ Agencies may assume that such occupations include any critical agency function performed by 100 or more employees. In addition, agencies should treat as "major occupations" any positions, regardless of the number of employees who perform them, in which incumbents are expected to make significant policy or administrative decisions on behalf of the agency.

The occupational comparisons required by this section will not be sufficient for agencies to evaluate whether discrimination exists. Instead, substantial disparities revealed by these comparisons are a "red flag" that there may be *some* limitation on the employment opportunities of a particular work force group ~~minorities and women~~. The agency must then investigate the reason(s) for the disparities.

The occupational comparisons required under Title VII are as follows. For an agency's multi-year plan, these comparisons should be done for each of the most recent three fiscal years:

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[10] These comparisons are intended to evaluate whether there are barriers that limit the broadest possible utilization of qualified people in all work force groups. As a result, and because people currently employed in other types of jobs may often be qualified to perform the federal sector jobs at issue, these analyses should not, outside the Professional category, be restricted to comparisons between those in a specific agency job and those already performing that job in the labor force at large. Thus, some of these comparisons rely on ATCOB data from the CLF.

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- **ATCOB/ATCOB comparisons.** Agencies should:

  1. cumulate the jobs in their work forces that fall within each of the ATCOB -- Administrative, Technical, Clerical, Other, and Blue Collar -- categories;

  2. calculate the percentage representation of each Title VII work force group (e.g., Hispanic men and Asian women) in each of those categories;

  3. compare the percentage representation of each of the work force groups in each of the agency's ATCOB categories with the representation of that group in the same ATCOB category in the CLF. *See* Appendix __.

  This analysis applies only to the ATCOB categories. Agencies should not cumulate or evaluate jobs in the Professional category for this portion of their analyses. Because professional jobs typically require specified licenses or education, availability for each professional job will be measured individually.

  Agency-wide plans, as well as those filed by major operating components or military commands that have nationwide operations, should use the national CLF in calculating representation in each CLF ATCOB category. Regional and field offices should use the geographic CLF that best reflects their actual recruiting area for the majority of their jobs in each occupational category.

- **Major occupation/ATCOB comparisons.** Agencies should compare the representation of the Title VII work force groups in each non-professional major occupation to the representation of the groups in the relevant Administrative, Technical, Clerical, Other, and Blue Collar category in the CLF. *See* Appendix __. Again, representation in an agency's professional occupations should *not* be compared to representation in the CLF Professional category as a whole.

  Agency-wide plans, as well as those filed by major operating components or military commands that have nationwide operations, should use the national CLF in comparing total representation in each major occupation to the appropriate ATCOB CLF category. Regional offices and field installations should use the geographic CLF that best reflects their actual recruiting area for each major occupation.

- **Professional occupation/professional occupation comparisons.** The third step is to compare the representation of each Title VII work force group in each professional occupation to the representation of that group in the corresponding occupation(s) in the CLF. *See* Appendix __. The EEOC has provided data to

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each agency that state the levels of CLF representation for each work force group for each federal occupation in the Professional category.

These data state availability for professional jobs on a nationwide basis. If agencies wish to show that certain professional jobs cannot be recruited nationally, they may contact the EEOC. In such circumstances, the EEOC will provide data that more closely reflect the actual recruiting area for the position.

(ii) Rehabilitation Act

Because there are no occupation-specific data on individuals with disabilities, this Directive limits the occupational analyses that agencies must make. To provide a baseline for understanding the types of jobs in which individuals with disabilities are employed, agencies should calculate the (a) representation of individuals with disabilities in each of the agency's ATCOB categories; and (b) representation of such individuals in each professional occupation. No comparisons to other data are required for these purposes.

c. Work Force Representation by Grade

Grade level analyses will reveal whether certain work force groups are disproportionately concentrated at particular grades. To make this determination, agencies must calculate, for each of the most recent three fiscal years:

- for each of the PATCOB categories, the representation of each work force group at each grade level (*e.g.*, that people with targeted disabilities comprise 1% of agency Administrative employees at the GS 13 level);

- for the work force as a whole, the percentage of the agency's minorities, women, and people with disabilities that is employed at each grade level (*e.g.*, that 5% of an agency's Hispanic employees are employed in jobs at the GS 14 level) .

For this analysis, agencies must also track separately the representation of each work force group in temporary jobs at each grade level. For these purposes, temporary workers are those who have been employed under temporary appointing authorities at any time during the fiscal year being analyzed. Employees with disabilities who are serving under excepted appointing authorities specifically for people with disabilities should continue to be counted as permanent employees. *See* Appendix __.

Grade levels are those reflected in the General Schedule and run between grade 1 and grade 15; analyses must also be done of representation in the Senior Executive Service. Other pay levels may be substituted when appropriate.

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2. Effects of Employment Decisions

a. Recruitment and Accessions

(i) Accessions

Agencies must analyze their accessions for each of the most recent three fiscal years. Accessions are personnel actions that add employees to an agency's work force. These include new hires, transfers from other agencies, or conversions from temporary to permanent appointment.

Under Title VII and for ATCOB jobs, agencies should compare the percentage that each Title VII work force group comprises of its accessions to the percentage representation of that group in the relevant ATCOB category. Agencies should separately track accessions for each professional occupation and should make comparisons to the comparable CLF occupation. These comparisons will help to determine whether members of each work force group are being hired at rates roughly consistent with their availability.

Because comparative data are unavailable, agencies should simply record the percentage that individuals with disabilities constitute of agency accessions in each ATCOB ~~occupational~~ category and in each professional occupation. *See* Appendix __.

(ii) Applicant flow data

Agencies are also advised to compile applicant flow data to evaluate their recruitment efforts and selection rates for each work force group. Where agencies are aware of the race, national origin, gender, or disability of ~~an~~ their applicants, they should calculate the percentage that applicants of that work force group ~~minorities, women, and/or people with disabilities~~ comprise of the applicant pool for each job. This information must be kept separate from the candidate's application and personnel file.

This Directive does not require that agencies create new records for this purpose. Instead, agencies should simply keep those materials (including resumes, personnel documents, and letters of inquiry) that they make or keep in the normal course of their recruitment and hiring processes. Agencies should maintain these records for the longer of one year or, where a complaint of discrimination has been filed, until final disposition of the complaint.

Where an agency compiles applicant flow data, it can compare the percentage of minorities and women in its applicant pool to the percentage of these groups in the relevant occupational and geographic CLF. Substantial disparities between these numbers are a signal that the agency's recruitment efforts may have been insufficient.

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Under both Title VII and the Rehabilitation Act, moreover, agencies should use any applicant flow data they compile to compare selection rates for each work force group. *See* Appendix __. Where selection rates differ materially for different work force groups, the agency should further investigate the practices or policies it uses to fill a position.

b. Promotions

~~Under both laws,~~ Agencies must do the following for all work force groups:

- Determine the number and percentages of promotions awarded to members of each work force group at grade groupings GS 1 - 4 and GS 5 - 8, and at individual grade levels from GS 9 through the Senior Executive Service;

- Compare those percentages to each group's percentage representation in the relevant grade level or grouping from which the promotions were made. *See* Appendix ___.

Agencies should conduct each of these analyses for each of the most recent three fiscal years and should include both competitive and career-ladder promotions.

If these analyses reflect substantial disparities in participation by any work force group, agencies should undertake additional analyses to help track the source of the imbalance. Agencies should analyze:

- **Time-in-grade.** By PATCOB category, agencies should evaluate whether the time served in grade prior to promotion is comparable for all work force groups. Thus, for each PATCOB category, agencies should determine the average time spent by male and female Whites, Blacks, Hispanics, Asian American/Pacific Islanders, and American Indian/Alaskan Natives, and by people with targeted and other reported disabilities, in the grades covered by jobs in that occupational category. ~~grade groupings GS 1 - 4 and GS 5 - 8, and in each grade level from GS 9 through the Senior Executive Service.~~ *See* Appendix ___.

- **Training.** For the work force as a whole, and for grade groupings GS 1 - 4 and GS 5 - 8 and each individual grade level from GS 9 through the Senior Executive Service, agencies should compare the percentage that each work force group comprises of those selected for employee development training opportunities with that group's percentage representation in the relevant grade level or grade grouping. *See* Appendix __.

- **Awards.** By grade grouping, agencies should compare the percentage of awards that each work force group receives with that group's representation in the grade grouping. For monetary awards, agencies should also compare the dollar amount

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received by each work force group in a grade grouping with that group's representation in the grouping. Grade groupings for this purpose are GS 1-4, GS 5-8, GS 9-12, and GS 13 and above. *See* Appendix __.

The EEOC has provided charts that agencies may use in tracking data on time-in-grade, training, and awards. These data need not be reported to the EEOC on a routine basis; agencies must, however, make the data available to the EEOC on request.

c. Separations and Disciplinary Actions

~~Under both Title VII and the Rehabilitation Act,~~ Agencies must analyze separations and disciplinary actions for ~~each of~~ the most recent three fiscal years ~~for all work force groups~~. For these purposes, separations are those personnel actions, excluding retirements, that subject employees to a voluntary or involuntary loss of their jobs. Separations include terminations, reductions-in-force, and ~~t~~ransfers. Disciplinary actions include any adverse actions taken against permanent employees.

To determine if the separation rate for any work force group makes up a disproportionate share of total separations, agencies must compare the percentage of separations to which each work force group has been subjected to that group's percentage representation in the agency work force as a whole. *See* Appendix ___. Agencies must similarly compare the percentage of disciplinary actions to which each work force group has been subjected to that group's percentage representation in the work force. *See* Appendix __. Agencies should also ~~bear in mind that there~~ can be disparities in the ~~assess the~~ severity of ~~the~~ disciplinary actions ~~that are taken~~, ~~and~~ are encouraged to take proactive steps to evaluate whether ~~to ensure that~~ members of a particular work force group are ~~being not~~ treated more harshly than others for similar conduct.

d. EEO Complaints

Each agency must analyze its EEO complaints to identify any employment practices that are or may be barriers to equal employment opportunity, any trends or patterns that suggest the need for further investigation, or any particular decision makers whose employment decisions are subject to repeated challenge. Each agency must also ensure that it has fully complied with all orders rendered or agreements reached at any stage of the EEO process.

Agencies need not report the results of this analysis to the EEOC.

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e. Selection Criteria

Under Title VII, agencies must comply with the Uniform Guidelines on Employee Selection Procedures.[11] Thus, agencies must assess whether facially neutral selection criteria disproportionately exclude any protected ~~women or any minority~~ group and, if so, whether such criteria are justified. An agency need evaluate only those criteria that the agency imposes above the threshold qualification standards set by OPM. An agency need not report the results of this analysis to the EEOC.

f. Annotation of Files

To promote equal opportunity for individuals with disabilities, an agency may also want to track the employment history of each of its employees with a disability. Thus, for each individual whose disability is previously -- and permissibly -- known to the agency, the agency may keep records of, among other things:

- each vacancy, promotion, or training opportunity for which the individual was considered;
- in each case in which the individual was rejected for such an employment opportunity, the reason for the rejection, as well as a description of any accommodations considered;
- in each case in which the individual was selected for such an employment opportunity, a description of any accommodation made by the agency to enable the individual to take full advantage of the opportunity.

Tracking done pursuant to this subsection need not be reported to the EEOC. All medical and disability-related information generated by this type of analysis must be kept confidential in accordance with this Directive.

III. REVIEWING AGENCY POLICIES, PRACTICES, EQUIPMENT, AND FACILITIES

~~Where they make use of comparative data,~~ agency work force analyses will show whether there are substantial disparities between the levels of participation that might have been expected for minorities, women, or people with disabilities, and the levels of participation that those groups actually enjoyed. The next step is for agencies to investigate the reasons for any such disparities that they discover. ~~as well as to evaluate the impact of certain additional policies on individuals with disabilities.~~

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[11] 29 C.F.R. Part 1607 (1998).

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Agencies should start with the results of their work force analyses. Some of these ~~an agency's work force~~ analyses may point directly to employment practices that need to be closely reviewed. For example, analysis of an agency's EEO complaints may reveal a particular practice that has disproportionately excluded qualified women or minorities. More typically, however, the work force analyses will not identify specific practices that are responsible for any imbalances that are found. Thus, in most cases, an agency's first step after conducting its work force analyses will be to determine *whether* there are particular practices that have caused the imbalances and that are artificial barriers to equal employment opportunity. Sometimes these investigations may require additional numerical analyses that focus on specific occupations or agency offices.

Agencies must go beyond their numerical analyses in evaluating whether their policies are non-discriminatory, however. First, for some employment decisions affecting individuals with disabilities, there will be insufficient data for an agency to make useful comparisons of actual and expected representation. Second, many of the practices or policies identified below (such as selection criteria) must be regularly reviewed for an agency to meet its non-discrimination responsibilities -- whether or not the agency's work force analyses show an overall imbalance in representation of a particular protected group. Thus, in addition to the investigations spurred by their work force analyses, agencies should periodically address all of the questions raised below with respect to their employment of each of the work force groups. Section III(A)(2) further sets forth some of the specific policies to which agencies must pay particular attention in evaluating barriers to the employment of people with disabilities.

These investigations will in most instances be conducted by the agency's EEO staff, but should involve managers and supervisors from other offices as necessary. Agencies may also wish to consult EEOC staff, or officials of other agencies with substantive expertise in the anti-discrimination laws, for assistance in conducting their investigations. In addition, agencies should include individuals with disabilities ~~should be included~~ among those responsible for evaluating the impact of agency practices on people with disabilities.

A. How Should an Agency Determine Which Practices to Review?

1. Title VII and the Rehabilitation Act

Among the questions agencies should consider during their investigations are the following. This list is not exhaustive.

1. ~~Does the~~ Where there is a substantial numerical ~~observed~~ imbalance in the representation of a particular work force group, does it exist agency-wide or is it restricted to particular regions, offices, or components? Does the imbalance occur across occupations or occupational categories, or only in a single job series?

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2. Does the observed imbalance result from only a few instances of decision making or does it occur each time the particular type of employment decision is made?

3. Are there particular decision makers, or groups of decision makers, whose employment selections consistently exclude members of particular groups?

4. What are the selection criteria and qualification standards for the particular types of employment opportunities in question?

   a. Are any selection criteria facially exclusionary? Are there any physical or mental qualification standards for the job?

   b. Are there unwritten or unannounced selection criteria that are nonetheless being used for the employment decisions?

   c. Do the agency's selection criteria exceed those imposed by OPM qualification standards?

   d. Have the standards been applied differently to members of different work force groups?

   e. Even if they are facially neutral, do any criteria disproportionately exclude particular work force ~~women or particular minority~~ groups? Do any exclude people with disabilities?

   f. Do the selection criteria measure abilities that are truly necessary to perform the jobs or complete the training in question, or do they demand skills or credentials that are not actually required for effective job performance?

   g. Do the selection criteria in fact measure the skills they purport to assess? Is there an adequate match between high scores in the selection process and performance on the job?

   h. Even if the selection criterion is justified, are there any accommodations to enable people with disabilities to meet the standard?

5. Are the grade levels set for entry into the employment opportunities at issue appropriate?

6. Are the agency's recruitment efforts resulting in a diverse pool of qualified applicants?

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7. Does the any observed imbalance result from a failure of members of particular groups to *apply* for the types of opportunities in question? Is there an identifiable disincentive to particular groups in either the application process or the job?

~~8. Do vacancy announcements for the job communicate the agency's willingness to hire people with disabilities? Do they state that the agency will provide reasonable accommodation for qualified individuals with disabilities?~~

8. Are the employment opportunities in question restricted to internal applicants, or has the agency searched for external candidates as well?

9. In what geographic area(s) has the agency recruited for the positions at issue? Are there additional areas in which the agency reasonably could recruit?

10. Have the employment opportunities in question been advertised and announced in ways designed to promote the broadest dissemination of information?

11. Do the job descriptions for the employment opportunities in question accurately reflect the actual demands of the job?

12. Are adequate training opportunities made available to employees at the lower grade levels? Is career counseling available to all employees? Are training opportunities equitably distributed among occupational groups?

~~14. Do agency contracts reflect the obligation to make services and facilities accessible to employees with disabilities?~~

13. What are the criteria used in deciding on separations?

2. Rehabilitation Act

Under the Rehabilitation Act, agencies must *also* review the following, whether or not the agency's work force analyses have revealed numerical imbalances in the representation of people with disabilities ~~these policies have resulted in numerical imbalances~~:

1. physical and mental qualification standards;

2. selection or job criteria -- in vacancy announcements, position descriptions, or elsewhere -- that describe *how* a job is to be done, rather than simply stating outcomes that are to be accomplished;

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3. any other policies or criteria that agencies know or should know -- through prior requests for accommodation, complaints, or a common sense understanding of the likely impact of a particular policy -- might exclude individuals with disabilities;

4. policies -- including, for example, those that affect the purchase of equipment, the hiring of readers or interpreters, or the flexibility to restructure work schedules -- that might affect the agency's ability to provide reasonable accommodations;

5. agency contracts for provision of services and/or facilities to agency employees, to ensure that they reflect the obligation to make the services and facilities accessible to employees with disabilities;

6. policies, practices, and equipment related to the procurement or use of information technology; and

7. the accessibility of physical facilities to individuals with disabilities.

As a practical matter, it may be difficult for an agency to review all of its policies, practices, equipment, and facilities at one time and to anticipate in every case where such policies could adversely affect individuals with different kinds of disabilities. Nonetheless, it is critical for agencies to review at least the above-listed policies on a regular basis.[12] These reviews are not dependent on notification to the agency by a particular individual that (s)he has been excluded from an employment opportunity on the basis of disability; rather, agencies must anticipate -- and respond -- where their policies, equipment, or facilities may operate as artificial barriers to the employment opportunities of individuals with disabilities.

Additionally, each agency must also include in all of its vacancy announcements a statement that the agency will provide reasonable accommodation for qualified individuals with disabilities. This statement will encourage applications from individuals with disabilities, as well as help to ensure that individuals with disabilities are not deterred from applying for jobs for which they cannot meet the criteria without a reasonable accommodation.

B. How Should an Agency Evaluate its Practices?

The basic question that an agency should ask in reviewing its practices is whether any practice operates as an artificial barrier to [redacted] the employment

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[12] Agencies should set reasonable review cycles. Certain agency actions may themselves trigger the need for review -- where, for example, agencies issue new vacancy announcements, change their leave procedures, or purchase or upgrade computer systems. Even absent a specific triggering event, however, each agency must ensure that all of the above-listed policies (*e.g.*, existing physical and mental qualification standards) are reviewed at least once in the three year period covered by the agency's multi-year affirmative action plan.

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opportunities of ~~any work force group~~ ~~minorities, women, or people with disabilities. An artificial barrier will arise where an agency practice unnecessarily restricts opportunities for a particular work force group or groups.~~ Sometimes these practices will be discriminatory, or unlawful under other statutes. Sometimes they will simply represent missed opportunities for an agency to open employment opportunities to a wider group of qualified individuals. Agencies should address both types of practices.

1. Title VII and the Rehabilitation Act

a. Facial discrimination

In some cases, agencies may have policies that explicitly limit the participation of particular work force groups. Based on concerns about safety, for example, agencies may refuse to hire people with epilepsy for jobs handling heavy machinery, or to hire drivers who have insulin-dependent diabetes. An agency might, alternatively, seek to exclude pregnant women from jobs that the agency perceives to be dangerous.

~~Even if these policies are based on legitimate safety concerns, they will typically be unlawful.~~ An agency may exclude individuals based on sex only in the very limited cases in which gender is a bona fide occupational qualification for the job.[13] ~~Moreover, Under~~ the Rehabilitation Act requires an individualized assessment of whether applicants with particular disabilities ~~moreover, agencies must evaluate each applicant to assess whether (s)he~~ poses a direct threat -- that is, a significant, current risk of substantial harm to themselves ~~himself/herself~~ or others that cannot be eliminated by reasonable accommodation.[14] This showing requires objective evidence; agencies may not make assumptions ~~assume~~ that people with certain impairments are unable to safely perform particular jobs.

b. Other disparate treatment

Artificial barriers will also exist where there is evidence of bias or other disparate treatment in particular selection decisions. Such disparate treatment need not be malicious or borne of animosity toward a particular work force group; nor is it typically revealed in explicit, "smoking gun" documents. In fact, disparate treatment may sometimes result simply from stereotypes about what particular groups can, or will be willing to, do or from decisions that favor those who are most like the decision makers. Thus, agencies must be vigilant to detect any assumptions about particular groups that underlie employment decision making.

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[13] *See* 42 U.S.C. § 2000e-2(e)(1). The BFOQ defense is an extremely narrow one. *See International Union, UAW v. Johnson Controls, Inc.*, 499 U.S. 187 (1991). In addition, it can never be used to defend race-based distinctions.

[14] *See* 29 C.F.R. part 1630 app. 1630.2(r) (addressing direct threat standards).

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c. Facially neutral policies

Even facially neutral policies may be artificial barriers. For example, a facially neutral standard may exclude individuals with disabilities if it describes *how* a job function is to be performed rather than stating simply the outcome that is to be achieved. A change to a new technology system may similarly disadvantage employees with disabilities. Moreover, some facially neutral selection criteria -- like educational credentials or physical fitness requirements -- are likely to disproportionately exclude particular minority groups or women.

It is unlawful to use a selection criterion or policy that disproportionately excludes members of any work force group ~~minorities, women, or people with disabilities~~ -- or even a single individual with a disability -- unless the criterion or policy is job-related and consistent with business necessity. Thus, agencies must ensure a match between their selection criteria and the jobs for which those criteria are used. Even if the agency can demonstrate that a criterion or policy is job-related and consistent with business necessity, moreover, it should investigate whether there are less discriminatory alternatives available. In addition, under the Rehabilitation Act, agencies must consider whether an individual with a disability who has been excluded by a criterion or policy could meet it with a reasonable accommodation.[15]

Artificial barriers may also arise if neutral procurement policies create impediments to prompt delivery of effective reasonable accommodations. Where agency policy requires multiple approvals or substantial paperwork to purchase new equipment, for example, that policy should be modified to permit expeditious response where reasonable accommodations that involve new equipment have been requested.

d. Barriers based on perceptions

Exclusionary barriers can also arise from the *perceptions* of employees or applicants. If members of a work force group ~~minorities, women, or people with disabilities~~ believe that selection processes are biased against them, they may be unwilling to apply for employment opportunities with an agency, even if there is no actual bias in the agency's employment practices. Where, for example, there are few Hispanic employees among top management of an agency, Hispanics may believe that it is futile to apply for promotions -- even if the agency uses neutral criteria to make promotion decisions and would in fact welcome additional applications from Hispanic employees.

Agencies must address situations that create a climate of mistrust within the agency. In particular, agencies should ensure that all ~~first-line~~ supervisors get adequate training in affirmative employment principles and responsibilities, and that the agency's commitment to EEO principles in all employment decisions is adequately communicated.

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[15] *See* 29 C.F.R. pt. 1630 app. § 1630.10 (1998).

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2. Rehabilitation Act

Under the Rehabilitation Act, agencies must also ensure that they meet the following standards.

a. Information technology and equipment

Agencies must provide to federal employees with disabilities access to information and data that is comparable to the access provided to federal employees without disabilities.[16] To meet this standard, agencies ~~must~~ should regularly evaluate the accessibility of their electronic and information technology ~~systems~~.[17]

~~final~~ standards for evaluating accessibility are to be published by the Architectural and Transportation Barriers Compliance Board by early in the year 2000, and incorporated into agency procurement policies by August of that year; ~~proposed~~ standards are to be issued in September 1999. ~~In the interim, agencies should apply the *Requirements for Accessible Software Design* published by the Department of Education,[18] and should make efforts to use, develop, and procure accessible systems.~~ Absent a showing of undue burden, agencies will be required to make efforts to use, develop, and procure electronic and information technology that is accessible as defined in these standards; ~~such efforts will be required once final standards have been adopted;~~ even if agencies can demonstrate that undue burden will result from making ~~technology systems~~ accessible, moreover, they will be required to provide alternative means of access to the information disseminated through inaccessible technology.

~~Agencies should also review procedures governing approval and purchase of information technology to identify any practices that might interfere with the provision of a reasonable~~

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[16] Rehabilitation Act, Section 508, 29 U.S.C. § 794d, *as amended by* Pub. L. No. 105-220, 112 Stat. 1203 (1998). ~~National security systems, as defined in the Clinger-Cohen Act, 40 U.S.C. § 1452, are exempt from these requirements.~~ 29 U.S.C. § 794d(a)(5).

[17] ~~Under Section 508, each agency is to evaluate the accessibility of its electronic and information technology every two years and submit the results of that self-evaluation to the Attorney General of the United States. The Attorney General is to make the first report on the federal government's use of electronic and information technology by February 7, 2000, and is to report biannually to the President and Congress thereafter. An initial report on accessibility was to have been completed by each agency, and submitted to the Attorney General of the United States, by February 7, 1999. *See* Section 508(c). This section of the EEOC's Directive anticipates that agencies will continue to conduct regular and systematic evaluations of accessibility and will respond where problems are found.~~

[18] ~~A copy of the *Requirements* is attached as Appendix __.~~

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~~accommodation in a particular case. Such practices should be modified in advance to ensure that reasonable accommodation requests can be addressed promptly.~~

b. Physical facilities

Agencies must regularly evaluate the accessibility of their physical facilities for individuals with disabilities. Agencies should have in place, and should publicize to employees and applicants, procedures for the identification of facilities that might create architectural, transportation, and/or communications barriers. Although the agency's obligation to review its facilities is not contingent on receipt of particular requests for reasonable accommodation, its reasonable accommodation procedures should include instructions on the ways in which individuals may request modifications in particular facilities. See Section ___ *infra.*

In general, agencies should evaluate whether their facilities meet the requirements of Section502 of the Rehabilitation Act, which requires newly constructed Federal facilities, and altered portions of existing facilities, to comply with the Architectural Barriers Act of 1968.[19] The Rehabilitation Act also requires agencies to ensure that Federal programs sited in existing facilities are accessible to people with disabilities. ~~If facilities do not meet these standards, agencies should develop plans to bring them into compliance on a timely basis.~~

IV. OPENING EMPLOYMENT OPPORTUNITIES

The work force analyses and ~~subsequent~~ investigations of agency practices should enable agencies to identify and modify practices that are artificial barriers. But fixing identified barriers may be insufficient to create full equality of employment opportunity. In some cases, there may be no identifiable agency practice that is responsible for ~~an~~ the observed imbalance. In other cases, there may be a discernible reason for ~~an~~ the imbalances -- but it may not be a discriminatory or exclusionary policy. In still other situations, fully remedying ~~an~~ the identified barrier may require the agency to take follow-up steps, such as recruitment or training. Agencies are required to take additional action as appropriate to respond to the results of their investigations. Additionally, and regardless of the results of their work force analyses, agencies must ~~will need to~~ create reasonable accommodation procedures to ~~help~~ enable employees with disabilities to take full advantage of employment opportunities in the work force.

~~There are numerous ways that agencies can address the findings of their investigations.~~ Among the steps that agencies should consider ~~take to respond in such situations~~ are the following: engaging in targeted outreach and recruitment to ensure that sources for candidates

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[19] 42 U.S.C. § 4151 *et seq.* If more stringent standards would govern accessibility of particular facilities under the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.*, agencies should consider adhering to those standards. For technical assistance in this area, agencies may contact the Architectural and Transportation Barriers Compliance Board.

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who are minorities, women, and people with disabilities are not overlooked; providing enhanced training opportunities to help employees to advance to higher grades; considering new ways to tap employee skills and talents; setting goals for employment of people with targeted disabilities; and establishing procedures to improve the functioning of the work place for employees with disabilities.

None of the steps listed above is governed by strict scrutiny,[20] and none requires a finding that an agency has engaged in unlawful discrimination. An agency will be able to take any of these actions if it believes, after completing the work force analyses and investigations required under this Directive, that additional steps are necessary to address problems that are found. Indeed, this Directive *requires* agencies to take appropriate responsive action and to engage in some of the actions discussed below.

Additional analysis *will* be necessary before agencies may take race, national origin, gender, or disability into account in particular selection decisions. The requirements of that analysis are separately addressed in Section V, *infra*.

A. Title VII and the Rehabilitation Act

Under both laws, agencies are expected to undertake recruitment, training, and other actions as necessary to respond to the results of their work force analyses and investigations. As to individuals with disabilities, moreover, agencies should pay particular attention in these activities to those individuals who face especially significant barriers to employment. People with the disabilities included on the EEOC's list of targeted disabilities are likely to encounter such barriers in jobs in every occupational category. People with other disabilities may also face pervasive barriers, particularly in specific jobs or job categories. In identifying those on whom their efforts should focus, therefore, agencies should consider the following.

1. How severe is the disability? Generally, the more severe the disability, the more likely it is to subject the individual to especially significant employment barriers.

2. Is the disability the subject of particularly high levels of stigma?

3. Is the disability visually apparent?

4. Is the individual eligible for an excepted appointment? Such appointments may be available for individuals who are mentally retarded or severely physically disabled, or who have experienced a significant period of mental illness. *See* Section __, *infra*.

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[20] *See Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995) and Section V(A), *infra*, for a discussion of the strict scrutiny standard.

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5. What is the nature of the job? If, for example, people with insulin-dependent diabetes have traditionally been barred from police officer's jobs -- although they may be able to fully perform those jobs with or without reasonable accommodation -- agencies should make particular efforts to consider such individuals.

1. Recruitment

Both Section 717 and the Rehabilitation Act anticipate that agencies will make efforts to include minorities, women, and people with disabilities in their applicant pools.[21] Recruitment efforts do not guarantee jobs to particular groups or require that race, national origin, gender, or disability be taken into account in selection decisions. As a result, they do not restrict anyone's ability to participate in the application process; instead, they help to give minorities, women, and people with disabilities a fair opportunity to compete for vacancies. Such action is thus appropriate in numerous situations, including where: minorities, women, or people with disabilities are being hired at rates below their availability; agency applicant pools include insufficient numbers of these groups; the existence of artificial barriers has in the past deterred applications from diverse groups; or an agency has relied on internal candidates for promotions and has thereby perpetuated exclusion of particular groups from upper level jobs.

Agencies should establish and maintain continuing contact with the following types of entities, among others and as appropriate to the particular job for which they are recruiting, in trying to expand the presence of minorities, women, and/or people with disabilities in their applicant pools:

1. media outlets, including Internet sites, directed at minority or female audiences and/or at people with disabilities;

2. Historically Black Colleges and Universities, the Hispanic Association of Colleges and Universities, and other schools that focus on, or specialize in training, minorities, women, or people with disabilities;

3. civil rights, ~~and~~ advocacy and/or relevant professional organizations;

4. other organizations of or established for the benefit of individuals with disabilities;

5. state employment security agencies;

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[21] Recruitment obligations are also imposed by the Federal Equal Opportunity Recruitment Program, which mandates that agencies conduct continuing programs of recruitment of minorities and women to eliminate underrepresentation of these groups in agency work forces. *See* 5 U.S.C. § 7201 and 5 C.F.R. Part 720 (1998). This program is administered by OPM.

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6. state vocational rehabilitation agencies;

7. state education or social services agencies;

8. sheltered workshops;[22]

9. centers for independent living; and

10. disability coordinators at colleges and universities.

Agencies are also encouraged to engage in cooperative recruitment efforts with other agencies to maximize the use of limited resources and/or to compile pools of qualified applicants to which the agencies can refer whenever any of them has a vacancy to be filled.

To ensure effective outreach to and recruitment from these, or other, entities, agencies should engage in a broad range of activities. Among other possibilities, agencies should consider:

1. holding briefings or making other presentations to publicize the agency's commitment to opening employment opportunities for minorities, women, and people with disabilities;

2. disseminating vacancy announcements for particular jobs to, and participating in job fairs held by, schools or organizations that focus on minorities, women, or people with disabilities;

3. establishing internship, mentoring, or other training programs that are open to all individuals from such schools or organizations;

4. if feasible, maintaining files of all rejected applicants who were determined by the agency to be qualified for particular types of jobs and consulting these files when openings for these jobs become available;

5. if feasible, maintaining files of those recently terminated through reductions-in-force who might be interested in future job vacancies;

6. maintaining contact with appropriate social service agencies or organizations to obtain technical assistance and advice on hiring and accommodating people with disabilities;

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[22] However, contracts with sheltered workshops do not substitute for employment of qualified individuals with disabilities in an agency's own work force.

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7. including minorities, women, and people with disabilities in agency advertising, as well as among employees who recruit on behalf of the agency;

8. undertaking community service and other projects that might be of interest to minorities, women, and/or people with disabilities; and

9. participating in cooperative efforts to resolve employment-related problems in the community, including needs for improved transportation, education, and childcare.

Additionally, agencies should consider steps to improve the skills of individuals who are not yet qualified for particular jobs and that can thereby expand the qualified labor pool. Agencies might, for example, participate in programs that expose high school students to the work of the agency; create partnership arrangements with a school that serves inner city residents or people with particular kinds of disabilities; or participate in career night and informational fairs for students. These types of efforts, while not targeting those who are currently capable of filling particular jobs, can help -- without reliance on race, national origin, gender, or disability -- to develop the capabilities of individuals who could in the future become contributing members of the federal work force.

2. Maximizing Employee Development

Agencies should also consider steps to promote the development and potential of all of their employees. Such steps might be warranted if, for example, certain groups are not well-represented at higher grade levels; there are insufficient training opportunities for employees to advance to higher grades; or disparities in promotion rates are the result of insufficient numbers of qualified minorities, women, or people with disabilities in the eligible pools.

Steps that agencies might take include, but are not limited to, the following.

1. Offering additional skill enhancement training programs to enable employees to reach higher grade levels.

2. Creating lists of skills possessed by employees to identify those that might help promote the agency mission in higher level jobs.

3. Sponsoring career enhancement internship programs to give employees specialized training and exposure.

4. Making participation in existing training programs mandatory.

5. Facilitating the formation of employee groups that work to improve employee communications skills.

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6. Structuring details or assignments to expose employees to numerous occupations within the agency.

7. Considering whether there are incentives, including paying for training, that can be offered to encourage employees to enroll in outside training or continuing education classes.

8. Establishing mentoring programs to link employees at different grade levels.

9. Making career counseling services available to all employees.

10. Encouraging managers to promote the development of each of their employees through making new types of assignments, taking the time to teach and reinforce new skills, and engaging in collaborative work efforts, among other actions.

Agencies must ensure that qualified individuals with disabilities have adequate opportunities to participate in these professional development activities, that no artificial barriers limit their participation, and that reasonable accommodations are made where necessary. As consistent with applicable legal standards, moreover,[23] agencies may also consider establishing individual development plans for employees with disabilities, and particularly for employees with targeted disabilities, who wish to progress to higher grade levels. Such plans might identify the positions for which the employee would like to be trained, the skills or knowledge that the employee would need to develop in order to attain the positions, and the means and schedule by which the employee could gain such skills and knowledge. To the extent that such plans contain disability-related information, they should be kept confidential in accordance with this Directive.

3. Exploring New Policies

Agencies should also consider whether there are other ways that they can tap the skills and talents of all of their employees. Agencies might consider, for example:

1. Redefining selection criteria to give credit to applicants for overcoming social, economic, or disability-related ~~physical~~ disadvantage.

2. Consistent with the needs of the agency, redesigning job criteria, or restructuring job functions, to open jobs to individuals with diverse abilities.

3. Implementing alternative dispute resolution mechanisms and training supervisors and employees in conflict resolution to promote a climate of trust and openness.

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[23] *See* Section __, *infra*.

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4. Creating means to more clearly communicate to employees the expectations of their supervisors and the skills necessary to advance to higher level jobs.

B. Rehabilitation Act

In addition to the efforts listed above, agencies are expected to undertake the following activities specifically for individuals with disabilities.

1. Set Goals for Employment of Individuals with Targeted Disabilities

Agencies with 1,001 or more employees must set numerical goals for the employment of individuals with the targeted disabilities set forth on the EEOC's list. For this purpose, all such targeted disabilities may be considered as a group; further, the goals may address hiring, placement, and/or advancement of individuals with such disabilities as is most relevant and useful for the particular agency. ~~These goals will help agencies to measure how far they have come — and how far they need to go — in equalizing employment opportunities for individuals with targeted disabilities.~~

The EEOC has previously estimated that individuals with targeted disabilities comprise 5.95% of the available labor pool for federal jobs. That estimate is based on outdated data, may well understate the current availability of such individuals, and should not currently be used as the benchmark for evaluating an agency's representation of people with targeted disabilities. Indeed, because there is currently no reliable estimate ~~of the absence of reliable data~~ of the availability of individuals with targeted disabilities in the labor force at large, agencies will not be able to set goals for their own employment of such individuals with precision.

Agencies must, however, bear in mind that the current federal representation of individuals with targeted disabilities — 1.16% of the federal work force in Fiscal Year 1997 — is far below any conceivable estimate that could be reliably derived of the availability of individuals with these disabilities. That level of representation thus falls far short of providing the "adequate" employment opportunities for people with disabilities required by the Rehabilitation Act. As a result, all agencies must make serious and sustained efforts to improve their representation of people with disabilities, and must set goals that reflect a good faith estimate of the representation that should result when those efforts are made consistently.

The EEOC is available to provide technical assistance on appropriate goals for individual agencies, and will be monitoring the goals that are set to ensure that they reflect a sufficient commitment on the part of each agency to increase its representation of people with disabilities. In addition, the EEOC anticipates that data will soon be available to provide a more accurate measure of the availability of people with disabilities in the work force at large. The EEOC will issue updated guidance once such data are available, and will measure the adequacy of each agency's efforts against that data at that time.

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~~Nonetheless, if setting goals for their work forces as a whole, agencies may want to consider the EEOC's estimate that individuals with these disabilities comprise approximately 6% of the available labor pool and take steps to move toward that level of utilization. If setting goals for the placement or advancement of individuals with disabilities in particular jobs or pay grades, agencies should bear in mind the results of their other work force analyses. If, for example, an agency's distribution of individuals with targeted disabilities across pay grades substantially differs from the distribution of agency employees across those pay grades generally, agencies might set as a goal taking steps to reduce that gap.~~

These goals will help agencies measure how far they have come -- and how far they need to go -- in equalizing employment opportunities for individuals with targeted disabilities. They thus serve as a yardstick to evaluate the effectiveness of an agency's affirmative action efforts. Agencies may be able to meet their these goals through numerous means -- including, for example, the elimination of artificial barriers, the adoption of enhanced procedures relating to reasonable accommodation, the expansion of part-time employment opportunities or opportunities for telecommuting, or a redoubled focus on recruitment. Agencies are encouraged to pursue the combination of these, or other activities, that will best serve their work forces and most effectively expand employment opportunities. If agencies wish to take disability into account in a selection decision, they should consult Section V(B), *infra*. ~~Goals do not require that agencies take disability into account in selection decisions. Where agencies do take disability into account in selections, moreover, they may hire and promote only individuals with disabilities who are qualified to perform the job at issue.~~

2. Improve the Functioning of the Work Place for All Employees with Disabilities

Agencies must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability.[24] Unless the agency can show that accommodation would impose undue hardship on the operation of its programs, a failure to provide one will violate a core non-discrimination provision of the Rehabilitation Act.

As a matter of affirmative action, agencies must do more than simply respond to requests for reasonable accommodation and comply with the minimum necessary to meet their non-discrimination obligations. In the first instance, agencies should respond to requests for reasonable accommodation in ways that will maximize employment opportunities for people with disabilities. Agencies should, for example, consider providing accommodations that would enable individuals with disabilities to be contributing members of the work force even in circumstances in which an undue hardship defense might, as a legal matter, be available.

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[24] *See* 42 U.S.C. § 12112(b)(5); EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, No. 915.002 (3/1/99) (hereinafter "EEOC Reasonable Accommodation Guidance").

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Additionally, agencies are ~~expected~~ required to take other proactive steps to improve their ability to respond to the needs of employees and applicants with disabilities. ~~Regardless of the results of their work force analyses,~~ agencies must ~~institute procedures for responding to requests for reasonable accommodation. Agencies must also consider the additional steps listed here and implement those, as well as others that they may devise, that are do at least the following, and should take additional steps~~ appropriate to their particular situations.

a. ~~Institute Procedures for Responding to Requests for~~ Reasonable Accommodation ~~Procedures~~

Agencies must be prepared in advance to respond effectively and efficiently to requests for reasonable accommodation. Accordingly, agencies must establish and publicize written procedures that will govern their handling of reasonable accommodation requests.

The procedures should permit flexibility in processing each request for reasonable accommodation. They should be easy to understand; impose as few burdens as possible on employees or applicants with disabilities; allow for expedited consideration and a streamlined process, ~~where appropriate procedures~~; and provide for meaningful dialogue between the employee and his/her supervisor. Agencies should consult individuals with disabilities in formulating their procedures.

The agency's procedures should do at least the following:

1. **Define the agency's legal obligations, including key legal terms (*e.g.*, reasonable accommodation, disability, qualified individual with a disability, and undue hardship) in plain language.** Agencies should also include references to applicable statutes, regulations, and other guidance.

2. **Explain how an employee or applicant should initiate a request for reasonable accommodation.** An agency must always consider oral requests for reasonable accommodation promptly. For tracking purposes, an agency may make a written record of the request.

3. **Specify to whom a request should be submitted, from whom an individual will receive a final decision, and the time period in which decisions will be made.** The procedures should explain the role of each office or agency official who will be involved in the decision making on a request. The procedures should eliminate unnecessary levels of review and permit first-line supervisors flexibility in authorizing accommodations. Time limits for decision making should be as short as reasonably possible, and any delays should be explained to the individual.

4. **Explain restrictions on obtaining and handling medical and disability-related information.** The procedures should address the limited circumstances in which

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the agency may request supplemental medical information; the types of documentation an individual might provide in response to such a request; and the agency's responsibility to keep all information related to the individual's request for reasonable accommodation confidential.

5. **Compile a list of the resources, including sources for technical assistance, available to provide information about, and fund, accommodations.** The procedures should identify assistance that can be provided both by the agency and by other entities, including the Job Accommodation Network.

6. **Set forth the requirement that the agency consider reassignment in appropriate cases.** The procedures should also describe the means of identifying available vacancies and the decision making process to be followed when the agency considers reassignment.

7. **Require that decisions on reasonable accommodation, including on requests for particular accommodations, be in writing and specify the reasons for denial, if applicable.** These decisions should be written in plain language. Where an accommodation is provided, the written summary need not detail the reasons the accommodation was granted.

8. **Create a flexible and informal process for reconsidering denials of reasonable accommodation.** Agencies should specify how individuals can, on an expedited and informal basis, obtain review of denials of requests for reasonable accommodation. This process is to be separate from, and will not affect, the agency's EEO complaint process.

Agencies should also create record keeping systems for tracking responses to requests for reasonable accommodation. These systems should limit paperwork requirements to the extent possible but should permit agencies to assess their performance in providing reasonable accommodations. The systems should enable agencies to evaluate, among other things, the types of jobs for which accommodations have been requested; the disposition of those requests; the specific accommodations that were granted or denied; and any technical assistance that was obtained in responding to the request.

The EEOC is available to provide technical assistance on the drafting and implementation of these reasonable accommodation procedures as well as on the handling of specific accommodation requests.

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b. ~~Consider~~ Practices to Facilitate Providing Reasonable Accommodations

Agencies should consider implementing practices that will facilitate the agency's ability to consider and grant requests for reasonable accommodation. Among such practices are:

- establishing a central pool of staff assistant slots, that would not be included in the ~~requesting any individual~~ office's personnel ceiling, to provide readers, interpreters, and other assistants throughout the agency or agency component;

- implementing funding mechanisms that will avoid charging individual offices for the cost of accommodations; and

- creating central offices that can, among other services, demonstrate and evaluate equipment and assistive devices; expeditiously purchase equipment needed for reasonable accommodation; provide technical assistance and referrals for information on reasonable accommodations; coordinate training on reasonable accommodations and other non-discrimination obligations; and expeditiously prepare agency printed and audiovisual materials in alternative formats on request. ~~Where an agency lacks the resources to create such offices, it should consider working with other agencies – such as the Department of Defense or the Department of Agriculture's Target Center – that have established programs to provide these types of assistance.~~

c. ~~Plan to~~ Initiating the Reasonable Accommodation Process in Certain Circumstances

In general, an individual with a disability must request a reasonable accommodation. Nonetheless, there are circumstances in which, for affirmative action purposes, an agency should consider initiating the reasonable accommodation process even absent a request from the individual with a disability -- and even in cases in which the disability does not prevent the individual from asking for the accommodation.[25] Specifically, if an employee with a known disability is having significant difficulty performing his or her job, and it is reasonable to conclude that the performance problem may stem from the employee's known disability, ~~it is appropriate~~ for the agency ~~to should~~ notify the employee of the performance problem and inquire whether the problem is related to the employee's disability. If the employee indicates that the performance problem is in fact disability-related, the agency must inquire whether the employee needs a reasonable accommodation to help improve his or her performance.

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[25] If the agency knows or should know that an individual's disability prevents him/her from requesting a reasonable accommodation, the agency must initiate the reasonable accommodation interactive process as a matter of non-discrimination. *See* EEOC Reasonable Accommodation Guidance at p. 51.

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To ensure that its inquiries are narrowly focused, an agency should:

- have prior knowledge that an individual has a disability as defined by the Rehabilitation Act; this section does not authorize new disability-related inquiries of employees.
- make the inquiry only where an employee's performance problems are significant.
- have reason to believe, based on objective evidence, that the performance problem results from the disability.
- ask about the need for a reasonable accommodation only after it has confirmed with the individual that the performance problem is in fact related to the disability.

d. ~~Consider~~ Additional Actions to Meet the Needs of Individuals with Disabilities

Certain actions are not typically required as reasonable accommodations under the non-discrimination provisions of the Rehabilitation Act.[26] Nonetheless, to meet their affirmative action responsibilities, agencies should ~~must~~ consider whether ~~to they should~~ take additional voluntary actions to meet the needs of employees with disabilities, such as:

1. authorizing agency-wide Flexiplace or other work-at-home arrangements, and expanding agency part-time work opportunities, to promote maximum flexibility for individuals with disabilities;
2. providing transportation-related services, including parking arrangements or accessible vans to transport individuals with disabilities to and from work, even where transportation services are not available to employees generally;
3. providing personal assistants, who could help individuals with disabilities with daily functions such as eating and toileting;
4. creating a new job for an individual with a disability where the agency cannot reallocate the functions of an existing job that that individual cannot perform because of his/her disability or where reassignment to a vacant position is not possible or required;
5. reallocating essential job functions;

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[26] *See* 29 C.F.R. pt. 1630 app. § 1630.9 (1998); EEOC Reasonable Accommodation Guidance at pp. 4-5.

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6. providing an individual with a disability with the accommodation of his or her choice, or with the accommodation that is most effective, even though the agency could meet its non-discrimination obligations by providing another effective, but less expensive, accommodation.

V. TAKING RACE, NATIONAL ORIGIN, GENDER, OR DISABILITY INTO ACCOUNT IN SELECTION DECISIONS

Constitutional standards must be considered where agencies take race, national origin, gender, or disability into account in selection decisions. The applicable constitutional standards for programs for minorities and women differ, however, from those applicable to programs for people with disabilities. The relevant analyses ~~under Title VII and the Rehabilitation Act~~ are addressed separately here.

Under both Title VII and the Rehabilitation Act, the groundwork laid under this Directive will be sufficient to justify each of the steps described in the preceding sections; no additional justification for such actions is necessary. The requirements of this section, therefore, apply only to selection decisions that take race, national origin, gender, or disability into account.

A. Title VII

~~Under the United States Constitution,~~ Agencies may take race, national origin, or gender into account in selection decisions only if they can satisfy strict scrutiny – that is, only if their programs are narrowly tailored to serve a compelling government interest.[27] This means that an agency may make selection decisions that take race, national origin, or gender into account **only** if the agency has reason to believe that discrimination, or the effects of discrimination, are at work, or if the agency's operations require a certain level of minority or female representation that has not been reached by race-neutral means.

1. Compelling Interest

This Directive does not require that agencies take race, national origin, or gender into account in selection decisions. Agencies must ensure that all decisions to consider such factors

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[27] *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995). As a matter of law, strict scrutiny standards apply only to decisions that take race and national origin into account. Gender-based decisions must be supported by an "exceedingly persuasive justification." *United States v. Virginia*, 518 U.S. 515, 532 (1996). Nonetheless, agencies should, as a practical matter, follow the analysis applied to decision making based on race and national origin to ensure that any decisions in which gender plays a role meet applicable legal requirements. As a result, the text treats gender-based decisions in the same way as decisions based on race or national origin.

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are adequately justified under applicable law.[28] Nonetheless, where significant exclusion of minorities and women persists in specific jobs despite elimination of barriers, recruitment, or other neutral actions to open employment opportunities ~~agency compliance with the foregoing sections of this Directive~~, agencies may consider taking race, national origin, or gender into account in selection decisions as the final step in the continuum of their corrective actions. This is because a statistically significant disparity between the level of minority or female participation in a job and the percentage of qualified minorities or women in the relevant labor pool is evidence that discrimination may be the reason for the difference. Under such circumstances, the agency has a sufficient basis for taking race, national origin, or gender into account in selection decisions.

The results of the work force analyses required by this Directive are the starting point for any inquiry into whether an agency can satisfy the strict scrutiny standard. But these work force analyses are designed as an "early warning" diagnostic tool, not as a means to actually determine whether discrimination exists. Thus, agencies should not assume that the results of their work force analyses will alone justify taking race, national origin, or gender into account. Agencies must consider at least the following additional questions.

a. Do the jobs at issue require special skills or qualifications?

In order to determine whether a sufficient disparity exists to justify taking race, national origin, or gender into account, agencies must first identify the relevant labor pool -- that is, the group of people who are qualified to perform the jobs at issue. The nature of the particular jobs ~~at issue~~ will determine who is qualified to perform them.

Because those performing other jobs may in some cases be qualified to perform the particular jobs at issue, the relevant labor pool should not automatically be limited to those currently employed in precisely the occupations under consideration. In identifying the jobs that should be included in the relevant labor pool, agencies should apply the following:

- The relevant CLF ATCOB category will be the applicable labor pool if the jobs at issue are in the ATCOB categories and do not require special skills or qualifications, such as positions in training programs and most entry level jobs. ~~positions in training programs; or jobs that do not require special skills or qualifications.~~ A job ~~that~~ does not require special skills where the skill involved is one that most people have or can readily acquire.

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[28] Agencies should consult the "Memorandum to General Counsels from John Schmidt, addressing *Post-Adarand Guidance on Affirmative Action in Federal Employment*" (Department of Justice, February 29, 1996), for guidance.

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- The Professional category of jobs should not be used as the relevant labor pool for individual professional jobs. For entry level professional jobs, agencies should use the comparable occupational title(s) in the CLF as the relevant labor pool.

For upper level jobs in any occupational category, agencies should refine their broad CLF comparisons. For example, agencies should use comparable occupational titles, and not more general occupational categories, in assessing availability for upper level jobs. Where training, education, or experience are truly necessary for effective job performance, agencies should also assess whether other refinements are possible. Additional sources of data that may help to identify the qualified labor pool for upper level jobs include the following:

- ~~Civilian~~ Central **Personnel Data File**: These data include the educational levels, tenure, grade levels, and salaries of current federal employees. They may be useful in identifying the pool of federal employees who meet the valid requirements set for upper level jobs if a job is to be filled within the government. Agencies should bear in mind that decisions not to recruit externally may operate as artificial barriers in certain circumstances and should review such decisions if there is evidence that they are having this effect.

- **Applicant flow data**: Applicant flow data can be used to measure the representation of each work force group among the pool of candidates who meet the minimum qualifications for each job. If, however, those data show that the representation of a particular work force group is significantly lower than the representation of that group in the comparable CLF occupation, the applicant pool may not be truly representative of the available and qualified labor force. In such cases, agencies should evaluate their recruitment and hiring practices to determine if any have a chilling effect on particular groups of applicants.

b. What is the relevant recruitment area for the jobs at issue?

After identifying the applicable labor pool, agencies must identify the areas of the country in which they should measure the availability of that qualified group. This will depend on the geographic areas in which the agency recruits for the jobs at issue. This information may be available in the agency's affirmative employment plans, particularly at the regional level. Agencies should also ask the following questions, among others:

1. Are the types of jobs at issue advertised in national publications? Are job announcements placed on the Internet?

2. Over time, have applications for the types of jobs at issue been submitted from across the country?

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3. Has the agency considered recruiting nationally for jobs that have in the past been recruited locally?

4. Are there openings for the types of jobs at issue in numerous agency offices or installations?

In many cases, and particularly for professional or upper level jobs, the recruitment area is likely to be nationwide. In such circumstances, agencies should use national representation in the applicable CLF occupational category as the appropriate ~~comparator~~ pool for comparison purposes. In cases in which agencies reasonably expect to recruit in a smaller area, they should use the narrower CLF data, reflecting availability state-wide, for a region, or for a standard metropolitan statistical area, that are most relevant for the particular jobs.

c. What is the extent of the disparity?

The next step is to determine whether there is a large enough disparity between the representation of a work force group in the federal jobs at issue and in the relevant labor ~~appropriate comparator~~ pool.

As an initial matter, agencies may consider the following questions to evaluate which (if any) of the work force imbalances they have found may be sufficiently significant to justify taking race, national origin, or gender into account.

1. How large is the disparity? The larger the disparity in percentage terms, the more likely it is to be significant.

2. How many jobs are affected? Generally, the larger the number of jobs at issue, the lower the percentage threshold for finding that disparities in representation are significant.

3. How long has the disparity existed? As a general rule, the longer the disparity has persisted, the more likely it is to show a history of discrimination.

4. Is there other evidence of discrimination in the jobs at issue? Disparities may more readily be treated as significant if there is also non-statistical evidence of discrimination.

In most cases, agencies should then use statistical tests to measure the significance of work force imbalances. Consistent with applicable case law, the Department of Justice has stated that, absent an adequate non-discriminatory explanation, a disparity of more than two or three standard deviations between these numbers will be sufficient to show a compelling need ~~justify decisions~~ to take race, national origin, or gender into account. Computer software that calculates standard deviations is widely available; EEOC can also assist agencies on request in assessing whether this

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standard is satisfied. Where sample sizes are small, agencies should consult agency statisticians or the Department of Justice about other statistical tests that can be used.

d. Is there other evidence of discrimination or of an operational need for diversity?

All evidence of problems of discrimination in the work force -- and not simply statistical evidence -- should be considered in assessing whether there is a need to take race, national origin, or gender into account as a remedial tool. Thus, agencies should include the results of all of their work force analyses -- including the results of EEO administrative complaints and lawsuits, as well as other reports of possible discrimination -- in evaluating the need for this type of decision making.

In addition, agencies should consider whether they have an operational need for diversity that is not now being met -- that is, a need for a certain level of representation of minorities and women in particular jobs. Agencies may have such a need, for example, in law enforcement positions, for jobs in EEO offices, or for employees of community relations offices who are called upon to quiet racial tensions in troubled neighborhoods. ~~or for jobs whose occupants address issues of particular concern to minorities or minority communities.~~ Where it exists, an operational need to take race, national origin, or gender into account does not depend on a showing that there is or has been discrimination in the agency's operations. An agency should instead compare ~~It thus can be implemented -- if warranted -- by comparing~~ the level of representation of the particular work force group in the job at issue ~~work force~~ to the level of representation the agency has determined is necessary to satisfy the operational need.

2. Narrow Tailoring

If an agency has a compelling reason to take ~~basis for taking~~ race, national origin, ~~and~~ or gender into account, it must also ensure that its mechanisms for doing so are narrowly tailored. The specific considerations for narrow tailoring will vary depending on the nature of an agency's program. Agencies should keep the following in mind:

1. The agency should consider ~~race-~~neutral alternatives that are available to all employees before taking race, national origin, or gender into account.

2. The agency should not make race, national origin, or gender the sole or dominant factor in a selection.

3. Any numerical goals should be reasonable, based on the availability of qualified individuals in the relevant geographic area.

4. The agency's program should not impose excessive burdens on non-targeted groups.

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5. The agency's program should extend only to those groups for whom a compelling interest can be shown. ~~there is a need for race-based decision making.~~

6. The agency's program should be temporary. The program should be reviewed regularly and should last only as long as is necessary to accomplish the agency's legitimate goals.

B. Rehabilitation Act

The strict scrutiny standard does not apply to agency selection decisions that take disability into account. Instead, such decisions are judged under the "rational relationship" test of the Constitution. Under that test, agencies need show only that there is a "rational relationship between the disparity of treatment and some legitimate governmental purpose." Indeed, disability-based distinctions will be lawful if there is "any reasonably conceivable state of facts" that could provide a rational basis for the classification.[29]

As a result, agencies need not undertake the more extensive analysis laid out above for decisions which take race, national origin, or gender into account. Congress and the President have both recognized that individuals with disabilities have long been excluded from employment opportunities in both the public and the private sectors, and have exhorted agencies to take affirmative action to increase the representation of people with disabilities in the federal work force.[30] Agencies may consider this history of exclusion, as well as these legal mandates, in evaluating whether there is a basis for taking disability into account in selection decisions. Agencies may also consider whether they have met their goals for employment of people with disabilities, and whether their work force analyses have shown an underselection of individuals with disabilities for particular employment opportunities that has not been corrected by other means.

The legitimacy of an agency's decision to consider disability in a selection decision must always be assessed with regard to the specific job that the agency seeks to fill or the particular program that it wishes to implement. In particular, agencies must always ensure that individuals

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[29] *Heller v. Doe*, 509 U.S. 312, 320 (1993).

[30] *See, e.g.*, Rehabilitation Act of 1973, 29 U.S.C. § 791 (requiring federal agency affirmative action plans for individuals with disabilities); Americans with Disabilities Act, 42 U.S.C. § 12101(a)(2), (3) (noting that disability discrimination is a "serious and pervasive social problem"); Executive Order 13078, Sections 1(c), 2(a) (March 13, 1998) (urging a "coordinated and aggressive national policy" to improve employment for people with disabilities); *Recharting the Course: First Report of the Presidential Task Force on Employment of Adults with Disabilities* (November 15, 1998) at p. 8 (aggressive efforts necessary to bring people with disabilities into government positions).

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selected for each employment opportunity are qualified to perform the essential functions of the job. Assuming that an agency can meet these standards, the following are some of the means it might consider to improve employment opportunities for people with disabilities.

1. Excepted appointing authorities

Individuals with specified categories of disabilities may be eligible for excepted appointment under authorities administered by the Office of Personnel Management. These authorities, which exempt eligible individuals from the competitive appointment process, currently include Section 213.3102(t) of Schedule A for employment of individuals who are mentally retarded, Section 213.3102(u) of Schedule A for employment of individuals with severe physical disabilities, and Section 213.3202(k) of Schedule B for employment of persons who have experienced a significant period of substantially disrupted employment due to mental illness. *See* 5 C.F.R. §§ 213.3102(t), (u); 213.3202(k) (1998); *see also* 5 C.F.R. §213.3102(ll) (1998) (authorizing excepted appointments for readers, interpreters, and personal assistants for people with disabilities).[31] In general, these authorities are intended to help agencies consider applicants with disabilities who are qualified to perform the jobs at issue.

Agencies must ensure that management and personnel officials are fully informed about the availability and scope of, and procedures for, use of excepted appointing authorities. When employment opportunities arise, agencies should encourage applications from individuals who might be eligible for employment under such authorities.[32] For example, agencies should include in their vacancy announcements a statement that they will consider individuals who are eligible for excepted appointment and should list the appointment authorities. Moreover, agencies are to

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[31] Special appointing authorities and hiring preferences are also available for certain categories of disabled veterans. *See, e.g.*, 5 U.S.C. § 3309 (eligible disabled veterans who pass competitive service exam receive an extra 10 points); 5 U.S.C. § 3112 (agencies may make non-competitive appointments of disabled veterans with compensable service-connected disabilities of 30% or more); 38 U.S.C. § 4214(b), (c) (authorizing veterans readjustment appointments for certain veterans of the Vietnam war, and requiring affirmative action plans for disabled veterans covered by this section). Each of these authorities is enforced by OPM, and eligibility for the benefits conferred will depend on the terms of the particular statute.

[32] Toward this end, agencies are authorized to invite applicants to self-identify as individuals with disabilities covered by these excepted appointing authorities. Such invitations should include only those disabilities that might qualify individuals for excepted appointment, and should be extended to all applicants applying for a particular job -- not simply to those with visually apparent disabilities. Those involved in the selection process may be informed that an applicant may be eligible for an excepted appointment, but any disability-related information the agency obtains must otherwise be kept confidential. *See* 29 C.F.R. pt. 1630 app. §1630.14(b), (c) (1998).

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establish mechanisms by which applications from these individuals will be forwarded to selecting officials for consideration along with applications from individuals listed on competitive certificates. Finally, agencies should ensure that managers and personnel officials are aware of the circumstances in which individuals with disabilities who have been hired under excepted appointing authorities may be converted to the competitive service without competitive examination.[33]

2. Promoting the selection of individuals with disabilities

In addition to using excepted appointing authorities, agencies should implement mechanisms to increase the employment of individuals with disabilities through competitive hiring authorities available to all applicants regardless of disability. Toward this end, and as permitted under the law, agencies may ~~also~~ design their own programs to facilitate the consideration or selection of individuals with disabilities for particular employment opportunities. Under appropriate circumstances, for example, agency managers ~~agencies~~ might be able to take ~~treat~~ the existence of a disability, and particularly of a targeted disability, into account in selecting among candidates who have applied under regular appointing authorities and are qualified for a particular job ~~as a "plus" factor in considering the application of an individual with a disability who is qualified to do the job~~.

As consistent with the law, moreover, agencies might consider additional means to encourage applications from qualified individuals with disabilities. Agencies might, for example, publicize their willingness to provide reasonable accommodations in the application process; devise and publicize alternative ways, in addition to the use of excepted appointing authorities, that applicants with disabilities can demonstrate their ability to perform the jobs for which they have applied; and/or select particular agency supervisors to serve as the contact point and liaison for applicants with disabilities, ~~decide, for example, to accept applications from such individuals after the closing date, accept applications from outside the area of consideration specified in the vacancy announcement, or waive criteria such as previous federal experience.~~ Agencies should publicize these expanded opportunities for individuals with disabilities through their vacancy announcements or in other ways designed to communicate effectively with those who might be eligible to participate. Agencies could consider, for example, including in their website special sections on hiring and employment opportunities for people with disabilities.

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[33] *See* 5 C.F.R. §§ 213.3102(t), (u); 315.709 (1998) (authorizing employees with severe physical disabilities and mental retardation to convert to competitive status after completion of two years of satisfactory service in their excepted positions). OPM is to promulgate additional regulations to provide the same opportunities to individuals who have experienced a significant disruption of their working lives as the result of mental illness. *See* Executive Order 13124, 64 Fed. Reg. 31103 (June 4, 1999) (directing OPM to issue regulations extending the same hiring rules that apply to individuals with severe physical disabilities or mental retardation to those with psychiatric disabilities).

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Agencies are also encouraged to consider applicants with known disabilities, and particularly applicants known to have targeted disabilities, for vacant positions for which they may be qualified when they are not selected for the position for which they have originally applied. This Directive does not require that selecting or personnel ~~hiring~~ officials investigate whether their agencies have vacancies other than those for which a particular applicant has applied, and it remains the primary responsibility of the applicant to conduct his or her own job search. Nonetheless, if an agency's personnel or EEO office ~~selecting official~~ is aware of vacant jobs for which a particular applicant with a disability might be qualified, that office ~~(s)he~~ should notify the applicant of the vacancy and ask whether the applicant would like to be considered for it. If the applicant consents, the agency ~~selecting official~~ should provide the necessary information to ensure that the individual can submit an application for the open position. Such a practice simply expands the pool of applicants for the available vacancy, but can thereby help to maximize the employment opportunities available to individuals with disabilities.

VI. REPORTS TO THE EEOC

To enable agencies to focus on establishing and maintaining effective affirmative programs, this Directive limits paperwork and reporting burdens to the extent possible. Nonetheless, reports to the EEOC enable the EEOC to perform its oversight responsibilities and provide technical assistance to agencies. Record keeping obligations also offer agencies a means to internally evaluate their affirmative programs.

A. The Multi-Year Plan

1. Contents of the plan

Multi-year plans should cover three year periods. Each agency must prepare its initial multi-year plan for submission to the EEOC on dates specified in Appendix __; the plans must be reviewed and revised as necessary, and resubmitted every three years thereafter. Plans may be submitted in hard copy and/or electronically; those submitted electronically should be prepared in an accessible format, such as WAI-compliant HTML.

Agencies and reporting components with ~~more than~~ 500 or more employees must submit full-scale multi-year plans. Agencies and components with fewer than 500 employees may submit abbreviated multi-year plans. *See* Appendix __ for a list of the information that abbreviated plans must include. All references to "agencies" below include both agencies as a whole and those agency components that are required to file reports.

Full-scale multi-year plans must contain the following information:

1. **Certification that the plan is approved.** The plan must identify the agency, the head of the agency or reporting component, and the principal EEO official by name and title, and must include the signatures of these officials. The title page of the

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plan must also provide the agency's or component's location and number of employees and state that the plan has been made available to all employees.

2. **Copies of the agency's EEO policy and accountability statement.** Agencies must also certify that the statement has been made available to all agency employees and describe how it has been disseminated.

3. **Report on the qualifications of the agency's principal EEO official.** The report should specify the official's training and experience related to equal employment opportunity.

4. **Description of the agency's organization.** The reporting position of the EEO operation must be shown in the organizational chart. The agency must also identify the resources it has committed to its affirmative employment program.

5. **Results of the work force analyses.** Agencies must submit the data forms attached as appendices to this Directive, unless Section __ provides that the forms are for record keeping purposes only. Analyses should cover each of the most recent three fiscal years.

6. **Planned investigations.** Agencies must identify the policies and practices that they plan to review in the period covered by the multi-year plan. Agencies must also report any modifications that they have made to policies or practices as a result of their reviews in the immediately preceding fiscal year.

7. **Copies of the agency's reasonable accommodation procedures.** In their first multi-year plans, agencies must submit copies of their procedures for responding to requests for reasonable accommodation. Thereafter, agencies need submit these procedures to the EEOC only if they have been changed. Agencies should also describe how these procedures have been made available to employees and applicants.

8. **Planned corrective action.** Agencies must report on the actions they plan to take to open employment opportunities to minorities, women, and people with disabilities during the period covered by the multi-year plan. Agencies should report on activities such as outreach and targeted recruitment; enhanced training programs; and the use of excepted appointing authorities. Agencies must assign responsibility for the implementation of each such action and set specific target dates for its completion. Agencies must also report their goals for the employment of individuals with targeted disabilities.

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2. Components that must prepare plans

Agencies and their components must prepare the following.

1. **Agency-wide plans.** Agency-wide plans are to cover the entire work force of the agency and must aggregate data from all subordinate units. Agency-wide plans must include all major operating components and field offices or installations. Agency-wide plans must be submitted to the EEOC's Office of Federal Operations in Washington, D.C.

2. **Major operating component (MOC) and military command plans.** These plans must cover all employees in the MOC or command nationwide and include data from all subordinate units. MOCs and military commands with 500 or more employees must submit full-scale plans to their headquarters offices. The EEOC will select a number of these plans for review and evaluation. *See* Appendix __ for a listing of MOCs and commands subject to this requirement.

3. **Regional office plans.** The plans of agency regional offices must cover all employees within the regional office's jurisdiction. Regional offices that supervise fewer than 500 employees should complete only the abbreviated plan required by this Directive for smaller agencies and should forward the results to their headquarters offices for inclusion in the agency-wide plan. Regional offices that supervise ~~more than~~ 500 or more employees must prepare and submit full-scale, region-wide multi-year plans to the appropriate EEOC District Office, as well as to their headquarters offices.

4. **Field installation plans.** In some agencies, there are individual installations that do not report to a regional office. They should do the following.

   a. Installations with fewer than 500 employees should prepare only abbreviated plans and forward the results to the appropriate reporting unit in the agency for inclusion in the unit's plan.

   b. Installations with between 500 and 999 employees should prepare full-scale multi-year plans and submit them to the appropriate regional or other reporting unit for inclusion in that unit's plan.

   c. Installations with 1000 or more employees must develop and submit full-scale multi-year plans to the appropriate EEOC District Office as well as to the regional or other reporting unit.

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Agencies may contact the EEOC if they wish to discuss reporting arrangements that more closely conform to their organizational structures.

B. Annual Progress Reports

All agencies must submit annual progress reports to the EEOC. Full-scale progress reports must contain updates for the preceding fiscal year of all of the information reported in the multi-year plan, including work force analyses; the policies and practices that have been reviewed and the modifications that have been made; and the actions that have been taken to open employment opportunities for minorities, women, and people with disabilities. Full-scale plans must also contain reports on the investigations and corrective actions planned for the following year. Abbreviated progress reports -- to be filed by those agencies and components that prepared abbreviated multi-year plans -- are simply to update the work force analyses.

EEOC ENFORCEMENT AND OVERSIGHT

The EEOC enforces Section 717 of Title VII and Section 501 of the Rehabilitation Act. To fulfill its statutory responsibilities under these laws, the EEOC will do the following.

I. PROVIDE TECHNICAL ASSISTANCE

The EEOC is available to provide technical assistance to help agencies comply with affirmative employment requirements. The EEOC can provide assistance on, among other topics, preparing affirmative employment plans; conducting work force analyses; evaluating agency practices; preparing reasonable accommodation procedures; exploring corrective actions; and identifying specific reasonable accommodations. The EEOC can also refer agency officials to non-government sources for technical assistance.

Among other things, agencies should feel free to consult or contact the following for technical assistance:

1. EEOC's telephone information line, at (800) 669-EEOC;

2. EEOC's Office of Federal Operations, at (202) 663-4599;

3. EEOC's Website, at www.eeoc.gov, for, among other things, regulations and policy documents that explain an agency's non-discrimination obligations;

4. EEOC's Technical Assistance Manual, which explains non-discrimination obligations for people with disabilities, and provides extensive references for other sources of information;

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5. the Job Accommodation Network, at (800) 526-7234, for information and advice on custom job and work site accommodations.

Requests for further information concerning this Directive may also be submitted to the:

Director
Affirmative Employment Programs Division
Office of Federal Operations
EEOC
1801 L Street, N.W.
Washington, D.C. 20507

II. EVALUATE AGENCY REPORTS

The EEOC will review each multi-year plan to evaluate the adequacy of the actions the agency plans to take to improve employment opportunities for minorities, women, and people with disabilities. The EEOC will not approve plans which do not contain the required work force analyses; which do not follow the requirements of this Directive with regard to review of agency policies and practices or the establishment of procedures to respond to requests for reasonable accommodation; or which do not identify specific actions to open employment opportunities in the agency's work force. If a multi-year plan is disapproved, the agency must respond in a timely manner to the EEOC's evaluation of the plan and make all revisions necessary to bring the plan into compliance with EEOC requirements.

The EEOC will also review agency annual progress reports to gauge the effectiveness of affirmative program efforts. Among other things, the EEOC will examine: evidence that the agency has made progress in taking its designated corrective actions; identification of new corrective actions; and the completeness and accuracy of all submitted information.

Where multi-year plans or progress reports show that an agency is giving insufficient attention to its affirmative employment obligations, the EEOC will apprise the appropriate Congressional committees.

III. CONDUCT ON-SITE EVALUATIONS

The EEOC will conduct on-site reviews as necessary to ensure that affirmative programs under both Title VII and the Rehabilitation Act comply with this Directive. These on-site reviews will focus on each of the elements of an agency's affirmative program as set forth in this Directive. The EEOC will communicate its findings to the agency and, where necessary, will conduct a follow-up review at a subsequent date.

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IV. PREPARE ANNUAL REPORTS

The EEOC's annual report to the President and Congress will focus on individual agency performance in complying with the requirements of Title VII, the Rehabilitation Act, and this Directive. The report will examine agencies' utilization of minorities, women, and people with disabilities, and will evaluate the status of equal employment opportunity in the federal government.

CONCLUSION

This Directive sets forth some of the ways in which agencies can comply with their obligations, under both Title VII and the Rehabilitation Act, to improve employment opportunities for minorities, women, and people with disabilities. The requirements of this Directive are fully consistent with applicable law and serve important goals. These requirements will help agencies to uncover and respond to discrimination; they will also enable agencies to act proactively before discrimination has occurred. By helping agencies to recognize and remove artificial barriers; expand the representativeness of their applicant pools; and maximize the potential of all of their employees, moreover, these efforts will assist the government in making equal employment opportunity a reality. Agencies must promptly implement vigorous and effective affirmative programs in accordance with this Directive.

_____

Ida L. Castro
Chairwoman
Equal Employment Opportunity Commission

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FOLDER TITLE:
Disability-OPM-Model Plan I [1]

Richard Stalcup

rx42

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Draft Cover Letter for "A Plan for Employment of People with Disabilities in the Federal Government."

America is enjoying great prosperity, with the prospect of an even brighter future as we head into the next century. Our economy is the strongest it has been in a generation. Since I have been President, there have been more than 18 million new jobs; and unemployment is as low as it has been in 29 years. Still, we cannot consider ourselves truly successful until all Americans, including the 30 million working-age adults with disabilities, have access to the tools and opportunities they need to achieve economic independence.

Today, the Americans with Disabilities Act is making it possible for millions of Americans to participate more fully in our society. However, 9 years after the ADA's passage, the unemployment rate among working-age Americans with severe disabilities is still far too high. Almost 75 percent of working-age Americans with severe disabilities remain unemployed. If America is to live up to its promise of equal opportunity, and if our economy is to continue to strengthen and expand, we must be able to draw on the untapped energy, and creativity of this large and capable segment of our population.

On March 13, 1998, I addressed the unemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities. This Task Force was charged with creating a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented me with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations, ~~including~~ My FY 2000 includes a historic new $2 billion initiative that removes significant barriers to work for people with disabilities. It includes the Work Incentives Improvement Act, which invests $1.2 billion in providing health care and employment services for people with disabilities ~~if~~ so they can work; a new $700 million investment in a $1,000 tax credit for workers with disabilities; and ~~more than double the government's current investment~~, an increase of $35 million, in assistive technologies that make it possible for individuals with disabilities to work.

chart the actual goal

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, today I am directing the heads of all Federal departments and agencies to incorporate the steps outlined in the plan, ~~provided by~~ the Office of Personnel Management part of their recruitment and professional development plans. ~~In turn, this~~ We must do more to help the Federal government be a model employer for people with disabilities. That is why in November I directed the Office of Personnel Management to develop a model plan to increase the representation of adults with disabilities in the Federal workforce. Today I am pleased to release that plan, Both the Guide and its companion piece "A Plan for Employment of People with Disabilities in the Federal Government: Accessing Opportunity," ~~were developed in support of the Task Force's efforts and recommendations.~~ Together they provide and companion guidebook

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???

guidance on recruitment and hiring, training, opportunities for students, reasonable accommodation, career development and promotions, and regular monitoring to determine our progress and success. The recommendations included within them will assist Federal departments and agencies in their efforts to increase the representation of adults with disabilities in the Federal workforce. With employment being the best path to economic security and to personal and professional fulfillment, these references are excellent guides and resources to aid Federal employers in their continued efforts to hire and advance employees with disabilities.

which ~~outlines~~ provides resources and advice ~~guidance on how~~ agencies for agencies on recruitment and hiring, reasonable accommodation, career development and promotion and monitoring in hiring goals with disabilities. using federal criteria and evaluating progress. I direct every agency ~~member of my Cabinet to~~ to implement this plan immediately. ~~Work together~~ [Some sort of close]

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J. Eric Gould 05/24/99 03:01:56 PM

Record Type: Record

To: Lisa M. Brown/OVP @ OVP, Cynthia A. Rice/OPD/EOP

cc:

Subject: OPM edits and draft POTUS cover letter

I apologize for the delay but I also drafted the cover letter.

I did not include reference to the SGA increase from Feb 99. I don't remember whether we decided that POTUS and VPOTUS were going to do cover letters. SGA should be included in VPOTUS letter.

POTUSLT.W

OPMEDITS.W

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Letter should clearly direct agencies to implement the recommendations in the plan

Draft Cover Letter for "A Plan for Employment of People with Disabilities in the Federal Government."

America is enjoying great prosperity, with the prospect of an even brighter future as we head into the next century. Our economy is the strongest it has been in a generation. Since I have been President, there have been more than 18 million new jobs; and unemployment is as low as it has been in 29 years. Still, we cannot consider ourselves truly successful until all Americans, including the 30 million working-age adults with disabilities, have access to the tools and opportunities they need to achieve economic independence.

Today, the Americans with Disabilities Act is making it possible for millions of Americans to participate more fully in our society. However, 9 years after the ADA's passage, the unemployment rate among working-age Americans with severe disabilities is still far too high. Almost 75 percent of working-age Americans with severe disabilities remain unemployed. If America is to live up to its promise of equal opportunity, and if our economy is to continue to strengthen and expand, we must be able to draw on the untapped energy, and creativity of this large and capable segment of our population.

On March 13, 1998, I addressed the unemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities. This Task Force was charged with creating a coordinated national policy to bring working-age individuals with disabilities into gainful employment.

~~Moreover, the Administration's FY 2000 budget includes~~ a historic new $2 billion initiative that removes significant barriers to work for people with disabilities. It includes the Work Incentives Improvement Act, which invests $1.2 billion in providing ~~options for workers with disabilities to buy into Medicaid and Medicare~~ health care and employment services for people with disabilities so they can work; a new $700 million investment in a $1,000 tax credit for workers with disabilities; and more than double the government's current investment, an increase of $35 million, in assistive technologies that make it possible for individuals with disabilities to work.

At the same time as we fight to ensure all people with disabilities have the health care and other assistance they need to go to work, today

Both the Guide and its companion piece "A Plan for Employment of People with Disabilities in the Federal Government: Accessing Opportunity," were developed in support of the Task Force's efforts and recommendations. With employment being the best path to economic security and to personal and professional fulfillment, these references are excellent guides and resources to aid Federal employers in their continued efforts to hire and advance employees with disabilities.

[Directive]

In December, the Task Force presented me with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations, including

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Suggested Edits to OPM Draft of Plan for Employment of People With Disabilities in the Federal Government

Throughout the paper: Omit bold and underline for "OPM". Also, general instructions should be consistent: "Agencies should" and "OPM will"

Title Page

Omit: "Model" in title (reflect the change of title throughout the document).

Table of Contents

Change: "Recruitment and ~~Placement~~" to "Recruitment and Hiring".

Sections are rearranged as reflected below.

Introduction

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Replace first three paragraphs with:

"Since President Clinton took office, the American economy has added nearly 18 million new jobs, and unemployment is the lowest in three decades. The unemployment rate among all working-age adults with disabilities, however, is nearly 75 percent. ~~Individuals with disabilities face multiple barriers to work, which include lack of adequate health insurance, higher costs of work, a disconnected service system, and inaccessible or unavailable technology.~~ However, scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. As a nation, we are best served when all our citizens have the opportunity to contribute their ~~talents~~, ideas, and energy to the workforce.

The Federal Government should take the lead in recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. ~~The objective is eliminating widespread barriers to gainful employment for people with disabilities.~~

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as a close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a Plan. The Plan addresses the following specific goals:

- Recruitment and Hiring;
- Reasonable Accommodation;
- Career Development and Promotion; and

to increase the representation of adults with disabilities in the Federal workforce.

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- Monitoring and Evaluating Progress."

Omit the fourth paragraph beginning, "In addition, ..."

Fifth paragraph, first sentence: OPM ~~is pleased to~~ provides the ~~Model~~ Plan for government wide....

Last sentence: The ~~Model~~ Plan ~~is the first step to help~~ will assist Federal employers to fulfill this commitment...

Recruitment and Hiring

Goal: ~~Urges~~ [A]ll departments and managers ~~to~~ should recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels.

Because it is a long section, it should be broken up as: "Vacancy Announcements" (for the first bullet); "Recruitment Strategies" (after the first bullet); "Special Appointing Authorities" (after the bullet, 'Federal employers should ensure that managers and supervisors understand and use various hiring programs...'); and "Employment Opportunities for Students" (inserted after the CFR reference on hiring disabled veterans).

Second paragraph: OPM will benchmark best practices in public and private sectors ~~when~~ of successful recruitment efforts...

Third paragraph, second sentence: These messengers will serve as liaisons ~~of~~ between the ~~Model~~ Plan ~~to~~ and the community....

Paragraph, "Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness." This paragraph needs to be modified to reflect the pending Executive Order to be announced by Mrs. Gore.

Omit the third to last bullet: "Before recruiting, Federal employers will review internal human resource policies..."

Second to last bullet, "Federal employees should include language for vacancy announcements..." should be moved up as the first bullet of the entire section.

Last bullet: "Federal employers ~~are also urged to~~ should review their programs to determine if part-time employment opportunities could be created..." -- Could OPM add more to this language, describing options agencies have?

A separate section on Employment Opportunities for Students is not necessary. The key points should be added to the end of this section:

"OPM will continue promoting the Student Educational Employment Program to students,

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colleges and universities, and Federal managers and supervisors."

"OPM will serve as clearinghouse for all students interested in Student Educational Employment Program opportunities."

"OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to department and agencies."

"OPM will master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses."

Reasonable Accommodation

Goal: Employers should establish agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities.

Up front language should be added making the point that reasonable accommodation is current law, i.e., "The law requires reasonable accommodation in the workplace and it is the policy of this Administration to ensure reasonable accommodation is available to all employees."
First bullet, "A reasonable accommodation is an adjustment or alteration ~~made to a job and/or the work environment~~ that enables people with disabilities to ~~perform the duties of the position~~ apply for jobs, to perform job duties, or to enjoy equal benefits and other privilege of employment...

After the first bullet, insert new bullet: "Agency-wide policies should make it easy and simple to request an accommodation. They should provide for a fair, prompt and balanced review of an accommodation request and a meaningful dialogue between supervisor and employee where necessary."

In the second bullet, "The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies should explore ways to insure their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new Enforcement Guidance on Reasonable Accommodation issued by The Equal Employment Opportunity Commission (EEOC), on March 1, 1999. Free copies of this and other EEOC guidance can be obtained by calling 1(800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov. (Delete the cite to the EEOC Guidelines).

The example of a reasonable accommodation process should be mentioned but included as part of the more comprehensive "Employment Guide".

Career Development

Goal: "~~Encourages~~ [A]ll departments and agencies ~~to~~ should give full consideration..."

First bullet: "Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, promotions, managerial and executive training or other career development opportunities..."

Monitoring and Evaluating Progress

Goal: "Collects and maintains data to monitor the success..."

Second to last bullet, re: federal employers are encouraged to recognize managers and supervisors... should be moved to "Career Development" section.

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Throughout "OPM will . . . ." no underline/bold → Also Gail in with To help paginate, OPM will

Suggested Edits to OPM Draft of Plan for Employment of People With Disabilities in the Federal Government

Title Page Need to draft cover letter

Omit: "Model" in title (reflect ~~the change of title throughout the document~~).

Table of Contents

Change: "Recruitment and ~~Placement~~" to "Recruitment and Hiring".

Sections are rearranged as reflected below.

Make it more 18 mill/yr jobs. Admin focused → use Lakshmi

Introduction

~~Omit first sentence~~ = Rework first ~~paragraph~~.

Change the last sentence of the third paragraph and bullets to: "The Plan addresses the following areas:

- Recruitment and Hiring;
- Reasonable Accommodation;
- Career Development and Promotion; and
- Monitoring and Evaluating Progress."

Rework 1st 3 graphs → job creation thru Admin → PWD not beg → EO target → Fed employ down Lord

Omit the fourth paragraph beginning, "In addition, ..."

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~~to~~ ensure them managers and supervisors ~~to~~ understand and use

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Third paragraph, second sentence: These messengers will serve as liaisons ~~of~~ between the ~~Model~~ Plan ~~to~~ and the community....

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Management

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Please Deliver To:

Name: Lisa Brown	
Office: OVP	Room:
Telephone:	

From:

Name:	Mary Strand	
Office:	OPM	Room:
Telephone:	(202) 606-1000	FAX Number: (202) 606-2183

Remarks

(1) Changes to model Plan

(2) DRAFT EO on Psy. Disabilities w/ Preamble w/ EDITS

INFO CIRCLED ARE OPM ADDITIONS

OPM Form 1615(WP)

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CHANGES FROM 4/19 HIGHLIGHTED

APR 29 1999

ACCESSING OPPORTUNITY

A Model Plan *for* Employment of People With Disabilities in the Federal Government

United States Office of Personnel Management

Employment Service

Theodore Roosevelt Building
1900 E Street, NW
Washington, DC 20415-9800

202-606-1059
www.opm.gov

ES DO-04
March 1999

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with disabilities have not shared in this employment prosperity.

The Federal Government should take the lead in recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. The objective is eliminating widespread barriers to gainful employment for people with disabilities.

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a Model Plan. The Model Plan addresses the following specific goals: areas.

- Urge departments and agencies to recruit widely for positions at all levels; Recruitment and hiring
- Help departments and agencies provide opportunities for students with disabilities; Reasonable accomodation;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities; and Developmental opportunities; and
- Collect and maintain data to monitor success. Data collection for monitoring & evaluating progress

In addition, the Model Plan reminds agencies of their responsibilities to provide, when requested, a reasonable accommodation to an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.

OPM is pleased to provide the Model Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Model Plan is the first step to help Federal employers fulfill this commitment and become a model employer. will assist

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MODEL PLAN

- RECRUITMENT AND PLACEMENT -

**GOAL I: ~~Urges~~ *All departments and managers should recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels.*

- Federal employers should develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors when successful recruitment efforts of people with disabilities is evident. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons of the Model Plan to the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Model Plan efforts and best practices.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13-15, in order to attract candidates from outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at 1-800-526-7234.

- The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

- Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security disability benefits and have been prepared to work. Employers may request resumes--

  - By telephone: (757) 441-3362;
  - By fax: (757) 441-3374; or
  - By Email: projable@opm.gov.

  Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling OPM at (912) 744-2085.

  For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

17 Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also

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appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, ***OPM*** is available to provide governmentwide or agency-specific data.

- (2) ***OPM*** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Model Plan.

- (1) Federal employers should educate and train managers and supervisors on various hiring programs and resources available ~~to them~~ in recruiting and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

- ***OPM*** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

  Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

  Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

MIS - Goal Announcement related.

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5 CFR 316.302(b)(5) and 5 CFR 316.402(b)(5) for hiring 30 percent or more disabled veterans. These authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

5 CFR 315.604 for hiring disabled veterans enrolled in a VA training program. This authority is used to hire disabled veterans eligible for training under the Department of Veterans Affairs (VA) vocational rehabilitation program (38 U.S.C. chapter 31). The veterans may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program the veterans are not Federal employees for most purposes, but are beneficiaries of the VA. Upon successful completion, the host agency and VA give the veterans Certificates of Training showing the occupational series and grade levels of the positions for which trained. The Certificates of Training allows any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements similar to those available for disabled veterans under 5 CFR 315.604).

- Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules, job sharing, and dissemination of employment and other information in alternative formats.

- Federal employers should include language for vacancy announcements that states that reasonable accommodations are available to applicants or employees with a disability when such an accommodation is requested.

- Federal employers are also urged to review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL II: ***"Helps departments and agencies should provide opportunities for students with disabilities to participate in internship and student employment programs."***

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

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  ~~***OPM*** will continue to expand the diversity of academic disciplines in the PMI Program.~~

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OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- OPM will encourage Colleges and universities ~~will be encouraged~~ to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

GOAL III: ***"Encourages all departments and agencies should give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."***

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Career development and related program review is encouraged to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are encouraged ~~advocated~~. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- ***OPM***, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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Switch this w/ reasonable accomodation as #IV

- MONITORING AND EVALUATING PROGRESS -

**GOAL ~~IV~~: ~~To~~ *Collect and maintain data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce.*

- ***OPM*** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- ***OPM***, in its oversight role, will monitor Federal employer efforts in recruiting and employing people with disabilities.

how do they do that?

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Goal II
Employers should establish agency-wide reasonable accomodation policies and procedures for applicants and employees with disabilities

- REASONABLE ACCOMMODATION -

An example See Employment guide for exampl

- A reasonable accommodation is an adjustment or alteration made to a job and/or the work environment that enables people with disabilities to perform the duties of the position. Federal departments and agencies are required, when requested, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.[1]

- The concept of reasonable accommodation applies to recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies should explore ways to insure their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. The Equal Employment Opportunity Commission (EEOC) is responsible for regulations governing reasonable accommodation and should be contacted by Federal employers needing additional guidance in this matter. Reference EEOC guidance

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential duties of the particular job, the work environment, and the reasonableness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made.

- Types of accommodations include worksite modifications; part-time employment; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, readers, personal assistants; and reassigning or retraining employees. For more information on this matter, please refer to the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*.

Agency-wide policies should make it easy and simple to request an accomodation. They should provide for a fair, prompt and balanced review of an accomodation request; a meaningful dialogue between supervisor and employee where necessary; and a review of medical evidence by a medical professional, where the medical reasons for the dispute accomodation are

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United States Office of Personnel Management

FAX TRANSMITTAL SHEET

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Please Deliver To:

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Telephone:	(202) 606-1000	FAX Number: (202) 606-2183

Remarks

(1) Changes to model Plan

(2) DRAFT EO on Psy. Disabilities w/ Preamble

CHANGES FROM 4/19 HIGHLIGHTED

APR 29 1999

ACCESSING OPPORTUNITY

A Model Plan *for* Employment of People With Disabilities in the Federal Government

United States Office of Personnel Management

Employment Service

Theodore Roosevelt Building
1900 E Street, NW
Washington, DC 20415-9800

202-606-1059
www.opm.gov

ES 00-04
March 1999

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with disabilities have not shared in this employment prosperity.

The Federal Government should take the lead in recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. The objective is eliminating widespread barriers to gainful employment for people with disabilities.

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a Model Plan. The Model Plan addresses the following specific goals:

- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities; and
- Collect and maintain data to monitor success.

In addition, the Model Plan reminds agencies of their responsibilities to provide, when requested, a reasonable accommodation to an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.

OPM is pleased to provide the Model Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Model Plan is the first step to help Federal employers fulfill this commitment and become a model employer.

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MODEL PLAN

- RECRUITMENT AND PLACEMENT -

GOAL I: ***"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."***

- Federal employers should develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors when successful recruitment efforts of people with disabilities is evident. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons of the Model Plan to the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Model Plan efforts and best practices.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13-15, in order to attract candidates from outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at 1-800-526-7234.

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- The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

- Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security disability benefits and have been prepared to work. Employers may request resumes--

  - By telephone: (757) 441-3362;
  - By fax: (757) 441-3374; or
  - By Email: projable@opm.gov.

  Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling OPM at (912) 744-2085.

  For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also

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appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, ***OPM*** is available to provide governmentwide or agency-specific data.

- ***OPM*** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Model Plan.

- Federal employers should educate and train managers and supervisors on various hiring programs and resources available ~~to them~~ in recruiting and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

- ***OPM*** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

  Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

  Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

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GOAL II: ***"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."***

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

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- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

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- REASONABLE ACCOMMODATION -

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- The concept of reasonable accommodation applies to recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies should explore ways to insure their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. The Equal Employment Opportunity Commission (EEOC) is responsible for regulations governing reasonable accommodation and should be contacted by Federal employers needing additional guidance in this matter.

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4/20 @ OPM Model Plan

Bobby = how do we measure the success?

Mark Hunker

Goal @ OPM generally to meet civilian rate

Now people self identify when they join the workforce but people's disability status change

So current #s aren't good

Bill

BCS trying to develop ~~emp~~ employer rate

Mark who by beginning of Jan

~~appointing~~ appointing authority also not good reflection

Instead - do a campaign

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Ron

→ start up / 7 disabilities
EEOC was
(targetted disabilities)
→ more severely / visable

EEOC / Task Force rec

→ we're not requiring agencies
to do these things

→ Pres could direct

→ set forth minimum standards
for reasonable accomodation

→ EEOC guidance on reasonable accomodation
March 1, 1999

→ applies to all employers
→ should reference it

These Task Force recommendations go beyond EEOC rec.

Mark

Agencies may complain

→ we've met EEOC guidance

EEOC recommends we include Task Force rec as 'shoulds'

→ put in plan now

Do in steps??

(1) Model Plan

(2)

→ report back to OPM by certain date

→ data

→ results

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Direct La Chance as
Lack of Fed Govt as
Model Employer

A Plan not a Model Plan

Next steps

OPM < (1) Revise plan (same level)
(2) Then do matrix version
Bailey (3) How to measure success?

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF LEGAL COUNSEL

PEGGY R. MASTROIANNI
ASSOCIATE LEGAL COUNSEL

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SMALL EMPLOYERS AND REASONABLE ACCOMMODATION

INTRODUCTION

The Americans with Disabilities Act (ADA) requires an employer with 15 or more employees to provide reasonable accommodation for individuals with disabilities, unless it would cause undue hardship. A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities. There are three categories of "reasonable accommodations":

(i) changes to a ***job application process***

(ii) changes to the ***work environment***, or to the ***way a job is usually done***

(iii) changes that enable an employee with a disability to enjoy ***equal benefits and privileges of employment*** (such as access to training).

Although many individuals with disabilities can apply for and perform jobs without any reasonable accommodations, workplace barriers may keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how job tasks are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.

This guide answers some of the key questions facing small businesses in connection with reasonable accommodations. It explains the obligations of both employers and individuals with disabilities, and reviews the limits on how far employers must go in providing reasonable accommodations.

This guide is adapted from the Equal Employment Opportunity Commission's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA. Small employers wishing to learn more about reasonable accommodation and undue hardship should call ***1-800-669-3362*** to request a free copy of the Enforcement Guidance, or review it at EEOC's website, ***www.eeoc.gov***.

REQUESTING REASONABLE ACCOMMODATION

1. *How must an individual* request a reasonable accommodation?

The individual must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. An individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation." Requests for reasonable accommodation do not need to be in writing, though an employer may choose to write a memorandum or letter confirming the request.

2. What must an employer do *after receiving a request for reasonable accommodation?*

When the **disability and/or the need for accommodation is not obvious**, the employer may ask the individual for **reasonable documentation** about his/her disability and functional limitations.

The employer and the individual with a disability should **engage in an informal process** to clarify what the individual needs and identify the appropriate reasonable accommodation. The employer may ask the individual questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

There are extensive public and private resources to help employers and individuals with disabilities who are not familiar with possible accommodations. (See the Appendix to this guide for a resource directory to help identify reasonable accommodations.)

3. Must an employer provide the reasonable accommodation *that the individual wants*?

The employer may choose among reasonable accommodations as long as the chosen accommodation is effective (i.e., it removes the workplace barrier at issue). The employer may offer alternative suggestions for reasonable accommodations to remove the workplace barrier in question. If there are two possible reasonable accommodations, and one costs more or is more difficult to provide, the employer may choose the one that is less expensive or easier to provide, as long as it is effective.

4. *How quickly must an employer respond* to a request for reasonable accommodation?

An employer should respond promptly to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Similarly, the

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employer should act promptly to provide the reasonable accommodation.

TYPES OF REASONABLE ACCOMMODATIONS

There are many different kinds of reasonable accommodations. Below is information on some of them.

5. Is *restructuring a job* a reasonable accommodation?

Yes. This includes: (1) shifting responsibility to other employees for minor job tasks that an employee is unable to perform because of a disability; and (2) altering when and/or how a job task is performed. If an employee is unable to perform a minor job task because of a disability, an employer can require the employee to perform a different minor job function in its place.

6. Is providing *leave* necessitated by an employee's disability a form of reasonable accommodation?[1]

Yes, absent undue hardship, providing ***unpaid leave*** is a form of reasonable accommodation. However, ***an employer does not have to provide more paid leave*** than it provides to other employees.

7. May an employer apply a *"no-fault" leave policy*, under which employees are automatically terminated after they have been on leave for a certain period of time, to an employee with a disability who needs additional leave?

If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must provide the employee with the additional leave even if it has a "no-fault" policy. An employer, however, does not need to provide leave if: (1) it can provide an effective accommodation that allows the person to keep working, or (2) it can show that granting additional leave would cause an undue hardship.

8. When an employee requests leave as a reasonable accommodation, may an employer provide an accommodation that *requires him/her to remain on the job instead?*

Yes, if the employer's proposed reasonable accommodation would be effective and

[1] *Employers who are covered by the Family and Medical Leave Act (FMLA) may have obligations under that law, as well as the ADA. For more information on how these two laws apply to leave and modified schedules, employers may consult the EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA and the EEOC's Fact Sheet on the FMLA and the ADA.*

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eliminate the need for leave. Accordingly, an employer may reallocate minor job tasks or provide a temporary transfer instead of leave, so long as the employee can still address his/her medical needs.

9. Is a *modified or part-time schedule* a reasonable accommodation?

Yes, absent undue hardship. A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain job tasks are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave.

10. Is it a reasonable accommodation to *modify a workplace policy* because of an employee's disability?

Yes. For example, granting an employee time off from work or an adjusted work schedule as a reasonable accommodation may involve modifying leave or attendance procedures or policies. However, reasonable accommodation only requires that the employer modify the policy for an employee with a disability. The employer may continue to apply the policy to all other employees.

11. Does an employer have to *reassign to a vacant position* an employee who can no longer perform his/her job because of a disability?

Yes, unless the employer can show that it would be an undue hardship. The following criteria apply to reassignment:

- ***An employee must be "qualified" for the new position.*** This means that s/he: (1) satisfies the skill, experience, education, and other job-related requirements of the position, and (2) can perform the primary job tasks of the new position, with or without reasonable accommodation. The employer does not have to assist the employee to become qualified.

- An employer does not have to bump other employees or create a position. Nor does an employer have to promote the employee.

- Reassignment should be to a position that is ***equal in pay and status*** to the position that the employee held, or to one that is as close as possible in terms of pay and status if an equivalent position is not vacant.

12. Does a reasonable accommodation include *changing a person's supervisor*?

No. The ADA may, however, require that supervisory methods, such as the method of communicating assignments, be altered as a form of reasonable accommodation.

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OTHER REASONABLE ACCOMMODATION ISSUES

13. Are there certain things that *are not considered reasonable accommodations and are therefore not required*?

- An employer ***does not have to eliminate a primary job responsibility.***

- An employer is ***not required to lower production standards*** that are applied to all employees, though it may have to provide reasonable accommodation to enable an employee with a disability to meet them.

- An employer ***does not have to provide personal use items***, such as a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices.

- An employer ***never has to excuse a violation of a uniformly applied conduct rule*** that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

14. May an employer *tell other employees that someone is receiving a reasonable accommodation*?

No, because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.

An employer may certainly respond to a question from an employee about why a coworker is receiving what is perceived as "different" or "special" treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer's policy to respect employee privacy. An employer may be able to make this point effectively by reassuring the employee asking the question that his/her privacy would similarly be respected if s/he found it necessary to ask the employer for some kind of workplace change for personal reasons. Employers might also find it helpful to provide all employees with information about various laws that require employers to meet certain employee needs (*e.g.*, the ADA and the Family and Medical Leave Act), while also requiring them to protect the privacy of employees.

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15. *May an employer ask whether a reasonable accommodation is needed* when an employee with a disability has not asked for one?

If an employer knows that an employee has a disability, it may ask whether s/he needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. An employer also may ask an employee with a disability who is having performance or conduct problems if s/he needs reasonable accommodation.

UNDUE HARDSHIP: LIMITS ON PROVIDING REASONABLE ACCOMMODATIONS

An employer never has to provide any reasonable accommodation that causes ***undue hardship***, meaning significant difficulty or expense. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive or disruptive, or those that would fundamentally alter the nature or operation of the business.

Every request for reasonable accommodation should be evaluated separately to determine if it would impose an undue hardship, taking into account:

- the nature and cost of the accommodation needed;

- the overall financial resources of the business; the number of persons employed by the business; and the effect on expenses and resources of the business;

- the impact of the accommodation on the business.

If cost is an issue, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation. In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation. Also, to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if s/he will pay the difference.

An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices, or because providing a reasonable accommodation might have a negative impact on employee morale. Employers, however, may claim undue hardship where a reasonable accommodation would be ***unduly disruptive to other employees' ability to work.***

16. Must an employer modify the work hours of an employee with a disability if doing so *would prevent other employees from performing their jobs*?

No. If modifying one employee's work hours (or granting leave) would prevent

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other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

17. Can an employer deny a request for leave when *an employee cannot provide a fixed date of return*?

In some situations, an employee may be able to provide only an ***approximate date of return*** because treatment and recuperation do not always permit exact timetables. If an employer is able to show that the lack of a fixed return date imposes an undue hardship, then it can deny the leave. Undue hardship could result if the employer can neither plan for the employee's return nor permanently fill the position. In other situations, an employer may be able to be flexible.

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APPENDIX

RESOURCES FOR LOCATING REASONABLE ACCOMMODATIONS

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice) 1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq. (1994), and the regulations, 29 C.F.R. § 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9 (1997) , and (2) *A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act* III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, rehabilitation agencies (that may be able to pay some/all of the costs for certain reasonable accommodations), and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidances and documents: (1) Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); and (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the *ADA Technical Assistance Manual and Resource Directory* and the poster, are also available through the Internet at *http://www.eeoc.gov.*

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U.S. Department of Labor

(To obtain information on the Family and Medical Leave Act)
To request written materials: 1-800-959-3652 (Voice) 1-800-326-2577 (TT)
To ask questions: (202) 219-8412 (Voice)

Internal Revenue Service

(For information on tax credits and deductions for providing certain reasonable accommodations)
(202) 622-6060 (Voice)

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)
http://janweb.icdi.wvu.edu/.

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

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(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice) (703) 524-6639 (TT)
http://www.resna.org/hometa1.htm

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

* information and referral centers to help determine what devices may assist a

person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products),

* centers where individuals can try out devices and equipment,

* assistance in obtaining funding for and repairing devices, and

* equipment exchange and recycling programs.

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EEOC	NOTICE	Number 915.002
		Date 03/01/99

1. SUBJECT: EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act

2. PURPOSE: This enforcement guidance sets forth the Commission's position under Title I of the Americans with Disabilities Act of 1990, on reasonable accommodation and undue hardship.

3. EFFECTIVE DATE: Upon receipt.

4. EXPIRATION DATE: As an exception to EEOC Order 205.001, Appendix B, Attachment 4, § a(5), this Notice will remain in effect until rescinded or superseded.

5. ORIGINATOR: ADA Division, Office of Legal Counsel.

6. INSTRUCTIONS: File after Section 902 of Volume II of the Compliance Manual.

3/1/99
Date

Ida L. Castro
Chairwoman

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DISTRIBUTION: CM Holders

Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act

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ENFORCEMENT GUIDANCE:
REASONABLE ACCOMMODATION AND UNDUE HARDSHIP
UNDER THE AMERICANS WITH DISABILITIES ACT

INTRODUCTION

This Enforcement Guidance clarifies the rights and responsibilities of employers and individuals with disabilities regarding reasonable accommodation and undue hardship. Title I of the ADA requires an employer to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, except when such accommodation would cause an undue hardship. This Guidance sets forth an employer's legal obligations regarding reasonable accommodation; however, employers may provide more than the law requires.

This Guidance examines what "reasonable accommodation" means and who is entitled to receive it. The Guidance addresses what constitutes a request for reasonable accommodation, the form and substance of the request, and an employer's ability to ask questions and seek documentation after a request has been made.

The Guidance discusses reasonable accommodations applicable to the hiring process and to the benefits and privileges of employment. The Guidance also covers different types of reasonable accommodations related to job performance, including job restructuring, leave, modified or part-time schedules, modified workplace policies, and reassignment. Questions concerning the relationship between the ADA and the Family and Medical Leave Act (FMLA) are examined as they affect leave and modified schedules. Reassignment issues addressed include who is entitled to reassignment and the extent to which an employer must search for a vacant position. The Guidance also examines issues concerning the interplay between reasonable accommodations and conduct rules.

The final section of this Guidance discusses undue hardship, including when requests for schedule modifications and leave may be denied.

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GENERAL PRINCIPLES

Reasonable Accommodation

Title I of the Americans with Disabilities Act of 1990 (the "ADA")[1] requires an employer[2] to provide reasonable accommodation to qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship. "In general, an accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities."[3] There are three categories of "reasonable accommodations":

> "(i) modifications or adjustments to a **job application process** that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or
>
> (ii) modifications or adjustments to the **work environment**, or to the manner or **circumstances under which the position held** or **desired is customarily performed**, that enable a qualified individual with a disability to perform the essential functions of that position; or
>
> (iii) modifications or adjustments that enable a covered entity's employee with

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[1] 42 U.S.C. §§ 12101-12117, 12201-12213 (1994) (codified as amended).

The analysis in this guidance applies to federal sector complaints of non-affirmative action employment discrimination arising under section 501 of the Rehabilitation Act of 1973. 29 U.S.C. § 791(g) (1994). It also applies to complaints of non-affirmative action employment discrimination arising under section 503 and employment discrimination under section 504 of the Rehabilitation Act. 29 U.S.C. §§ 793(d), 794(d) (1994).

The ADA's requirements regarding reasonable accommodation and undue hardship supercede any state or local disability antidiscrimination laws to the extent that they offer less protection than the ADA. See 29 C.F.R. § 1630.1(c)(2) (1997).

[2] In addition to employers, the ADA requires employment agencies, labor organizations, and joint labor-management committees to provide reasonable accommodations. See 42 U.S.C. § 12112(a), (b)(5)(A) (1994).

[3] 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997).

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a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities."[4]

The duty to provide reasonable accommodation is a fundamental statutory requirement because of the nature of discrimination faced by individuals with disabilities. Although many individuals with disabilities can apply for and perform jobs without any reasonable accommodations, there are workplace barriers that keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible facilities or equipment), or they may be procedures or rules (such as rules concerning when work is performed, when breaks are taken, or how essential or marginal functions are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.

Reasonable accommodation is available to qualified applicants and employees with disabilities.[5] Reasonable accommodations must be provided to qualified employees regardless of whether they work part-time or full-time, or are considered "probationary." Generally, the individual with a disability must inform the employer that an accommodation is needed.[6]

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[4] 29 C.F.R. § 1630.2(o)(1)(i-iii) (1997) (emphasis added). The notices that employers and labor unions must post informing applicants, employees, and members of labor organizations of their ADA rights must include a description of the reasonable accommodation requirement. These notices, which must be in an accessible format, are available from the EEOC. See the Appendix.

[5] All examples used in this document assume that the applicant or employee has an ADA "disability."

Individuals with a relationship or association with a person with a disability are not entitled to receive reasonable accommodations. See Den Hartog v. Wasatch Academy, 129 F.3d 1076, 1084, 7 AD Cas. (BNA) 764, 772 (10th Cir. 1997).

[6] See 29 C.F.R. pt. 1630 app. § 1630.9 (1997); see also H.R. Rep. No. 101-485, pt. 3, at 39 (1990) [hereinafter House Judiciary Report]; H.R. Rep. No. 101-485, pt. 2, at 65 (1990) [hereinafter House Education and Labor Report]; S. Rep. No. 101-116, at 34 (1989) [hereinafter Senate Report].

For more information concerning requests for a reasonable accommodation, see Questions 1-4, infra. For a discussion of the limited circumstance under which an employer would be required to ask an individual with a disability whether s/he needed a reasonable accommodation, see Question 39, infra.

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There are a number of possible reasonable accommodations that an employer may have to provide in connection with modifications to the work environment or adjustments in how and when a job is performed. These include:

- making existing facilities accessible;
- job restructuring;
- part-time or modified work schedules;
- acquiring or modifying equipment;
- changing tests, training materials, or policies;
- providing qualified readers or interpreters; and
- reassignment to a vacant position.[7]

There are several **modifications or adjustments that are not considered forms of reasonable accommodation.** An employer does not have to eliminate an essential function, i.e., a fundamental duty of the position. This is because a person with a disability who is unable to perform the essential functions, with or without reasonable accommodation,[8] is not a "qualified" individual with a disability within the meaning of the ADA. Nor is an employer required to lower production standards -- whether qualitative or quantitative[9] -- that are applied uniformly to employees with and without disabilities. However, an employer may have to provide reasonable accommodation to enable an employee with a disability to meet the production standard. While an employer is not required to eliminate an essential function or lower a production standard, it may do so if it wishes.

An employer does not have to provide as reasonable accommodations personal use items needed in accomplishing daily activities both on and off the job. Thus, an

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[7] 42 U.S.C. § 12111(9) (1994); 29 C.F.R. § 1630.2(o)(2)(i-ii) (1997).

[8] "[W]ith or without reasonable accommodation" includes, if necessary, reassignment to a vacant position. Thus, if an employee is no longer qualified because of a disability to continue in his/her present position, an employer must reassign him/her as a reasonable accommodation. See the section on "Reassignment," infra pp. 37-38 and n.73.

[9] 29 C.F.R. pt. 1630 app. § 1630.2(n) (1997).

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employer is not required to provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, an employer is not required to provide personal use amenities, such as a hot pot or refrigerator, if those items are not provided to employees without disabilities. However, items that might otherwise be considered personal may be required as reasonable accommodations where they are specifically designed or required to meet job-related rather than personal needs.[10]

A modification or adjustment satisfies the reasonable accommodation obligation if it is "effective."[11] In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, an effective accommodation will enable an applicant with a disability to have an equal opportunity to participate in the application process and to be considered for a job. Finally, a reasonable accommodation will be effective if it allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy.

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[10] 29 C.F.R. pt. 1630 app. § 1630.9 (1997).

[11] See 29 C.F.R. pt. 1630 app. § 1630.9 (1997); Senate Report, supra note 6, at 35 ("reasonableness" of an accommodation is assessed "in terms of effectiveness and equal opportunity"); House Education and Labor Report, supra note 6, at 66 ("[a] reasonable accommodation should be effective for the employee"); see also Bryant v. Better Business Bureau of Greater Maryland, 923 F. Supp. 720, 736, 5 AD Cas. (BNA) 625, 634-35 (D. Md. 1996); Dutton v. Johnson County Bd. of Comm'rs, 859 F. Supp. 498, 507, 3 AD Cas. (BNA) 808, 815 (D. Kan. 1994); Davis v. York Int'l, Inc., 2 AD Cas. (BNA) 1810, 1816 (D. Md. 1993).

Some courts have said that in determining whether an accommodation is "reasonable," one must look at the costs of the accommodation in relation to its benefits. See, e.g., Monette v. Electronic Data Sys. Corp., 90 F.3d 1173, 1184 n.10, 5 AD Cas. (BNA) 1326, 1335 n.10 (6th Cir. 1996); Vande Zande v. Wisconsin Dept. of Admin., 44 F.3d 538, 543, 3 AD Cas. (BNA) 1636, 1638-39 (7th Cir. 1995). This "cost/benefit" analysis has no foundation in the statute, regulations, or legislative history of the ADA. See 42 U.S.C. § 12111(9), (10) (1994); 29 C.F.R. § 1630.2(o), (p) (1997); see also Senate Report, supra, at 31-35; House Education and Labor Report, supra, at 57-58.

Example A: An employee with a hearing disability must be able to contact the public by telephone. The employee proposes that he use a TTY[12] to call a relay service operator who can then place the telephone call and relay the conversation between the parties. This is a reasonable accommodation because it is effective. It enables the employee to communicate with the public.

Example B: A cashier easily becomes fatigued because of lupus and, as a result, has difficulty making it through her shift. The employee requests a stool because sitting greatly reduces the fatigue. This reasonable accommodation is effective because it removes a workplace barrier -- being required to stand -- and thus gives the employee the opportunity to perform as well as any other cashier.

The term "reasonable accommodation" is a term of art that Congress defined only through examples of changes or modifications to be made, or items to be provided, to a qualified individual with a disability. The statutory definition of "reasonable accommodation" does not include any quantitative, financial, or other limitations regarding the extent of the obligation to make changes to a job or work environment.[13] **The only statutory limitation on an employer's obligation to provide "reasonable accommodation" is that no such change or modification is required if it would cause "undue hardship" on the employer.**[14] Undue hardship addresses quantitative, financial, or other limitations on an employer's ability to provide reasonable accommodation.

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[12] A TTY is a device that permits individuals with hearing and speech impairments to communicate by telephone.

[13] 42 U.S.C. § 12111(9) (1994) ("The term 'reasonable accommodation' may include -- (A) making existing facilities . . . readily accessible . . .; and (B) job restructuring; part-time or modified work schedules, reassignment to a vacant position; acquisition or modification of equipment or devices, . . .").

[14] See 42 U.S.C. § 12112 (b)(5)(A) (1994) (it is a form of discrimination to fail to provide a reasonable accommodation "unless such covered entity can demonstrate that the accommodation would impose an undue hardship . . ."); see also 42 U.S.C. § 12111(10) (1994) (defining "undue hardship" based on factors assessing cost and difficulty).

The legislative history discusses financial, administrative, and operational limitations on providing reasonable accommodations only in the context of defining "undue hardship." Compare Senate Report, supra note 6, at 31-34 with 35-36; House Education and Labor Report, supra note 6, at 57-58 with 67-70.

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Undue Hardship

"Undue hardship" means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business.[15] An employer must assess on a case-by-case basis whether a particular reasonable accommodation would cause undue hardship. The ADA's "undue hardship" standard is different from that applied by courts under Title VII of the Civil Rights Act of 1964 for religious accommodation.[16]

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[15] See 42 U.S.C. § 12111(10) (1994); 29 C.F.R. § 1630.2(p) (1997); 29 C.F.R. pt. 1630 app. § 1630.2(p) (1997).

[16] See 29 C.F.R. pt. 1630 app. § 1630.15(d) (1997). See also Eckles v. Consolidated Rail Corp., 94 F.3d 1041, 1048-49, 5 AD Cas. (BNA) 1367, 1372-73 (7th Cir. 1996); Bryant v. Better Business Bureau of Maryland, 923 F. Supp. 720, 740, 5 AD Cas. (BNA) 625, 638 (D. Md. 1996).

REQUESTING REASONABLE ACCOMMODATION

1. **How must an individual** request a reasonable accommodation?

When an individual decides to request accommodation, the individual or his/her representative must let the employer know that s/he needs an adjustment or change at work for a reason related to a medical condition. To request accommodation, an individual may use "plain English" and need not mention the ADA or use the phrase "reasonable accommodation."[17]

Example A: An employee tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for a reasonable accommodation.

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[17] See, e.g., Schmidt v. Safeway Inc., 864 F. Supp. 991, 997, 3 AD Cas. (BNA) 1141, 1146-47 (D. Or. 1994) ("statute does not require the plaintiff to speak any magic words. . . . The employee need not mention the ADA or even the term 'accommodation.'"). See also Hendricks-Robinson v. Excel Corp., 154 F.3d 685, 694, 8 AD Cas. (BNA) 875, 882 (7th Cir. 1998) ("[a] request as straightforward as asking for continued employment is a sufficient request for accommodation"); Bultemeyer v. Ft. Wayne Community Schs., 100 F.3d 1281, 1285, 6 AD Cas. (BNA) 67, 71 (7th Cir. 1996) (an employee with a known psychiatric disability requested reasonable accommodation by stating that he could not do a particular job and by submitting a note from his psychiatrist); McGinnis v. Wonder Chemical Co., 5 AD Cas. (BNA) 219 (E.D. Pa. 1995) (employer on notice that accommodation had been requested because: (1) employee told supervisor that his pain prevented him from working and (2) employee had requested leave under the Family and Medical Leave Act).

Nothing in the ADA requires an individual to use legal terms or to anticipate all of the possible information an employer may need in order to provide a reasonable accommodation. The ADA avoids a formulistic approach in favor of an interactive discussion between the employer and the individual with a disability, after the individual has requested a change due to a medical condition. Nevertheless, some courts have required that individuals initially provide detailed information in order to trigger the employer's duty to investigate whether reasonable accommodation is required. See, e.g., Taylor v. Principal Fin. Group, Inc., 93 F.3d 155, 165, 5 AD Cas. (BNA) 1653, 1660 (5th Cir. 1996); Miller v. Nat'l Cas. Co., 61 F.3d 627, 629-30, 4 AD Cas. (BNA) 1089, 1090-91 (8th Cir. 1995).

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Example B: An employee tells his supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.

Example C: A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

Example D: An employee tells his supervisor that he would like a new chair because his present one is uncomfortable. Although this is a request for a change at work, his statement is insufficient to put the employer on notice that he is requesting reasonable accommodation. He does not link his need for the new chair with a medical condition.

While an individual with a disability may request a change due to a medical condition, **this request does not necessarily mean that the employer is required to provide the change. A request for reasonable accommodation is the first step** in an informal, interactive process between the individual and the employer. In some instances, before addressing the merits of the accommodation request, the employer needs to determine if the individual's medical condition meets the ADA definition of "disability,"[18] a prerequisite for the individual to be entitled to a reasonable accommodation.

2. May someone **other than the individual with a disability request a reasonable accommodation** on behalf of the individual?

Yes, a family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a

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[18] See Questions 5 - 7, infra, for a further discussion on when an employer may request reasonable documentation about a person's "disability" and the need for reasonable accommodation.

disability.[19] Of course, the individual with a disability may refuse to accept an accommodation that is not needed.

Example A: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. This discussion constitutes a request for reasonable accommodation.

Example B: An employee has been out of work for six months with a workers' compensation injury. The employee's doctor sends the employer a letter, stating that the employee is released to return to work, but with certain work restrictions. (Alternatively, the letter may state that the employee is released to return to a light duty position.) The letter constitutes a request for reasonable accommodation.

3. Do requests for reasonable accommodation need to be in writing?

No. Requests for reasonable accommodation do not need to be in writing. Individuals may request accommodations in conversation or may use any other mode of communication.[20] An employer may choose to write a memorandum

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[19] Cf. Beck v. Univ. of Wis. Bd. of Regents, 75 F.3d 1130, 5 AD Cas. (BNA) 304 (7th Cir. 1996); Schmidt v. Safeway Inc., 864 F. Supp. 991, 997, 3 AD Cas. (BNA) 1141, 1146 (D. Or. 1994). But see Miller v. Nat'l Casualty Co., 61 F.3d 627, 630, 4 AD Cas. (BNA) 1089, 1091 (8th Cir. 1995) (employer had no duty to investigate reasonable accommodation despite the fact that the employee's sister notified the employer that the employee "was mentally falling apart and the family was trying to get her into the hospital").

The employer should be receptive to any relevant information or requests it receives from a third party acting on the individual's behalf because the reasonable accommodation process presumes open communication in order to help the employer make an informed decision. See 29 C.F.R. §§ 1630.2(o), 1630.9 (1997); 29 C.F.R. pt. 1630 app. §§ 1630.2(o), 1630.9 (1997).

[20] Although individuals with disabilities are not required to keep records, they may find it useful to document requests for reasonable accommodation in the event there is a dispute about whether or when they requested accommodation. Employers, however, must keep all employment records, including records of requests for reasonable accommodation, for one year from the making of the record or the

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or letter confirming the individual's request. Alternatively, an employer may ask the individual to fill out a form or submit the request in written form, but the employer cannot ignore the initial request. An employer also may request reasonable documentation that the individual has an ADA disability and needs a reasonable accommodation. (See Question 6).

4. When should an individual with a disability **request** a **reasonable accommodation?**

An individual with a disability may request a reasonable accommodation at any time during the application process or during the period of employment. The ADA does not preclude an employee with a disability from requesting a reasonable accommodation because s/he did not ask for one when applying for a job or after receiving a job offer. Rather, an individual with a disability should request a reasonable accommodation when s/he knows that there is a workplace barrier that is preventing him/her, due to a disability, from effectively competing for a position, performing a job, or gaining equal access to a benefit of employment.[21] As a practical matter, it may be in an employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur.

5. What must an employer do **after receiving** a **request for reasonable accommodation?**

The employer and the individual with a disability should **engage in an informal process** to clarify what the individual needs and identify the appropriate reasonable accommodation.[22] The employer may ask the individual relevant

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personnel action involved, whichever occurs later. If a charge is filed, records must be preserved until the charge is resolved. 29 C.F.R. § 1602.14 (1997).

[21] Cf. Masterson v. Yellow Freight Sys., Inc., Nos. 98-6126, 98-6025, 1998 WL 856143 (10th Cir. Dec. 11, 1998) (fact that an employee with a disability does not need a reasonable accommodation all the time does not relieve employer from providing an accommodation for the period when he does need one).

[22] See 29 C.F.R. § 1630.2(o)(3) (1997); 29 C.F.R. pt. 1630 app. §§ 1630.2(o), 1630.9 (1997); see also Haschmann v. Time Warner Entertainment Co., 151 F.3d 591, 601, 8 AD Cas. (BNA) 692, 700 (7th Cir. 1998); Dalton v. Subaru-Isuzu, 141 F.3d 667, 677, 7 AD Cas. (BNA) 1872, 1880-81 (7th Cir. 1998). The appendix to

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questions that will enable it to make an informed decision about the request. This includes asking what type of reasonable accommodation is needed.

The exact nature of the dialogue will vary. In many instances, both the disability and the type of accommodation required will be obvious, and thus there may be little or no need to engage in any discussion. In other situations, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not have to be able to specify the precise accommodation, s/he does need to describe the problems posed by the workplace barrier. Additionally, suggestions from the individual with a disability may assist the employer in determining the type of reasonable accommodation to provide. Where the individual or the employer are not familiar with possible accommodations, there are extensive public and private resources to help the employer identify reasonable accommodations once the specific limitations and workplace barriers have been ascertained.[23]

6. May an employer ask an individual for documentation when the individual requests reasonable accommodation?

Yes. When the disability and/or the need for accommodation is not obvious, the employer may ask the individual for reasonable documentation about his/her disability and functional limitations.[24] The employer is entitled to know that the

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the regulations at § 1630.9 provides a detailed discussion of the reasonable accommodation process.

Engaging in an interactive process helps employers to discover and provide reasonable accommodation. Moreover, in situations where an employer fails to provide a reasonable accommodation (and undue hardship would not be a valid defense), evidence that the employer engaged in an interactive process can demonstrate a "good faith" effort which can protect an employer from having to pay punitive and certain compensatory damages. See 42 U.S.C. § 1981a(a)(3) (1994).

[23] See 29 C.F.R. pt. 1630 app. § 1630.9 (1997). The Appendix to this Guidance provides a list of resources to identify possible accommodations.

[24] 29 C.F.R. pt. 1630 app. § 1630.9 (1997); see also EEOC Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 6, 8 FEP Manual (BNA) 405:7191, 7193 (1995) [hereinafter Preemployment Questions and Medical Examinations]; EEOC Enforcement Guidance: The Americans with

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individual has a covered disability for which s/he needs a reasonable accommodation.

Reasonable documentation means that the employer may require only the documentation that is needed to establish that a person has an ADA disability, and that the disability necessitates a reasonable accommodation. Thus, an employer, in response to a request for reasonable accommodation, cannot ask for documentation that is unrelated to determining the existence of a disability and the necessity for an accommodation. This means that in most situations an employer cannot request a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. If an individual has more than one disability, an employer can request information pertaining only to the disability that requires a reasonable accommodation.

An employer may require that the documentation about the disability and the functional limitations come from an appropriate health care or rehabilitation professional. The appropriate professional in any particular situation will depend on the disability and the type of functional limitation it imposes. Appropriate professionals include, but are not limited to, doctors (including psychiatrists), psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals.

In requesting documentation, employers should specify what types of information they are seeking regarding the disability, its functional limitations, and the need for reasonable accommodation. The individual can be asked to sign a limited release allowing the employer to submit a list of specific questions to the health care or vocational professional.[25]

Disabilities Act and Psychiatric Disabilities at 22-23, 8 FEP Manual (BNA) 405:7461, 7472-73 (1997) [hereinafter ADA and Psychiatric Disabilities]. Although the latter Enforcement Guidance focuses on psychiatric disabilities, the legal standard under which an employer may request documentation applies to disabilities generally.

When an employee seeks leave as a reasonable accommodation, an employer's request for documentation about disability and the need for leave may overlap with the certification requirements of the Family and Medical Leave Act (FMLA), 29 C.F.R. §§ 825.305-.306, 825.310-.311 (1997).

[25] Since a doctor cannot disclose information about a patient without his/her permission, an employer must obtain a release from the individual that will permit

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As an alternative to requesting documentation, an employer may simply discuss with the person the nature of his/her disability and functional limitations. It would be useful for the employer to make clear to the individual why it is requesting information, i.e., to verify the existence of an ADA disability and the need for a reasonable accommodation.

Example A: An employee says to an employer, "I'm having trouble reaching tools because of my shoulder injury." The employer may ask the employee for documentation describing the impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities (i.e., the employer is seeking information as to whether the employee has an ADA disability).

Example B: A marketing employee has a severe learning disability. He attends numerous meetings to plan marketing strategies. In order to remember what is discussed at these meetings he must take detailed notes but, due to his disability, he has great difficulty writing. The employee tells his supervisor about his disability and requests a laptop computer to use in the meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask the employee for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits the employee's ability to perform the activity or activities. The employer also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help the employee retain the information from the meetings.[26]

Example C: An employee's spouse phones the employee's supervisor on Monday morning to inform her that the employee had a medical emergency due to multiple sclerosis, needed to be hospitalized, and thus requires time off. The supervisor can ask the spouse to send in

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his/her doctor to answer questions. The release should be clear as to what information will be requested. Employers must maintain the confidentiality of all medical information collected during this process, regardless of where the information comes from. See Question 41 and note 103, infra.

[26] See Question 9, infra, for information on choosing between two or more effective accommodations.

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documentation from the employee's treating physician that confirms that the hospitalization was related to the multiple sclerosis and provides information on how long an absence may be required from work.[27]

If an individual's disability or need for reasonable accommodation is not obvious, and s/he refuses to provide the reasonable documentation requested by the employer, then s/he is not entitled to reasonable accommodation.[28] On the other hand, failure by the employer to initiate or participate in an informal dialogue with the individual after receiving a request for reasonable accommodation could result in liability for failure to provide a reasonable accommodation.[29]

7. May an employer require an individual to go to a health care professional of the **employer's (rather than the employee's) choice** for purposes of documenting need for accommodation and disability?

The ADA does not prevent an employer from requiring an individual to go to an appropriate health professional of the employer's choice if the individual provides insufficient information from his/her treating physician (or other health care professional) to substantiate that s/he has an ADA disability and needs a reasonable accommodation. However, if an individual provides insufficient documentation in response to the employer's initial request, the employer should explain why the documentation is insufficient and allow the individual an opportunity to provide the missing information in a timely manner. Documentation is insufficient if it does not specify the existence of an ADA disability and explain the need for reasonable accommodation.[30]

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[27] This employee also might be covered under the Family and Medical Leave Act, and if so, the employer would need to comply with the requirements of that statute.

[28] See Templeton v. Neodata Servs., Inc., No. 98-1106, 1998 WL 852516 (10th Cir. Dec. 10, 1998); Beck v. Univ. of Wis. Bd. of Regents, 75 F.3d 1130, 1134, 5 AD Cas. (BNA) 304, 307 (7th Cir. 1996); McAlpin v. National Semiconductor Corp., 921 F. Supp. 1518, 1525, 5 AD Cas. (BNA) 1047, 1052 (N.D. Tex. 1996).

[29] See Hendricks-Robinson v. Excel Corp., 154 F.3d 685, 700, 8 AD Cas. (BNA) 875, 887 (7th Cir. 1998).

[30] If an individual provides sufficient documentation to show the existence of an ADA disability and the need for reasonable accommodation, continued efforts by the employer to require that the individual see the employer's health professional could be considered retaliation.

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Any medical examination conducted by the employer's health professional must be job-related and consistent with business necessity. This means that the examination must be limited to determining the existence of an ADA disability and the functional limitations that require reasonable accommodation.[31] If an employer requires an employee to go to a health professional of the employer's choice, the employer must pay all costs associated with the visit(s).

8. Are there situations in which an employer **cannot ask for documentation** in response to a request for reasonable accommodation?

Yes. An employer cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided the employer with sufficient information to substantiate that s/he has an ADA disability and needs the reasonable accommodation requested.

Example A: An employee brings a note from her treating physician explaining that she has diabetes and that, as a result, she must test her blood sugar several times a day to ensure that her insulin level is safe in order to avoid a hyperglycemic reaction. The note explains that a hyperglycemic reaction can include extreme thirst, heavy breathing, drowsiness, and flushed skin, and eventually would result in unconsciousness. Depending on the results of the blood test, the employee might have to take insulin. The note requests that the employee be allowed three or four 10-minute breaks each day to test her blood, and if necessary, to take insulin. The doctor's note constitutes sufficient documentation that the person has an ADA disability because it describes a substantially limiting impairment and the reasonable accommodation needed as a result. The employer cannot ask for additional documentation.

Example B: One year ago, an employer learned that an employee had bipolar disorder after he requested a reasonable accommodation. The documentation provided at that time from the employee's psychiatrist indicated that this was a permanent condition which would always involve periods in which the disability would remit and then intensify. The psychiatrist's letter explained that during periods when the condition flared up, the person's manic moods or depressive episodes could be

[31] Employers also may consider alternatives like having their health professional consult with the individual's health professional, with the employee's consent.

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severe enough to create serious problems for the individual in caring for himself or working, and that medication controlled the frequency and severity of these episodes.

Now, one year later, the employee again requests a reasonable accommodation related to his bipolar disorder. Under these facts, the employer may ask for reasonable documentation on the need for the accommodation (if the need is not obvious), but it cannot ask for documentation that the person has an ADA disability. The medical information provided one year ago established the existence of a long-term impairment that substantially limits a major life activity.

Example C: An employee gives her employer a letter from her doctor, stating that the employee has asthma and needs the employer to provide her with an air filter. This letter contains insufficient information as to whether the asthma is an ADA disability because it does not provide any information as to its severity (i.e., whether it substantially limits a major life activity). Furthermore, the letter does not identify precisely what problem exists in the workplace that requires an air filter or any other reasonable accommodation. Therefore, the employer can request additional documentation.

9. Is an employer required to provide the reasonable accommodation that the individual wants?

The employer may choose among reasonable accommodations as long as the chosen accommodation is effective.[32] Thus, as part of the interactive process, the employer may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with a disability.

If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, the employer may choose the less expensive or burdensome accommodation as long as it is effective (i.e., it would remove a workplace barrier, thereby providing the individual with an equal

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[32] See 29 C.F.R. pt. 1630 app. § 1630.9 (1997); see also Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1285-86, 6 AD Cas. (BNA) 1834, 1839 (11th Cir. 1997); Hankins v. The Gap, Inc., 84 F.3d 797, 800, 5 AD Cas. (BNA) 924, 926-27 (6th Cir. 1996); Gile v. United Airlines, Inc., 95 F.3d 492, 499, 5 AD Cas. (BNA) 1466, 1471 (7th Cir. 1996).

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opportunity to apply for a position, to perform the essential functions of a position, or to gain equal access to a benefit or privilege of employment). Similarly, when there are two or more effective accommodations, the employer may choose the one that is easier to provide. In either situation, the employer does not have to show that it is an undue hardship to provide the more expensive or more difficult accommodation. If more than one accommodation is effective, "the preference of the individual with a disability should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between effective accommodations."[33]

Example A: An employee with a severe learning disability has great difficulty reading. His supervisor sends him many detailed memoranda which he often has trouble understanding. However, he has no difficulty understanding oral communication. The employee requests that the employer install a computer with speech output and that his supervisor send all memoranda through electronic mail which the computer can then read to him. The supervisor asks whether a tape recorded message would accomplish the same objective and the employee agrees that it would. Since both accommodations are effective, the employer may choose to provide the supervisor and employee with a tape recorder so that the supervisor can record her memoranda and the employee can listen to them.

Example B: An attorney with a severe vision disability requests that her employer provide someone to read printed materials that she needs to review daily. The attorney explains that a reader enables her to review substantial amounts of written materials in an efficient manner. Believing that this reasonable accommodation would be too costly, the employer instead provides the attorney with a device that allows her to magnify print so that she can read it herself. The attorney can read print using this device, but with such great difficulty it significantly slows down her ability to review written materials. The magnifying device is ineffective as a reasonable accommodation because it does not provide the attorney with an equal opportunity to attain the same level of performance as her colleagues. Without an equal opportunity to attain the same level of performance, this attorney is denied an equal opportunity to compete for promotions. In this instance, failure to provide the reader, absent undue hardship, would violate the ADA.

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[33] 29 C.F.R. pt. 1630 app. §1630.9 (1997).

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10. **How quickly must an employer respond** to a request for reasonable accommodation?

An employer should respond expeditiously to a request for reasonable accommodation. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible.[34] Similarly, the employer should act promptly to provide the reasonable accommodation. Unnecessary delays can result in a violation of the ADA.[35]

Example A: An employer provides parking for all employees. An employee who uses a wheelchair requests from his supervisor an accessible parking space, explaining that the spaces are so narrow that there is insufficient room for his van to extend the ramp that allows him to get in and out. The supervisor does not act on the request and does not forward it to someone with authority to respond. The employee makes a second request to the supervisor. Yet, two months after the initial request, nothing has been done. Although the supervisor never definitively denies the request, the lack of action under these circumstances amounts to a denial, and thus violates the ADA.

Example B: An employee who is blind requests adaptive equipment for her computer as a reasonable accommodation. The employer must order this equipment and is informed that it will take three months to receive delivery. No other company sells the adaptive equipment the employee needs. The employer notifies the employee of the results of its investigation and that it has ordered the equipment. Although it will take three months to receive the equipment, the employer has moved as quickly as it can to obtain it and thus there is no ADA violation resulting from the delay. The employer and employee should determine what can be done so that the employee can perform his/her job as effectively as possible while waiting for the equipment.

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[34] See Dalton v. Subaru-Isuzu Automotive, Inc., 141 F.3d 667, 677, 7 AD Cas. (BNA) 1872, 1880 (7th Cir. 1998).

[35] In determining whether there has been an unnecessary delay in responding to a request for reasonable accommodation, relevant factors would include: (1) the reason(s) for the delay, (2) the length of the delay, (3) how much the individual with a disability and the employer each contributed to the delay, (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide.

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11. May an employer **require an individual with a disability to accept a reasonable accommodation that s/he does not want?**

No. An employer may not require a qualified individual with a disability to accept an accommodation. If, however, an employee needs a reasonable accommodation to perform an essential function or to eliminate a direct threat, and refuses to accept an effective accommodation, s/he may not be qualified to remain in the job.[36]

REASONABLE ACCOMMODATION AND JOB APPLICANTS

12. **May** an employer ask whether a reasonable accommodation is needed when an applicant **has not asked for one?**

An employer may tell applicants what the hiring process involves (e.g., an interview, timed written test, or job demonstration), and may ask applicants whether they will need a reasonable accommodation for this process.

During the hiring process and before a conditional offer is made, an employer generally may not ask an applicant whether s/he needs a reasonable accommodation for the job, except when the employer knows that an applicant has a disability -- either because it is obvious or the applicant has voluntarily disclosed the information -- and could reasonably believe that the applicant will **need a reasonable accommodation to perform specific job functions.** If the applicant replies that s/he needs a reasonable accommodation, the employer may inquire as to what type.[37]

After a conditional offer of employment is extended, an employer may inquire whether applicants will **need reasonable accommodations related to anything connected with the job** (i.e., job performance or access to benefits/privileges of the job) as long as all entering employees in the same job category are asked this question. Alternatively, an employer may ask a specific applicant if s/he needs a reasonable accommodation if the employer knows that this applicant

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[36] See 29 C.F.R. pt. 1630 app. § 1630.9 (1997); see also Hankins v. The Gap, Inc., 84 F.3d 797, 801, 5 AD Cas. (BNA) 924, 927 (6th Cir. 1996).

[37] 42 U.S.C. § 12112(d)(2)(A) (1994); 29 C.F.R. § 1630.13(a) (1997). For a thorough discussion of these requirements, see Preemployment Questions and Medical Examinations, supra note 24, at 6-8, 8 FEP Manual (BNA) 405:7193-94.

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has a disability -- either because it is obvious or the applicant has voluntarily disclosed the information -- and could reasonably believe that the applicant will need a reasonable accommodation. If the applicant replies that s/he needs a reasonable accommodation, the employer may inquire as to what type.[38]

13. Does an employer have to provide a reasonable accommodation to an applicant with a disability even **if it believes that it will be unable to provide this individual with a reasonable accommodation on the job?**

Yes. An employer must provide a reasonable accommodation to a **qualified applicant with a disability** that will enable the individual to have an equal opportunity to participate in the application process and to be considered for a job (unless it can show undue hardship). Thus, individuals with disabilities who meet initial requirements to be considered for a job should not be excluded from the application process because the employer speculates, based on a request for reasonable accommodation for the application process, that it will be unable to provide the individual with reasonable accommodation to perform the job. In many instances, employers will be unable to determine whether an individual needs reasonable accommodation to perform a job based solely on a request for accommodation during the application process. And even if an individual will need reasonable accommodation to perform the job, it may not be the same type or degree of accommodation that is needed for the application process. Thus, an employer should assess the need for accommodations for the application process separately from those that may be needed to perform the job.[39]

Example A: An employer is impressed with an applicant's resume and contacts the individual to come in for an interview. The applicant, who is deaf, requests a sign language interpreter for the interview. The employer cancels the interview and refuses to consider further this applicant because it believes it would have to hire a full-time interpreter. The employer has violated the ADA. The employer should have proceeded with the interview, using a sign language interpreter (absent

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[38] 42 U.S.C. § 12112(d)(3) (1994); 29 C.F.R. § 1630.14(b) (1997); see also Preemployment Questions and Medical Examinations, supra note 24, at 20, 8 FEP Manual (BNA) 405:7201.

[39] See Question 12, supra, for the circumstances under which an employer may ask an applicant whether s/he will need reasonable accommodation to perform specific job functions.

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undue hardship), and at the interview inquired to what extent the individual would need a sign language interpreter to perform any essential functions requiring communication with other people.

Example B: An individual who has paraplegia applies for a secretarial position. Because the office has two steps at the entrance, the employer arranges for the applicant to take a typing test, a requirement of the application process, at a different location. The applicant fails the test. The employer does not have to provide any further reasonable accommodations for this individual because she is no longer qualified to continue with the application process.

REASONABLE ACCOMMODATION RELATED TO THE BENEFITS AND PRIVILEGES OF EMPLOYMENT[40]

The ADA requires employers to provide reasonable accommodations so that employees with disabilities can enjoy the "benefits and privileges of employment" equal to those enjoyed by similarly-situated employees without disabilities. Benefits and privileges of employment include, but are not limited to, employer-sponsored: (1) training, (2) services (e.g., employee assistance programs (EAP's), credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and company outings).[41] If an employee with a disability needs a reasonable accommodation in order to gain access to, and have an equal opportunity to participate in, these benefits and privileges, then the employer must provide the accommodation unless it can show undue hardship.

14. Does an employer have to provide reasonable accommodation **to enable an employee with a disability to have equal access to information communicated in the workplace to non-disabled employees?**

Yes. Employers provide information to employees through different means, including computers, bulletin boards, mailboxes, posters, and public address

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[40] The discussions and examples in this section assume that there is only one effective accommodation and that the reasonable accommodation will not cause undue hardship.

[41] See 29 C.F.R. pt. 1630 app. § 1630.9 (1997).

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systems. Employers must ensure that employees with disabilities have access to information that is provided to other similarly-situated employees without disabilities, regardless of whether they need it to perform their jobs.

Example A: An employee who is blind has adaptive equipment for his computer that integrates him into the network with other employees, thus allowing communication via electronic mail and access to the computer bulletin board. When the employer installs upgraded computer equipment, it must provide new adaptive equipment in order for the employee to be integrated into the new networks, absent undue hardship. Alternative methods of communication (e.g., sending written or telephone messages to the employee instead of electronic mail) are likely to be ineffective substitutes since electronic mail is used by every employee and there is no effective way to ensure that each one will always use alternative measures to ensure that the blind employee receives the same information that is being transmitted via computer.

Example B: An employer authorizes the Human Resources Director to use a public address system to remind employees about special meetings and to make certain announcements. In order to make this information accessible to a deaf employee, the Human Resources Director arranges to send in advance an electronic mail message to the deaf employee conveying the information that will be broadcast. The Human Resources Director is the only person who uses the public address system; therefore, the employer can ensure that all public address messages are sent, via electronic mail, to the deaf employee. Thus, the employer is providing this employee with equal access to office communications.

15. Must an employer provide reasonable accommodation so that an employee may attend training programs?

Yes. Employers must provide reasonable accommodation (e.g., sign language interpreters; written materials produced in alternative formats, such as braille, large print, or on audio-cassette) that will provide employees with disabilities with an equal opportunity to participate in employer-sponsored training, absent undue hardship. This obligation extends to in-house training, as well as to training provided by an outside entity. Similarly, the employer has an obligation to provide reasonable accommodation whether the training occurs on the employer's premises or elsewhere.

Example A: XYZ Corp. has signed a contract with Super Trainers, Inc., to provide mediation training at its facility to all of XYZ's Human

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Resources staff. One staff member is blind and requests that materials be provided in braille. Super Trainers refuses to provide the materials in braille. XYZ maintains that it is the responsibility of Super Trainers and sees no reason why it should have to arrange and pay for the braille copy.

Both XYZ (as an employer covered under Title I of the ADA) and Super Trainers (as a public accommodation covered under Title III of the ADA[42]) have obligations to provide materials in alternative formats. This fact, however, does not excuse either one from their respective obligations. If Super Trainers refuses to provide the braille version, despite its Title III obligations, XYZ still retains its obligation to provide it as a reasonable accommodation, absent undue hardship.

Employers arranging with an outside entity to provide training may wish to avoid such problems by specifying in the contract who has the responsibility to provide appropriate reasonable accommodations. Similarly, employers should ensure that any offsite training will be held in an accessible facility if they have an employee who, because of a disability, requires such an accommodation.

Example B: XYZ Corp. arranges for one of its employees to provide CPR training. This three-hour program is optional. A deaf employee wishes to take the training and requests a sign language interpreter. XYZ must provide the interpreter because the CPR training is a benefit that XYZ offers all employees, even though it is optional.

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[42] 42 U.S.C. §§ 12181(7), 12182(1)(A), (2)(A)(iii) (1994).

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TYPES OF REASONABLE ACCOMMODATIONS RELATED TO JOB PERFORMANCE[43]

Below are discussed certain types of reasonable accommodations related to job performance.

Job Restructuring

Job restructuring includes modifications such as:

- reallocating or redistributing marginal job functions that an employee is unable to perform because of a disability; and
- altering when and/or how a function, essential or marginal, is performed.[44]

An employer never has to reallocate essential functions as a reasonable accommodation, but can do so if it wishes.

16. If, as a reasonable accommodation, an employer restructures an employee's job to eliminate some marginal functions, **may the employer require the employee to take on other marginal functions** that s/he can perform?

Yes. An employer may switch the marginal functions of two (or more) employees in order to restructure a job as a reasonable accommodation.

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[43] The discussions and examples in this section assume that there is only one effective accommodation and that the reasonable accommodation will not cause undue hardship.

The types of reasonable accommodations discussed in this section are not exhaustive. For example, employees with disabilities may request reasonable accommodations to modify the work environment, such as changes to the ventilation system or relocation of a work space.

See the Appendix for additional resources to identify other possible reasonable accommodations.

[44] 42 U.S.C. § 12111(9)(B) (1994); 29 C.F.R. pt. 1630 app. §§ 1630.2(o), 1630.9 (1997); see Benson v. Northwest Airlines, Inc., 62 F.3d 1108, 1112-13, 4 AD Cas. (BNA) 1234, 1236-37 (8th Cir. 1995).

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Example: A cleaning crew works in an office building. One member of the crew wears a prosthetic leg which enables him to walk very well, but climbing steps is painful and difficult. Although he can perform his essential functions without problems, he cannot perform the marginal function of sweeping the steps located throughout the building. The marginal functions of a second crew member include cleaning the small kitchen in the employee's lounge, which is something the first crew member can perform. The employer can switch the marginal functions performed by these two employees.

Leave

Permitting the use of accrued paid leave, or unpaid leave, is a form of reasonable accommodation when necessitated by an employee's disability.[45] **An employer does not have to provide paid leave beyond that which is provided to similarly-situated employees.** Employers should allow an employee with a disability to exhaust accrued paid leave first and then provide unpaid leave.[46] For example, if employees get 10 days of paid leave, and an employee with a disability needs 15 days of leave, the employer should allow the individual to use 10 days of paid leave and 5 days of unpaid leave.

An employee with a disability may need leave for a number of reasons related to the disability, including, but not limited to:

- obtaining medical treatment (e.g., surgery, psychotherapy, substance abuse treatment, or dialysis); rehabilitation services; or physical or occupational therapy;
- recuperating from an illness or an episodic manifestation of the disability;
- obtaining repairs on a wheelchair, accessible van, or prosthetic device;

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[45] 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997). See Cehrs v. Northeast Ohio Alzheimer's, 155 F.3d 775, 782, 8 AD Cas. (BNA) 825, 830-31 (6th Cir. 1998).

An employee who needs leave, or a part-time or modified schedule, as a reasonable accommodation also may be entitled to leave under the Family and Medical Leave Act. See Questions 21 and 23, infra.

[46] See A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, at 3.10(4), 8 FEP Manual (BNA) 405:6981, 7011 (1992) [hereinafter TAM].

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- avoiding temporary adverse conditions in the work environment (for example, an air-conditioning breakdown causing unusually warm temperatures that could seriously harm an employee with multiple sclerosis);

- training a service animal (e.g., a guide dog); or

- receiving training in the use of braille or to learn sign language.

17. May an employer apply a **"no-fault" leave policy,** under which employees are automatically terminated after they have been on leave for a certain period of time, to an employee with a disability who needs leave beyond the set period?

No. If an employee with a disability needs additional unpaid leave as a reasonable accommodation, the employer must modify its "no-fault" leave policy to provide the employee with the additional leave, unless it can show that: (1) there is another effective accommodation that would enable the person to perform the essential functions of his/her position, or (2) granting additional leave would cause an undue hardship. Modifying workplace policies, including leave policies, is a form of reasonable accommodation.[47]

18. Does an employer have to **hold open an employee's job** as a reasonable accommodation?

Yes. An employee with a disability who is granted leave as a reasonable accommodation is entitled to return to his/her same position unless the employer demonstrates that holding open the position would impose an undue hardship.[48]

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[47] 42 U.S.C. § 12111(9)(B) (1994); 29 C.F.R. § 1630.2(o)(2)(ii) (1997). See also Question 24, infra. While undue hardship cannot be based solely on the existence of a no-fault leave policy, the employer may be able to show undue hardship based on an individualized assessment showing the disruption to the employer's operations if additional leave is granted beyond the period allowed by the policy. In determining whether undue hardship exists, the employer should consider how much additional leave is needed (e.g., two weeks, six months, one year?).

[48] See Schmidt v. Safeway Inc., 864 F. Supp. 991, 996-97, 3 AD Cas. (BNA) 1141, 1145-46 (D. Or. 1994); Corbett v. National Products Co., 4 AD Cas. (BNA) 987, 990 (E.D. Pa. 1995).

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If an employer cannot hold a position open during the entire leave period without incurring undue hardship, the employer must consider whether it has a vacant, equivalent position for which the employee is qualified and to which the employee can be reassigned to continue his/her leave for a specific period of time and then, at the conclusion of the leave, can be returned to this new position.[49]

Example: An employee needs eight months of leave for treatment and recuperation related to a disability. The employer grants the request, but after four months the employer determines that it can no longer hold open the position for the remaining four months without incurring undue hardship. The employer must consider whether it has a vacant, equivalent position to which the employee can be reassigned for the remaining four months of leave, at the end of which time the employee would return to work in that new position. If an equivalent position is not available, the employer must look for a vacant position at a lower level. Continued leave is not required as a reasonable accommodation if a vacant position at a lower level is also unavailable.

19. Can an employer **penalize an employee for work missed during leave** taken as a reasonable accommodation?

No. To do so would be retaliation for the employee's use of a reasonable accommodation to which s/he is entitled under the law.[50] Moreover, such punishment would make the leave an ineffective accommodation, thus making an employer liable for failing to provide a reasonable accommodation.[51]

Example A: A salesperson took five months of leave as a reasonable accommodation. The company compares the sales records of all salespeople over a one-year period, and any employee whose sales fall

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[49] See EEOC Enforcement Guidance: Workers' Compensation and the ADA at 16, 8 FEP Manual (BNA) 405:7391, 7399 (1996) [hereinafter Workers' Compensation and the ADA]. See also pp. 37-45, infra, for information on reassignment as a reasonable accommodation.

[50] Cf. Kiel v. Select Artificials, 142 F.3d 1077, 1080, 8 AD Cas. (BNA) 43, 44 (8th Cir. 1998).

[51] See Criado v. IBM, 145 F.3d 437, 444-45, 8 AD Cas. (BNA) 336, 341 (1st Cir. 1998).

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more than 25% below the median sales performance of all employees is automatically terminated. The employer terminates the salesperson because she had fallen below the required performance standard. The company did not consider that the reason for her lower sales performance was her five-month leave of absence; nor did it assess her productivity during the period she did work (i.e., prorate her productivity).

Penalizing the salesperson in this manner constitutes retaliation and a denial of reasonable accommodation.

Example B: Company X is having a reduction-in-force. The company decides that any employee who has missed more than four weeks in the past year will be terminated. An employee took five weeks of leave for treatment of his disability. The company cannot count those five weeks in determining whether to terminate this employee.[52]

20. When an employee requests leave as a reasonable accommodation, may an employer provide an accommodation that **requires him/her to remain on the job** instead?

Yes, if the employer's reasonable accommodation would be effective and eliminate the need for leave.[53] An employer need not provide an employee's preferred accommodation as long as the employer provides an effective accommodation.[54] Accordingly, in lieu of providing leave, an employer may provide a reasonable accommodation that requires an employee to remain on the job (e.g., reallocation of marginal functions or temporary transfer) as long as it

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[52] But see Matthews v. Commonwealth Edison Co., 128 F.3d 1194, 1197-98, 7 AD Cas. (BNA) 1651, 1653-54 (7th Cir. 1997) (an employee who, because of a heart attack, missed several months of work and returned on a part-time basis until health permitted him to work full-time, could be terminated during a RIF based on his lower productivity). In reaching this decision, the Seventh Circuit failed to consider that the employee needed leave and a modified schedule as reasonable accommodations for his disability, and that the accommodations became meaningless when he was penalized for using them.

[53] If an employee, however, qualifies for leave under the Family and Medical Leave Act, an employer **may not** require him/her to remain on the job with an adjustment in lieu of taking leave. See 29 C.F.R. § 825.702(d)(1) (1997).

[54] See Question 9, supra.

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does not interfere with the employee's ability to address his/her medical needs. The employer is obligated, however, to restore the employee's full duties or to return the employee to his/her original position once s/he no longer needs the reasonable accommodation.

Example A: An employee with emphysema requests ten weeks of leave for surgery and recuperation related to his disability. In discussing this request with the employer, the employee states that he could return to work after seven weeks if, during his first three weeks back, he could work part-time and eliminate two marginal functions that require lots of walking. If the employer provides these accommodations, then it can require the employee to return to work after seven weeks.

Example B: An employee's disability is getting more severe and her doctor recommends surgery to counteract some of the effects. After receiving the employee's request for leave for the surgery, the employer proposes that it provide certain equipment which it believes will mitigate the effects of the disability and delay the need for leave to get surgery. The employer's proposed accommodation is not effective because it interferes with the employee's ability to get medical treatment.

21. How should an employer handle leave for an employee covered by both the **ADA and the Family and Medical Leave Act (FMLA)?**[55]

An employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.[56]

Under the ADA, an employee who needs leave related to his/her disability is entitled to such leave if there is no other effective accommodation and the leave will not cause undue hardship. An employer must allow the individual to use any accrued paid leave first, but, if that is insufficient to cover the entire period, then the employer should grant unpaid leave. An employer must continue an

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[55] For more detailed information on issues raised by the interplay between these statutes, refer to the FMLA/ADA Fact Sheet listed in the Appendix.

[56] Employers should remember that many employees eligible for FMLA leave will not be entitled to leave as a reasonable accommodation under the ADA, either because they do not meet the ADA's definition of disability or, if they do have an ADA disability, the need for leave is unrelated to that disability.

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employee's health insurance benefits during his/her leave period only if it does so for other employees in a similar leave status. As for the employee's position, the ADA requires that the employer hold it open while the employee is on leave unless it can show that doing so causes undue hardship. When the employee is ready to return to work, the employer must allow the individual to return to the same position (assuming that there was no undue hardship in holding it open) if the employee is still qualified (i.e., the employee can perform the essential functions of the position with or without reasonable accommodation).

If it is an undue hardship under the ADA to hold open an employee's position during a period of leave, or an employee is no longer qualified to return to his/her original position, then the employer must reassign the employee (absent undue hardship) to a vacant position for which s/he is qualified.

Under the FMLA, an eligible employee is entitled to a maximum of 12 weeks of leave per 12 month period. The FMLA guarantees the right of the employee to return to the same position or to an equivalent one.[57] An employer must allow the individual to use any accrued paid leave first, but if that is insufficient to cover the entire period, then the employer should grant unpaid leave. The FMLA requires an employer to continue the employee's health insurance coverage during the leave period, provided the employee pays his/her share of the premiums.

> Example A: An employee with an ADA disability needs 13 weeks of leave for treatment related to the disability. The employee is eligible under the FMLA for 12 weeks of leave (the maximum available), so this period of leave constitutes both FMLA leave and a reasonable accommodation. Under the FMLA, the employer could deny the employee the thirteenth week of leave. But, because the employee is also covered under the ADA, the employer cannot deny the request for the thirteenth week of leave unless it can show undue hardship. The employer may consider the impact on its operations caused by the initial 12-week absence, along with other undue hardship factors.[58]
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> Example B: An employee with an ADA disability has taken 10 weeks of FMLA leave and is preparing to return to work. The employer wants to put her in an equivalent position rather than her original one. Although this is permissible under the FMLA, the ADA requires that the employer

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[57] 29 C.F.R. §§ 825.214(a), 825.215 (1997).

[58] For further information on the undue hardship factors, see infra p. 54.

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return the employee to her original position. Unless the employer can show that this would cause an undue hardship, or that the employee is no longer qualified for her original position (with or without reasonable accommodation), the employer must reinstate the employee to her original position.

Example C: An employee with an ADA disability has taken 12 weeks of FMLA leave. He notifies his employer that he is ready to return to work, but he no longer is able to perform the essential functions of his position or an equivalent position. Under the FMLA, the employer could terminate his employment,[59] but under the ADA the employer must consider whether the employee could perform the essential functions with reasonable accommodation (e.g., additional leave, part-time schedule, job restructuring, or use of specialized equipment). If not, the ADA requires the employer to reassign the employee if there is a vacant position available for which he is qualified, with or without reasonable accommodation, and there is no undue hardship.

Modified or Part-Time Schedule

22. Must an employer allow an **employee with a disability to work a modified or part-time schedule** as a reasonable accommodation, absent undue hardship?

Yes.[60] A modified schedule may involve adjusting arrival or departure times, providing periodic breaks, altering when certain functions are performed, allowing an employee to use accrued paid leave, or providing additional unpaid leave. An employer must provide a modified or part-time schedule when required as a reasonable accommodation, absent undue hardship, even if it does not provide such schedules for other employees.

Example A: An employee with HIV infection must take medication on a strict schedule. The medication causes extreme nausea about one hour after ingestion, and generally lasts about 45 minutes. The employee asks that he be allowed to take a daily 45-minute break when the nausea occurs. The employer must grant this request absent undue hardship.

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[59] 29 C.F.R. § 825.702(c)(4) (1997).

[60] See Ralph v. Lucent Technologies, Inc., 135 F.3d 166, 172, 7 AD Cas. (BNA) 1345, 1349 (1st Cir. 1998) (a modified schedule is a form of reasonable accommodation).

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For certain positions, **the time during which an essential function is performed may be critical.** This could affect whether an employer can grant a request to modify an employee's schedule.[61] Employers should carefully assess whether modifying the hours could **significantly disrupt** their operations -- that is, cause undue hardship -- or whether the essential functions may be performed at different times with **little or no impact** on the operations or the ability of other employees to perform their jobs.

If modifying an employee's schedule poses an undue hardship, an employer must consider reassignment to a vacant position that would enable the employee to work during the hours requested.[62]

> Example B: A day care worker requests that she be allowed to change her hours from 7:00 a.m. - 3:00 p.m. to 10:00 a.m. - 6:00 p.m. because of her disability. The day care center is open from 7:00 a.m. - 7:00 p.m. and it will still have sufficient coverage at the beginning of the morning if it grants the change in hours. In this situation, the employer must provide the reasonable accommodation.
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> Example C: An employee works for a morning newspaper, operating the printing presses which run between 10 p.m. and 3 a.m. Due to her

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[61] Certain courts have characterized attendance as an "essential function." See, e.g., Carr v. Reno, 23 F.3d 525, 530, 3 AD Cas. (BNA) 434, 438 (D.C. Cir. 1994); Jackson v. Department of Veterans Admin., 22 F.3d 277, 278-79, 3 AD Cas. (BNA) 483, 484 (11th Cir. 1994). Attendance, however, is not an essential function as defined by the ADA because it is not one of "the fundamental **job duties** of the employment position." 29 C.F.R. § 1630.2(n)(1) (1997) (emphasis added). As the regulations make clear, essential functions are duties to be performed. 29 C.F.R. § 1630.2(n)(2) (1997). See Haschmann v. Time Warner Entertainment Co., 151 F.3d 591, 602, 8 AD Cas. (BNA) 692, 701 (7th Cir. 1998); Cehrs v. Northeast Ohio Alzheimer's, 155 F.3d 775, 782-83, 8 AD Cas. (BNA) 825, 830-31 (6th Cir. 1998).

On the other hand, attendance is **relevant to job performance** and employers need not grant all requests for a modified schedule. To the contrary, if the time during which an essential function is performed is **integral to its successful completion**, then an employer may deny a request to modify an employee's schedule as an undue hardship.

[62] Employers covered under the Family and Medical Leave Act (FMLA) should determine whether any denial of leave or a modified schedule is also permissible under that law. See 29 C.F.R. § 825.203 (1997).

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disability, she needs to work in the daytime. The essential function of her position, operating the printing presses, requires that she work at night because the newspaper cannot be printed during the daytime hours. Since the employer cannot modify her hours, it must consider whether it can reassign her to a different position.

23. How should an employer handle requests for modified or part-time schedules for an employee covered by both the ADA and the Family and Medical Leave Act (FMLA)?[63]

An employer should determine an employee's rights under each statute separately, and then consider whether the two statutes overlap regarding the appropriate actions to take.

Under the ADA, an employee who needs a modified or part-time schedule because of his/her disability is entitled to such a schedule if there is no other effective accommodation and it will not cause undue hardship. If there is undue hardship, the employer must reassign the employee if there is a vacant position for which s/he is qualified and which would allow the employer to grant the modified or part-time schedule (absent undue hardship).[64] An employee receiving a part-time schedule as a reasonable accommodation is entitled only to the benefits, including health insurance, that other part-time employees receive. Thus, if non-disabled part-time workers are not provided with health insurance, then the employer does not have to provide such coverage to an employee with a disability who is given a part-time schedule as a reasonable accommodation.

Under the FMLA, an eligible employee is entitled to take leave intermittently or on a part-time basis, when medically necessary, until s/he has used up the equivalent of 12 workweeks in a 12-month period. When such leave is foreseeable based on planned medical treatment, an employer may require the employee to temporarily transfer (for the duration of the leave) to an available alternative position, with equivalent pay and benefits, for which the employee

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[63] For more detailed information on issues raised by the interplay between these statutes, refer to the FMLA/ADA Fact Sheet listed in the Appendix.

[64] See infra pp. 37-45 for more information on reassignment, including under what circumstances an employer and employee may voluntarily agree that a transfer is preferable to having the employee remain in his/her current position.

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is qualified and which better suits his/her reduced hours.[65] An employer always must maintain the employee's existing level of coverage under a group health plan during the period of FMLA leave, provided the employee pays his/her share of the premium.[66]

> Example: An employee with an ADA disability requests that she be excused from work one day a week for the next six months because of her disability. If this employee is eligible for a modified schedule under the FMLA, the employer must provide the requested leave under that statute if it is medically necessary, even if the leave would be an undue hardship under the ADA.

Modified Workplace Policies

24. Is it a reasonable accommodation to **modify a workplace policy?**

Yes. It is a reasonable accommodation to modify a workplace policy when necessitated by an individual's disability-related limitations,[67] absent undue hardship. But, reasonable accommodation only requires that the employer modify the policy for an employee who requires such action because of a disability; therefore, the employer may continue to apply the policy to all other employees.

> Example: An employer has a policy prohibiting employees from eating or drinking at their workstations. An employee with insulin-dependent diabetes explains to her employer that she may occasionally take too much insulin and, in order to avoid going into insulin shock, she must immediately eat a candy bar or drink fruit juice. The employee requests permission to keep such food at her workstation and to eat or drink when her insulin level necessitates. The employer must modify its policy to grant this request, absent undue hardship. Similarly, an employer might have to modify a policy to allow an employee with a disability to bring in a small refrigerator, or to use the employer's refrigerator, to store medication that must be taken during working hours.

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[65] 29 C.F.R. § 825.204 (1997); see also special rules governing intermittent leave for instructional employees at §§ 825.601, 825.602.

[66] 29 C.F.R. §§ 825.209, 825.210 (1997).

[67] 42 U.S.C. § 12111(9)(B) (1994); 29 C.F.R. § 1630.2(o)(2)(ii) (1997).

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Granting an employee time off from work or an adjusted work schedule as a reasonable accommodation may involve modifying leave or attendance procedures or policies. For example, it would be a reasonable accommodation to modify a policy requiring employees to schedule vacation time in advance if an otherwise qualified individual with a disability needed to use accrued vacation time on an unscheduled basis because of disability-related medical problems, barring undue hardship.[68] Furthermore, an employer may be required to provide additional leave to an employee with a disability as a reasonable accommodation in spite of a "no-fault" leave policy, unless the provision of such leave would impose an undue hardship.[69]

In some instances, an employer's refusal to modify a workplace policy, such as a leave or attendance policy, could constitute disparate treatment as well as a failure to provide a reasonable accommodation. For example, an employer may have a policy requiring employees to notify supervisors before 9:00 a.m. if they are unable to report to work. If an employer would excuse an employee from complying with this policy because of emergency hospitalization due to a car accident, then the employer must do the same thing when the emergency hospitalization is due to a disability.[70]

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[68] See Dutton v. Johnson County Bd. of Comm'rs, 868 F. Supp. 1260, 1264-65, 3 AD Cas. (BNA) 1614, 1618 (D. Kan. 1994).

[69] See 29 C.F.R. pt. 1630 app. § 1630.15(b), (c) (1997). See also Question 17, supra.

[70] But cf. Miller v. Nat'l Casualty Co., 61 F.3d 627, 629-30, 4 AD Cas. (BNA) 1089, 1090 (8th Cir. 1995) (court refuses to find that employee's sister had requested reasonable accommodation despite the fact that the sister informed the employer that the employee was having a medical crisis necessitating emergency hospitalization).

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Reassignment[71]

The ADA specifically lists "reassignment to a vacant position" as a form of reasonable accommodation.[72] This type of reasonable accommodation must be provided to an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodation, unless the employer can show that it would be an undue hardship.[73]

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[71] Pursuant to the Rehabilitation Act Amendment of 1992, the ADA's employment standards apply to all non-affirmative action employment discrimination claims filed by federal applicants or employees with disabilities under section 501 of the Rehabilitation Act. Pub. L. No. 102-569, § 503(b), 106 Stat. 4344 (1992) (codified as amended at 29 U.S.C. § 791(g) (1994)). The Rehabilitation Act regulations governing reassignment of federal employees with disabilities, which were promulgated several months prior to the enactment of the Rehabilitation Act Amendment, differ in several respects from the ADA's requirements. See 29 C.F.R. § 1614.203(g) (1997). For non-discrimination purposes, federal agencies must follow the ADA standards.

For information on how reassignment may apply to employers who provide light duty positions, see Workers' Compensation and the ADA, supra note 49, at 20-23, 8 FEP Manual (BNA) 405:7401-03.

[72] 42 U.S.C. § 12111(9)(B) (1994); 29 C.F.R. § 1630.2(o)(2)(ii) (1997). See Benson v. Northwest Airlines, Inc., 62 F.3d 1108, 1114, 4 AD Cas. (BNA) 1234, 1238 (8th Cir. 1995); Monette v. Electronic Data Sys. Corp., 90 F.3d 1173, 1187, 5 AD Cas. (BNA) 1326, 1338 (6th Cir. 1996); Gile v. United Airlines, Inc., 95 F.3d 492, 498, 5 AD Cas. (BNA) 1466, 1471 (7th Cir. 1996).

Reassignment is available only to employees, not to applicants. 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997).

[73] 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997); see Haysman v. Food Lion, Inc., 893 F. Supp. 1092, 1104, 4 AD Cas. (BNA) 1297, 1305 (S.D. Ga. 1995).

Some courts have found that an employee who is unable to perform the essential functions of his/her **current position is** unqualified to receive a reassignment. See, e.g., Schmidt v. Methodist Hosp. of Indiana, Inc., 89 F.3d 342, 345, 5 AD Cas. (BNA) 1340, 1342 (7th Cir. 1996); Pangalos v. Prudential Ins. Co. of Am., 5 AD Cas. (BNA) 1825, 1826 (E.D. Pa. 1996). These decisions, however, nullify Congress' inclusion of reassignment in the ADA. An employee requires a reassignment **only if** s/he is unable to continue performing the essential functions of his/her current position, with or without reasonable accommodation. Thus, an employer must provide

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An employee must be "qualified" for the new position. An employee is "qualified" for a position if s/he: (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the new position, with or without reasonable accommodation.[74] The employee does not need to be the best qualified individual for the position in order to obtain it as a reassignment.

There is no obligation for the employer to assist the individual to become qualified. Thus, the employer does not have to provide training so that the employee acquires necessary skills to take a job.[75] The employer, however, would have to provide an employee with a disability who is being reassigned with any training that is normally provided to anyone hired for or transferred to the position.

> Example A: An employer is considering reassigning an employee with a disability to a position which requires the ability to speak Spanish in order to perform an essential function. The employee never learned Spanish and wants the employer to send him to a course to learn Spanish. The employer is not required to provide this training as part of the obligation to make a reassignment. Therefore, the employee is not qualified for this position.
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> Example B: An employer is considering reassigning an employee with a disability to a position in which she will contract for goods and services. The employee is qualified for the position. The employer has its own specialized rules regarding contracting that necessitate training all individuals hired for these positions. In this situation, the employer must provide the employee with this specialized training.

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reassignment either when reasonable accommodation in an employee's current job would cause undue hardship or when it would not be possible. See Aka v. Washington Hosp. Ctr., 156 F.3d 1284, 1300-01, 8 AD Cas. (BNA) 1093, 1107-08 (D.C. Cir. 1998); Dalton v. Subaru-Isuzu Automotive, Inc., 141 F.3d 667, 678, 7 AD Cas. (BNA) 1872, 1880 (7th Cir. 1998); see also ADA and Psychiatric Disabilities, supra note 24, at 28, 8 FEP Manual (BNA) 405:7476; Workers' Compensation and the ADA, supra note 49, at 17-18, 8 FEP Manual (BNA) 405:7399-7400.

[74] 29 C.F.R. § 1630.2(m) (1997); 29 C.F.R. pt. 1630 app. §§ 1630.2(m), 1630.2(o) (1997). See Stone v. Mount Vernon, 118 F.3d 92, 100-01, 6 AD Cas. (BNA) 1685, 1693 (2d Cir. 1997).

[75] See Quintana v. Sound Distribution Corp., 6 AD Cas. (BNA) 842, 846 (S.D.N.Y. 1997).

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Before considering reassignment as a reasonable accommodation, employers should first consider those accommodations that would enable an employee to remain in his/her current position. Reassignment is the reasonable accommodation of last resort and is required only after it has been determined that: (1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position, or (2) all other reasonable accommodations would impose an undue hardship.[76] However, if both the employer and the employee **voluntarily** agree that transfer is preferable to remaining in the current position with some form of reasonable accommodation, then the employer may transfer the employee.

"Vacant" means that the position is available when the employee asks for reasonable accommodation, or that the employer knows that it will become available within a reasonable amount of time. A "reasonable amount of time" should be determined on a case-by-case basis considering relevant facts, such as whether the employer, based on experience, can anticipate that an appropriate position will become vacant within a short period of time.[77] A position is considered vacant even if an employer has posted a notice or announcement seeking applications for that position. The employer does not have to bump an employee from a job in order to create a vacancy; nor does it have to create a new position.[78]

> Example C: An employer is seeking a reassignment for an employee with a disability. There are no vacant positions today, but the employer has just learned that another employee resigned and that that position will become vacant in four weeks. The impending vacancy is equivalent to the position currently held by the employee with a disability. If the employee is qualified for that position, the employer must offer it to him.
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> Example D: An employer is seeking a reassignment for an employee with a disability. There are no vacant positions today, but the employer has just learned that an employee in an equivalent position plans to retire in six months. Although the employer knows that the employee with a disability is qualified for this position, the employer does not have to offer this position to her because six months is beyond a "reasonable amount of time." (If, six months from now,

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[76] See 29 C.F.R. pt. 1630 app. §1630.2(o) (1997); Senate Report, supra note 6, at 31; House Education and Labor Report, supra note 6, at 63.

[77] For suggestions on what the employee can do while waiting for a position to become vacant within a reasonable amount of time, see note 86, infra.

[78] See 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997); see also White v. York Int'l Corp., 45 F.3d 357, 362, 3 AD Cas. (BNA) 1746, 1750 (10th Cir. 1995).

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the employer decides to advertise the position, it must allow the individual to apply for that position and give the application the consideration it deserves.)

The employer must reassign the individual to a vacant position that is equivalent in terms of pay, status, or other relevant factors (e.g., benefits, geographical location) if the employee is qualified for the position. If there is no vacant equivalent position, the employer must reassign the employee to a vacant lower level position for which the individual is qualified. Assuming there is more than one vacancy for which the employee is qualified, the employer must place the individual in the position that comes closest to the employee's current position in terms of pay, status, etc.[79] If it is unclear which position comes closest, the employer should consult with the employee about his/her preference before determining the position to which the employee will be reassigned. **Reassignment does not include giving an employee a promotion. Thus, an employee must compete for any vacant position that would constitute a promotion.**

25. Is a **probationary employee** entitled to reassignment?

Employers cannot deny a reassignment to an employee solely because s/he is designated as "probationary."[80] An employee with a disability is eligible for reassignment to a new position, regardless of whether s/he is considered "probationary," as long as the employee adequately performed the essential functions of the position, with or without reasonable accommodation, before the need for a reassignment arose.

The longer the period of time in which an employee has adequately performed the essential functions, with or without reasonable accommodation, the more likely it is that reassignment is appropriate if the employee becomes unable to continue performing the essential functions of the current position due to a disability. If, however, the probationary employee has **never** adequately performed the essential functions, with or without reasonable accommodation, then s/he is not entitled to reassignment because s/he was never "qualified" for the original position. In this situation, the employee is similar to an applicant

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[79] See 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997).

[80] The current regulation governing reassignment of federal employees states that reassignment is available to "nonprobationary" employees. See 29 C.F.R. §§ 1614.203(g) (1997). This regulation does not state the applicable ADA non-discrimination standard. See note 71, supra.

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who applies for a job for which s/he is not qualified, and then requests reassignment. Applicants are not entitled to reassignment.

Example A: An employer designates all new employees as "probationary" for one year. An employee has been working successfully for nine months when she becomes disabled in a car accident. The employee, due to her disability, is unable to continue performing the essential functions of her current position, with or without reasonable accommodation, and seeks a reassignment. She is entitled to a reassignment if there is a vacant position for which she is qualified and it would not pose an undue hardship.

Example B: A probationary employee has been working two weeks, but has been unable to perform the essential functions of the job because of his disability. There are no reasonable accommodations that would permit the individual to perform the essential functions of the position, so the individual requests a reassignment. The employer does not have to provide a reassignment (even if there is a vacant position) because, as it turns out, the individual was never qualified -- i.e., the individual was never able to perform the essential functions of the position, with or without reasonable accommodation, for which he was hired.

26. Must an employer offer reassignment as a reasonable accommodation if it does not allow any of its employees to transfer from one position to another?

Yes. The ADA requires employers to provide reasonable accommodations to individuals with disabilities, including reassignment, even though they are not available to others. Therefore, an employer who does not normally transfer employees would still have to reassign an employee with a disability, unless it could show that the reassignment caused an undue hardship. And, if an employer has a policy prohibiting transfers, it would have to modify that policy in order to reassign an employee with a disability, unless it could show undue hardship.[81]

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[81] See Aka v. Washington Hosp. Ctr., 156 F.3d 1284, 1304-05, 8 AD Cas. (BNA) 1093, 1110-11 (D.C. Cir. 1998); United States v. Denver, 943 F. Supp. 1304, 1312, 6 AD Cas. (BNA) 245, 252 (D. Colo. 1996). See also Question 24, supra.

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27. Is an employer's obligation to offer reassignment to a vacant position limited to those vacancies within an employee's office, branch, agency, department, facility, personnel system (if the employer has more than a single personnel system), or geographical area?

No. This is true even if the employer has a policy prohibiting transfers from one office, branch, agency, department, facility, personnel system, or geographical area to another. The ADA contains no language limiting the obligation to reassign only to positions within an office, branch, agency, etc.[82] Rather, the extent to which an employer must search for a vacant position will be an issue of undue hardship.[83] If an employee is being reassigned to a different geographical area, the employee must pay for any relocation expenses unless the employer routinely pays such expenses when granting voluntary transfers to other employees.

28. Does an employer have to notify an employee with a disability about vacant positions, or is it the employee's responsibility to learn what jobs are vacant?

The employer is in the best position to know which jobs are vacant or will

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[82] 42 U.S.C. § 12111(9)(B) (1994); 29 C.F.R. § 1630.2(o)(2)(ii) (1997); see Hendricks-Robinson v. Excel Corp., 154 F.3d 685, 695, 8 AD Cas. (BNA) 875, 883 (7th Cir. 1998); see generally Dalton v. Subaru-Isuzu Automotive, Inc., 141 F.3d 667, 677-78, 7 AD Cas. (BNA) 1872, 1880-81 (7th Cir. 1998).

[83] See Gile v. United Airlines, Inc., 95 F.3d 492, 499, 5 AD Cas. (BNA) 1466, 1472 (7th Cir. 1996); see generally United States v. Denver, 943 F. Supp. 1304, 1311-13, 6 AD Cas. (BNA) 245, 251-52 (D. Colo. 1996).

Some courts have limited the obligation to provide a reassignment to positions within the same department or facility in which the employee currently works, except when the employer's standard practice is to provide inter-department or inter-facility transfers for all employees. See, e.g., Emrick v. Libbey-Owens-Ford Co., 875 F. Supp. 393, 398, 4 AD Cas. (BNA) 1, 4-5 (E.D. Tex. 1995). However, the ADA requires modification of workplace policies, such as transfer policies, as a form of reasonable accommodation. See Question 24, supra. Therefore, policies limiting transfers cannot be a *per se* bar to reassigning someone outside his/her department or facility. Furthermore, the ADA requires employers to provide reasonable accommodations, including reassignment, regardless of whether such accommodations are routinely granted to non-disabled employees. See Question 26, supra.

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become vacant within a reasonable period of time.[84] In order to narrow the search for potential vacancies, the employer, as part of the interactive process, should ask the employee about his/her qualifications and interests. Based on this information, the employer is obligated to inform an employee about vacant positions for which s/he may be eligible as a reassignment. However, an employee should assist the employer in identifying appropriate vacancies to the extent that the employee has access to information about them. If the employer does not know whether the employee is qualified for a specific position, the employer can discuss with the employee his/her qualifications.[85]

An employer should proceed as expeditiously as possible in determining whether there are appropriate vacancies. The length of this process will vary depending on how quickly an employer can search for and identify whether an appropriate vacant position exists. For a very small employer, this process may take one day; for other employers this process may take several weeks.[86] When an

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[84] See Hendricks-Robinson v. Excel Corp., 154 F.3d 685, 695-96, 697-98, 8 AD Cas. (BNA) 875, 883, 884 (7th Cir. 1998) (employer cannot mislead disabled employees who need reassignment about full range of vacant positions; nor can it post vacant positions for such a short period of time that disabled employees on medical leave have no realistic chance to learn about them); Mengine v. Runyon, 114 F.3d 415, 420, 6 AD Cas. (BNA) 1530, 1534 (3d Cir. 1997) (an employer has a duty to make reasonable efforts to assist an employee in identifying a vacancy because an employee will not have the ability or resources to identify a vacant position absent participation by the employer); Woodman v. Runyon, 132 F.3d 1330, 1344, 7 AD Cas. (BNA) 1189, 1199 (10th Cir. 1997) (federal employers are far better placed than employees to investigate in good faith the availability of vacant positions).

[85] See Dalton v. Subaru-Isuzu Automotive, Inc., 141 F.3d 667, 678, 7 AD Cas. (BNA) 1872, 1881 (7th Cir. 1998) (employer must first identify full range of alternative positions and then determine which ones employee qualified to perform, with or without reasonable accommodation); Hendricks-Robinson v. Excel Corp., 154 F.3d 685, 700, 8 AD Cas. (BNA) 875, 886-87 (7th Cir. 1998) (employer's methodology to determine if reassignment is appropriate does not constitute the "interactive process" contemplated by the ADA if it is directive rather than interactive); Mengine v. Runyon, 114 F.3d 415, 419-20, 6 AD Cas. (BNA) 1530, 1534 (3d Cir. 1997) (once an employer has identified possible vacancies, an employee has a duty to identify which one he is capable of performing).

[86] If it will take several weeks to determine whether an appropriate vacant position exists, the employer and employee should discuss the employee's status during that period. There are different possibilities depending on the circumstances, but they may

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employer has completed its search, identified whether there are any vacancies (including any positions that will become vacant in a reasonable amount of time), notified the employee of the results, and either offered an appropriate vacancy to the employee or informed him/her that no appropriate vacancies are available, the employer will have fulfilled its obligation.

29. Does **reassignment** mean that the employee is **permitted to compete** for a vacant position?

No. Reassignment means that the employee gets the vacant position **if s/he is qualified for it**. Otherwise, reassignment would be of little value and would not be implemented as Congress intended.[87]

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include: use of accumulated paid leave, use of unpaid leave, or a temporary assignment to a light duty position. Employers also may choose to take actions that go beyond the ADA's requirements, such as eliminating an essential function of the employee's current position, to enable an employee to continue working while a reassignment is sought.

[87] 42 U.S.C. § 12111(9)(b) (1994); 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997). See Senate Report, supra note 6, at 31 ("If an employee, because of disability, can no longer perform the essential functions of the job that she or he has held, a transfer to another vacant job for which the person is qualified may prevent the employee from being out of work and the employer from losing a valuable worker."). See Wood v. County of Alameda, 5 AD Cas. (BNA) 173, 184 (N.D. Cal. 1995) (when employee could no longer perform job because of disability, she was entitled to reassignment to a vacant position, not simply an opportunity to "compete"); cf. Aka v. Washington Hosp. Ctr., 156 F.3d 1284, 1304-05, 8 AD Cas. (BNA) 1093, 1110-11 (D.C. Cir. 1998) (the court, in interpreting a collective bargaining agreement provision authorizing reassignment of disabled employees, states that "[a]n employee who is allowed to compete for jobs precisely like any other applicant has not been "reassigned"); United States v. Denver, 943 F. Supp. 1304, 1310-11, 6 AD Cas. (BNA) 245, 250 (D. Colo. 1996) (the ADA requires employers to move beyond traditional analysis and consider reassignment as a method of enabling a disabled worker to do a job).

Some courts have suggested that reassignment means simply an opportunity to compete for a vacant position. See, e.g., Daugherty v. City of El Paso, 56 F.3d 695, 700, 4 AD Cas. (BNA) 993, 997 (5th Cir. 1995). Such an interpretation nullifies the clear statutory language stating that reassignment is a form of reasonable accommodation. Even without the ADA, an employee with a disability may have the right to compete for a vacant position.

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30. If an employee is reassigned to a lower level position, **must an employer maintain his/her salary** from the higher level position?

No, unless the employer transfers employees without disabilities to lower level positions and maintains their original salaries.[88]

OTHER REASONABLE ACCOMMODATION ISSUES[89]

31. If an employer has provided one reasonable accommodation, does it have to **provide additional reasonable accommodations** requested by an individual with a disability?

The duty to provide reasonable accommodation is an ongoing one.[90] Certain individuals require only one reasonable accommodation, while others may need more than one. Still others may need one reasonable accommodation for a period of time, and then at a later date, require another type of reasonable accommodation. If an individual requests multiple reasonable accommodations, s/he is entitled only to those accommodations that are necessitated by a disability and that will provide an equal employment opportunity.

An employer must consider each request for reasonable accommodation and determine: (1) whether the accommodation is needed, (2) if needed, whether the accommodation would be effective, and (3) if effective, whether providing the reasonable accommodation would impose an undue hardship. If a reasonable accommodation turns out to be ineffective and the employee with a disability remains unable to perform an essential function, the employer must consider whether there would be an alternative reasonable accommodation that would not pose an undue hardship. If there is no alternative accommodation, then the employer must attempt to reassign the employee to a vacant position for which s/he is qualified, unless to do so would cause an undue hardship.

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[88] 29 C.F.R. pt. 1630 app. § 1630.2(o) (1997).

[89] The discussions and examples in this section assume that there is only one effective accommodation and that the reasonable accommodation will not cause an undue hardship.

[90] See Ralph v. Lucent Technologies, Inc., 135 F.3d 166, 171, 7 AD Cas. (BNA) 1345, 1349 (1st Cir. 1998).

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32. Does an employer have to change a person's supervisor as a form of reasonable accommodation?

No. An employer does not have to provide an employee with a new supervisor as a reasonable accommodation. Nothing in the ADA, however, prohibits an employer from doing so. Furthermore, although an employer is not required to change supervisors, the ADA may require that supervisory methods be altered as a form of reasonable accommodation.[91] Also, an employee with a disability is protected from disability-based discrimination by a supervisor, including disability-based harassment.

Example: A supervisor frequently schedules team meetings on a day's notice – often notifying staff in the afternoon that a meeting will be held on the following morning. An employee with a disability has missed several meetings because they have conflicted with previously-scheduled physical therapy sessions. The employee asks that the supervisor give her two to three days' notice of team meetings so that, if necessary, she can reschedule the physical therapy sessions. Assuming no undue hardship would result, the supervisor must make this reasonable accommodation.

33. Does an employer have to allow an employee with a disability to work at home as a reasonable accommodation?

An employer must modify its policy concerning where work is performed if such a change is needed as a reasonable accommodation, but **only if this accommodation would be effective and would not cause an undue hardship.**[92] Whether this accommodation is effective will depend on whether the essential functions of the position can be performed at home. There are certain jobs in which the essential functions can only be performed at the work site -- e.g., food server, cashier in a store. For such jobs, allowing an employee to work at home is not effective because it does not enable an employee to perform his/her essential functions. Certain considerations may be critical in determining

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[91] For a discussion on ways to modify supervisory methods, see ADA and Psychiatric Disabilities, supra note 24, at 26-27, 8 FEP Manual (BNA) 405:7475.

[92] See 29 C.F.R. § 1630.2(o)(1)(ii), (2)(ii) (1997) (modifications or adjustments to the manner or circumstances under which the position held or desired is customarily performed that enable a qualified individual with a disability to perform the essential functions).

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whether a job can be effectively performed at home, including (but not limited to) the employer's ability to adequately supervise the employee and the employee's need to work with certain equipment or tools that cannot be replicated at home. In contrast, employees may be able to perform the essential functions of certain types of jobs at home (e.g., telemarketer, proofreader).[93] For these types of jobs, an employer may deny a request to work at home if it can show that another accommodation would be effective or if working at home will cause undue hardship.

34. Must an employer **withhold discipline or termination of an employee who, because of a disability, violated a conduct rule** that is job-related for the position in question and consistent with business necessity?

No. An employer never has to excuse a violation of a uniformly applied conduct rule that is job-related and consistent with business necessity. This means, for example, that an employer never has to tolerate or excuse violence, threats of violence, stealing, or destruction of property. An employer may discipline an employee with a disability for engaging in such misconduct if it would impose the same discipline on an employee without a disability.

35. Must an employer provide a **reasonable accommodation for an employee with a disability who violated a conduct rule that is job-related for the position in question and consistent with business necessity?**

An employer must make reasonable accommodation to enable **an otherwise qualified employee with a disability** to meet such a conduct standard **in the**

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[93] Courts have differed regarding whether "work-at-home" can be a reasonable accommodation. Compare Langon v. Department of Health and Human Servs., 959 F.2d 1053, 1060, 2 AD Cas. (BNA) 152, 159 (D.C. Cir. 1992); Anzalone v. Allstate Insurance Co., 5 AD Cas. (BNA) 455, 458 (E.D. La. 1995); Carr v. Reno, 23 F.3d 525, 530, 3 AD Cas. (BNA) 434, 437-38 (D.D.C. 1994), with Vande Zande v. Wisconsin Dep't of Admin., 44 F.3d 538, 545, 3 AD Cas. (BNA) 1636, 1640 (7th Cir. 1995). Courts that have rejected working at home as a reasonable accommodation focus on evidence that personal contact, interaction, and coordination are needed for a specific position. See, e.g., Whillock v. Delta Air Lines, 926 F. Supp. 1555, 1564, 5 AD Cas. (BNA) 1027 (N.D. Ga. 1995), aff'd, 86 F.3d 1171, 7 AD Cas. (BNA) 1267 (11th Cir. 1996); Misek-Falkoff v. IBM Corp., 854 F. Supp. 215, 227-28, 3 AD Cas. (BNA) 449, 457-58 (S.D.N.Y. 1994), aff'd, 60 F.3d 811, 6 AD Cas. (BNA) 576 (2d Cir. 1995).

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future, barring undue hardship, except where the punishment for the violation is termination.[94] Since reasonable accommodation is always prospective, an employer is not required to excuse past misconduct even if it is the result of the individual's disability.[95] Possible reasonable accommodations could include adjustments to starting times, specified breaks, and leave if these accommodations will enable an employee to comply with conduct rules.[96]

> Example: An employee with major depression is often late for work because of medication side-effects that make him extremely groggy in the morning. His scheduled hours are 9:00 a.m. to 5:30 p.m., but he arrives at 9:00, 9:30, 10:00, or even 10:30 on any given day. His job responsibilities involve telephone contact with the company's traveling sales representatives, who depend on him to answer urgent marketing questions and expedite special orders. The employer disciplines him for tardiness, stating that continued failure to arrive promptly during the next month will result in termination of his employment. The individual then explains that he was late because of a disability and needs to work on a

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[94] See 29 C.F.R. § 1630.15(d) (1997).

[95] See Siefken v. Arlington Heights, 65 F.3d 664, 666, 4 AD Cas. (BNA) 1441, 1442 (7th Cir. 1995). Therefore, it may be in the employee's interest to request a reasonable accommodation before performance suffers or conduct problems occur. For more information on conduct standards, including when they are job-related and consistent with business necessity, see ADA and Psychiatric Disabilities, supra note 24, at 29-32, 8 FEP Manual (BNA) 405:7476-78.

An employer does not have to offer a "firm choice" or a "last chance agreement" to an employee who performs poorly or who has engaged in misconduct because of alcoholism. "Firm choice" or "last chance agreements" involve excusing past performance or conduct problems resulting from alcoholism in exchange for an employee's receiving substance abuse treatment and refraining from further use of alcohol. Violation of such an agreement generally warrants termination. Since the ADA does not require employers to excuse poor performance or violation of conduct standards that are job-related and consistent with business necessity, an employer has no obligation to provide "firm choice" or a "last chance agreement" as a reasonable accommodation. See Johnson v. Babbitt, EEOC Docket No. 03940100 (March 28, 1996). However, an employer may choose to offer an employee a "firm choice" or a "last chance agreement."

[96] See ADA and Psychiatric Disabilities, supra note 24, at 31-32, 8 FEP Manual (BNA) 405:7477-78.

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later schedule. In this situation, the employer may discipline the employee because he violated a conduct standard addressing tardiness that is job-related for the position in question and consistent with business necessity. The employer, however, must consider reasonable accommodation, barring undue hardship, to enable this individual to meet this standard in the future. For example, if this individual can serve the company's sales representatives by regularly working a schedule of 10:00 a.m. to 6:30 p.m., a reasonable accommodation would be to modify his schedule so that he is not required to report for work until 10:00 a.m.

36. Is it a reasonable accommodation to **make sure that an employee takes medication** as prescribed?

No. Medication monitoring is not a reasonable accommodation. Employers have no obligation to monitor medication because doing so does not remove a workplace barrier. Similarly, an employer has no responsibility to monitor an employee's medical treatment or ensure that s/he is receiving appropriate treatment because such treatment does not involve modifying workplace barriers.[97]

It may be a form of reasonable accommodation, however, to give an employee a break in order that s/he may take medication, or to grant leave so that an employee may obtain treatment.

37. Is an employer **relieved of its obligation to provide reasonable accommodation** for an employee with a disability who **fails to take medication,** to obtain medical treatment, or to use an assistive device (such as a hearing aid)?

No. The ADA requires an employer to provide reasonable accommodation to remove workplace barriers, regardless of what effect medication, other medical treatment, or assistive devices may have on an employee's ability to perform the job.[98]

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[97] See Robertson v. The Neuromedical Ctr., 161 F.3d 292, 296 (5th Cir. 1998); see also ADA and Psychiatric Disabilities, supra note 24, at 27-28, 8 FEP Manual (BNA) 405:7475.

[98] While from an employer's perspective it may appear that an employee is "failing" to use medication or follow a certain treatment, such questions can be

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However, if an employee with a disability, with or without reasonable accommodation, cannot perform the essential functions of the position or poses a direct threat in the absence of medication, treatment, or an assistive device, then s/he is unqualified.

38. Must an employer provide a reasonable accommodation that is needed because of the **side effects of medication or treatment related to the disability**, or because of symptoms or other medical conditions resulting from the underlying disability?

Yes. The side effects caused by the medication that an employee must take because of the disability are limitations resulting from the disability. Reasonable accommodation extends to all limitations resulting from a disability.

Example A: An employee with cancer undergoes chemotherapy twice a week, which causes her to be quite ill afterwards. The employee requests a modified schedule -- leave for the two days a week of chemotherapy. The treatment will last six weeks. Unless it can show undue hardship, the employer must grant this request.

Similarly, any symptoms or related medical conditions resulting from the disability that cause limitations may also require reasonable accommodation.[99]

Example B: An employee, as a result of insulin-dependent diabetes, has developed background retinopathy (a vision impairment). The employee, who already has provided documentation showing his diabetes is a disability, requests a device to enlarge the text on his computer screen. The employer can request documentation that the retinopathy is related to the diabetes but the employee does not have to show that the retinopathy is an independent disability under the ADA. Since the retinopathy is a consequence of the diabetes (an ADA disability), the request must be granted unless undue hardship can be shown.

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complex. There are many reasons why a person would choose to forgo treatment, including expense and serious side effects.

[99] See Vande Zande v. Wisconsin Dep't of Admin., 44 F.3d 538, 544, 3 AD Cas. (BNA) 1636, 1639 (7th Cir. 1995).

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39. **Must** an employer ask whether a reasonable accommodation is needed when an **employee has not asked for one?**

Generally, no. As a general rule, the individual with a disability -- who has the most knowledge about the need for reasonable accommodation -- must inform the employer that an accommodation is needed.[100]

However, **an employer should initiate the reasonable accommodation interactive process[101] without being asked if** the employer: (1) knows that the employee has a disability, (2) knows, or has reason to know, that the employee is experiencing workplace problems because of the disability, and (3) knows, or has reason to know, that the disability prevents the employee from requesting a reasonable accommodation. If the individual with a disability states that s/he does not need a reasonable accommodation, the employer will have fulfilled its obligation.

Example: An employee with mental retardation delivers messages at a law firm. He frequently mixes up messages for "R. Miller" and "T.

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100 See 29 C.F.R. pt. 1630 app. § 1630.9 (1997); see also House Judiciary Report, supra note 6, at 39; House Education and Labor Report, supra note 6, at 65; Senate Report, supra note 6, at 34.

See, e.g., Taylor v. Principal Fin. Group, Inc., 93 F.3d 155, 165, 5 AD Cas. (BNA) 1653, 1659 (5th Cir. 1996); Tips v. Regents of Texas Tech Univ., 921 F. Supp. 1515, 1518 (N.D. Tex. 1996); Cheatwood v. Roanoke Indus., 891 F. Supp. 1528, 1538, 5 AD Cas. (BNA) 141, 147 (N.D. Ala. 1995); Mears v. Gulfstream Aerospace Corp., 905 F. Supp. 1075, 1080, 5 AD Cas. (BNA) 1295, 1300 (S.D. Ga. 1995), aff'd, 87 F.3d 1331, 6 AD Cas. (BNA) 1152 (11th Cir. 1996). But see Schmidt v. Safeway Inc., 864 F. Supp. 991, 997, 3 AD Cas. (BNA) 1141, 1146-47 (D. Or. 1994) (employer had obligation to provide reasonable accommodation because it knew of the employee's alcohol problem and had reason to believe that an accommodation would permit the employee to perform the job).

An employer may not assert that it never received a request for reasonable accommodation, as a defense to a claim of failure to provide reasonable accommodation, if it actively discouraged an individual from making such a request.

For more information about an individual requesting reasonable accommodation, see Questions 1-4, supra.

101 See Question 5, supra, for information on the interactive process.

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Miller." The employer knows about the disability, suspects that the performance problem is a result of the disability, and knows that this employee is unable to ask for a reasonable accommodation because of his mental retardation. The employer asks the employee about mixing up the two names and asks if it would be helpful to spell the first name of each person. When the employee says that would be better, the employer, as a reasonable accommodation, instructs the receptionist to write the full first name when messages are left for one of the Messrs. Miller.

40. **May an employer ask whether a reasonable accommodation is needed when an employee with a disability has not asked for one?**

An employer may ask an employee with a known disability whether s/he needs a reasonable accommodation when it reasonably believes that the employee may need an accommodation. For example, an employer could ask a deaf employee who is being sent on a business trip if s/he needs reasonable accommodation. Or, if an employer is scheduling a luncheon at a restaurant and is uncertain about what questions it should ask to ensure that the restaurant is accessible for an employee who uses a wheelchair, the employer may first ask the employee. An employer also may ask an employee with a disability who is having performance or conduct problems if s/he needs reasonable accommodation.[102]

41. **May an employer tell other employees that an individual is receiving a reasonable accommodation** when employees ask questions about a coworker with a disability?

No. An employer may not disclose that an employee is receiving a reasonable accommodation because this usually amounts to a disclosure that the individual has a disability. The ADA specifically prohibits the disclosure of medical information except in certain limited situations, which do not include disclosure to coworkers.[103]

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[102] 29 C.F.R. pt. 1630 app. § 1630.9 (1997).

[103] 42 U.S.C. § 12112(d)(3)(B), (d)(4)(C) (1994); 29 C.F.R. § 1630.14(b)(1) (1997). The limited exceptions to the ADA confidentiality requirements are: (1) supervisors and managers may be told about necessary restrictions on the work or duties of the employee and about necessary accommodations; (2) first aid and safety personnel may be told if the disability might require emergency treatment; and

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An employer may certainly respond to a question from an employee about why a coworker is receiving what is perceived as "different" or "special" treatment by emphasizing its policy of assisting any employee who encounters difficulties in the workplace. The employer also may find it helpful to point out that many of the workplace issues encountered by employees are personal, and that, in these circumstances, it is the employer's policy to respect employee privacy. An employer may be able to make this point effectively by reassuring the employee asking the question that his/her privacy would similarly be respected if s/he found it necessary to ask the employer for some kind of workplace change for personal reasons.

Since responding to specific coworker questions may be difficult, employers might find it helpful before such questions are raised to provide all employees with information about various laws that require employers to meet certain employee needs (e.g., the ADA and the Family and Medical Leave Act), while also requiring them to protect the privacy of employees. In providing general ADA information to employees, an employer may wish to highlight the obligation to provide reasonable accommodation, including the interactive process and different types of reasonable accommodations, and the statute's confidentiality protections. Such information could be delivered in orientation materials, employee handbooks, notices accompanying paystubs, and posted flyers. Employers may wish to explore these and other alternatives with unions because they too are bound by the ADA's confidentiality provisions. Union meetings and bulletin boards may be further avenues for such educational efforts.

As long as there is no coercion by an employer, an employee with a disability may **voluntarily** choose to disclose to coworkers his/her disability and/or the fact that s/he is receiving a reasonable accommodation.

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(3) government officials investigating compliance with the ADA must be given relevant information on request. In addition, the Commission has interpreted the ADA to allow employers to disclose medical information in the following circumstances: (1) in accordance with state workers' compensation laws, employers may disclose information to state workers' compensation offices, state second injury funds, or workers' compensation insurance carriers; and (2) employers are permitted to use medical information for insurance purposes. See 29 C.F.R. pt. 1630 app. §1630.14(b) (1997); Preemployment Questions and Medical Examinations, supra note 24, at 23, 8 FEP Manual (BNA) 405:7201; Workers' Compensation and the ADA, supra note 49, at 7, 8 FEP Manual (BNA) 405:7394.

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UNDUE HARDSHIP ISSUES[104]

An employer does not have to provide a reasonable accommodation that would cause an "undue hardship" to the employer. Generalized conclusions will not suffice to support a claim of undue hardship. Instead, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.[105] A determination of undue hardship should be based on several factors, including:

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
- the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer;
- the impact of the accommodation on the operation of the facility.[106]

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104 The discussions and examples in this section assume that there is only one effective accommodation.

105 See 29 C.F.R. pt. 1630 app. §1630.15(d) (1996); see also Stone v. Mount Vernon, 118 F.3d 92, 101, 6 AD Cas. (BNA) 1685, 1693 (2d Cir. 1997) (an employer who has not hired any persons with disabilities cannot claim undue hardship based on speculation that if it were to hire several people with disabilities it may not have sufficient staff to perform certain tasks); Bryant v. Better Business Bureau of Greater Maryland, 923 F. Supp. 720, 735, 5 AD Cas. (BNA) 625, 634 (D. Md. 1996).

106 See 42 U.S.C. § 12111(10)(B) (1994); 29 C.F.R. § 1630.2(p)(2) (1997); 29 C.F.R. pt. 1630 app. § 1630.2(p) (1997); TAM, supra note 46, at 3.9, 8 FEP Manual (BNA) 405:7005-07.

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The ADA's legislative history indicates that Congress wanted employers to consider all possible sources of outside funding when assessing whether a particular accommodation would be too costly.[107] Undue hardship is determined based on the net cost to the employer. Thus, an employer should determine whether funding is available from an outside source, such as a state rehabilitation agency, to pay for all or part of the accommodation. In addition, the employer should determine whether it is eligible for certain tax credits or deductions to offset the cost of the accommodation.[108] Also, to the extent that a portion of the cost of an accommodation causes undue hardship, the employer should ask the individual with a disability if s/he will pay the difference.

If an employer determines that one particular reasonable accommodation will cause undue hardship, but a second type of reasonable accommodation will be effective and will not cause an undue hardship, then the employer must provide the second accommodation.

An employer cannot claim undue hardship based on employees' (or customers') fears or prejudices toward the individual's disability.[109] Nor can undue hardship be based on the fact that provision of a reasonable accommodation might have a negative impact on the morale of other employees. Employers, however, may be able to show undue hardship where provision of a reasonable accommodation would be unduly disruptive to other employees's ability to work.

> Example A: An employee with breast cancer is undergoing chemotherapy. As a consequence of the treatment, the employee is subject to fatigue and finds it difficult to keep up with her regular workload. So that she may focus her reduced energy on performing her essential functions, the employer transfers three of her marginal functions to another employee for the duration of the chemotherapy treatments. The second employee is unhappy at being given extra assignments, but the employer determines that the employee can absorb the new assignments with little effect on his ability to perform his own

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107 See Senate Report, supra note 6, at 36; House Education and Labor Report, supra note 6, at 69. See also 29 C.F.R. pt. 1630 app. § 1630.2(p) (1997).

108 See the Appendix on how to obtain information about the tax credit and deductions.

109 See 29 C.F.R. pt. 1630 app. § 1630.15(d) (1997).

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assignments in a timely manner. Since the employer cannot show significant disruption to its operation, there is no undue hardship.[110]

Example B: A convenience store clerk with multiple sclerosis requests that he be allowed to go from working full-time to part-time as a reasonable accommodation because of his disability. The store assigns two clerks per shift, and if the first clerk's hours are reduced, the second clerk's workload will increase significantly beyond his ability to handle his responsibilities. The store determines that such an arrangement will result in inadequate coverage to serve customers in a timely manner, keep the shelves stocked, and maintain store security. Thus, the employer can show undue hardship based on the significant disruption to its operations and, therefore, can refuse to reduce the employee's hours. The employer, however, should explore whether any other reasonable accommodation will assist the store clerk without causing undue hardship.

42. Must an employer modify the work hours of an employee with a disability if doing so would prevent other employees from performing their jobs?

No. If the result of modifying one employee's work hours (or granting leave) is to prevent other employees from doing their jobs, then the significant disruption to the operations of the employer constitutes an undue hardship.

Example A: A crane operator, due to his disability, requests an adjustment in his work schedule so that he starts work at 8:00 a.m. rather than 7:00 a.m., and finishes one hour later in the evening. The crane operator works with three other employees who cannot perform their jobs without the crane operator. As a result, if the employer grants this requested accommodation, it would have to require the other three workers to adjust their hours, find other work for them to do from 7:00 to 8:00, or have the workers do nothing. The ADA does not require the employer to take any of these actions because they all significantly disrupt the operations of the business. Thus, the employer can deny the requested accommodation, but should discuss with the employee if there are other possible accommodations that would not result in undue hardship.

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[110] Failure to transfer marginal functions because of its negative impact on the morale of other employees also could constitute disparate treatment when similar morale problems do not stop an employer from reassigning tasks in other situations.

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Example B: A computer programmer works with a group of people to develop new software. There are certain tasks that the entire group must perform together, but each person also has individual assignments. It is through habit, not necessity, that they have often worked together first thing in the morning.

The programmer, due to her disability, requests an adjustment in her work schedule so that she works from 10:00 a.m. - 7:00 p.m. rather than 9:00 a.m. - 6:00 p.m. In this situation, the employer could grant the adjustment in hours because it would not significantly disrupt the operations of the business. The effect of the reasonable accommodation would be to alter when the group worked together and when they performed their individual assignments.

43. Can an employer deny a request for leave when an employee cannot provide a fixed date of return?

Providing leave to an employee who is unable to provide a fixed date of return is a form of reasonable accommodation. However, if an employer is able to show that the lack of a fixed return date causes an undue hardship, then it can deny the leave. In certain circumstances, undue hardship will derive from the disruption to the operations of the entity that occurs because the employer can neither plan for the employee's return nor permanently fill the position. If an employee cannot provide a fixed date of return, and an employer determines that it can grant such leave at that time without causing undue hardship, the employer has the right to require, as part of the interactive process, that the employee provide periodic updates on his/her condition and possible date of return. After receiving these updates, employers may reevaluate whether continued leave constitutes an undue hardship.

In certain situations, an employee may be able to provide only an **approximate date of return.** Treatment and recuperation do not always permit exact timetables. Thus, an employer cannot claim undue hardship solely because an employee can provide only an approximate date of return.[111] In such situations, or in situations in which a return date must be postponed because of unforeseen medical developments, employees should stay in regular communication with

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[111] See Haschmann v. Time Warner Entertainment Co., 151 F.3d 591, 600-02, 8 AD Cas. (BNA) 692, 699-701 (7th Cir. 1998).

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their employers to inform them of their progress and discuss, if necessary, the need for continued leave beyond what might have been granted originally.[112]

Example A: An experienced chef at a top restaurant requests leave for treatment of her disability but cannot provide a fixed date of return. The restaurant can show that this request constitutes undue hardship because of the difficulty of replacing, even temporarily, a chef of this caliber. Moreover, it leaves the employer unable to determine how long it must hold open the position or to plan for the chef's absence. Therefore, the restaurant can deny the request for leave as a reasonable accommodation.

Example B: An employee requests eight weeks of leave for surgery for his disability. The employer grants the request. During surgery, serious complications arise that require a lengthier period of recuperation than originally anticipated, as well as additional surgery. The employee contacts the employer after three weeks of leave to ask for an additional ten to fourteen weeks of leave (i.e., a total of 18 to 22 weeks of leave). The employer must assess whether granting additional leave causes an undue hardship.

44. Does a cost-benefit analysis determine whether a reasonable accommodation will cause undue hardship?

No. A cost-benefit analysis assesses the cost of a reasonable accommodation in relation to the perceived benefit to the employer and the employee. Neither the statute nor the legislative history supports a cost-benefit analysis to determine whether a specific accommodation causes an undue hardship.[113]

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[112] See Criado v. IBM, 145 F.3d 437, 444-45, 8 AD Cas. (BNA) 336, 341 (1st Cir. 1998).

[113] The ADA's definition of undue hardship does not include any consideration of a cost-benefit analysis. See 42 U.S.C. § 12111(10) (1994); see also House Education and Labor Report, supra note 6, at 69 ("[T]he committee wishes to make clear that the fact that an accommodation is used by only one employee should not be used as a negative factor counting in favor of a finding of undue hardship.").

Furthermore, the House of Representatives rejected a cost-benefit approach by defeating an amendment which would have presumed undue hardship if a reasonable accommodation cost more than 10% of the employee's annual salary. See 136 Cong.

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Whether the cost of a reasonable accommodation imposes an undue hardship depends on the employer's resources, not on the individual's salary, position, or status (e.g., full-time versus part-time, salary versus hourly wage, permanent versus temporary).

45. Can an employer claim that a reasonable accommodation imposes an undue hardship simply because it **violates a collective bargaining agreement (CBA)**[114]?

No. First, an employer should determine if it could provide a reasonable accommodation that would remove the workplace barrier without violating the CBA. If no reasonable accommodation exists that avoids violating the CBA, then the ADA requires an employer and a union, as a collective bargaining representative, to negotiate in good faith a variance to the CBA so that the employer may provide a reasonable accommodation, except if the proposed accommodation unduly burdens the expectations of other workers (i.e., causes undue hardship). Undue hardship must be assessed on a case-by-case basis to determine the extent to which the proposed accommodation would affect the expectations of other employees. Among the relevant factors to assess would be the duration and severity of any adverse effects caused by granting a variance and the number of employees whose employment opportunities would be affected by the variance.[115]

Rec. H2475 (1990), see also House Judiciary Report, supra note 6, at 41; 29 C.F.R. pt. 1630 app. § 1630.15(d) (1997).

Despite the statutory language and legislative history, some courts have applied a cost-benefit analysis. See, e.g., Monette v. Electronic Data Sys. Corp., 90 F.3d 1173, 1184 n.10, 5 AD Cas. (BNA) 1326, 1335 n.10 (6th Cir. 1996); Vande Zande v. Wisconsin Dep't of Admin., 44 F.3d 538, 543, 3 AD Cas. (BNA) 1636, 1638-39 (7th Cir. 1995).

[114] The current regulation governing reassignment of federal employees states that Postal Service workers with disabilities shall not be considered qualified for a reassignment to the extent that it would be inconsistent with the terms of a collective bargaining agreement. See 29 C.F.R. § 1614.203(g) (1997). This regulation does not state the applicable ADA non-discrimination standard when there is a conflict between a collective bargaining agreement and the need to provide a reassignment to an employee with a disability.

[115] See 42 U.S.C. § 12111(10) (1994). Certain circuits have held that it is an undue hardship to provide a reasonable accommodation when doing so will violate

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46. Can an employer claim undue hardship solely because a reasonable accommodation would require it to make changes to property owned by someone else?

No, an employer cannot claim undue hardship solely because a reasonable accommodation would require it to make changes to property owned by someone else. In some situations, an employer will have the right under a lease or other contractual relationship with the property owner to make the type of changes that are needed. If this is the case, the employer should make the changes, assuming no other factors exist that would make the changes too difficult or costly. If the contractual relationship between the employer and property owner requires the owner's consent to the kinds of changes that are required, or prohibits them from being made, then the employer must make good faith efforts either to obtain the owner's permission or to negotiate an exception to the terms of the contract. If the owner refuses to allow the employer to make the modifications, the employer may claim undue hardship. Even in this situation, however, the employer must still provide another reasonable accommodation, if one exists, that would not cause undue hardship.

Example A: X Corp., a travel agency, leases space in a building owned by Z Co. One of X Corp.'s employees becomes disabled and needs to use a wheelchair. The employee requests as a reasonable accommodation that several room dividers be moved to make his work space easily accessible. X Corp.'s lease specifically allows it to make these kinds of physical changes, and they are otherwise easy and inexpensive to make. The fact that X Corp. does not own the property

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the seniority provisions of a collective bargaining agreement. See Eckles v. Consolidated Rail Corp., 94 F.3d 1041, 1048, 5 AD Cas. (BNA) 1367, 1372 (7th Cir. 1996); Kralik v. Durbin, 130 F.3d 76, 83, 7 AD Cas. (BNA) 1040, 1045-46 (3d Cir. 1997). These decisions create a virtual *per se* rule that the ADA does not mandate as a reasonable accommodation an action that infringes on the seniority rights of another employee in a collective bargaining agreement. In the EEOC's view, such a *per se* rule nullifies Congress' intent that undue hardship always be determined on a case-by-case basis. See House Judiciary Report, supra note 6, at 42. Indeed, Congress believed employers could consider the terms of a collective bargaining agreement as one factor, but not the determining factor, in assessing undue hardship. See Senate Report, supra note 6, at 32; House Education and Labor Report, supra note 6, at 63. Finally, both Eckles and Kralik rely heavily upon pre-ADA Rehabilitation Act case law, despite the fact that Congress amended that statute by incorporating the ADA's employment discrimination provisions. See 29 U.S.C. §§ 791(g), 793(d), 794(d) (1994).

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does not create an undue hardship and therefore it must make the requested accommodation.

Example B: Same as Example A, except that X Corp.'s lease requires it to seek Z Co.'s permission before making any physical changes that would involve reconfiguring office space. X Corp. requests that Z Co. allow it to make the changes, but Z Co. denies the request. X Corp. can claim that making the physical changes would constitute an undue hardship. However, it must provide any other type of reasonable accommodation that would not involve making physical changes to the facility, such as finding a different location within the office that would be accessible to the employee.

An employer should remember its obligation to make reasonable accommodation when it is negotiating contracts with property owners.[116] Similarly, a property owner should carefully assess a request from an employer to make physical changes that are needed as a reasonable accommodation because failure to permit the modification might constitute "interference" with the rights of an employee with a disability.[117] In addition, other ADA provisions may require the property owner to make the modifications.[118]

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[116] See 42 U.S.C. § 12112(b)(2) (1994); 29 C.F.R. § 1630.6 (1997) (prohibiting an employer from participating in a contractual relationship that has the effect of subjecting qualified applicants or employees with disabilities to discrimination).

[117] See 42 U.S.C. § 12203(b) (1994); 29 C.F.R. § 1630.12(b) (1997).

[118] For example, under Title III of the ADA a private entity that owns a building in which goods and services are offered to the public has an obligation, subject to certain limitations, to remove architectural barriers so that people with disabilities have equal access to these goods and services. 42 U.S.C. § 12182(b)(2)(A)(iv) (1994). Thus, the requested modification may be something that the property owner should have done to comply with Title III.

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INSTRUCTIONS FOR INVESTIGATORS

When assessing whether a Respondent has violated the ADA by denying a reasonable accommodation to a Charging Party, investigators should consider the following:

- **Is the Charging Party "otherwise qualified"** (i.e., is the Charging Party qualified for the job except that, because of disability, s/he needs a reasonable accommodation to perform the position's essential functions)?

- **Did the Charging Party, or a representative, request a reasonable accommodation** (i.e., did the Charging Party let the employer know that s/he needed an adjustment or change at work for a reason related to a medical condition)? [see Questions 1-4]

    * Did the Respondent request **documentation** of the Charging Party's disability and/or functional limitations? If yes, was the documentation provided? Did the Respondent have a legitimate reason for requesting documentation? [see Questions 6-8]

    * What **specific type of reasonable accommodation**, if any, did the Charging Party request?

    * Was there a **nexus** between the reasonable accommodation requested and the functional limitations resulting from the Charging Party's disability? [see Question 6]

    * Was the need for reasonable accommodation related to the **use of medication, side effects from treatment, or symptoms related to a disability**? [see Questions 36-38]

- **For what purpose did the Charging Party request a reasonable accommodation:**

    * for the application process? [see Questions 12-13]

    * in connection with aspects of job performance? [see Questions 16-24, 32-33]

    * in order to enjoy the benefits and privileges of employment? [see Questions 14-15]

- Should the **Respondent have initiated the interactive process, or provided a reasonable accommodation, even if the Charging Party did not ask** for an

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accommodation? [see Questions 11, 39]

- What did the Respondent do in response to the Charging Party's request for reasonable accommodation (i.e., did the Respondent engage in an **interactive process** with the Charging Party and if so, describe both the Respondent's and the Charging Party's actions/statements during this process)? [see Questions 5-11]

- If the Charging Party asked the Respondent for a particular reasonable accommodation, and the Respondent provided a different accommodation, **why did the Respondent provide a different reasonable accommodation than the one requested by the Charging Party?** Why does the Respondent believe that the reasonable accommodation it provided was effective in eliminating the workplace barrier at issue, thus providing the Charging Party with an equal employment opportunity? Why does the Charging Party believe that the reasonable accommodation provided by the Respondent was ineffective? [see Question 9]

- **What type of reasonable accommodation** could the Respondent have provided that would have been **effective** in eliminating the workplace barrier at issue, thus providing the Charging Party with an equal employment opportunity?

- Does the charge involve allegations concerning reasonable accommodation and violations of any **conduct rules**? [see Questions 34-35]

- If the Charging Party alleges that the Respondent failed to provide a **reassignment** as a reasonable accommodation [see generally Questions 25-30 and accompanying text]:

    * did the Respondent and the Charging Party first discuss other forms of reasonable accommodation that would enable the Charging Party to remain in his/her current position before discussing reassignment?

    * did the Respondent have any vacant positions? [see Question 27]

    * did the Respondent notify the Charging Party about possible vacant positions? [see Question 28]

    * was the Charging Party qualified for a vacant position?

    * if there was more than one vacant position, did the Respondent place the Charging Party in the one that was most closely

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equivalent to the Charging Party's original position?

- If the Respondent is claiming **undue hardship** [see generally Questions 42-46 and accompanying text]:

    * what evidence has the Respondent produced showing that providing a specific reasonable accommodation would entail significant difficulty or expense?

    * if a modified schedule or leave is the reasonable accommodation, is undue hardship based on the impact on the ability of other employees to do their jobs? [see Question 42]

    * if leave is the reasonable accommodation, is undue hardship based on the amount of leave requested? [see Question 43]

    * is undue hardship based on a conflict between the reasonable accommodation and the provisions of a collective bargaining agreement? [see Question 45]

    * is undue hardship based on the fact that providing the reasonable accommodation requires changes to property owned by an entity other than the Respondent? [see Question 46]

    * if the Respondent claims that a particular reasonable accommodation would result in undue hardship, is there another reasonable accommodation that Respondent could have provided that would not have resulted in undue hardship?

- Based on the evidence obtained in answers to the questions above, is the Charging Party a **qualified** individual with a disability (i.e., can the Charging Party perform the essential functions of the position with or without reasonable accommodation)?

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APPENDIX

RESOURCES FOR LOCATING REASONABLE ACCOMMODATIONS

U.S. Equal Employment Opportunity Commission
1-800-669-3362 (Voice) 1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq. (1994), and the regulations, 29 C.F.R. § 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9 (1997) , and (2) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidances and documents: (1) Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); and (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the ADA Technical Assistance Manual and Resource Directory and the poster, are also available through the Internet at http://www.eeoc.gov.

U.S. Department of Labor (To obtain information on the Family and Medical Leave Act)
To request written materials: 1-800-959-3652 (Voice) 1-800-326-2577 (TT)
To ask questions: (202) 219-8412 (Voice)

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Internal Revenue Service (For information on tax credits and deductions for providing certain reasonable accommodations)
(202) 622-6060 (Voice)

Job Accommodation Network (JAN)
1-800-232-9675 (Voice/TT)
http://janweb.icdi.wvu.edu/.

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)
1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf
(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project
(703) 524-6686 (Voice) (703) 524-6639 (TT)
http://www.resna.org/hometa1.htm

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

* information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases

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containing information on thousands of commercially available assistive technology products),

* centers where individuals can try out devices and equipment,

* assistance in obtaining funding for and repairing devices, and

* equipment exchange and recycling programs.

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Changes to Draft Model Plan for Employment of People with Disabilities in the Federal Government

April 19, 1999

1. Table of Contents has been changed. It now refers to specific issues being addressed (recruitment, career development, etc.) instead of goals.

2. Vacancy Announcements--language has been added to the Recruitment section (page 5) which encourages agencies to include a statement that reasonable accommodations are available to applicants or employees with a disability when requested.

3. Part Time Employment--language has been added to the Recruitment section (page 5) and the Reasonable Accommodation section (page 10) which encourages agencies to consider part time employment as a means of increasing employment opportunities for people with disabilities.

→ linked to America's Job Bank
Q:

4. USAJOBS, OPM's web site for Federal jobs and employment information will be modified to include a feature that will allow job applicants to search for part time employment opportunities. On any given day, USAJOBS lists 10,000 or more job openings and is visited by over 1,000,000 job seekers a month. This modification should be completed in the next 7 to 9 weeks.

not in plan → should we reference

would put out press release → send to every Personnel Office

5. Reasonable Accommodation--a section has been added to the model plan on reasonable accommodation (page 10) which highlights what it is, gives examples of types accommodations, and points the reader to OPM's *People with Disabilities in the Federal Government: An Employment Guide* for additional information.

Those = psychiatric disabilities
→ won't this be misleading given that we're about to change policy?

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APR 1 9 1999

ACCESSING OPPORTUNITY

A Model Plan *for* Employment of People With Disabilities in the Federal Government

United States Office of Personnel Management

Employment Service

Theodore Roosevelt Building
1900 E Street, NW
Washington, DC 20415-9800

202-606-1059
www.opm.gov

ES DO-04
March 1999

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with disabilities have not shared in this employment prosperity.

The Federal Government should take the lead in recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. The objective is eliminating widespread barriers to gainful employment for people with disabilities.

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop the Model Plan by March 1, 1999. The Model Plan addresses four specific goals summarized below:

- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities; and
- Collect and maintain data to monitor success.

In addition, the Model Plan reminds agencies of their responsibilities to provide, when requested, a reasonable accommodation to an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.

OPM is pleased to submit the Model Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Model Plan is the first step to help Federal employers fulfill this commitment and become a model employer.

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MODEL PLAN

- RECRUITMENT -

GOAL I: ***"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."***

- Federal employers are strongly encouraged to develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors when successful recruitment efforts of people with disabilities is evident. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons of the Model Plan to the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Model Plan efforts and best practices.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13-15, in order to attract candidates from outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to actively recruit people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at 1-800-526-7234.

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- The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

- Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security disability benefits and have been prepared to work. Employers may request resumes--

  - By telephone: (757) 441-3362;
  - By fax: (757) 441-3374; or
  - By Email: projable@opm.gov.

  Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling OPM at (912) 744-2085.

  For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at www.ssa.gov/odhome.

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities, especially veterans. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also

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appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, ***OPM*** is available to provide governmentwide or agency-specific data.

- ***OPM*** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Model Plan.

- Federal employers should educate managers and supervisors on various hiring programs and resources available to them in recruiting and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

- ***OPM*** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

  Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

  Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

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5 CFR 316.302(b)(4) and 5 CFR 316.402(b)(4) for hiring 30 percent or more disabled veterans. These competitive authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

5 CFR 315.604 for hiring disabled veterans enrolled in a VA training program. This competitive authority is used to hire disabled veterans eligible for training under the Department of Veterans Affairs (VA) vocational rehabilitation program (38 U.S.C. chapter 31). The veterans may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program the veterans are not Federal employees for most purposes, but are beneficiaries of the VA. Upon successful completion, the host agency and VA give the veterans Certificates of Training showing the occupational series and grade levels of the positions for which trained. The Certificates of Training allows any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time.

- Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules, job sharing, and dissemination of employment and other information in alternative formats.

- Federal employers are encouraged to include language for vacancy announcements that states that reasonable accommodations are available to applicants or employees with a disability when requested.

- Federal employers are also urged to review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL II: ***"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."***

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status.

  OPM will continue to expand the diversity of academic disciplines in the PMI Program.

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OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

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- CAREER DEVELOPMENT -

GOAL III: ***"Encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."***

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Career development and related program review is encouraged to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- ***OPM***, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

GOAL IV: ***"Collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce."***

- ***OPM*** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- ***OPM***, in its oversight role, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

- A reasonable accommodation is an adjustment or alteration made to a job and/or the work environment that enables people with disabilities to perform the duties of the position. Federal departments and agencies are required, when requested, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.[1]

- The concept of reasonable accommodation applies to recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies should explore ways to insure their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. The Equal Employment Opportunity Commission (EEOC) is responsible for regulations governing reasonable accommodation and should be contacted by Federal employers needing additional guidance in this matter.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential duties of the particular job, the work environment, and the reasonableness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made.

- Types of accommodations include worksite modifications; part-time employment; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, readers, personal assistants; and reassigning or retraining employees. For more information on this matter, please refer to the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*.

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[1] An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation. As mentioned previously, the Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (PCEPD) is an excellent technical assistance resource in the area of reasonable accommodation.

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Changes to Draft Model Plan for Employment of People with Disabilities in the Federal Government

April 19, 1999

1. Table of Contents has been changed. It now refers to specific issues being addressed (recruitment, career development, etc.) instead of goals.

2. Vacancy Announcements--language has been added to the Recruitment section (page 5) which encourages agencies to include a statement that reasonable accommodations are available to applicants or employees with a disability when requested.

3. Part Time Employment--language has been added to the Recruitment section (page 5) and the Reasonable Accommodation section (page 10) which encourages agencies to consider part time employment as a means of increasing employment opportunities for people with disabilities.

4. USAJOBS, OPM's web site for Federal jobs and employment information will be modified to include a feature that will allow job applicants to search for part time employment opportunities. On any given day, USAJOBS lists 10,000 or more job openings and is visited by over 1,000,000 job seekers a month. This modification should be completed in the next 7 to 9 weeks.

5. Reasonable Accommodation--a section has been added to the model plan on reasonable accommodation (page 10) which highlights what it is, gives examples of types accommodations, and points the reader to OPM's *People with Disabilities in the Federal Government: An Employment Guide* for additional information.

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4/20

Issues

Done (1) Vacancy announcements should state that reasonable accommodation is available

? Done (2) Reasonable accommodation

→ Statement that all federal employers should establish agency-wide, reasonable accomodation guidelines

→ List what type of info should be included (12 point plan)

(3) Technology accessibility

(4) Interpreters

? Done (5) Guide should develop and promote part-time

Doing separately (6) Psychiatric disabilities

→ will amat lang be missing?

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-INTRODUCTION-

As the twenty-first century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with disabilities have not shared in this employment prosperity.

The Federal Government should lead the way in recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. The objective is eliminating widespread barriers to gainful employment for people with disabilities.

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998, meeting, and directed the U.S. Office of Personnel Management (OPM) to develop the Model Plan by March 1, 1999. The Model Plan addresses ~~four specific goals summarized below~~: **the following areas:**

- ~~Urge departments and agencies to recruit widely for positions at all levels~~; **Recruitment and hiring;**
- ~~Help departments and agencies provide opportunities for students with disabilities~~; **Reasonable accommodation;**
- ~~Encourage department and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities; and~~ **Developmental opportunities; and**
- Collection and maintenance of data to monitor success.

OPM is pleased to submit the Model Plan for government-wide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that government-wide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Model Plan is the first step to help Federal employers fulfill this commitment and become a model employer.

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MODEL PLAN

-RECRUITMENT AND HIRING-

~~GOAL I: *"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."*~~

Vacancy Announcements

- **Federal employers should include language in federal vacancy notices that explicitly states that reasonable accommodation is available.**

Recruitment Strategies

- Federal employers ~~are strongly encouraged to~~ should develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors when successful recruitment efforts of people with disabilities is evident. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons of the Model Plan to the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Model Plan efforts and best practices.

- Departments and agencies should explore ways to recruit from all sources when filing

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positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS 13-15, in order to attract candidates from outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to actively recruit people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached on 1-800-526-7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

  - Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security disability benefits and have been prepared to work. Employers may request resumes-

    - By telephone: (757) 441-3362;
    - By fax: (757) 441-3374; or
    - By Email: projable@opm.gov.

    Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System on (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling OPM on (912) 744-2085.

    For more information on Project ABLE, please contact the Social Security

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Administration on (410) 965-9040, TTY (410) 966-6210, or through Internet at www.ssa.gov/odhome.

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities, especially veterans. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide.* Also, telephone numbers may be found in the government blues pages section of the local telephone directory.

- Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, ***OPM*** is available to provide Government-wide or agency-specific data.

- ***OPM*** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Model Plan.

- Federal employers should educate managers and supervisors on various hiring programs and resources available to them in recruiting and retaining employees with disabilities . An initial survey regarding familiarity with these programs may help identify specific training needs.

Special Appointing Authorities

- ***OPM*** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

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Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

OPM and other appropriate agencies should explore measures aimed at eliminating the stricter standards currently applied to individuals with psychiatric disabilities seeking to qualify for excepted appointments and thereby extending to them those opportunities currently available to individuals with severe physical disabilities and mental retardation.

5 CFR 316.302(b)(4) and 5 CFR 316.402(b)(4) for hiring 30 percent or more disabled veterans. These competitive authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals at any time during the appointment.

- ~~Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as vacancy announcements, flexible workplace policies, composition of selection panels, and dissemination of employment information in alternative formats.~~

~~-EMPLOYMENT OPPORTUNITIES FOR STUDENTS-~~

~~GOAL II: *"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."*~~

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Employment Opportunities for Students

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students–high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status.

  OPM will continue to expand the diversity of academic disciplines in the PMI Program. OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

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-REASONABLE ACCOMMODATION-

Federal employers should establish agency-wide, written reasonable accommodation policies and procedures for applicants and employees with disabilities. Such guidelines should promote policies that make it easy and simple to request an accommodation. They should provide for a fair, prompt and balanced review of an accommodation request; a meaningful dialogue between supervisor and employee where necessary; and a review of medical evidence by a medical professional, where the medical reasons for the accommodation are in dispute.

At a minimum, the reasonable accommodation policies adopted by Federal employers should:

1. Explain how an employee or job applicant initiates a request for reasonable accommodation. If the agency requires an applicant or employee to complete a reasonable accommodation request form, the form must be provided as an attachment to the written procedures.

2. Specify to whom the request must be submitted and from whom the employee will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. If designated time deadlines are not met, responsible agency officials should explain the delay to the employee.

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reasonable accommodation decisions should be in writing and specify the reasons for denial, when applicable.

8. Provide a "plain English" explanation of certain key legal terms used in the policy (e.g., reasonable accommodations, disability, qualified person with a disability, and undue hardship), and reference applicable statutes and regulations as a source of the actual wording of the terms.

9. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee to perform the essential functions of his or her current position. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

10. Designate a system of record keeping that tracks the processing of requests for reasonable accommodation and maintains the confidentiality of medical information received in accordance with applicable law and regulations.

11. State in the policy that employees have the right to file a complaint in the event that their requests for reasonable accommodation are denied.

12. Clearly and expressly explain the role and responsibility of each agency official or office in the grant or denial of reasonable accommodation requests.

- Federal employers should apply the ADA standards for reassignment when reassigning Federal employees with disabilities as a form of reasonable accommodation.

- Federal employers should take the following measures to ensure the accessibility of technology for their employees with disabilities: Adopt the Department of Education's Requirements for Accessible Software Design as an interim standard until the Section 508 standards are published; ensure that all hardware and software purchased, modified, or upgraded by such agencies are accessible to people with disabilities; test new and current information technology systems for accessibility and consider upgrading or modifying any inaccessible systems used by employees or job applicants; ensure that all employee information provided on their interdepartmental computer networks as well as public information provided on their Web or Internet sites is accessible to people with disabilities; and ensure that employees with disabilities receive an assessment of technology access needs, and receive the appropriate assistive technology hardware, software, or peripherals to make all information technology systems used on the job accessible.

- Federal employers should take the following actions to ensure that interpreters and

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auxiliary aids are available for training and other public events: Review their policies on provision of interpreters and other auxiliary aids and services for people with disabilities in order to ensure that their written policies state their obligation under the Rehabilitation Act to provide interpreter services and that these policies are followed; ensure that internal training opportunities are offered equally to employees with disabilities and that interpreters or other auxiliary aids and services are planned for and provided; provide sign language interpreter services for training and other public events and, when requested, provide effective communications through other means such as Computer Assisted Real-time Transcription (CART) or assistive listening systems.

- Federal employers should develop and promote part-time employment in the federal government.

-CAREER DEVELOPMENT-

~~GOAL III: "Encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."~~

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

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- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

-TRAINING-

- Development of training and other courses related to disability employment issues are

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advocated. These courses are helpful to all levels of agency management-from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- ***OPM,*** through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

- MONITORING AND EVALUATING PROGRESS -

~~GOAL IV: "Collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce.~~

- ***OPM*** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government–A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated–including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- ~~Federal employers are encouraged to reorganize managers and supervisors whose recruiting, hiring, and promoting efforts to those with disabilities are commendable~~.

- ***OPM,*** in its oversight role, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. entire folder	Disability-OPM-Model Plan I [2] (125 pages)	ca. March, 1998	P5

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Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15430

FOLDER TITLE:
Disability-OPM-Model Plan I [2]

Richard Stalcup

rx43

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Lisa M. Brown @ OVP

03/30/99 09:49:38 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:
Subject: FW: OPM Model Plan - Revised

Here is a revised plan that Becky says includes items the Task Force etc thought should be in the model plan. They took OPM's plan and added to it.

Should we talk this week? I am pretty free all week as of now.
---------- Forwarded by Lisa M. Brown/OVP on 03/30/99 09:47 AM ----------

Ogle Becky <ogle-becky@dol.gov>
03/30/99 09:30:05 AM

Record Type: Record

To: Lisa M. Brown/OVP

cc:
Subject: FW: OPM Model Plan - Revised

<<OPMMODEL.WPD>>
This is what I came up. Please review and let me know if you want me to make changes. For purposes of our meeting w/OPM, and to diminish OPM's resistance to the suggested changes (am I dreaming?) it may be better if this revised plan was perceived to be your product, and not the EEOC's. What do you think?

- OPMMODEL.WPD

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-INTRODUCTION-

As the twenty-first century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with disabilities have not shared in this employment prosperity.

The Federal Government should lead the way in recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. The objective is eliminating widespread barriers to gainful employment for people with disabilities.

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998, meeting, and directed the U.S. Office of Personnel Management (OPM) to develop the Model Plan by March 1, 1999. The Model Plan addresses ~~four specific goals summarized below~~: **the following areas:**

- ~~Urge departments and agencies to recruit widely for positions at all levels~~; **Recruitment and hiring;**
- ~~Help departments and agencies provide opportunities for students with disabilities~~; **Reasonable accommodation;**
- ~~Encourage department and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities; and~~ **Developmental opportunities; and**
- ~~Collect and maintain data to monitor success.~~ Data collection

OPM is pleased to submit the Model Plan for government-wide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that government-wide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Model Plan is the first step to help Federal employers fulfill this commitment and become a model employer.

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MODEL PLAN

-RECRUITMENT AND HIRING-

~~**GOAL I:** *"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."*~~

Vacancy Announcements

- **Federal employers should include language in federal vacancy notices that explicitly states that reasonable accommodation is available.**

Recruitment Strategies

- Federal employers ~~are strongly encouraged to~~ should develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors when successful recruitment efforts of people with disabilities is evident. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons of the Model Plan to the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Model Plan efforts and best practices.

- Departments and agencies should explore ways to recruit from all sources when filing positions, including those in the Senior Executive Service and managerial and

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supervisory positions at the grades GS 13-15, in order to attract candidates from outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to actively recruit people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached on 1-800-526–7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

  - Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security disability benefits and have been prepared to work. Employers may request resumes-

    – By telephone: (757) 441-3362;
    – By fax: (757) 441-3374; or
    – By Email: **projable@opm.gov.**

    Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System on (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling OPM on (912) 744-2085.

    For more information on Project ABLE, please contact the Social Security Administration on (410) 965-9040, TTY (410) 966-6210, or through Internet at

→ Recruit people w/ disabilities through formal channels

www.ssa.gov/odhome.

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities, especially veterans. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide.* Also, telephone numbers may be found in the government blues pages section of the local telephone directory.

- Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, ***OPM*** is available to provide Government-wide or agency-specific data.

- ***OPM*** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Model Plan.

- Federal employers should educate managers and supervisors on various hiring programs and resources available to them in recruiting and retaining employees with disabilities . An initial survey regarding familiarity with these programs may help identify specific training needs.

Special Appointing Authorities

- ***OPM*** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

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Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

MVS the announcement

OPM and other appropriate agencies should explore measures aimed at eliminating the stricter standards currently applied to individuals with psychiatric disabilities seeking to qualify for excepted appointments and thereby extending to them those opportunities currently available to individuals with severe physical disabilities and mental retardation.

5 CFR 316.302(b)(4) and 5 CFR 316.402(b)(4) for hiring 30 percent or more disabled veterans. These competitive authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals at any time during the appointment.

- ~~Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as vacancy announcements, flexible workplace policies, composition of selection panels, and dissemination of employment information in alternative formats.~~

~~-EMPLOYMENT OPPORTUNITIES FOR STUDENTS-~~

~~**GOAL II:** ***"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."***~~

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Employment Opportunities for Students

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students–high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status.

  OPM will continue to expand the diversity of academic disciplines in the PMI Program. OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

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1) Do we need EO?
2) How closely does this track ~~ADA~~? Current law?

-REASONABLE ACCOMMODATION-

- Federal employers should establish agency-wide, written reasonable accommodation policies and procedures for applicants and employees with disabilities. Such guidelines should promote policies that make it easy and simple to request an accommodation. They should provide for a fair, prompt and balanced review of an accommodation request; a meaningful dialogue between supervisor and employee where necessary; and a review of medical evidence by a medical professional, where the medical reasons for the accommodation are in dispute.

At a minimum, the reasonable accommodation policies adopted by Federal employers should include the following information:

1. Explain how an employee or job applicant initiates a request for reasonable accommodation. If the agency requires an applicant or employee to complete a reasonable accommodation request form, the form must be provided as an attachment to the written procedures.

2. Specify to whom the request must be submitted and from whom the employee will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. If designated time deadlines are not met, responsible agency officials should explain the delay to the employee.

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

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7. Provide that reasonable accommodation decisions should be in writing and specify the reasons for denial, when applicable.

8. Provide a "plain English" explanation of certain key legal terms used in the policy (e.g., reasonable accommodations, disability, qualified person with a disability, and undue hardship), and reference applicable statutes and regulations as a source of the actual wording of the terms.

9. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee to perform the essential functions of his or her current position. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

10. Designate a system of record keeping that tracks the processing of requests for reasonable accommodation and maintains the confidentiality of medical information received in accordance with applicable law and regulations.

11. State in the policy that employees have the right to file a complaint in the event that their requests for reasonable accommodation are denied.

12. Clearly and expressly explain the role and responsibility of each agency official or office in the grant or denial of reasonable accommodation requests.

- Federal employers should apply the ADA standards for reassignment when reassigning Federal employees with disabilities as a form of reasonable accommodation.

- Federal employers should take the following measures to ensure the accessibility of technology for their employees with disabilities: Adopt the Department of Education's Requirements for Accessible Software Design as an interim standard until the Section 508 standards are published; ensure that all hardware and software purchased, modified, or upgraded by such agencies are accessible to people with disabilities; test new and current information technology systems for accessibility and consider upgrading or modifying any inaccessible systems used by employees or job applicants; ensure that all employee information provided on their interdepartmental computer networks as well as public information provided on their Web or Internet sites is accessible to people with disabilities; and ensure that employees with disabilities receive an assessment of technology access needs, and receive the appropriate assistive technology hardware, software, or peripherals to make all information technology systems used on the job accessible.

how does this conform to our technology policy? Ask Tom K

- Federal employers should take the following actions to ensure that interpreters and

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auxiliary aids are available for training and other public events. Review their policies on provision of interpreters and other auxiliary aids and services for people with disabilities in order to ensure that their written policies state their obligation under the Rehabilitation Act to provide interpreter services and that these policies are followed; ensure that internal training opportunities are offered equally to employees with disabilities and that interpreters or other auxiliary aids and services are planned for and provided; provide sign language interpreter services for training and other public events and, when requested, provide effective communications through other means such as Computer Assisted Real-time Transcription (CART) or assistive listening systems.

- Federal employers should develop and promote part-time employment in the federal government.

-CAREER DEVELOPMENT-

~~GOAL III: "Encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."~~

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Career development and related program review is encouraged to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

-TRAINING-

- Development of training and other courses related to disability employment issues are

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advocated. These courses are helpful to all levels of agency management-from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- ***OPM,*** through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

- MONITORING AND EVALUATING PROGRESS -

~~GOAL IV: "Collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce.~~

- ***OPM*** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government–A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated–including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- ~~Federal employers are encouraged to reorganize managers and supervisors whose recruiting, hiring, and promoting efforts to those with disabilities are commendable~~.

- ***OPM,*** in its oversight role, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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(1) Why not part of the Model Plan? (p 9)

(2) EEOC role?

March 17, 1999

MEMORANDUM FOR: LISA BROWN
CYNTHIA RICE
MARK HUNKER

FROM: BECKY OGLE

SUBJECT: RECOMMENDATIONS FOR OPM MODEL PLAN

It is critical that OPM and EEOC both are at the table to revise the OPM Model Plan and produce a plan that reflects the intent and spirit of the Presidential Directive. I sincerely hope that with collaboration and cooperation spearheaded by all that a plan can be developed that we are all proud to stand behind.

I would like to offer some specific comments regarding the proposed OPM Model Plan. Please do not view the following as exhaustive, even if it might appear so. We would like to participate in further discussions that most likely will develop as a result of what is submitted below for your consideration.

First, I still do not understand the relationship between the Model Plan and the table of contents for People with Disabilities in the Federal Government: An Employment Guide. This should be part of the discussions between OPM and EEOC as they work toward the development of the Model Plan.

The Table of Contents for the Model Plan is currently uninformative. Rather than referring to Goals, it would be more useful to refer to what is being addressed. For example, use Recruitment instead of Goal I. Employment Opportunities for Students should be subsumed under Recruitment. An additional section that should be included is Reasonable Accommodations.

In general, all language that is in the current Plan should be as strong as possible. While the Presidential Directive used words such as encourage, urge, it was not intended that OPM use that language verbatim.

The following recommendations were generated by the Section 2 Work Group on the Review of Federal Government Personnel Laws, Regulations, and Policy and included in **Re-charting the Course**. All of the recommendations were cleared by OMB. The Task Force played a critical role in helping the work group members reach consensus when differences arose during the clearance process.

What follows is a restatement of each of the issues and the recommendations included in the report. All of these recommendations should/must be included in the OPM Model Plan and none

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of these require any regulatory action.

The following should be included in the Recruitment Section:

***ISSUE: Vacancy Announcements**--Availability of reasonable accommodations does not appear to be indicated on the vacancy announcements and other recruiting materials of the vast majority of federal agencies. This poses a barrier to individuals with disabilities seeking federal government employment who are unsure of their right to, or the availability of, reasonable accommodations during the application process and during the employment relationship.*

RECOMMENDATION--

--OPM, in consultation with the **Equal Employment Opportunity Commission (EEOC)** should develop language for federal vacancy notices that explicitly states that reasonable accommodation is available. OPM should also revise its regulations to require all federal agencies to include this notice in vacancy announcements and other recruiting materials.

***ISSUE: Establishment of Part-Time Positions**--The issue of part-time work relates to employment of adults with disabilities in the federal sector because, without viable options for part-time work, some adults with disabilities will be unable to enter or to remain in the workforce. The Federal Employees Part-Time Career Employment Act of 1978 was created to increase federal part-time career employment. When passing the Act, Congress explicitly recognized that part-time employment provides a real alternative for individuals with disabilities. Although agencies are mandated to establish part-time career employment programs, there is evidence that agencies may not be routinely establishing, or evaluating the need for, part-time positions within their organizations.*

RECOMMENDATION--

--OPM should remind agencies annually of Congressional intent to promote part-time employment and should encourage agencies to expand part-time opportunities, especially for individuals with disabilities, and to promote part-time employment within their respective organizations.

--OPM's existing USAJOBS site should be modified to provide a separate search category for part-time employment.

The following should be placed in the Reasonable Accommodation Section: (It would be appropriate for OPM to reference EEOC's Enforcement Guidance on Reasonable Accommodations and Undue Hardship under the Americans with Disabilities Act when reasonable accommodations are first mentioned in the OPM Model Plan)

***ISSUE: Reasonable Accommodation Policies and Procedures**--Both potential and current federal employees with disabilities are faced with significant problems when seeking reasonable accommodation. It is often unclear who is responsible for determining, approving, and obtaining accommodations. Requests for reasonable accommodation often are not handled promptly, chiefly because there are no time limits on decision making. Individuals with nonvisible or hidden disabilities have a particularly difficult time obtaining needed accommodations. And, supervisors and managers often are unaware of the legal requirements governing the obligation to provide reasonable accommodations. Presently, there are no government-wide, uniform procedures for processing applicant and employee requests for reasonable accommodation, nor are there model procedures for processing such requests. Among federal*

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agencies with written procedures for processing accommodation requests, some are exceedingly and unnecessarily complex, while others require intrusive and extensive medical information that is not necessary and that may be inappropriate.

RECOMMENDATION--

--EEOC should issue regulations or other appropriate directives providing guidelines which federal agencies may choose to adopt in establishing agency-wide, written reasonable accommodation policies and procedures for applicants and employees with disabilities. Such guidelines should promote policies that make it easy and simple to request an accommodation. They should provide for a fair, prompt and balanced review of an accommodation request; a meaningful dialogue between supervisor and employee where necessary; and a review of medical evidence by a medical professional, where the medical reasons for the accommodation are in dispute.

Agencies that choose to develop their own policies should ensure that these policies include at a minimum the standards on reasonable accommodation requests provided below.

1. Explain how an employee or job applicant initiates a request for reasonable accommodation. If the agency requires an applicant or employee to complete a reasonable accommodation request form, the form must be provided as an attachment to the written procedures.

2. Specify to whom the request must be submitted and from whom the employee will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. If designated time deadlines are not met, responsible agency officials should explain the delay to the employee.

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reasonable accommodation decisions should be in writing and specify the reasons for denial, when applicable.

8. Provide a "plain English" explanation of certain key legal terms used in the policy (e.g., reasonable accommodations, disability, qualified person with a disability, and undue hardship), and reference applicable statutes and regulations as a source of the actual wording of the terms.

9. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee to perform the essential functions of his or her current position. In the case of reassignment to a lower graded position, the

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agency has the option of providing pay retention because the action is not for personal cause.

10. Designate a system of record keeping that tracks the processing of requests for reasonable accommodation and maintains the confidentiality of medical information received in accordance with applicable law and regulations.

11. State in the policy that employees have the right to file a complaint in the event that their requests for reasonable accommodation are denied.

12. Clearly and expressly explain the role and responsibility of each agency official or office in the grant or denial of reasonable accommodation requests.

***ISSUE: Reassignment**--The ADA specifically mentions reassignment to a vacant position as a form of reasonable accommodation for individuals who, because of a disability, can no longer perform their current jobs. In 1992, Congress amended the Rehabilitation Act to make ADA standards regarding nondiscrimination in employment (including ADA standards on reassignment) applicable to the federal government. Federal regulatory standards governing reassignment, however, have not been changed to accommodate this statutory mandate.*

RECOMMENDATIONS--

--OPM should direct EEOC to revise its regulation regarding reassignment in the federal government to incorporate the ADA standards for reassignment.

--EEOC should provide guidance about the applicable ADA provisions that apply to reassignment and, specifically, about the application of the ADA's undue hardship standard.

***ISSUE: Interpreters and Personal Assistance Services**--As employers, federal agencies are required to provide interpreters to individuals with hearing disabilities as a form of reasonable accommodation under section 501 of the Rehabilitation Act of 1973. Interpreting services represent both an ongoing cost and a logistical challenge to locate qualified interpreters and schedule events appropriately. Some federal agencies, however, fail to do an adequate job of planning and allocating resources effectively and do not establish clear policies and procedures regarding interpreting services. In addition, personal assistance services are required by other employees as a reasonable accommodation. Just as interpreters are key accommodations to persons with severe hearing impairment and computers, TTYs, and other pieces of equipment are key accommodations to persons with visual impairments, personal assistance services, such as readers for visually impaired persons and attendants for mobility impaired persons are key workplace accommodations.*

RECOMMENDATIONS--

--EEOC should direct all government agencies that provide training to employees of other federal agencies to review their policies on provision of interpreters and other auxiliary aids and services for people with disabilities in order to ensure that their written policies state their obligation under the Rehabilitation Act to provide interpreter services and that these policies are followed.

--EEOC should direct all government agencies to ensure that internal training opportunities are offered equally to employees with disabilities and that interpreters or other auxiliary aids and services are

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planned for and provided.

--EEOC should direct all government agencies that provide sign language interpreter services for training and other public events and, when requested, to provide effective communications through other means such as Computer Assisted Real-time Transcription (CART) or assistive listening systems.

***ISSUE: Public Education**--Information on availability of part-time employment is not readily available or easily accessible. Currently, prospective part-time employees must individually review each vacancy to determine if it is a full-time or part-time position. Since so few part-time positions are advertised, this effort is usually futile.*

RECOMMENDATION--

--**OPM** should create a part-time employment Internet site with specific vacancy announcements to promote part-time employment in the federal government. Such changes would make it easier for prospective employees to apply for part-time jobs and would generally promote part-time employment in the federal sector.

ACCESSING OPPORTUNITY

A Model Plan *for* Employment of People With Disabilities in the Federal Government

United States Office of Personnel Management

Employment Service

Theodore Roosevelt Building
1900 E Street, NW
Washington, DC 20415-9800

202-606-1059
www.opm.gov

ES DO-04
March 1999

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Goal I 2

"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including at the GS-13 to 15 and senior executive service levels."

Goal II 6

"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."

Goal III 8

"Encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in development opportunities designed to enhance their leadership skills and to advance their careers."

Goal IV 9

"Collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce."

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with disabilities have not shared in this employment prosperity.

The Federal Government should take the lead in recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. The objective is eliminating widespread barriers to gainful employment for people with disabilities.

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop the Model Plan by March 1, 1999. The Model Plan addresses four specific goals summarized below:

- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities; and
- Collect and maintain data to monitor success.

OPM is pleased to submit the Model Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Model Plan is the first step to help Federal employers fulfill this commitment and become a model employer.

Why can't the model be to recruit widely / provide opp etc.? Comply w/ EO?

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MODEL PLAN

- RECRUITMENT -

GOAL I: ***"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."***

- Federal employers are strongly encouraged to develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors when successful recruitment efforts of people with disabilities is evident. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons of the Model Plan to the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Model Plan efforts and best practices.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13-15, in order to attract candidates from outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to actively recruit people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at 1-800-526-7234.

- The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

- Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security disability benefits and have been prepared to work. Employers may request resumes--

  - By telephone: (757) 441-3362;
  - By fax: (757) 441-3374; or
  - By Email: projable@opm.gov.

  Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling OPM at (912) 744-2085.

  For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at www.ssa.gov/odhome.

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities, especially veterans. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

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- Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, ***OPM*** is available to provide governmentwide or agency-specific data.

- ***OPM*** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Model Plan.

- Federal employers should educate managers and supervisors on various hiring programs and resources available to them in recruiting and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

- ***OPM*** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

  Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

  Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

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5 CFR 316.302(b)(4) and 5 CFR 316.402(b)(4) for hiring 30 percent or more disabled veterans. These competitive authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals at any time during the appointment.

- Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as vacancy announcements, flexible workplace policies, composition of selection panels, and dissemination of employment information in alternative formats.

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL II: ***"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."***

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status.

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OPM will continue to expand the diversity of academic disciplines in the PMI Program. OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

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- CAREER DEVELOPMENT -

GOAL III: ***"Encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."***

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Career development and related program review is encouraged to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- ***OPM***, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

GOAL IV: ***"Collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce."***

- ***OPM*** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- ***OPM***, in its oversight role, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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PEOPLE WITH DISABILITIES in the Federal Government

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AN EMPLOYMENT GUIDE

United States Office of Personnel Management

Employment Service

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Washington, DC 20415-9800

202-606-1059
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ES/99-DO-02

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INTRODUCTION

The Federal Government must strive to create and maintain a sound, diverse, and cooperative work environment. Equal opportunity in employment for all people, regardless of race, color, sex, age, religion, national origin, sexual orientation, or disability should be the common goal across government. However, persons with disabilities are often overlooked as a source of employable talent.

On March 13, 1998, President Clinton addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities. The Task Force was charged with creating a coordinated and aggressive national policy to bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general adult population.

This guide and its companion piece, *"A Model Plan for Employment of People with Disabilities in the Federal Government: Accessing Opportunity,"* was developed in support of the Task Force's efforts and recommendations. The purpose of this guide is to provide guidance, information, and references to aid Federal employers in their efforts to hire and advance employees with disabilities.

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LEGAL FRAMEWORK

There are several laws which support and encourage the employment, retention, and advancement of people with disabilities.

1) **Section 501 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in Federal employment. The law:

- Requires employers to make "reasonable accommodations" to employ disabled individuals. Such accommodations may involve restructuring the job, modifying work schedules, adjusting or modifying examinations, providing readers or interpreters, and acquiring or modifying equipment and/or facilities (including the use of adaptive technology such as voice recognition software).

- Prohibits selection criteria and standards which tend to screen out disabled persons, unless such procedures have been determined through a job analysis to be essential for the job in question.

- Requires Federal agencies in the Executive branch to develop affirmative employment action programs for hiring, placement, and advancement of persons with disabilities. Affirmative action should be an integral part of ongoing agency personnel management programs. Persons with disabilities should be employed in all grade levels and occupational series commensurate with their qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of job structure or design, or because of architectural, transportation, communication, procedural, or attitudinal barriers.

2) **The Vietnam Era Veterans' Readjustment Assistance Act of 1974.** In furtherance of the policy of promoting "the maximum of employment and job advancement opportunities within the Federal Government for disabled veterans and certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement," this act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans' Readjustment Appointment (VRA). The act also ensures that all veterans are considered for employment under merit system rules and requires a separate affirmative action plan for the hiring, placement, and advancement of disabled veterans. (Please note, however, that this law does not provide any preferences to disabled veterans or to veterans of the Vietnam era.)

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3) **The Civil Service Reform Act of 1978** requires "fair and equitable" treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for privacy and constitutional rights.

4) **The Americans with Disabilities Act (ADA) of 1990** covers employers in the private sector but was amended in 1992 to make certain provisions of the Act applicable to the Federal government. The sections of the ADA that are applicable to the Federal government can be found at 42 U.S.C. §§ 12111 *et. seq.* and 42 U.S.C. §§ 12201-204 and 12210.

5) **The Veterans Education and Employment Program Amendments of 1991** require expanded job opportunities for veterans and disabled veterans through the Veterans Readjustment Appointment (VRA) Authority.

6) **The Architectural Barriers Act**, enforced by the Architectural and Transportation Barriers Compliance Board (the Access Board), requires that buildings and facilities be accessible to people with disabilities if they were designed, built, or altered with certain Federal funds, or leased for occupancy by Federal agencies after 1968. When individuals with disabilities are unable to use a building because there are no accessible parking spaces, no curb ramps, no ramps at the entrance, no accessible rest rooms, no accessible drinking fountains, no raised lettering on signs, or other barriers exist, they may file a complaint with the Access Board.

7) **The Pregnancy Discrimination Act** amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. This amendment requires that employers treat pregnancy and related conditions as any other short-term disability.

8) **Title 5, United States Code, Sections 3312 and 3318** requires that any disqualification, non-selection, or passover of a veteran's preference eligible applicant for medical reasons must be approved by the Office of Personnel Management before the position can be filled. This includes an agency medical disqualification of a 30 percent or more disabled veteran for assignment to another position in a reduction in force.

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ROLES AND RESPONSIBILITIES

The following Federal and State entities have responsibilities concerning the employment of people with disabilities:

Equal Employment Opportunity Commission (EEOC)

The EEOC is responsible for regulating and enforcing the Federal program for ensuring equal employment opportunity, oversight of the development and implementation of Federal agencies' affirmation action programs, and adjudicating claims of disability discrimination in the Federal government. Instructions on affirmative action plans for the disabled may be found in EEOC's Management Directives 712 and 713.

EEOC's Management Directive 713 requires that Federal agencies submit Annual Affirmative Action Program Plans and accomplishment reports. This directive is pursuant to the EEOC's obligation and authority under Section 501 of the Rehabilitation Act of 1973.

EEOC is also responsible for approving or disapproving each agency wide affirmative action program plan; rating the accomplishments of each agency; and communicating results of evaluations to each agency with instructions for submission of a revised agency wide plan if required. EEOC will work closely with Federal Government personnel to assist in creating and implementing effective affirmative employment programs.

Guidelines on reasonable accommodation and non-discrimination of people with disabilities are published by the EEOC. In addition, EEOC issues an annual report on employment of individuals with disabilities in the Federal Government to the Congress of the United States.

U.S. Office of Personnel Management (OPM)

OPM provides nationwide program leadership, development, and coordination for the employment of people with disabilities, including veterans with service-connected disabilities. This includes providing direction, guidance, and technical support to agency heads, directors of personnel, agency personnel offices and officials; developing recruitment policy and appointing authorities; providing information on employment methods and program development to departments and agencies; developing publications for use in promoting employment; developing,

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monitoring, and modifying examining procedures to facilitate the employment consideration of qualified applicants with disabilities; and developing medical policy and realistic medical and suitability standards.

OPM takes the lead role in promoting reemployment of employees with or recovered from compensable injuries or illnesses, and fostering research and demonstration projects on disability related issues. Further, OPM maintains consistent liaison with national offices of Federal, private organizations, community agencies, and other organizations concerned with the employment of people with disabilities.

President's Committee on Employment of People with Disabilities

The President's Committee on Employment of People with Disabilities (PCEPD) is a small Federal agency whose mission is to communicate, coordinate, and promote public and private efforts to enhance the employment of people with disabilities. The PCEPD provides information, training, and technical assistance related to the employment of people with disabilities. Some of the projects and resources developed by the PCEPD include:

- The Job Accommodation Network (JAN), a toll-free information service on workplace accommodations and the employment provisions of the Americans with Disabilities Act. Anyone may call JAN at (800) 232-9675 or (800) 526-7234. One can also obtain information from the JAN Website at http://www.jan.wvu.edu/english/homeus.htm.

- The Workforce Recruitment Program (WRP) for college students with disabilities, a joint venture with the Department of Defense which identifies college and university students with disabilities seeking summer and permanent jobs. Federal employers may access the candidate database by calling the PCEPD's Job Accommodation Network (JAN) at 1-800-526-7234.

- Education Kits containing fact sheets on timely disability employment issues. An Education Kit and a list of available publications may be requested by calling (202) 376-6200.

- The PCEPD's Website on the Internet http://www.pcepd.gov which provides visitors direct access to their publications, speeches, press releases, statistical data, workplace laws, and other related topics affecting the employment of persons with disabilities.

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Federal Employers

Federal agency managers and supervisors are responsible for the employment and advancement of people with disabilities. This includes recruitment, hiring, training, career development, mentoring support and providing reasonable accommodations when requested.

Career development and promotion opportunities, training, awards, and other similar programs should be an integral part of an agency's responsibilities towards employees with disabilities. Further, Federal employers should make reasonable accommodations, when requested, to the known physical or mental limitations of a qualified employee with a disability, unless the agency can demonstrate that the accommodation(s) would impose an undue hardship on the operation of its program.

Federal employers are encouraged to establish procedures to ensure that the employment and advancement of people with disabilities meet affirmative action program objectives, diversity planning, emphasis, and accountability. Action should be taken to eliminate discrimination against applicants or employees with disabilities due to barriers in agency facilities. Federal employers should also ensure that there are no personnel or management policies, practices or procedures which restrict hiring, placement and advancement of people with disabilities.

It is illegal for a Federal agency to discriminate in employment against qualified individuals with disabilities. Anyone who believes he or she has been subjected to discrimination on the basis of disability may file a complaint with the employing agency's equal employment opportunity (EEO) office. Departments and agencies should refer to EEOC's MD-110 and 29 CFR, Part 1614, for additional guidance on the EEO complaint process.

State and Other Rehabilitation Service Resources

Vocational rehabilitation counselors are available at State Vocational Rehabilitation Agencies (SVRAs) and their local offices. They can be easily reached by phone. The extent and types of services offered may vary from State to State, but most SVRA counselors are able to do some or all of the following:

- Explain disabilities;
- Prepare certification documents;
- Refer qualified applicants and provide follow-up assistance for placements made;

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- Provide assistance when individuals with disabilities employed under excepted appointing authorities are upgraded or downgraded or when problems arise in regard to these employees;
- Evaluate the rehabilitation needs of Federal employees who become disabled and advise managers and supervisors about services available;
- Purchase special equipment that individuals with disabilities need to perform their jobs;
- Locate readers for persons who are visually impaired, interpreters for persons who are hearing impaired, and personal assistants for individuals with disabilities;
- Advise about modification(s) needed to overcome architectural, transportation, and communication barriers;
- Participate in training programs for Federal employees, managers and supervisors relating to subjects such as reasonable accommodations, modification of jobs or worksites, and other related subjects;
- Arrange for Federal employees, managers, and supervisors to tour rehabilitation centers, workshops, campus facilities for students with disabilities, and independent living centers.

While State vocational rehabilitation agencies are a primary source of rehabilitation services, a number of other organizations can also be helpful. For example:

- U.S. Department of Education, Rehabilitation Services Administration;
- U.S. Architectural and Transportation Barriers Compliance Board;
- U.S. Department of Transportation;
- U.S. Department of Veterans Affairs, Vocational Rehabilitation Program;
- President's Committee on Employment of People with Disabilities and their Job Accommodation Network (JAN);
- General Services Administration;
- Local and State Committees on Employment of People With Disabilities;
- University medical centers and counseling programs;
- Gallaudet University (Washington, DC); and
- Advocacy organizations for persons with disabilities.

Also, employees with disabilities within the agency are another vital resource. Many of them are active in advocacy groups, serve on agency advisory committees, and are experts on various aspects of disability and rehabilitation.

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DEFINITIONS

Person with a disability: The Rehabilitation Act of 1973, as amended, defines a "person with a disability" as an individual who:

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities (such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). A "physical or mental impairment" means:

  1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculosketal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genito-urinary, hemic and lymphatic, skin, and endocrine; or

  2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- Has a record of such an impairment (this means that the person has a history of, or has been classified -or misclassified- as having a mental or physical impairment that substantially limits one or more major life activities); or

- Is regarded as having such an impairment; this includes individuals who are perceived to have disabilities.

Qualified person with a disability: A qualified person with a disability refers to a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question without harming themselves or others.

Invisible (hidden) disabilities: These are disabilities that are not readily apparent, such as migraine headaches, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, and learning disabilities.

Targeted disabilities: Targeted disabilities, as defined by the Equal Employment Opportunity Commission (EEOC), are disabilities "targeted" for emphasis in affirmative action planning. These are: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine. EEOC

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recognizes that some disabilities that are not targeted are nevertheless just as severe or more severe than some disabilities that are targeted.

Drug addicts and alcoholics: Drug addicts and alcoholics are classified as "people with disabilities" under Section 504 of the Rehabilitation Act of 1973. However, the Americans with Disabilities Act of 1990, amended the Rehabilitation Act definition of an individual with disabilities to **exclude** "individuals currently engaging in the illegal use of drugs" regardless of whether it can be shown to adversely affect job performance or safety. Federal employers are no longer required to offer a firm choice or last chance agreement[s].

Human Immunodeficiency Virus (HIV)-Infected people: Before June 1998, only people with full-blown AIDS were covered under the Americans with Disabilities Act. As a result of a Supreme Court ruling in June 1998, people infected with HIV are also covered, even those with no overt symptoms of the disease. Protection under the disabilities law begins the moment they become infected.

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REASONABLE ACCOMMODATION

Federal departments and agencies are required, **when requested**, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency. An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation.

A reasonable accommodation is an adjustment or alteration made to a job and/or the work environment that enables people with disabilities to perform the duties of the position. There are many types of accommodations such as worksite modifications; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, readers, personal assistants; and reassigning or retraining employees.

Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, his/her specific disability and the existing limitations, the essential duties of the particular job, the work environment, and the reasonableness of the proposed accommodation. In all cases, the applicant or employee should be consulted before an accommodation is made. Accommodations are highly individualized and what may be successful for one individual with a disability may not be appropriate for another. The value and nature of a particular accommodation may be clarified by considering questions such as:

- Is the accommodation necessary for the performance of duties?
- What effect will the accommodation have on the agency's operations and on the employee's performance?
- To what extent does the accommodation compensate for the person with a disability's limitations?
- Will the accommodation give the person the opportunity to function, participate, or compete on an equal basis with co-workers?
- Are there alternatives that would accomplish the same purpose?

In determining undue hardship, consider the following factors:

- Overall size of the agency, with respect to the number of employees, number and type of facilities, and size of budget;

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- Type of agency operation; and
- Nature and cost of the accommodation.

Reasonable accommodations are as varied as the needs of the individuals involved, the type of position in question, and ingenuity of the agency. Some examples are provided below:

Special Testing

Federal employers may not use any test or other selection criterion that screens out or tends to screen out people with disabilities, unless the test is job-related for the position in question and there is no alternative. They are required to select and administer tests to insure that the scores of applicants or employees who have disabilities that impair sensory, manual, or speaking skills accurately reflect the ability of the applicant to do the job in question rather than disabilities of the applicant. The following factors merit additional attention:

Modifying Written Examinations: The objective is to eliminate any artificial barriers which would prevent persons with disabilities from demonstrating their capabilities in the examination process. Modification of examination procedures can include modifying test administration methods. Consideration should be given to scheduling individual or small group testing, allowing extra time, and using examiners specifically trained for this task. Accommodations may include: braille, large-print, or tape-recorded tests for persons who are visually impaired; reading to individuals who are blind or persons with reading disabilities; writing for persons who have difficulties using their hands; providing sign language interpreters to explain test procedures and directions for taking tests; and waiving verbal portions of some tests for individuals who are hearing impaired.

Modifying exam content: If an applicant's disability causes some part of a test to be unusable or inappropriate, it may be necessary to modify exam content or to develop alternate materials which measure the same knowledge, skills, and abilities that do not screen out people with disabilities. OPM has modified certain examinations for persons who are hearing and visually impaired and may be able to offer advice about types of modifications.

Accessible Examination Facilities: Examinations must be offered in accessible facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible parking, etc.), steps should be taken to remove those barriers or, when this is not feasible, to arrange for use of an alternate location.

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Many people with disabilities, even those with severe disabilities, do not need special testing. As a rule, persons who are visually or hearing impaired will require special testing. Others for whom special arrangements often are made include persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons whose arms or hands are paralyzed or spastic, persons with brain damage, and persons with learning disabilities such as dyslexia.

Restructuring Jobs

Job restructuring is one of the principal means by which qualified people with disabilities can be accommodated. Job restructuring, however, does not alter the essential function of the job. Federal employers should identify which factors make a job incompatible with an individual's disability and, if possible, eliminate them so that the capabilities of the person may be used to the best advantage. This may involve changing job content by isolating and eliminating non-essential duties through reassignment, or altering the method of task accomplishment.

Two things must occur before job restructuring:

- Federal employers must understand the capabilities of individuals and identify limitations prior to job restructuring. The person with a disability should be consulted first. Supplemental information can be obtained through consultation with specialists in the field of vocational rehabilitation.

- Careful job analysis to determine the exact demands of positions must also precede job structuring. Inputs by those with intimate knowledge of the tasks involved, such as supervisors and persons who currently perform the tasks or have performed them in the past, should be included in the analysis process. This enables the most accurate differentiation to be made between basic functions and those which are non-essential and can be reassigned.

The restructuring and job analysis processes should also be used in creating positions, modifying existing position descriptions, developing recruitment strategies, determining selection criteria, designing performance plans, determining training needs, and other human resource initiatives.

Modifying Worksites

Changes in the work environment enable people with disabilities to more effectively perform job duties. Alterations may consist of: rearranging files or shelves for

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accessibility to wheelchair occupants; braille labeling for the visually impaired; raising or lowering equipment to provide comfortable working heights; installing special holding devices on desks, machines, or benches; using adaptive technology such as voice recognition systems; or providing special heating or air conditioning units for persons who are sensitive to environmental temperature.

Work locations should be reviewed by supervisors; Disability Employment Program Managers, SVRA counselors; building managers; and persons with disabilities to identify needed worksite modifications.

Accessible Facilities

Reasonable accommodation is different from architectural accessibility and program accessibility. For buildings not covered by existing accessibility statutes, provisions of accessibility may be an aspect of reasonable accommodation. In such cases, reasonable accommodation might include physical modification of facilities or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by people with disabilities.

Accommodations that may need to be made involve eliminating barriers in the physical design of the environment. This is a broader concern than modification of the worksite environment. It consists of eliminating major obstacles in the way of people with disabilities getting to and from the worksite. Physical and/or structural changes should be made in order to create as barrier-free an environment as practicable. Eliminating architectural barriers through such means as ramps, wider doorways, elevators, work platforms, and handrails often make the work facility more usable by all employees, not just those with disabilities.

Adjusting Work Schedules

Some people with disabilities possess great productive potential which is not utilized because they cannot meet the requirements of a standard 40-hour work week. By taking advantage of the flexibility of alternative work schedules, accommodations can be made for various disabilities. For example, people with mobility impairments may find it difficult to maneuver during peak periods on public transportation systems and may require an earlier or later work day. In another instance, employees requiring medical treatments may need a flexible schedule on certain days of a week. Employees requiring shorter hours may be accommodated by use of a part-time schedule or a job sharing arrangement.

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Assistive Devices

Many assistive devices are available to people with disabilities. Such devices can ensure successful job performance, enabling people with disabilities to perform tasks they would not otherwise be able to do or to increase the quantity, quality, or efficiency of their work. Before purchasing any special equipment, the individual requesting a reasonable accommodation should be consulted as to what is needed and/or wanted.

In certain cases, the Department of Veterans Affairs or State vocational rehabilitation office may provide the assistive device to the individual requesting a reasonable accommodation.

Federal employers are authorized to purchase equipment if it is determined that the use of the equipment is necessary in transaction of the official business of the agency. In determining whether the purchase of a device should be authorized, consideration should be given to how well the employee could perform the job without the equipment and whether the principal benefit would be better job performance by the employee.

Readers and Interpreters

Readers: Many Federal employers have found that the best way of providing reading assistance to employees who are blind or have visual impairments is to have other employees provide this service as needed. In most cases, this amounts to a relatively small fraction of an employee's workday. Federal employers have the administrative authority to assign employees to provide reading services on a part-time or "as required" basis. This service can be classified under "other duties as assigned."

Federal employers may also hire readers for blind employees. Generally, a reader will be assigned to provide reading assistance to a specific employee. For this reason, the blind or visually-impaired employee should be involved in the selection process.

Providing reading assistance to a blind or visually-impaired employee in no way relieves the agency of the responsibility to provide clerical, secretarial, and/or administrative support to that employee in those instances where the employee's position entitles or requires such assistance. In most cases, the person providing clerical, secretarial, or administrative support will also provide reading assistance.

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Interpreters: Much of the day-to-day communication may be accomplished by employees who have learned basic sign language. Many co-workers of persons who are deaf or have hearing impairments have taken it upon themselves to learn sign language and some Federal employers offer courses for their employees. When employees have gained sufficient skill in sign language, they may provide day-to-day communication services for their co-workers who are deaf or those who have hearing impairments.

Federal employers have the authority to assign other employees to provide these services on a part-time or "as required" basis. Individuals may also be hired to provide interpreter assistance on a full-time, part-time, or intermittent basis.

There are some instances where employees would not be expected to possess the high degree of interpreting skills which might be necessary for the individual who is deaf or hard of hearing to communicate effectively. Thus, service contracts may be used to obtain interpreting services from outside sources in situations such as conferences, training courses, meetings, or court appearances.

Federal employers may make excepted appointments of readers, interpreters, and other personal assistants 5 CFR 213.3102(ll). This and other special hiring authorities applicable to persons with disabilities are explained in later sections of the handbook (see section on hiring options).

Flexible Leave Policies

Federal employers have the authority to adopt flexible leave policies that will accommodate people with disabilities. While the administration of the leave system is subject to certain laws and regulations, departments and agencies can adopt flexible leave policies that will accommodate people with disabilities. Instances may include the following:

(1) When extreme weather conditions make it difficult for mobility-impaired employees to get to or from work. For example, employees are generally expected to report for work after snow removal has been accomplished. However, in many cases, snow removal equipment makes travel by mobility-impaired individuals even more difficult by creating snow drifts at the curb cuts. Federal employers can adopt separate leave policies for situations such as this but should identify in advance employees who would be covered by the extended policy.

(2) When temporary building conditions adversely affect performance or health,

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such as extremes of heat or cold which could affect persons with neurological disorders or respiratory ailments.

Leave policies may also include granting extended leave without pay for illness or disability. Whatever flexibility is used, they should be carefully detailed to prevent misunderstanding and should be consistently applied for all appropriate employees.

Reassigning, Retraining and Detailing Employees

In cases of current Federal employees who become disabled after employment, or whose disabilities are aggravated during their careers, Federal employers have a responsibility to make every effort for their continued employment. An employee who, because of illness or injury, is unable to continue to perform the duties of his or her current position may have other options available than applying for disability retirement. The first step should be to explore the possibility of accommodating the disabled employee in his or her accustomed position. Minor job modifications or changes in the physical environment are often all that is needed to allow a disabled employee to continue working productively. If that is not enough, then retraining, reassignment, or use of a detail should be considered.

Reassignment: The employee's work experience and education may indicate that he or she can perform satisfactorily in another position. Under certain circumstances, an exception may be made to normal qualification standards to facilitate reassignment. Reassignment need not necessarily be limited to positions of the same grade or series. The possibility that the employee would be willing to accept reassignment to a lower grade position (with save pay) with less strenuous physical or mental demands should be explored.

Retraining: Federal employers should consider retraining disabled employees for positions for which they have the basic qualifications and capabilities. Although there are initial expenses involved, the result will justify the expenditure if the employee and the position are matched carefully beforehand.

Details: In instances where the employee's ability to perform the duties of an available position are in question, or to encourage an employee to accept a voluntary reassignment, the use of a temporary detail assignment may help. If performance in the position is acceptable, consideration can then be given to making the reassignment permanent.

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Disability Retirement

Prior to submitting a disability retirement application for an employee, Federal employers are obligated to review all vacant positions at the same grade or pay level and in the same commuting area, to determine if the employee meets minimum qualification standards and can be reassigned. An employee who refuses an offer of reassignment to a position at the same grade or pay level and in the same commuting area will lose eligibility for disability retirement and should be counseled of the consequences. While the employee is obligated to accept such an offer of reassignment, the possibility that the employee would be willing to voluntarily accept reassignment to a position at a lower grade or a position outside the usual commuting area should also be considered.

Eliminating Transportation Barriers

One of the most difficult problems people with disabilities face is transportation to the worksite. Federal employers can do a great deal to help people with disabilities solve their personal transportation problems. Such assistance can consist of helping employees form car pools, helping people with disabilities locate co-workers with whom they may car pool; or allocate parking spaces to employees with disabilities.

Drivers who provide transportation to Federal employees with disabilities may make use of parking privileges for people with disabilities who ride with them. The General Services Administration has ruled that Federal employers are to give these persons the same priority in assignment of parking spaces that they give persons with disabilities.

Minimal Cost Accommodations

In many cases, the cost of a job or work environment accommodation can be minimal. A few examples are as follows:

- To accommodate a person who uses a wheelchair, reasonable accommodations may include the ability to access the building, the office, and files. The desk must be the right height to accommodate the wheelchair. This may be accomplished by raising the desk using wooden blocks to prop it up, and then moving furniture so that the employee may freely move around the office. Files can be placed to make them easily accessible.

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- An individual with arthritis experiencing difficulty with maintaining stamina during the workday may be accommodated by providing flexibility in work hours, and a recliner to allow change in body positions to cut down on fatigue.

- Visual aids, screen readers, and enlargers; voice activated software; and braille computers may assist people who are blind or visually impaired. Initial contact should start with the office responsible for information technology (IT) management.

The concept of reasonable accommodation also applies to recruitment, training, promotion, reassignment, and developmental assignments. For example, merit promotion vacancy announcements could be brailled or taped to provide equal access to employees or applicants who are blind or visually impaired. In order to give people with disabilities opportunities to attend formal training programs, Federal employers are authorized to use training funds to provide special services, such as interpreters, readers, and brailling or taping of course materials.

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HIRING OPTIONS

Agency personnel offices work with State vocational rehabilitation agencies (SVRAs), the Department of Veterans Affairs, Gallaudet University and other various organizations to locate and identify qualified people with disabilities. In addition, many Federal employers participate in focused job fairs and campus recruitment visits to identify qualified people with disabilities. Hiring may be accomplished through the competitive hiring process or, if the qualifications are met, through the use of excepted service appointment authorities.

Federal employers may use a variety of hiring options to bring people with disabilities into their workforce. Descriptions of key options are listed below.

Competitive Appointments

Most Federal employees obtain jobs competitively. Applicants apply directly to the hiring departments and agencies for most positions. Federal employers use a variety of assessment tools in evaluating applicants and conducting hiring. If passing a written test is required, special testing arrangements are available, if requested. Once this process is completed, an agency may select from a list of qualified people from the appropriate list of eligible candidates to fill vacancies. The agency may then interview and make a selection for the vacancy. Special interview "reasonable accommodation" arrangements may be made, if requested.

Time-limited Appointments

An agency may fill a position using a temporary or term appointment when the need for an employee's services is not permanent. Temporary appointments are made not to exceed one year, with one 1-year extension. The work must not be permanent in nature. In contrast, term appointments are made for a period of more than one year but not to exceed four years.

Term appointment are appropriate when there is project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

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Student Employment Programs

The Student Educational Employment Program helps Federal employers find the right people to fill current and future hiring needs. The program also gives students the opportunity to get hands-on experience in their chosen career field. The program has two major components; Student Temporary Employment and Student Career Experience.

Student Temporary Employment opportunities range from summer jobs to positions that can last as long as the student is enrolled. The Federal job does not have to be related to the student's academic field of study.

Student Career Experience opportunities include formal periods of work and study while the student attends school. This requires a commitment by the student, the school, and the Federal employer. Work experience is directly related to the student's academic field of study. After successfully completing the educational and work requirements, the student is eligible for permanent job opportunities.

Presidential Management Intern (PMI) Program

The PMI Program is designed to attract to the federal service outstanding graduate students from a wide variety of academic disciplines who have an interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals eligible to be nominated for the PMI Program are graduate students completing a master's or doctoral-level degree from an accredited college or university during the current academic year.

Students are nominated for the PMI Program by the appropriate dean, director or chairperson of their graduate academic program. All nominees are evaluated by an OPM-developed structured assessment process. Selection as a PMI finalist is based on review of the PMI application and the structured assessment process.

PMIs receive an initial two-year appointment. During the two-year internship, PMIs experience structured orientation and graduation training programs facilitated by OPM, as well as seminars, briefings, conferences, on-the-job training, rotational assignments, and other developmental opportunities arranged by participating Federal employers.

After successfully completing the two-year program, PMIs may be eligible for conversion to a permanent position and further promotional opportunities.

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Appointment Under Special Authorities

The Federal Government's hiring options include excepted service special appointing authorities for people with disabilities. Federal employers are authorized to use these authorities when considering certain people with disabilities (those who have a severe physical, cognitive or emotional disability or a history of having such disabilities or are perceived as having such disabilities). The authorities provide a unique opportunity to demonstrate the potential to successfully perform the essential duties of a position with or without reasonable accommodation in the workplace.

- **Schedule A, 5 CFR 213.3102(t) for Hiring People with Mental Retardation.** This authority is used to appoint persons with cognitive disabilities (mental retardation) who meet the eligibility requirements. Upon completion of 2 years of satisfactory performance the employee may qualify for conversion to the competitive service.

- **Schedule A, 5 CFR 213.3102(u) for Hiring People With Severe Physical Disabilities.** This authority is used to appoint persons with severe physical disabilities who (1) under a temporary appointment have demonstrated their ability to perform duties satisfactorily; or (2) have been certified by a counselor from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affair's Vocational Rehabilitation Office as likely to succeed in performance of duties. Upon completion of two years of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

- **Schedule B, 5 CFR 213.3202(k) for Hiring People Who Have Recovered from Mental Illness.** This authority permits appointments at Grades GS-15 and below when filled by individuals who: (I) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; (2) are certified to a specific position by a State vocational rehabilitation counselor or a Department of Veterans Affairs counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the position to which they will be appointed, and that any residual disability is not job related. Employment under this authority may not exceed 2 years following each significant period of mental illness.

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In addition, Federal employers can use the following authority to provide assistance to employees with disabilities:

- **Schedule A, 5 CFR 213.3102(ll) for Hiring Readers Interpreters, and Other Personal Assistants.** This authority permits appointments of readers, interpreters, and personal assistants for employees with severe disabilities when filled on a full-time, part-time, or intermittent basis. Upon completion of at least one year of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

Disabled Veterans

- **30 Percent or More Disabled Veterans.** Federal employers may give a noncompetitive temporary appointment of more than 60 days (see 5 CFR 316.302(b)(4)) or a term appointment (see 5 CFR 316.402(b)(4)) to a veteran:

  - retired from active military service with a disability rating of 30 percent or more; or

  - rated by the Department of Veterans Affairs (VA) within the preceding year as having a comprehensive service-connected disability of 30 percent or more.

  There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement.

  The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment.

- **Disabled Veterans Enrolled in VA Training Programs, 5 CFR 315.604.** Disabled veterans eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a Federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA. The training is tailored to individual needs and goals so there is no set length. If the training is intended to prepare the individual for eventual appointment in the agency rather than just work experience, the agency must insure that the training will enable the veteran to meet qualification requirements for the position.

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Upon successful completion, the VA and the host agency give the veteran a Certificate of Training showing the occupational series and grade level of the position for which trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

Certification

An individual who is physically disabled is considered to have met OPM qualification standards for either a temporary competitive service appointment or an excepted service Schedule A appointment when an appropriate certification is received from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affairs. The certification is prepared by a counselor on the basis of job-site inspection, analysis of job tasks, and evaluation of the proposed appointee's abilities and disabilities. The certification must state that in the counselor's judgement the proposed appointee is able to perform the duties of the position and is physically qualified to do the work safely. The certification must be supported by a medical report and a narrative statement documenting the counselor's conclusions. Factors to be discussed include training, education, work history, modification of job or worksite if needed, and limitations of the proposed appointee.

The certification required for an excepted service Schedule A appointment of an individual who is mentally retarded need only state that the individual has the ability to perform the duties of the position; is physically able to do the job safely; and can maintain himself or herself in the work environment. No medical report is required.

The certification required for appointment of individuals with psychiatric disabilities under an excepted Schedule B appointment must include documentation of a history of mental illness which includes periods of hospitalization or outpatient treatment within the previous two years; a statement by a psychologist or psychiatrist as to the individual's capability to function in the work setting; and a statement indicating that the individual is currently unemployed or has had a significant period of substantially disrupted employment within the previous two years.

Any certificate issued under the authority of an SVRA or Department of Veterans Affairs counselor and other related medical records must be maintained in a medical folder, rather than the official personnel folder (OPF) for persons with disabilities.

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DEALING WITH DIFFERENT DISABILITIES

Mobility Impairments

Countless injuries, diseases, and conditions can cause mobility impairments that affect an individual's ability to find and keep a job. Some disabilities are acquired at birth. Others stem from accidents or illnesses later in life. Basic mobility, coordination and balance, strength and endurance, and other aspects of body function may be affected.

Many people who have mobility impairments use adaptive equipment of one kind or another. Mobility aids are especially common, and the most ordinary are canes, crutches, walkers, and wheelchairs. Artificial limbs (arms and legs), and body braces are also used.

Persons who have mobility impairments can hold physically demanding jobs. They need not be confined to desk jobs. These individuals can be very independent, not necessarily relying on others for assistance in daily activities. They may or may not do things differently or more slowly than others. One may wish to consider the following suggestions when interacting with individuals who have mobility impairments:

- When scheduling a job interview or meeting, make sure the location is wheelchair accessible.

- Do not hold the person's wheelchair or assume the individual wants to be pushed; always ask first.

- A wheelchair is considered part of the person's personal space. Offer assistance but do not insist. If the person needs help, he or she will accept the offer and tell exactly what will be helpful.

- Put yourself at the wheelchair user's eye level, whenever possible.

- Do not be surprised if the person transfers from a wheelchair to a piece of furniture or gets out of the wheelchair to move about. Not all wheelchair users are paralyzed; many can walk with the aid of canes, braces, or crutches.

- If a person uses crutches, a walker, or some other assistive equipment, offer assistance with coats, bags, or other belongings.

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- Ensure non-slip floor coverings for the safety of a person who uses crutches and extra maneuvering space.

- Do not be sensitive about using words like "walking" or "running." People in wheelchairs use the same words.

- Treat a person who has a mobility impairment as a healthy person. A functional limitation does not mean the person is sick.

- Keep in mind that most people with disabilities have the same activities of daily living as anyone else. They maintain households, shop, go to restaurants, travel, marry, raise children, and, in general, occupy their time in the usual ways.

Blindness and Visual Impairments

The term "blindness" should be reserved for complete loss of sight, even with the best corrective lenses. For lesser disabilities, "visual impairment" is a better description. In visually impaired persons overall sight may not be affected, only the edges or a part of the visual field may be obscured, or there may be no central vision although side or peripheral vision still exists. A person's visual acuity may also change under different light conditions.

Most blind persons get around on their own by using a guide dog or cane. Visually impaired persons may not need mobility aids. For many jobs, vision simply is not necessary. Successful employment of blind and visually impaired individuals depends upon thorough job analysis, enlightened employer acceptance, and proper management support. One may wish to consider the following suggestions when interacting with individuals who have blindness or visual impairments:

- If the person seems to need assistance, offer one's services. If a person who is blind needs guidance through a door or to a chair, let the person take one's arm and follow the motion of one's body. Guide his or her hand or arm to the back of the chair. If one approaches steps, mention how many and the direction.

- Speak directly to the individual who is blind or visually impaired. Speak in a normal tone of voice.

- Introduce other people in the room or have them introduce themselves. This will assist the individual in orienting himself or herself to the room and its occupants.

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- Never touch or distract a service guide dog without first asking the owner.

- When giving directions, do not use references a person cannot see. "Over there" is not a good way of describing a location. When using directional words, use them with the orientation of the person who is blind or visually impaired.

- Tell the individual when one is leaving the room.

- When guiding a person into a new or strange surrounding, one may want to describe special features or decorations.

- One should be prepared to read aloud information that is written, or ask the person if he or she would like a reader.

- When interviewing or meeting with people with visual impairments, ensure a well lit area and avoid sharp contrasts of light and dark areas.

- If offering a seat, place the individual's hand on the back or arm of the chair and let him or her sit down by him or herself.

Deafness and Hearing Impairments

Electronic devices can often compensate for partial hearing impairment. Individuals who are hard of hearing usually speak clearly and communicate in the usual manner. They may be placed in almost any type of position, except those for which acute hearing is a safety requirement.

Extra time and interest may be required during oral communications settings, such as interviews and meetings. Communication problems should not be regarded as indicative of more extensive impairments and should not be allowed to obscure an applicant's knowledge, skills and abilities. In complex situations, it is desirable to obtain the services of a professional sign language interpreter.

Many persons who are deaf or hard of hearing can speak understandably. Those that do not speak well may communicate by sign language, writing notes, using gestures, and demonstrating concepts or problems. One may wish to consider the following suggestions when interacting with individuals who are deaf or hard of hearing:

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- When speaking with someone who is deaf or hard of hearing, face the person directly. Gain his or her attention before starting a conversation by a gentle touch.

- When speaking to persons who are deaf or hard of hearing, use meaningful facial expressions and gestures to emphasize one's intent and attitude. This substitutes for voice tone. Try to find a quiet place away from computers, telephones, and other sources of noise.

- Not all people who are deaf or hard of hearing know or use sign language. Do not assume they need an interpreter.

- If using a sign language or oral interpreter, speak directly to the person who is hearing impaired, not the interpreter. Face the light, speak clearly, in a normal tone of voice, and keep one's hands away from one's face.

- If one cannot understand the person with a hearing impairment, do not be afraid to ask him or her to repeat. If this approach does not work, one can ask if it would be helpful to communicate by writing or using a computer terminal.

Invisible (Hidden) Disabilities

There are many invisible disabilities such as asthma, arthritis, heart disease, environmental illness, AIDS, chronic fatigue, psychiatric or mental illnesses, attention deficit hyperactivity disorder, and learning disabilities.

If an applicant brings the condition to the prospective employer's attention, one may ask whether the condition might have an impact on his or her work and if there are any necessary accommodations. During an interview setting, if the applicant mentions seizures due to epilepsy or symptoms related to other invisible disabilities, the selecting official may ask whether the symptoms are under control and, if not, what fellow co-workers in the office need to know in the event of occurrence. This information, however, is not usually needed until after a person is hired.

A person who has recovered from a heart attack may be able to resume arduous work to which he or she previously was accustomed or may be so weakened that even administrative work is too stressful. Managers and supervisors do not need to be overcautious, as fitness for duty can be determined only by a medical specialist.

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Some people with learning disabilities have adapted to their limitations, through classes, counseling sessions, or through life itself. Many can compensate for their problems so well that it is barely noticeable. A strong match between the person's strengths and the work to be performed is particularly important to the learning disabled individual. A careful job analysis is essential in determining the task and competency requirements of the job. Rehabilitation counselors can be very helpful to candidates by assisting them in assessing their strengths and finding jobs that utilize their strong points.

For additional information regarding a description of invisible disabilities, please see the resources section of this handbook.

Mental Retardation

Many people with mental retardation have average or superior abilities in some respects. While it is true that some people who are mentally retarded may not be able to think, reason or remember as well as other people, it is important to remember that they are proficient in some ways and deficient in others. Mental retardation should not be confused with mental illness or behavioral and emotional problems. The effect of the disability can be lessened, and skills and abilities increased, through rehabilitation, special education and experience on the job.

People who have mental retardation usually want to be independent and responsible for their own support. When appropriately placed and supervised, they can be assets to a workforce. The object should be to reduce the need for learning details, exercising judgment, and finding new solutions to problems.

Success on the job often depends upon the willingness of others to devote reasonable time and interest to helping the individual adjust initially and meet new challenges as they arise. One of the greatest obstacles to equal employment opportunity for these individuals is persistent lack of employer confidence in, and lowered expectations of their capabilities. One may wish to consider the following suggestions when interacting with individuals with mental retardation:

- For the most part, one should talk to the individual in the same manner as anyone else, but be more specific.

- In an interview setting, ask questions and occasionally repeat responses to insure effective communication.

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- Provide information as to where things are located, such as time clock, lockers, restroom, cafeteria, drinking fountain, supply room, etc.

- Take care to explain about working hours, proper dress for the job, work station location, rate of pay, reporting official, and transportation options.

People with Psychiatric Disabilities and Mental Illness

People with psychiatric disabilities have skills, experiences and abilities that are not affected by their illness. For the purposes of employment, a person with a psychiatric disability is one who has experienced a mental or emotional difficulty that currently is under control to the extent that the individual is able to function effectively and satisfactorily in a specific job. The qualifications of people with psychiatric disabilities must be given the same consideration as those of other applicants. One may wish to consider the following suggestions when interacting with individuals who have a psychiatric disability:

- Talk to the individual as one would to anyone else.

- Through personal demeanor, show that one trusts the individual's ability to control his or her behavior.

Muscular or Neurological Limitations

Muscular or neurological disabilities may affect motor ability and/or speech. Intelligence is not affected. Some involuntary or halting movement or limitation of movement in one or more than one appendage may be observed, as well as some lisping, indistinct speech or flatness of tone due to lack of fine motor control of the tongue and lips. The severity and functional effects of the disability vary from person to person. Unless the person is severely disabled, or has the involvement of other disabilities, no accommodation may be needed during an interview setting or meeting.

If the person's speech is difficult, one should ask him or her to repeat what was said. Some people who have severe cerebral palsy, for example, find it more effective to communicate by writing, typing or using communication boards or electronic devices.

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INTEGRATING PEOPLE WITH DISABILITIES INTO THE WORKFORCE

The President's Committee on Employment of People with Disabilities has a six-step process for integration. It consists of:

1) Commitment - Let the people in the agency know of the commitment to employ, advance and retain people with disabilities. Workforce diversity includes people with disabilities.

2) Recruitment - Let the Personnel/Human Resource office and Disability Employment Program Managers know that one is aggressively seeking job candidates with disabilities. Send agency vacancy announcements to disability-related organizations and Federal employers. State the agency's interest in receiving applications from people with disabilities on the job announcement.

3) Interviewing - Look at the essential functions and competency requirements of the job, the qualifications of the individual, and the availability of reasonable accommodations. Do not let the disability distract from evaluating the candidate's qualifications.

4) Placement - Test accommodations and adaptations once the person is on the job. Ask the employee with a disability to help in the process.

5) Training - Any employee's success hinges on proper orientation and training. Insure that all such agency programs are available and accessible to employees with a disability. This includes training programs that may lead to upward mobility and career advancement.

6) Awareness/Sensitivity - Train managers, supervisors, and employees about disability myths and misconceptions. An educated workforce will be better able to ensure the success of employees with disabilities.

Interviewing

Interviewing people with disabilities is the same as interviewing people who are not disabled. In general, the selecting official should ask all applicants about their qualifications, experience, and skills for doing the job.

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However, there are some guidelines that are specific to people with disabilities. Unless an individual is seeking appointment under one of the special excepted appointment authorities, a selecting official should **only** ask questions about the person's ability to do the job. The office should make sure that all questions are job-related. The focus of the interview should be on the individual's ability to successfully perform the essential functions of the job and demonstrating the competencies or knowledge, skills, and abilities needed to perform the job. "Essential functions" are the tasks that are fundamental and intrinsic to the job. Understanding essential functions and the competencies required to perform those functions is particularly important to prepare for applicant interviews.

If the person indicates that he or she has a disability which makes it difficult to perform particular functions of a job, or if the selecting official believes that a person's disability may make it difficult to perform certain job functions, the selecting official may ask job-related follow-up questions, such as: describe how you can perform the job. The answer to such questions will indicate whether a reasonable accommodation is needed to enable the individual to perform the essential functions of the job. Allow the applicant to request reasonable accommodation. **It is the responsibility of the job applicant to inform the employer of any accommodation needs.** However, employers should not make a general assumption that an individual with a disability will be unable to do a certain part of the job, or that a reasonable accommodation will be needed.

Career Development

One of the major problems facing people with disabilities is underutilization of their knowledge, skills, and abilities. Developmental details and reassignments can be used as a means of providing on-the-job training which will enhance opportunities for promotion. In addition, it is easy to fall into the trap of isolating employees with disabilities from others. Make sure employees with disabilities have opportunities not only to work with others on group projects, but, when appropriate, to take on leadership roles.

Federal employers should ensure that employees with disabilities are given full consideration for inclusion in upward mobility programs, and that they are aware of career counseling. Recognize that people with disabilities have career goals. Agency managers should sit down with employees and talk about goals. Identify role models and mentors for disabled employees or encourage them to do so. Every effort should be made to ensure that disabled employees reach their maximum potential.

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Performance Evaluation

People with disabilities should be held accountable for their work performance. Supervisors are responsible for communicating performance expectations to their employees and monitoring and appraising their work. When the individual with a disability begins a job, he or she should be given a clear description of the job, and the specific duties. Employees should be provided with encouragement and feedback regarding their work performance. It is important to ensure that when evaluating a person with a disability, aspects of their physical or mental disability are not held against them. They should be evaluated for their ability to do a job with the appropriate accommodations. For example, it would be inappropriate to negatively evaluate an individual who uses a wheelchair for not attending a meeting, when the meeting was held in a physically inaccessible building.

If an employee with a disability cannot perform satisfactorily after a full and fair trial period, then his or her employment should be terminated. No supervisor or manager owes a job to any person with a disability. The goal and the only obligation is equal employment opportunity. The same job-related performance criteria should be applied to disabled employees that is applied to all other employees. If it becomes necessary to terminate the appointment of a disabled employee, the Human Resources or Personnel Office will help in making this decision and taking appropriate action.

Awards

People with disabilities should have equal opportunity to receive incentive awards (special achievement/act or performance), quality step increases and all other agency-sponsored or non-agency sponsored awards. Efforts should not be limited to special awards programs geared specifically to those who are disabled.

Training

Give employees with disabilities an equal chance to benefit from training and development opportunities. Ensure that classes are held in accessible facilities, and as necessary, that materials are available in large print for persons who are visually impaired, interpreters are provided for participants who are hearing-impaired, or other accommodations are made. Any training which would provide growth opportunities that will allow disabled employees to advance in their careers should be encouraged. Such training could include developmental detail assignments, lateral reassignments, and leadership training.

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PROMOTING THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

Communication is the key to increasing organizational understanding and support for the employment of people with disabilities. The positive portrayal of employees with disabilities can greatly affect the public's perception, and enhance self worth of affected employees. What one says and writes can enhance their dignity and promote positive attitudes about their abilities. There are a number of target groups to be reached: the disabled community, the rehabilitation establishment, the agency workforce, students, and community groups.

Communicating messages or events such as planned initiatives, programs or exhibits, employee success stories, activities and accomplishments, and training and career development opportunities will enhance the employment and advancement of people with disabilities. One of the most effective and efficient media for some messages are internal memorandum or personal contact with the organization head, managers, supervisors and employees. Messages may also be integrated into existing media, such as an agency newsletter.

Other communications media may also be considered:

- Agency publications
- Bulletin boards
- Press releases
- Film or slide-tape presentations
- Local newspapers
- Local radio and television stations
- Chambers of Commerce
- Trade and technical magazines
- Community organizations newsletters
- Flyers
- Web sites

An agency's public affairs office may be able to assist in preparing professional copy or in maximizing one's communication tools. Outside organizations such as the President's Committee on Employment of People with Disabilities, Veterans' service organizations (VSOs), Federally Employed Women, State Vocational Rehabilitation Centers, and local news media may be able to help in the preparation of materials.

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Experience has shown that programs and initiatives require dedicated and sustained support from departmental and agency leadership to achieve success. Thus, a clearly articulated commitment of agency leadership to achieving the goal of greater inclusion for adults with disabilities in the Federal workforce is critical to transforming such an aim into reality at the agency level.

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APPENDIX 1: STATISTICAL INFORMATION

The Office of Personnel Management (OPM) published a *Statistical Profile of People with Disabilities in the Federal Workforce* in 1998. Copies of the report can be obtained by calling OPM's Office of Diversity at (202) 606-1059. Some of the findings are listed below:

- Despite downsizing and employment changes, the representation of persons with disabilities in the Federal Government since 1992 has remained fairly stable near 7% of the workforce. In 1997, the approximately 127,076 employees with disabilities represented 7.2% of the Federal Executive Branch workforce.

- The average pay of Federal employees with disabilities lags below the overall average Federal employee pay. A higher proportion of Federal employees with disabilities are in lower grade occupations.

- Nearly two thirds of our Federal employees with disabilities are in professional, administrative and technical occupations. This is a positive factor given that, in 1992, 40% of Federal employees with disabilities were in blue-collar and clerical occupations; jobs with more limited pay and advancement opportunities. However, other employment indicators merit further scrutiny.

- Of the 195,903 new hires in FY 1997, only 11,847, or 5.7% were people with disabilities.

- Over half (55%) of all new FY 1997 hires with disabilities were hired into blue-collar and clerical occupations. While these occupational groups have constituted traditional employment vehicles for persons with disabilities, these employment pipelines offer limited career advancement opportunities and will continue shrinking due to changes in Federal agency operations.

- From FY 1992 thru FY 1997, there has been some decline in the use of special non-competitive hiring authorities, such as Schedule A, for severely physically handicapped and mentally retarded persons, and Schedule B, for persons recovered from mental illness. During FY 1997, five special hiring authorities for persons with disabilities accounted for 11 percent of all new hires of employees with disabilities.

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APPENDIX 2: FEDERAL RESOURCES

1) **President's Committee on Employment of People with Disabilities (PCEPD)**
1331 F Street, NW
Washington, DC 20004-1107
Phone: (V) (202) 376-6200
(TDD) (202) 376-6205

Website: http://www.pcepd.gov
EMAIL: info@pcepd.gov

2) **President's Committee Job Accommodation Network (JAN)**
918 Chestnut Ridge Road, Suite 1
West Virginia University - PO Box 6080
Morgantown, WV 26506-6080
Phone: (V) (800) 526-7234
(TDD) (800) 232-9675

Website: http://www.pcepd.gov and click on JAN or go directly to JAN at http://janweb.icdi.wvu.edu/english/homeus.htm

3) **Equal Employment Opportunity Commission**
1801 L St. NW (Federal Sector Programs)
Washington, DC 20507
Phone: (V) (800) 669-4000
(TDD) (800) 669-6820
(FAX) (513) 489-8692

For specific Federal employment questions, call the "ATTORNEY OF THE DAY" at (202) 663-4691.

4) **Department of Labor: Office of Federal Contractor Compliance Programs (OFCCP)** [administers Federal contractor compliance for affirmative action in the employment of people with disabilities]
Department of Labor
Frances Perkins Building,
200 Constitution Avenue NW
Washington, DC 20210
Phone: (V) (888) 376-3227
(V) (202) 219-9475
(TDD) (202) 208-0452

Website: http://www.dol.gov/dol/esa>

5) **U.S. Office of Personnel Management**
[for Federal employment information]
1900 E St, NW.
Washington, DC 20507
Phone: (V) (202) 606-2700
(TDD) (912) 744-2299

Website: http://www.opm.gov

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APPENDIX 3: STATE VOCATIONAL AND REHABILITATION AGENCIES

State Vocational and Rehabilitation Agencies provide a number of services for persons with disabilities. Services include counseling, evaluation, training, and job placement. For more information, call or write the office nearest you. Internet addresses for each agency can be accessed at:

www.nchrtm.okstate.edu/ncrtm_links/state_VR.html

ALABAMA
Dept. of Rehabilitation Services
P.O. Box 11586
Montgomery, AL 36111-0586
(334) 281-8780
Toll free: (800) 441-7607

ALASKA
Division of Vocational Rehabilitation
801 W. 10th St., Suite 200
Juneau, AK 99801-1894
Voice/TDD: (907) 465-2814
Toll Free: (800) 478-2815

ARIZONA
Rehabilitation Services Admin. (930A)
1789 West Jefferson, N.W. (2nd Floor)
Phoenix, AZ 85007
(602) 542-3332
Voice/TDD: (602) 542-6049

ARKANSAS
Department of Education
Arkansas Rehabilitation Services
Div. of Vocational & Technical Education
P.O. Box 3781
Little Rock, AR 72203
(501) 296-1616
Toll Free: (800) 330-0632

CALIFORNIA
Department of Rehabilitation
830 K Street Mall
Sacramento, CA 95814
Voice/TDD: (916) 445-3971

COLORADO
Division of Vocational Rehabilitation
110 16th Street, 2nd Floor
Denver, CO 80202
Voice/TDD: (303) 620-4153

CONNECTICUT
State Department of Social Services
Bureau of Rehabilitation Services
Division of Client Services
10 Griffin Road North
Windsor, CT 06095
(860) 298-2000
Toll Free: (800) 537-2549
TDD: (860) 298-2231

DELAWARE
Department of Labor
Division of Vocational Rehabilitation
4425 North Market Street
P.O. Box 9969
Wilmington, DE 19809-0969
(302) 761-8300
Voice/TDD: (302) 761-8349

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DISTRICT OF COLUMBIA
Department of Human Services
D.C. Rehabilitation Services Administration
800 9th Street, S.W., Fourth Floor
Washington, D.C. 20024
(202) 645-5703

FLORIDA
Dept. of Labor and Employment Security
Division of Vocational Rehabilitation
2002 Old St. Augustine Road, Building A
Tallahassee, FL 32399-0696
(850) 488-6210
Voice/TDD: (850) 488-2867

GEORGIA
Department of Human Resources
Division of Rehabilitation Services
2 Peachtree Street, N.W., 23rd Floor
Atlanta, GA 30330-3166
Voice/TDD: (404) 657-3000

GUAM
Department of Vocational Rehabilitation
122 Harmon Plaza, Room B-201
Harmon Industrial Park, GU 96911
011-671-475-4645
001-671-475-4635 (Consumer Information)

HAWAII
Department of Human Services
Division of Vocational Rehabilitation
and Services for the Blind
P.O. Box 339
Honolulu, HI 96809
(808) 586-5355
(808) 586-5366

IDAHO
Division of Vocational Rehabilitation
650 West State-L. B. Jordan Bldg, Rm 150
Boise, ID 83720-0096
Voice/TDD: (208) 334-3390
Toll Free: (800) 856-2720

ILLINOIS
Department of Rehabilitation Services
623 East Adams Street
Springfield, IL 62794
(217) 785-0218
Toll Free: (800)ASK-DORIS
TDD: (217) 782-5734

INDIANA
Division of Disability, Aging and
Rehabilitation Services
402 West Washington Street, Rm W-451
P.O. Box 7083
Indianapolis, IN 46207-7083
(317) 232-1147
Toll free: (800) 545-7763
TDD Toll free: (800) 962-8408

IOWA
Department of Education
Div. of Vocational Rehabilitation Services
510 East 12th Street
Des Moines, IA 50319
Voice/TDD: (515) 281-4311
Toll free: (800) 532-1486

KANSAS
Dept. of Social and Rehabilitation Services
300 S.W. Oakley-Biddle Building, 1st Floor
Topeka, KS 66606
(913) 296-3911
TDD: (913) 296-7029

KENTUCKY
Department of Vocational Rehabilitation
209 St. Clair
Frankfort, KY 40601
Voice/TDD: (502) 564-4440
Toll free: (800) 372-7172
TDD: (502) 564-6742

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LOUISIANA
Department of Social Services
Louisiana Rehabilitation Services
8225 Florida Blvd.
Baton Rouge, LA 70806-4834
(504) 925-4168
Toll free: (800) 737-2958
Voice/TDD: (504) 925-4179

MAINE
Department of Labor,
Division of Vocational Rehabilitation
35 Anthony Avenue
Augusta,, ME 04333-0150
(207) 624-5300
Toll free: (800) 332-1003
Voice/TDD: (207) 624-5322

MARIANA ISLANDS
Vocational Rehabilitation Division
Comm. of Northern Mariana Islands
P.O. Box 1521
Saipan, Mariana Islands 96950
011-670-234-6538

MARYLAND
State Department of Education
Division of Rehabilitation Services
2301 Argonne Drive
Baltimore, MD 21218
(410) 554-9385
TDD: (410) 554-9412

MASSACHUSETTS
Massachusetts Rehabilitation Commission
4 Point Place, 27-43 Wormwood Street
Boston, MA 02210
(617) 727-2172
TDD: (617) 727-9063

MICHIGAN
Michigan Rehabilitation Services
Michigan Jobs Commission
P.O. Box 30010
Lansing, MI 48909
(517) 373-3390
Toll free: (800) 605-6722
TDD: (517) 373-4035

Family Independence Agency
Disability Determination Service
P.O. Box 30011
Lansing, MI 48909
(517) 373-7830
(517) 373-4533
Toll free: (800) 366-3404

MINNESOTA
Michael Coleman, Assistant Commissioner
Department of Economics and Security
Rehabilitation Services Branch
390 North Robert Street, 5th Floor
St. Paul, MN 55101
(612) 296-1822
TDD: (612) 296-3900

MISSISSIPPI
Nell C. Carney, Executive Director
Department of Rehabilitation Services
Vocational Rehabilitation Division
1281 Highway 51
P.O. Box 22806
Madison, MS 39110
(601) 853-5100
Toll free: (800) 443-1000

MISSOURI
Don Gann, Assistant Commissioner
State Department of Education
Division of Vocational Rehabilitation
3024 W. Truman Blvd.
Jefferson City, MO 65109
Voice/TDD: (573) 751-3251

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MONTANA
Dept. of Public Health & Human Services
Disability Services Division
P.O. Box 4210
Helena, MT 59604-4210
Voice/TDD: (406) 444-2590

NEBRASKA
State Department of Education
Div. of Vocational Rehabilitation Services
P.O. Box 94987
Lincoln, NE 68509
(402) 471-3649
Voice/TDD: (402) 471-3659

NEVADA
Nevada Rehabilitation Division
505 East King Street, Room 502
Carson City, NV 89710
Voice/TDD: (702) 687-4440

NEW HAMPSHIRE
State Department of Education
Division of Adult Learning & Rehabilitation
78 Regional Drive, Bldg. 2
Concord, NH 03301
Voice/TDD: (603) 271-3471

NEW JERSEY
Div. of Vocational Rehabilitation Services
135 East State Street, CN 398
Trenton, NJ 08625-0398
(609) 292-5987
Voice/TDD: (609) 292-2919

NEW MEXICO
Department of Education
Division of Vocational Rehabilitation
435 St. Michaels Drive, Bldg. D
Santa Fe, NM 87505
Toll free: (800) 235-5387
Voice/TDD: (505) 827-3500

NEW YORK
New York State Education Department
Office of Vocational and Educational
Services for Individuals with Disabilities
One Commerce Plaza, Room 1606
Albany, NY 12234
(518) 474-2714
Toll free: (800) 222-JOBS
TDD: (518) 486-3773

NORTH CAROLINA
Department of Human Resources
Div. of Vocational Rehabilitation Services
P.O. Box 26053
Raleigh, NC 27611
(919) 733-3364
Voice/TDD: (919) 733-5924

NORTH DAKOTA
Department of Human Services
Division of Vocational Rehabilitation
Dacotah Foundation Bldg.
600 S. Second Street, Suite IB
Bismarck, ND 58504-5729
(701) 328-8950
Toll free: (800) 755-2745
TDD: (701) 328-8968

OHIO
Rehabilitation Services Commission
400 East Campus View Blvd.
Columbus, OH 43235-4604
Voice/TDD: (614) 438-1210
Toll free: (800) 282-4536, ext. 1210

OKLAHOMA
Department of Rehabilitation Services
3535 NW 58, Suite 500
Oklahoma City, OK 73112
(405) 951-3400

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OREGON
Department of Human Resources
Division of Vocational Rehabilitation
Human Resources Bldg.,
500 Summer St., N.E.
Salem, OR 97310-1018
(503) 945-5880
TDD: (503) 378-3933

PENNSYLVANIA
Office of Vocational Rehabilitation
Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17120
(717) 787-5244
Voice/TDD: (717) 783-8917
Toll free: (800) 442-6351

PUERTO RICO
Administration for Vocational Rehabilitation
P.O. Box 191118
San Juan, PR 00919-1118
(809) 725-1792

RHODE ISLAND
Department of Human Services
Office of Rehabilitation Services
40 Fountain Street
Providence, RI 02903-1898
(401) 421-7005
TDD: (401) 421-7016

SOUTH CAROLINA
Vocational Rehabilitation Department
1410 Boston Avenue
P.O. Box 15
West Columbia, SC 29171
(803) 896-6504
Voice/TDD: (803) 896-6635

SOUTH DAKOTA
Department of Human Services
Division of Rehabilitation Services
East Highway 34, Hillsview Plaza
c/o 500 E. Capitol
Pierre, SD 57501-5070
Voice/TDD: (605) 773-3195
Toll free: (800) 265-9684

TENNESSEE
Rehabilitation Services
Department of Human Services
Citizens Plaza State Office Bldg.
400 Deaderick Street, 15th Floor
Nashville, TN 37248-0060
Voice/TDD: (615) 313-4714

TEXAS
Texas Rehabilitation Commission
4900 North Lamar
Austin, TX 78751
(512) 483-4001
Toll free: (800) 628-5115

UTAH
Utah State Office of Rehabilitation
250 East Fifth South
Salt Lake City, UT 84111
Voice/TDD: (801) 538-7530
Toll free: (800) 473-7530

VERMONT
Vocational Rehabilitation Division
103 South Main Street
Waterbury, VT 05671-2303
Voice/TDD: (802) 241-2186

VIRGIN ISLANDS
Virgin Islands Dept. of Human Services
Div. for Disabilities and Rehabilitation Services
1303 Hospital Ground, Hansen Complex
St. Thomas, VI 00802
(809) 774-0930

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VIRGINIA
Department of Rehabilitation Services
4901 Fitzhugh Avenue
P.O. Box 11045
Richmond, VA 23230
(804) 367-0316
Voice/TDD: (804) 367-0315
Toll free: (800) 552-5019

WASHINGTON
Department of Social and Health Services
Division of Vocational Rehabilitation
P.O. Box 45340
Olympia, WA 98504-5340
Voice/TDD: (360) 427-2135
Toll free: (800) 637-5627

WEST VIRGINIA
Division of Rehabilitation Services
State Capitol Complex
P.O. Box 50890
Charleston, WV 25305-0890
(304) 766-4600
Voice/TDD: (304) 766-4970
Toll free: (800) 642-3021

WISCONSIN
Department of Workforce Development
Division of Vocational Rehabilitation
2917 International Lane, 3rd Floor
P.O. Box 7852
Madison, WI 53707-7852
(608) 243-5600
TDD: (608) 243-5601

WYOMING
Department of Employment
Division of Vocational Rehabilitation
1 East Herschler Building
Cheyenne, WY 82002
(307) 777-7385
Voice/TDD: (307) 777-7389

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APPENDIX 4: REFERENCES AND REGULATIONS

I. General Medical Personnel Guidance

Law:

A. The Americans with Disabilities Act of 1990 - 42 U.S.C. §§ 12101 et seq.

B. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq.; See also, 29 U.S.C. §§ 791(g), 794(d) (Incorporating standards of Americans with Disabilities Act into the Rehabilitation Act)

C. The Family and Medical Leave Act of 1993, Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, et seq. Title I of the Act applies to non-Federal employees and certain Federal employees and is administered by the Department of Labor. Title II of the Act applies to most Federal employees and is administered by the Office of Personnel Management.

Regulation:

A. 5 CFR 339, Medical Qualification Determinations, March 8, 1989

B. 29 CFR 1614, Equal Employment Opportunity Commission

NOTE: Part 1614 of the Federal sector Equal Employment Opportunity (EEO) complaint processing regulations replace part 1613, with the objective of promoting greater administrative fairness in the investigation and consideration of Federal sector EEO complaint by creating a process that is quicker and more efficient. Every Federal employee and applicant for Federal employment has the right to use the administrative EEO discrimination complaints process.

C. For most Federal employees, 5 CFR Part 630, Subpart L, Family and Medical Leave.

NOTE: The final rule became effective on January 6, 1997.

D. For certain Federal employees, including Postal Service employees, 29 CFR Part 825, The Family and Medical Leave Act of 1993.

NOTE: The final rule became effective on February 6, 1995.

Information:

A. Equal Employment Opportunity Commission (EEOC)

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1. EEOC - ADA Enforcement Guidance: Preemployment Disability Related Questions and Medical Examinations, October 10, 1995

   NOTE: This document provides the EEOC's position under the Americans with Disabilities Act of 1990, on preemployment disability-related questions and medical examinations.

2. EEOC - EEOC Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities, March 25, 1997

   NOTE: This guidance is designed to facilitate the full enforcement of the ADA with respect to individuals alleging employment discrimination based on psychiatric disabilities; respond to questions and concerns expressed by individuals with psychiatric disabilities regarding ADA; and answer questions posed by employers about how principles of ADA analysis apply in the context of psychiatric disabilities.

3. EEOC - The Family and Medical Leave Act, The Americans with Disabilities Act, and Title VII of the Civil Rights Acts of 1964

   NOTE: This fact sheet was prepared by the Equal Opportunity Commission's (EEOC) Office of Legal Counsel. It is intended to provide technical assistance on some common questions that have arise about the Americans with Disabilities Act of 1990 (ADA) and Title VII of the Civil Rights Act of 1964 (Title VII) when the Family and Medical Leave Act of 1993 (FMLA) also applies.

B. U.S. Office of Personnel Management (OPM)

1. OPM - Operating Manual - Qualification Standards for General Schedule Positions, August, 1994, prepared by OPM's Washington Service Center

   NOTE: This operating manual replaces the Qualification Standards Handbook for General Schedule Positions.

3. OPM - The Role of the Agency Medical Review Officer (MRO[1]), March, 1996, prepared by OPM's Staffing Reinvention Office

4. OPM - Guide for Administering Written Employment Examinations to Persons with Disabilities, December, 1994, prepared by OPM's Personnel Resources and Development Center

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[1] See Section VI, Information (E, F) for HHS Drug Testing Medical Review Officer Source List and Manual for Federal Workplace Drug Testing Programs

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5. OPM - Developing and Conducting the Structured Situational Interview: A Practical Guide, January, 1994, prepared by OPM's Personnel Resources and Development Center

6. OPM - Family-Friendly Leave Policies for Federal Employees: Employee Brochure, November 1997, prepared by OPM's Workforce Compensation and Performance Service

7. OPM - Federal Employee Entitlement Under the Family and Medical Leave Act of 1993, December 1996, prepared by OPM's Workforce Compensation and Performance Service

C. Social Security Administration (SSA)

1. U.S. Department of Health and Human Services, Social Security Administration - Disability Evaluation Under Social Security, January, 1995

   NOTE: This new publication obsoletes and replaces the October, 1992 edition of *Disability Evaluation Under Social Security*. It is intended to provide physicians and other health professionals with an understanding of the disability programs administrated by the Social Security Administration, how each program works, and the kinds of medical information a health professional can furnish to help ensure sound and prompt decisions on disability claims.

II. Aeromedical-FAA Medical Standards and Certification

Law:

A. 49 U.S.C. 106 (G), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45303.

Regulation:

A. 14 CFR Part 67, Federal Aviation Regulations, Medical Standards and Certification, recently revised, March, 1996, See 61 Federal Register 11256, March 19, 1996

   NOTE: This establishes medical standards for airman (e.g., pilots) who have to hold an FAA issued medical certificate.

Information:

A. U.S. Department of Transportation, Federal Aviation Administration, Office of Aviation Medicine, FAA Guide for Aviation Medical Examiners, Revised 1992

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NOTE: This 1992 revision supersedes previous editions of the FAA Guide which should now be discarded.

III. Conduct or Performance Problems Involving Medical Considerations

NOTE: See Section I, Information (A) for information regarding an Agency's right to order/offer a medical or psychiatric examination.

IV. Excepted Service Appointing Authorities for Persons with Disabilities

Schedule A:

A. 5 CFR 213.3102(II) - This hiring authority applies to readers, interpreters and other personal assistants for other employees with a severe disability(ies).

B. 5 CFR 213.3102(t) - This hiring authority applies to persons with mental retardation.

C. 5 CFR 213.3102(u) - This hiring authority applies to persons with severe physical disabilities.

Schedule B:

A. 5 CFR 213.3202(k) - This hiring authority applies to persons who are mentally restored.

Veteran Specific:

A. 5 CFR 316.402(b)(5) - This hiring authority applies to 30 percent or more Disabled Veterans.

Information:

A. OPM - People with Disabilities in the Federal Government - A Statistical Profile, July, 1998, prepared by OPM's Office of Diversity

B. OPM - Guide for Administering Written Employment Examinations to Persons with Disabilities, (PRDC-94-11), December, 1994, prepared by OPM's Personnel Research and Development Center

NOTE: This publication replaces the 1980 Guide for Administering Examinations to Handicapped Individuals for Employment Purposes.

V. Disability Retirement (CSRS and FERS)

Regulation:

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A. CSRS - 5 CFR Part 831, Civil Service Retirement System, Disability Retirement, September 22, 1993

Information:

A. CSRS - Documentation in Support of Disability Retirement Application, July, 1984

B. CSRS - OPM Pamphlet Information for Disability Annuitants, March, 1995

C. CSRS - Application for Immediate Retirement, January, 1990

Regulation:

A. FERS - 5 CFR Part 844, Federal Employees Retirement System - Disability Retirement, 1995

Information:

A. FERS - Documentation in Support of Disability Retirement Application, August, 1987

B. FERS - OPM Pamphlet Information for FERS Disability Annuitants, October, 1995

C. FERS - Application for Immediate Retirement, March, 1988

VI. Drug and Alcohol Testing[2]

Executive Order:

A. Drug-Free Federal Workplace, Executive Order 12564, 51 Federal Register 32,889 (1986)

NOTE: Executive Order 12564 requires that the Head of each Executive Agency establish a program to test for the use of illegal drugs by employees in safety or security-sensitive positions.

Law:

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[2] See Section IX, Information (A) for information regarding the role of OPM in the adjudication of medical objections to preference eligibles who test positive on a preemployment drug screen.

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A. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 391, 468-471, codified at 5 U.S.C. § 7301 note (1987)

B. The Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143, Title V, 105 Stat. 952 (1991)

NOTE: This Act requires that a program be established to test for the use of alcohol or controlled substances. This program is mandated for Federal Aviation Administration (FAA) employees whose duties include responsibility for safety-sensitive functions and for any other Federal employee whose position requires a Commercial Drivers License (CDL) under Federal Highway Administration (FHWA) regulations.

C. Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 42 U.S.C. § 290ee-1 et seq., as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. § 290dd et seq., Pub. L. 102-321, 106 Stat. 323 (1992) (codified at 42 U.S.C. § 201 note)

D. Federal Employees' Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570, Title VI, 100 Stat. 3207-157 (1986)

NOTE: This Act requires agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.

Regulation:

A. 5 CFR Part 792, Federal Employees' Health and Counseling Programs

B. 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing

NOTE: This regulation is issued by the Federal Highway Administration (FHWA) and contains the requirements applicable to positions requiring Commercial Drivers' License (CDL).

C. 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

NOTE: This regulation is issued by the U.S. Department of Transportation (DOT) and contains the technical procedures designed for use when testing is required pursuant to 49 CFR Part 382.

Mandatory Guidelines:

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A. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Register Vol. 59, No. 110, June 9, 1994

NOTE: This establishes mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to Executive Order 12564.

Information:

A. National Institute on Drug Abuse - Model Plan for a Comprehensive Drug-Free Workplace Program, 1990

B. U.S. Department of Transportation - Alcohol & Drug Rules - An Overview, February, 1994

C. U.S. Department of Health and Human Services - Substance Abuse and Mental Health Services Administration - Basic Information on Breath Alcohol Testing for Implementation of the DOT Rules, February, 1995

D. U.S. Department of Health and Human Services - An Overview of HHS Division of Workplace Programs (Federal Drug and Alcohol Program Oversight Responsibility)

E. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Medical Review Officer Manual for Federal Workplace Drug Testing Programs, 1997

NOTE: This manual applies to Federal agency drug testing programs that come under Executive Order 12564 and the Department of Health and Human Services (HHS) Mandatory Guidelines. The Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) programs have drug testing program requirements that may differ from those required by HHS. Therefore, Medical Review Officers (MROs) must be aware of those differences in reviewing results for other Federally regulated programs.

F. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Medical Review Officer (MRO) Source List, March 3, 1996

VII. Hearing Conservation

Regulation:

A. 29 CFR 1910.95, Occupational Noise Exposure Standard, U.S. Department of Labor, Occupational Safety and Health Administration

Information:

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A. U.S. Department of Labor, OSHA Guideline Occupational Noise Exposure Compliance Assistance Guideline, 1991

B. U.S. Department of Labor, Occupational Safety and Health Administration, Hearing Conservation, (OSHA Publication 3074), 1995

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are exposed to excessive/high noise levels that could cause hearing loss.

VIII. Infectious Diseases (HIV/AIDS, Hepatitis, Tuberculosis, etc.) Involving Employee Relations

Regulation:

A. 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogens, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: A bloodborne pathogen's protection program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are potentially exposed to infectious blood or body fluids as part of their employment.

Information:

A. OPM - HIV/AIDS Policy Guidelines, August 30, 1995, prepared by OPM's Office of Employee Relations

NOTE: These guidelines replace FPM letter 792-21, "Acquired Immune Deficiency Syndrome (AIDS) in the Workplace."

B. U.S. Department of Health and Human Services, Social Security Administration - A Guide to Social Security and SSI Disability Benefits for People with HIV Infection, May, 1997

C. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, September 8, 1995/Vol. 44/No. RR-11, Essential Components of a Tuberculosis Prevention and Control Program, Screening for Tuberculosis and Tuberculosis Infection in High-Risk Populations

D. U.S. Department of Labor, Occupational Disease - Claims for Pulmonary Tuberculosis, FECA Bulletin No. 95-20, June 21, 1995

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E. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, October 28, 1994/Vol. 43/No. RR-13 1994, Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities

IX. Medical Disqualifications of Veterans Preference Eligibles (TP, CP, CPS, XP)

Law:

A. 5 U.S.C., Sections 3312 and 3318, Preference Eligibles

Regulation:

A. 5 CFR 339.306 Medical Qualification Determinations

B. 5 CFR 351.702(d) Reduction in Force

Information:

A. Interagency Advisory Group, Memorandum for Directors of Personnel, dated March 14, 1997, "OPM Adjudication of Medical Disqualifications to Preference Eligibles"

NOTE: This is a reminder that in accordance with Title 5, United States Code, Sections 3312 and 3318, and 5 CFR 339, Medical Qualification Determinations, any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management (OPM) before the position can be filled.

B. OPM - Procedures Guide in Processing Medical Objections to Preference Eligibles, March, 1996, prepared by OPM's Staffing Reinvention Office

C. OPM - Typical Reasons for Not Sustaining Agency Medical Passover Requests, March, 1996, prepared by OPM's Staffing Reinvention Office

X. Medical Records

Law:

A. Privacy Act of 1974, 5 U.S.C. 552a

Regulation:

A. 5 CFR Part 293, Subpart D, Employee Medical File System Records, prepared by OPM's Office of Workforce Information

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B. 5 CFR Part 297, Privacy Procedures for Personnel Records, prepared by OPM's Office of Workforce Information

C. 29 CFR 1910.1020(d)(l) (1990) Access to Employee Exposure and Medical Records, U.S. Department of Labor, Occupational Safety and Health Administration

D. 29 CFR 1904 (June 1986), A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics

E. 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient's Records (This regulation applies only to Employee Assistance Program (EAP) records)

Information:

A. OPM/GOVT-10 "Employee Medical File System Records," 57 Federal Register, 35,722, (August 10, 1992), prepared by OPM's Office of Workforce Information

B. OPM Medical Record Procedures, (covered in OPM's Operating Manual) The Guide to Personnel Recordkeeping, prepared by OPM's Office of Workforce Information

C. U.S. Department of Labor, Occupational Safety and Health Administration, Access to Medical and Exposure Records, (OSHA Publication 3110), 1993

XI. Mental Health Issues

NOTE: See Section I, Regulation (A), for specific information regarding an Agency's right to order/offer a medical or psychiatric examination.

XII. OWCP Issues

Law:

A. 5 U.S.C. 8101 et seq. The Federal Employees Compensation Act, as amended

Regulation:

A. 20 CFR Parts 1 to 25, Federal Employees Compensation Act

B. 5 CFR Parts 353, 870, and 890, Restoration to Duty from Uniform Service or Compensable Injury (Interim Regulations, September 1, 1995)

Information:

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A. OPM - Pamphlet Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses, January, 1992, prepared by OPM's Staffing Reinvention Office

B. U.S. Department of Labor - Injury Compensation for Federal Employees (A Handbook for Employing Agency Personnel), (Publication CA-810), February, 1994

C. U.S. Department of Labor, Questions and Answers About the Federal Employees' Compensation Act, (Publication CA-550), September, 1988

D. U.S. Department of Labor, Resource Book - Training for Federal Employing Agency Compensation Specialists, 1994

XIII. Pregnancy Related Issues

Law:

A. Pregnancy Discrimination Act, P.L. 95-555, October 31, 1978, 92 Stat. 2076, 42 U.S.C. § 2000e(k) et seq.

Regulation:

A. 29 CFR § 1604.10(b), See also, 29 CFR Pt. 1604 App. (Questions and Answers on the Pregnancy Discrimination Act)

XIV. Respiratory Protection Program

Regulation:

A. 29 CFR 1910.134, Respiratory Protection, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers must wear respirators to protect themselves from actual or potential airborne hazards.

B. 29 CFR Part 1910.1001, Occupational Exposure to Asbestos, June 29, 1995, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

C. 29 CFR Part 1910.1200, Hazard Communication, March 11, 1994, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

XV. Safety and Occupational Health Programs

Law:

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3/16

Peggy M. | EEOC

(1) Too much "urges" "encourages"

(2) Don't incorporate any of working group new.

→ p. 2 No ref made to accommodations

→ p. 4 psychiatric disabilities

p. 8 – career development intricately bound up w/ reasonable accommodations

→ all agencies should have written policy

→ per on part-time employees

→ provision of interpreters

Add

(3) Reference to existing EEOC directive → revised directive now on chairwoman's desk

Barkley / We should convene EEOC-OPM mtg / Announce Chance Marie Hunker Sharon Snelling → would send us a fax w/in Aug '98

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Presidential Task Force on Employment of Adults With Disabilities
Report of the Federal Personnel Review Group

Co-Chairs Nancy Segal, Special Assistant to Commissioner Paul Steven Miller, EEOC, and Peggy Mastroianni, Associate Legal Counsel, EEOC

August 17, 1998

I. Mandate

A. Background Information and Supporting Data

The Federal Personnel Review Workgroup ("Workgroup") was established by the Presidential Task Force on Employment of Adults With Disabilities ("Task Force") to assist in carrying out Section 2(a) of the President's Executive Order on Increasing Employment of Adults with Disabilities, dated March 13, 1998. Section 2(a) of the Executive Order provides the following:

> To ensure that the Federal Government is a model employer of adults with disabilities, by November 15, 1998, the Office of Personnel Management, the Department of Labor, and the Equal Employment Opportunity Commission shall submit to the Task Force a review of Federal Government personnel laws, regulations, and policies and, as appropriate, shall recommend or implement changes necessary to improve Federal employment policy for adults with disabilities. This review shall include personnel practices and actions such as: hiring, promotion, benefits, retirement, workers' compensation, retention, accessible facilities, job accommodations, layoffs, and reductions in force.

As part of this review, the Workgroup has identified barriers and best practices with respect to the recruitment, hiring, and employment of adults with disabilities in the federal sector and developed recommendations to improve conditions in these areas.

Approximately 31 individuals, representing nine agencies, have participated in the Workgroup. Agencies represented include the Department of Labor (DOL), Office of Personnel Management (OPM), Equal Employment Opportunity Commission (EEOC), Department of Defense (DoD), Department of Education (ED), U.S. Architectural and Transportation Barriers Compliance Board (Access Board), Office of Management and Budget (OMB), President's Committee on the Employment of People With

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Disabilities (PCEPD), and General Services Administration (GSA). [1]

B. Federal Statistics

During the last fifteen years, the representation of persons with disabilities in the permanent federal civilian workforce has increased. Between 1982 and 1997, the percentage of employees with severe disabilities has increased from .81% to 1.16%. The representation of all employees with disabilities has increased from 4.97% in 1982 to 6.79% in 1997. This overall increase is particularly notable in view of recent significant cutbacks in non-postal federal jobs.

There are negative trends as well: The peak year of representation for persons with disabilities was 1993. From 1993 to 1997, representation for persons with severe disabilities declined from 1.24% to 1.16%, and representation for all persons with disabilities declined from 7.09% to 6.79%. One possible explanation for this trend is that (1) the federal workforce as a whole declined by 350,000 jobs from 1992 to 1997, (2) 60% of the eliminated jobs were clerical and blue collar, and (3) persons with disabilities are over-represented in federal clerical and blue collar jobs.

Specifically, with respect to clerical and blue collar jobs, 23.9% of federal employees without disabilities hold such jobs, compared to 33% of all federal employees with disabilities and 42.9% of federal employees with severe disabilities. With respect to lower-paying federal jobs generally (grades 1-8), there is a similar pattern. Of federal employees without disabilities, 33.7% are in lower-paying jobs, while 43.5% of all employees with disabilities and 57% of employees with severe disabilities hold such jobs. Conversely, 61.8% of federal employees without disabilities hold higher-paying jobs (grades 9-15), while 53.2% of all employees with disabilities and 41% of employees with severe disabilities occupy such jobs. While the promotion rate for all federal employees with disabilities (9.77%) was similar to that for the total federal workforce (9.97%), the promotion rate for federal employees with severe disabilities was 7.88%.

Finally, the critical figure that provides perspective for this report is that 5.95% of the people

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[1]This report reflects the hard work of the following individuals: Tali Stepp, Annabelle Lockhart, Mark Maxin, Kim H. Green, Sharon Woodward, John Riedel-Alvarez, Sharon Snellings, Tina Vay, Philip Calkins, Nancy Segal, Peggy Mastroianni, Christopher J. Kuczynski, Carol Miaskoff, Jocelyn Samuels, Vivian Cole, Gary Hozempa, Jim Sober, Mary-Jean Moore, Kevin Packman, Judy Gilliom, Shannon Brown, Jennifer Kemp, Jennifer Mechem, Carla Holt, Jeffery Hill, Beth Stewart, Ray Kogut, Elizabeth Bacon, Tony Waller, Randy Cooper and Kathleen Coleman.

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available to work in the civilian labor force are persons with severe disabilities. While the federal government has made significant hiring gains, the percentage of persons with severe disabilities in the federal workforce (1.24% at its peak in 1993) still lags far behind availability.

C. Actions Taken by Workgroup

In order to carry out its mission, the Workgroup reviewed materials from a variety of sources regarding the hiring and employment of adults with disabilities in the federal sector. The Workgroup requested Tony Coelho, Vice-Chair of the Task Force, to send out a letter to the heads of all federal agencies explaining the mission of the Task Force and requesting documents and information pertaining to each agency's procedures and policies applicable to the hiring and employment of individuals with disabilities. A sample copy of this letter is attached to this report as Attachment A. This letter, which was sent to 89 agencies on June 8th, asked each agency to provide the requested information to the Workgroup by early July. To date, approximately 65 agencies have responded to this letter. The information contained in these responses has provided the basis for many of the Workgroup's findings and recommendations.

Workgroup members have also reviewed Title 5 of the United States Code and Title 5 of the Code of Federal Regulations, the code sections and regulations pertaining to federal sector employment, to identify any barriers to the recruitment, hiring, and employment of adults with disabilities. In addition, Workgroup members reviewed 29 C.F.R. §1614.203, the regulation implementing Section 501 of the Rehabilitation Act. Workgroup members have also reviewed EEOC federal sector decisions and complaints received by the Access Board pertaining to federal employees with disabilities. Finally, Workgroup members have informally contacted unions, individuals with disabilities, and disability organizations who are knowledgeable about barriers and best practices in the area of hiring and employment of individuals with disabilities in the federal sector.

II. Positive Efforts Already Underway

Introduction

Since the advent of the Rehabilitation Act of 1973 and the passage of the Americans with Disabilities Act of 1990, there has been increased recognition of the need and the obligation to provide access to people with disabilities in the public and private sectors. In order to ensure access to facilities, employment opportunities, and technology in the federal sector, it

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is first crucial to identify successful existing programs.

This section details three examples of federal agency "best practices" for employees with disabilities. These practices provides valuable models for all federal agencies.

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A. United States Department of Education Self-Evaluation and Implementation Process

The Department of Education (ED) took a comprehensive approach to reviewing disability access issues by conducting a self-evaluation of its compliance with the Rehabilitation Act of 1973, from May 1995 to May 1996. In an initiative that enjoyed strong support from ED's senior leadership, ED made 44 recommendations for improving its compliance with Section 504 and other parts of the Rehabilitation Act. The recommendations address reasonable accommodation and employment policy, including policies that significantly improve access to technology, information, and other ED programs and activities.

A Coordinator was hired in September 1996 to implement the recommendations of the work group. Funds were allocated for compliance in FY 1997, and will continue to be allocated for ongoing compliance. Over the last two years, 19 of the 44 recommendations have been completed, 15 are underway, and ten involve ongoing projects or services.

Three working groups were established to assist the Coordinator in carrying out the recommendations: a Program Implementation Task Force, an Employment Task Force, and an Architectural Access Task Force. The philosophical driving force behind the initiative is that ED as a whole must take responsibility for equal access, rather than leaving it to the offices that have traditionally responded to disability issues because of their programmatic responsibilities for disability constituencies.

Difficulties and delays in obtaining reasonable accommodations were the most common problem facing employees with disabilities in ED. In FY 1998, a centralized fund for reasonable accommodation equipment and services related to assistive technology and training was established. This fund now pays for accommodations, with the result that lack of funding is no longer a barrier to accommodations. The Employment Task Force is rewriting ED's reasonable accommodation policies and establishing new procedures for requesting, granting, and tracking accommodations. This task should be completed by the end of FY 1999.

ED will remove another barrier to employment and hiring of people with disabilities by establishing in its FY 1999 budget, in the Office of Management, a central pool of salary and expense funds which includes Full-time Equivalent (FTE) slots for readers, interpreters, and personal assistants. Thus, offices within ED will no longer have a disincentive to hiring qualified individuals whose disability and position responsibilities require the support of interpreters, readers, or personal assistants who would take up additional FTE slots.

ED is the first federal agency to develop and adopt specific guidelines on information

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technology accessibility. The ***Requirements for Accessible Software Design*** were written to ensure that software purchased by or developed for ED is fully accessible to people with disabilities. The Requirements have been adopted by the National Science Foundation and the Census Bureau, and are under consideration at the EEOC, DOL, and several other agencies. ED hopes to serve as the prototype for a universal federal standard for software accessibility.

The ***Requirements for Accessible Software Design*** have also had an unexpectedly broad impact on the software industry. ED has inserted accessibility clauses in all its information technology contracts, and has worked extensively with developers and commercial software vendors. Disability access is now increasingly perceived as a major competitive feature by the industry. The overall intent is to increase the accessibility of off-the-shelf software for people with disabilities, thus increasing employability and decreasing reasonable accommodation costs nationwide.

In addition, ED has established an Alternate Format Center, which serves the entire Department with production of materials in Braille, large print, and audiotape. Production facilities in-house have enabled ED to achieve much quicker turnaround times on requests for materials in alternate formats. Employees who are blind or visually impaired can now receive meeting materials, reference materials, and memoranda in Braille, with minimal labor and expense. The Center is staffed by two contractors secured through National Industries for the Blind's program to provide employment for visually-impaired individuals.

Another first in the federal government is ED's decision to purchase a networked Teletypewriter (TTY) software program that puts a virtual TTY on every employee's desk. The NexTalk system will run over the Local Area Network (LAN) and offer TTY users the same options now available only to voice telephone users: access to every employee without having to go through the relay system, use of voice mail menus to locate program areas or information, and ability to transfer calls and leave messages. ED has also purchased state-of-the-art portable assistive listening systems for use in its headquarters buildings, and is installing three permanent assistive listening systems. Purchase of smaller portable assistive listening systems for regional offices is also planned.

The ED's Architectural Access Task Force conducted an architectural survey of its headquarters. The survey identified a number of accessibility problems and made recommendations for improving them. The Architectural Task Force prioritized the recommendations and is working with GSA to correct the most severe problems. Work began in FY 1998 and will continue in FY 1999.

The complete ***Report on the Section 504 Self-Evaluation*** may be obtained upon request

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from Jennifer Mechem, at (202) 401-3586 voice/401-3582 TTY.

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B. United States Department of Agriculture Technology Accessible Resources Gives Employment Today Center

The Technology Accessible Resources Gives Employment Today (TARGET) Center was officially opened at USDA headquarters in October, 1992. Its goal is to assist USDA agencies in providing an accessible work environment, ensuring equal access to electronic technology and automated systems essential to the jobs of today. The TARGET Center provides a wide range of services to USDA's employees with disabilities and to other Federal agencies upon request. These services include the following: evaluations, demonstrations, and assessments of accommodations; technology review; disability awareness presentations; coordination of training; a resource information library on accommodations, vendors, and technology; contracting of assistive services; technical support; consultations with managers and employees; and information provided in alternate/accessible formats.

With an FY 1998 funding level of $450,000 provided through agency reimbursements, the TARGET Center has provided close to 100 presentations on disability awareness to 6,000 people, resource information to 10,000 recipients, and a total of 4,000 technical evaluations and assessments this year. In addition, the Center has filled 250 requests for materials to be made available in alternative accessible formats. The staff interpreter, with a budget of $190,000, coordinates service provision with additional contracted vendors as needed, providing interpreting services for over 800 requests this year.

C. United States Department of Defense Computer/Electronic Accommodations Program

The Computer/Electronic Accommodations Program (CAP) was established in 1990 as the centrally funded DoD program that provides assistive technology to allow DoD employees with disabilities to access computer and telecommunication systems. CAP services are available to individuals with visual, hearing, dexterity, and cognitive disabilities and take into account the individual's specific situation, including functional capabilities and computer compatibility. CAP also provides funding for sign language interpreters, readers, and personal assistants for DoD employees in training classes that last more than two days.

In August of 1995 the CAP Technology Evaluation Center (CAPTEC) opened at the Pentagon. The CAPTEC has a wide variety of assistive devices available for demonstration and evaluation. Employees and supervisors searching for appropriate accommodations can visit CAPTEC and get hands-on experience with various equipment options. In FY 1997, approximately 2,000 individuals visited the Technology Evaluation Center in the Pentagon. CAPTEC also participated in over 20 functions throughout the year.

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CAP's purpose is to ensure that all DoD employees who have or develop a disabling condition can get the equipment (and, if necessary, the training) that best suits their needs, at no charge to the specific employing unit. CAP also provides accommodations to ensure that DoD hospitals, clinics, personnel offices, training centers, and dependent schools, worldwide, are accessible. In FY 1997, with a budget of $2 million, CAP filled 2,279 accommodation requests. Since its inception, CAP has filled over 14,000 requests for accommodations. CAP removes the cost liability for accommodations so managers no longer need consider the possible economic impact of hiring people with disabilities. CAP's expertise with accommodations encourages DoD management to recruit, hire, and promote people with disabilities.

CAP also assists DoD managers in implementing Flexiplace, a program that allows employees to work part or all of the day at home or at another offsite location, by providing computers and assistive equipment for participants with disabilities to use at their alternative work sites. Target groups for Flexiplace include: recipients of workers' compensation, persons who might otherwise consider disability retirement, persons who have not been employed because their disabilities make it difficult for them to function in a federal workplace on a regular basis, and employees with disabilities who could be more productive working part or all of the day at home. In FY 97, CAP filled 64 requests for computer and assistive equipment to support individuals working at home. CAP also filled 132 requests to accommodate injured and returning DoD employees from Workers' Compensation.

In FY 97, CAP continued to provide services and accommodations to ensure access in targeted DoD operations. The CAP office also assisted DoD Training Centers and Learning Centers by providing assistive equipment to ensure that DoD employees with disabilities can participate in training programs. CAP also provided teletypewriters (TTYs), closed caption decoders, and telestrobe lights to accommodate emergency rooms, outpatient facilities, nursing stations, and other treatment locations within hospitals and clinics. CAP worked closely with the internationally based DoD Dependent and Section Six Schools by filling 35 requests for accommodations for students and teachers.

In the effort to improve customer service, CAP made major changes to the Request Form and order process, which resulted in a 76% reduction in the processing and procurement time. On average, processing and procurement now take seven to nine days. Another major factor in the improved CAP request process is the use of the U.S. Government I.M.P.A.C. Visa credit card. This provides CAP greater flexibility to purchase high-cost assistive technology in a timely manner. Further cost savings are also realized through bulk purchasing.

In support of the DoD effort to increase accessible information dissemination, CAP provides videotape captioning equipment. This provides DoD with the audio-visual capability to

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caption its videotapes in-house at a reduced cost.

DoD also co-sponsors with the President's Committee on Employment of People with Disabilities (PCEPD) the Workforce Recruitment Program (WRP) for College Students with Disabilities. This recruitment and referral network provides a systematic review of applications for individuals with disabilities who are students or recent graduates of colleges or universities. The CAP lends federal agencies assistive equipment to accommodate individuals placed through this program. In FY 97, CAP filled 73 accommodation requests for WRP summer students.

In FY 97, the CAP office received the 1996 Federal Technology Leadership Award at a ceremony held in the Washington, D.C. Convention Center. The Fifth Annual Awards Program honored 24 leading-edge projects in state and Federal government. CAP was singled out for the imaginative use of technology to streamline program operations, demonstrating an innovative use of public funds.

D. Other Reported Best Practices

The Workgroup identified numerous other federal agency "best practices" with respect to the recruitment, hiring, and employment of adults with disabilities. A chart containing these "best practices" is attached to this report as Attachment B.

III. Barriers and Recommendations

The Workgroup also identified the following barriers which affect the employment of adults with disabilities in the federal sector. For each of these barriers, we present findings and recommendations.

A. Recruitment and Hiring Barriers

1. Excepted Appointing Authorities

Findings

In Part 213 of its regulations, OPM sets forth the eligibility criteria and standards for agency use of "excepted appointing authorities" to fill government positions. 5 C.F.R. Part 213. Excepted appointing authorities exempt individuals from the competitive appointment process and offer an alternative means to obtain federal employment. The use of excepted appointing authorities can increase the employment opportunities for individuals with

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disabilities.

There are three primary excepted appointing authorities explicitly applicable to individuals with disabilities. Schedule A of the applicable regulations establishes excepted appointments for positions filled by individuals with mental retardation and individuals with severe physical disabilities. *See* 5 C.F.R. § 213.3102(t), (u). Under Schedule B of the regulations, agencies are authorized to make appointments, to positions at grades GS-15 and below, of individuals who (a) are at a severe disadvantage because of a psychiatric disability that has caused a significant period of substantially disrupted employment; and (b) are certified to a specific position by a state vocational rehabilitation agency or the Veterans Administration as meeting the eligibility criteria, being able to perform the job, and having no job-related residual disability. 5 C.F.R. § 213.3202(k).

In three respects, however, the Schedule B appointing authority treats individuals with severe psychiatric disabilities differently from individuals with severe physical disabilities or mental retardation who are eligible for special appointment under Schedule A. First, unlike appointments under Schedule A, Schedule B appointments are subject to the basic qualification standards established by OPM for the relevant occupation and grade level. Second, Schedule B imposes a two-year limitation on appointment that does not exist under Schedule A. Finally, Schedule B appointees are not eligible for conversion to the competitive service. Under Schedule A, persons with severe physical disabilities and persons with mental retardation may qualify to convert to competitive status after completion of two years of satisfactory service in their excepted positions. *See* 5 C.F.R. §§ 213.3102(t), (u); 315.709 (setting criteria for conversion).

we have draft EO to fix

Thus, individuals with psychiatric disabilities who wish to take advantage of special appointing authorities in order to obtain employment with the federal government are clearly at a disadvantage as compared with individuals with severe physical disabilities or mental retardation who are eligible for excepted appointments under Schedule A. First, Schedule B appointees must satisfy the qualification standards set by OPM, whereas, under Schedule A, agencies have the option of substituting their own qualification standards. Second, individuals with psychiatric disabilities who are unable to apply for jobs through the regular competitive appointment process must leave their excepted positions after two years. Individuals with severe physical disabilities, on the other hand, may remain in their excepted service jobs without restriction and are further authorized to convert to the competitive service, without competitive examination, at the end of two years.

Individuals with psychiatric disabilities eligible for excepted appointments under Schedule B face many of the same barriers to employment as are encountered by individuals with severe

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physical disabilities and mental retardation. They, therefore, should be offered the same opportunities, including the opportunity to convert to the competitive service, that are available under Schedule A. The Rehabilitation Act and the ADA have never distinguished between physical and mental disabilities, but instead recognize that all individuals with disabilities face similar social, economic, and employment barriers.

The Workgroup recognizes that the differences between the Schedule A and Schedule B special appointing authorities are not the result of discriminatory animus against individuals with psychiatric disabilities. Rather, they were based at least in part upon the belief that individuals who had "recovered" from a psychiatric condition needed only an opportunity to supplement a resume after a period of extended unemployment, and thereafter would be able to compete for employment through the regular competitive process. Experience has shown, however, that some conditions, such as major depression, from which an individual may appear to have "recovered" can recur in the future, and thus may impose limitations that are as real and life-long as the limitations imposed by physical disabilities. *See EEOC Enforcement Guidance on the ADA and Psychiatric Disabilities,* No. 915.002 (March 25, 1997) at 9 (noting that "chronic episodic" conditions are disabilities if they are substantially limiting when they occur). Moreover, even the record of a psychiatric condition from which an individual has in fact recovered may often pose a barrier to employment. Indeed, the EEOC has long recognized "a history of treatment for mental or emotional problems" as a "targeted" (or severe) disability, along with numerous physical conditions.

Recommendation

The Workgroup recommends that OPM and any other appropriate agencies explore measures aimed at extending to individuals with psychiatric disabilities who currently qualify for excepted appointments under Schedule B those opportunities currently available to individuals with severe physical disabilities and mental retardation who are eligible for excepted appointments under Schedule A.

2. Vacancy Announcements

Findings

It appears that the availability of reasonable accommodations is not indicated on the vacancy announcements and other recruiting materials of the vast majority of federal agencies. This may pose a barrier to individuals with disabilities seeking federal government employment who are unsure of their right to, or the availability of, reasonable accommodations during the application process and during the employment relationship.

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Recommendation

The Workgroup recommends that OPM, in consultation with the EEOC, develop language for federal vacancy notices that explicitly states that reasonable accommodation is available. OPM should also revise its regulations to require all federal agencies to include this notice in vacancy announcements and other recruiting materials.

sounds good.

B. Reasonable Accommodation Barriers

The Workgroup has found that difficulty in obtaining reasonable accommodation poses a significant barrier to job applicants and employees with disabilities in the federal government. This difficulty arises particularly from the lack of clear and effective reasonable accommodation policies and procedures, and from resistance by managers to spending funds on accommodations. Federal agencies have a wide variety of policies, procedures, and practices with respect to the provision of reasonable accommodations to job applicants and employees with disabilities. Many pose real barriers to the employment of people with disabilities, potentially violating their rights under the Rehabilitation Act and resulting in productivity losses and inefficiency for the federal government as a whole. The Workgroup concludes that the employment of adults with disabilities in the federal sector could be dramatically improved by providing guidance and assistance to agencies and by making certain changes in the manner in which agencies handle, procure, and fund job accommodations for applicants and employees.

1. Reasonable Accommodation Policies and Procedures

Findings

Based on anecdotal evidence gathered from federal government employees and on the Workgroup's review of EEOC federal sector decisions, it appears that employees with disabilities frequently have difficulty obtaining reasonable accommodations. People with disabilities are faced with the following problems when seeking reasonable accommodation:

- It is often unclear who is responsible for determining, approving, and obtaining accommodations. *See, e.g., Meyer v. Dept. Of the Army*, EEOC Appeal No. 01944240 (Aug. 9, 1996).

- Requests for reasonable accommodation often are not handled promptly, chiefly because there are no time limits on decision making.

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- Individuals with nonvisible or "hidden" disabilities have a particularly difficult time obtaining the accommodations that they legitimately need.

- Supervisors and managers often are unaware of the legal requirements governing the obligation to provide reasonable accommodations. *See, e.g., Allen v. United States Postal Service*, EEOC Appeal No. 01954091 (March 27, 1997), Request No. 05970672 denied (June 12, 1998).

Presently, there are no government-wide, uniform procedures for processing applicant and employee requests for reasonable accommodation. Nor are there model procedures or guidelines for processing such requests.

Many of the agency responses to the Coelho letter reflect a lack of clarity about the reasonable accommodation process. For example, many federal agencies do not have any written procedures for processing reasonable accommodation requests, and different divisions and offices within these agencies may impose their own policies on employees. The written agency procedures that do exist vary widely. Some are exceedingly and unnecessarily complex, while others require intrusive and extensive medical information that is not necessary and that may be inappropriate in many cases. Agency policies often require extensive medical documentation for all requests, without apparent exception for, or consideration of, whether the information relates to the requestor's need for reasonable accommodation, the nature of the request, or whether the agency already has information on the requestor's disability due to previous requests. In some policies, requests must be filled out on specific forms turned in to specific people or offices; other agencies do not prescribe the form, format, and audience for the request. Most policies do not prescribe a time frame for agency decision making on reasonable accommodation requests.

Recommendations

What does OPM think? Would go through OMB clearance (Weigel)

The Workgroup recommends that the EEOC issue regulations, or other appropriate directives, providing guidelines for all federal agencies to follow in establishing agency-wide, written reasonable accommodation policies and procedures for applicants and employees with disabilities. The draft policies/procedures should be submitted to the EEOC within 120 days of the promulgation of the regulation for EEOC review and comment. These policies and procedures should be distributed to new staff during the orientation process and published on the agency intranet site (if available). At a minimum, the policies and procedures should also be distributed annually to senior executives, personnel directors and EEO directors; if feasible, they should also be distributed to all staff on an annual basis. The EEOC's regulations or guidelines should promote policies that make it easy and simple to request an accommodation; provide for a fair, prompt and balanced review of an accommodation request; provide for a meaningful dialogue between supervisor and employee where necessary; and provide for a review of medical evidence by a medical professional, where the medical reasons for the accommodation are in dispute.

The EEOC should provide a model reasonable accommodation policy which agencies may choose to adopt. In addition, the EEOC regulations or guidelines should provide agencies

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with the option of designing their own reasonable accommodation policies and procedures as long as the policies/procedures, at a minimum and in writing:

1. Explain how an employee or job applicant initiates a request for reasonable accommodation. If the agency requires an applicant or employee to complete a reasonable accommodation request form, the form must be provided as an attachment to the written procedures.

2. Specify to whom the request must be submitted and from whom the employee will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. If designated time deadlines are not met, responsible agency officials should explain the delay to the employee.

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reasonable accommodation decisions should be in writing and specify the reasons for denial, when applicable.

The model reasonable accommodation policy/procedure that the EEOC issues should contain all seven required elements, as described above. In addition, the model policy should also:

8. Provide a "plain English" explanation of certain key legal terms used in the policy (e.g., reasonable accommodations, disability, qualified person with a disability and undue hardship), and reference applicable statutes and regulations as a source of the actual wording of the terms.

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9. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee to perform the essential functions of his/her current position. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

10. Designate a system of record keeping that tracks the processing of requests for reasonable accommodation and maintains the confidentiality of medical information received in accordance with applicable law and regulations.

11. State in the policy that employees have the right to file an EEO complaint in the event that their requests for reasonable accommodation are denied.

12. Clearly and expressly explain the role and responsibility of each agency official or office in the grant or denial of reasonable accommodation requests.

2. Procurement and Payment for Reasonable Accommodations

Findings

The responses to the Coelho letter indicate that federal agencies procure and fund job accommodations for employees and applicants with disabilities in a wide variety of ways. Some agencies provide centralized procurement and funding for specified accommodations such as readers, sign language interpreters, special assistants, computers, electronic accommodations, and adaptive devices which cost over $100. Some small agencies, and at least one cabinet level agency, report that they provide centralized funds for the procurement of all equipment and services for employees with disabilities. In other agencies, individual offices or divisions procure and fund accommodations for employees.

It is logical to assume that a supervisor is more likely to reject an accommodation on the basis of cost where the funds for purchasing the accommodation come from the supervisor's budget. On the other hand, a supervisor is less likely to consider the cost of an accommodation where the funds for purchasing an accommodation come from a centralized budget. The Workgroup finds that the reluctance of supervisors to spend their own funds on reasonable accommodations is a real barrier.

Recommendations

The Workgroup recommends that the Administration draft and submit to Congress proposed legislation establishing a central point of contact and a single source of payment for assistive

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technology and related services for job applicants and federal employees with disabilities. At a minimum, items available should include specialized computer hardware, software, and peripherals; telecommunication devices; and related services and training. In addition, this centralized program should cover sign language interpreters, readers, and personal assistants under specified circumstances (e.g., when federal employees are enrolled in training that lasts more than one day) as well as miscellaneous specialized equipment (e.g., custom workstations, assistive listening systems and audiovisual captioning).

Federal employees with disabilities should be able to obtain job accommodations quickly and easily from this central source serving all federal agencies. Supervisors, or any other knowledgeable official designated by individual agencies, should have sign-off authority for employee requests, and the employing agency should provide additional input as necessary. If the central reasonable accommodation source denies a request that an agency has already "signed-off" on, then the agency disability program manager or some other appropriate official designated by the agency, should be able to reverse the denial.

Whatever funding mechanism is developed should not sustain current, or create new, disincentives to the employment of individuals with disabilities in the federal government. Agencies should not be mandated to pay into a centralized accommodations fund based on the number of individuals with disabilities they hire, employ, or accommodate, or be charged back for the cost of the accommodations provided to their employees under this system. There should be no direct link between the number of employees with disabilities an agency hires, employs, or accommodates, and cost charged to the agency.

This unified system of administration, procurement, and funding would enable the government to take advantage of bulk purchase values and other economies of scale, reduce administrative and procurement costs, and remove the nuisance and expense factors that too often are disincentives for supervisors and agencies considering hiring or accommodating individuals with disabilities. Each agency would not have to develop its own system and expertise for procurement of assistive technology and other devices; instead, one set of experts would suffice. While no agency would be prohibited from having its own program, the centralized program would be open to all, and no federal employee or manager would be prohibited from using it.

The Workgroup does not make a specific recommendation as to the entity that should administer the centralized procurement and funding system for reasonable accommodations. If an existing federal agency serves as the administrator, it will be necessary to obtain legislation augmenting the mission of the agency to allow it to provide "free" accommodations to employees of other agencies. One possibility is legislation enabling the DoD to provide accommodations for all federal government employees through the

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expansion of its Computer/Electronic Accommodation Program (CAP). Since its inception in 1990, CAP has filled over 14,000 requests for by DoD employees (regardless of branch) for the following information and technological assistive devices: computer input devices, computer output devices, telecommunication devices, magnification devices, assistive listening devices, alternative forms of documentation, captioning services, and requests for sign language interpreters, readers and personal assistants for employees attending training programs that last two days or more. CAP currently operates with an annual budget of $2.5 million. Note: Based on data derived from the *1995 EEOC Annual Report on Employment of Minorities, Women, and People with Disabilities in the Federal Government*, DoD employs 37% of federal government employees with disabilities and 35% of federal government employees with "targeted" disabilities.

The current benefits of CAP are the same as the potential benefits of a centralized accommodations program for the entire federal government. CAP has increased the ability of managers to hire people with disabilities without the cost of accommodations being considered in an inappropriate manner, reduced the cost of providing accommodations because of bulk purchases of assistive equipment, provided for review by experts of each accommodation request for appropriateness and computer compatibility, and increased efficiency of acquisition processing because of program staff knowledgeability about types of products, systems, and availability of assistive technology and services.
Any centralized, government-wide accommodations program could build on CAP's successes and expand its reach to cover a wider range of accommodations.

Another possible mechanism for providing this government-wide function would be for the DoD and the President's Committee on Employment of People with Disabilities to jointly administer a government-wide centralized accommodations program. This alliance would combine DoD's CAP experience and expertise with the President's Committee's mission to promote the employment of people with disabilities and job accommodation expertise.

Regardless of the entity that runs the proposed centralized system, individual agency involvement in the procurement of accommodations covered by the centralized system should be minimized. The purpose of the centralized system is to facilitate the prompt and efficient acquisition of reasonable accommodations. It should not become another hurdle for an employee with a disability.

While even agency-wide procurement and funding systems for reasonable accommodations would be an improvement over the current system where supervisors are faced with weighing the cost of reasonable accommodations against other needed items in their budgets, it would not be as effective or efficient as a government-wide program. It appears that many agencies lack the expertise and/or will to design effective and efficient procurement and funding

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systems. Few agencies have been successful in overcoming the chilling effects of constrained budgets, impervious bureaucracies, and uninformed attitudes. Today, many individuals with disabilities depend on their own negotiating skills and sympathetic decision-makers.

It is also important that the government-wide reasonable accommodation function be adequately funded and staffed. The most efficient and least expensive approach is to create one excellent, well-funded, well-staffed program and give it full access to the worldwide buying power, logistical capability, and technical expertise that the United States government routinely provides or obtains for undertakings of national significance.

OPM agrees that this recommendation could potentially improve the effectiveness and efficiency of agency efforts to provide reasonable accommodations; however, it would like to examine a number of related issues before endorsing this proposal.

3. Reassignment - 29 CFR § 1614.203(g)

Findings

The ADA specifically mentions "reassignment to a vacant position" as a form of reasonable accommodation for individuals who, because of a disability, can no longer perform their current jobs. Congress recognized that requiring reassignment as a reasonable accommodation would further two important policy objectives: reassignment would enable individuals with disabilities to continue working, and it would enable employers to retain valued employees. Pursuant to statutory directive, the EEOC promulgated regulations implementing Title I of the ADA, at 29 C.F.R. Part 1630. These regulations include standards governing reassignment as a reasonable accommodation.

In 1992, Congress amended Title V of the Rehabilitation Act of 1973 to make the ADA standards of nondiscrimination in employment applicable to the federal government. Despite this amendment, the regulatory standards governing reassignment continue to differ significantly with respect to the federal and private sectors.

In the private sector, under Title I of the Americans with Disabilities Act (ADA) and its implementing regulations, reassignment is a reasonable accommodation and, as such, is restricted only if it imposes an "undue hardship" on the employer's business. Under the ADA, "undue hardship" means "significant difficulty or expense." By contrast, under the federal regulation, 29 C.F.R. § 1614.203(g), a variety of restrictions in addition to undue hardship are imposed on reassignment. First, federal agencies are only required to offer reassignment to nonprobationary employees. Second, the regulation says that reassignment is

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not required to positions:

- located outside the employee's present commuting area;
- that are not serviced by the same appointing authority; and
- for which an announcement seeking applications already has been posted (although the agency must consider the individual on an equal basis with other applicants).

In addition, the regulation provides that, at the United States Postal Service, an individual with a disability "shall not be considered qualified for any offer of reassignment that would be inconsistent with the terms of any applicable collective bargaining agreement."

Recommendations

The Workgroup recommends that 29 C.F.R. § 1614.203(g) be revised to incorporate the ADA standards for reassignment. In addition, the EEOC should provide guidance about the applicable ADA provisions that apply to reassignment and, specifically, about the application of the ADA's undue hardship standard. Guidance will facilitate reassignment and other accommodations by allaying agencies' concerns about how to apply the ADA, which differs from 29 C.F.R. part 1614.203(g). Without a clear explanation, agencies may not understand that the ADA undue hardship criteria allow them to consider a range of financial and operational considerations in deciding whether to reassign an individual with a disability. Guidance will also aid administrative judges, the EEOC, and federal courts when analyzing claims of discrimination based on a federal agency's failure to provide reassignment.

4. Electronic and Information Technology

Findings

Computers and other information technology have become an increasingly vital part of the workplace in the last decade, to the extent that virtually all federal positions now require the use of computers to complete everyday job tasks. Access to electronic media such as e-mail, agency databases on internal networks, and Internet research is essential to communicating with colleagues and serving the public. However, if the software procured by agencies is not accessible to people with disabilities, the technology creates a barrier to employment and may be so difficult to retrofit that it creates a legitimate undue hardship in the provision of reasonable accommodations. Operating systems and applications must contain certain standard features to allow assistive technology software and peripherals to modify the input or output to provide access

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for a person with a disability. Without those features, the assistive technology, such as a screen-reader that reads text aloud to a blind person, cannot function properly.

The Rehabilitation Act of 1973 was amended on July 31, 1998; the amended Section 508 directs the Access Board to develop and publish standards for electronic and information technology accessibility within 18 months, and requires federal agencies to develop, procure and use accessible technology. These standards will include a definition of electronic and information technology consistent with that in the Clinger-Cohen Act, and "the technical and functional performance criteria necessary" to provide access for Federal employees and members of the public with disabilities. Starting two years after enactment of this amendment to Section 508, individuals with disabilities may file complaints for noncompliance.

Within six months, each federal agency must evaluate the extent to which its information technology is accessible to people with disabilities and submit a report to the Attorney General, who will make recommendations to the President and Congress within 18 months after enactment. The Attorney General will submit a second report and recommendations three years after enactment, and additional reports every two years thereafter.

The previous version of Section 508 required the development of accessibility guidelines for information technology. These guidelines in the Federal Information Resources Management Regulations (FIRMR) had no enforcement mechanism, and have been suspended.

The Department of Justice has ruled that web sites for state and local governments are required to be accessible to people with disabilities under Title II of the Americans with Disabilities Act (ADA), and has applied the same analysis to Federal agency web sites under Section 504 of the Rehabilitation Act.

Most federal agencies do not appear to have any systematic means for evaluating the accessibility of their information technology, nor for assessing the effect on accessibility when new systems and software are developed, purchased or upgraded. Some agencies have recently acquired agency-wide systems such as e-mail applications that are incompatible with assistive technology used by blind employees, creating numerous employment problems. There are currently no government-wide standards for accessible technology, and few agencies are aware of the FIRMR guidance. Several agencies test software acquisitions for disability access, though most do so in conjunction with providing assistive technology devices or services for employees with disabilities. The focus at most agencies seems to be on providing individual solutions for technology access problems encountered by employees with disabilities.

The Department of Education (ED) developed a set of Requirements for Accessible Software Design which specify functional criteria to ensure that software purchased by or developed for the

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Department is fully accessible to people with disabilities. The Requirements give clear direction on how to make software accessible, with simple, functional, outcome-oriented instructions that give developers maximum flexibility but result in programs that are compatible with commonly-used assistive technology aids. The Requirements have been adopted by the National Science Foundation and the Census Bureau, and are under consideration at the EEOC, Department of Labor and several other agencies. Both Census and ED have issued draft policy statements to implement the Requirements, and ED has inserted clauses in all information technology contracts requiring compliance with the Requirements.

Anecdotal evidence indicates that most agency web sites provide good access to text information. Problems remain with many sites that offer interactive functions such as electronic form submission or calculations of benefits; security features and the graphical nature of the interface render many sites inaccessible to users with disabilities.

Recommendations

The Workgroup makes the following recommendations with respect to electronic information and technology:

- All federal agencies should adopt ED's Requirements for Accessible Software Design as an interim standard until the Section 508 standards are published.

- All federal agencies should ensure that all hardware and software purchased, modified, or upgraded by such agencies, including purchases for Y2K compliance, are accessible to people with disabilities.

- All federal agencies should test new and current information technology systems for accessibility, and should consider upgrading or modifying any inaccessible systems used by employees or job applicants.

- All federal agencies should ensure that all employee information provided on their intranets or LANs and public information provided on their web or Internet sites is accessible to people with disabilities. They should use a public-domain web site tester such as Bobby, and comply with the web accessibility guidelines published by the World Wide Web Consortium's (W3C) Web Accessibility Initiative.

- All federal agencies should ensure that employees with disabilities receive an assessment of technology access needs, and receive the appropriate assistive technology hardware, software, or peripherals to make all information technology systems used on the job accessible.

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5. Interpreters

Background and Legislative Context

Interpreting services are necessary to afford deaf, hard of hearing, or deaf-blind employees equal access to communication in meetings, training sessions, conferences, and other job related functions and events. As employers, federal agencies are required to provide interpreters to individuals with hearing disabilities as a form of reasonable accommodation under section 501 of the Rehabilitation Act of 1973. Interpreting services are also a key component of agencies' ability to fulfill their responsibilities under Section 504 of the Rehabilitation Act to provide access for people with disabilities to federally-conducted programs and activities. Interpreting services represent both an ongoing cost and a logistical challenge to locate qualified interpreters and schedule events appropriately; agencies must therefore plan and allocate resources effectively in addition to establishing clear policies and procedures regarding interpreting services. Failure to plan effectively can result in failure to accommodate.

When federal employees attend outside events such as conferences or training sessions, the hosting entity has an obligation to provide effective communication and other accommodations for attendees under one or more of the disability civil rights statutes. If the hosting entity is a federal agency or receives federal funding, it is covered by Section 504 of the Rehabilitation Act. A hosting entity's failure to provide interpreting service or other means of effective communication such as Computer Assisted Real-time Transcription (CART) services or assistive listening systems, frequently poses a barrier to deaf and hard of hearing federal employees, who are denied the training, networking, and promotional opportunities afforded by attendance at outside events.

Findings

The Workgroup reviewed written policies regarding interpreter services from a number of federal entities, including the Department of Agriculture (USDA) Graduate School, OPM's Training Division, and the Department of the Treasury (Treasury) Center for Applied Financial Management (CAFM). While all three written policies state that the agency will provide interpreters upon request, anecdotal reports suggest that deaf employees have experienced some difficulty getting interpreters within an appropriate time frame when signing up for training opportunities. Two agencies did not previously provide interpreters, but have recently modified their policies to clarify their obligation to provide interpreter services. Some agencies, recognizing that sign language interpreters do not meet the needs of all employees with hearing impairments, provide other accommodations such as CART services or assistive listening systems that may be used instead of or in conjunction with interpreting services.

Recommendations

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The Workgroup recommends the following:

- All federal agencies that provide training to employees of other federal agencies should review their policies on provision of interpreters and other auxiliary aids and services for people with disabilities in order to ensure that their written policies state their obligation under the Rehabilitation Act to provide interpreter services, and that these policies are followed.

- All federal agencies should ensure that internal training opportunities are offered equally to employees with disabilities, and that interpreters or other auxiliary aids and services are planned for and provided.

- All federal agencies that provide sign language interpreter services for training and other public events should also, when requested, provide effective communications through other means such as Computer Assisted Real-time Transcription (CART) or assistive listening systems.

C. Barriers Resulting from Regulations Governing the Collection, Retention, and Distribution of Medical Information

Findings

When it passed the ADA, Congress was well aware that employers often used information about disability to exclude applicants -- particularly individuals with hidden disabilities -- from employment before their actual ability to perform a job was evaluated. Consequently, the ADA significantly restricts the kinds of questions that employers may ask applicants or employees about disability, and limits the circumstances under which employers may require medical examinations of applicants and employees.

An employer may not ask disability-related questions or conduct medical examinations until after a conditional job offer has been made. Once a conditional offer has been made, an employer may ask disability-related questions or require medical examinations as long as it does so for all persons in the same job category. An employer may ask disability-related questions or conduct medical examinations of employees only if they are job-related and consistent with business necessity.

Information obtained as the result of disability-related inquiries and medical examinations must be kept in separate files and treated as a confidential medical record. Disclosure of this information is permitted only in specified circumstances where necessary, for example, to inform supervisors and managers about necessary work restrictions or accommodations; to

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inform first aid or safety personnel if a disability might require emergency treatment; or to respond to the requests of government EEO officials investigating compliance with the Rehabilitation Act.

While Congress amended the Rehabilitation Act to make the provisions of Title I of the ADA governing nondiscrimination on the basis of disability in employment applicable to the federal sector, federal regulations governing collection, retention, and disclosure of medical information have not been revised in light of the amendment. While certain OPM regulations concerning the collection and use of medical documentation require agency actions to be consistent with the EEOC's old regulations implementing Section 501 of the Rehabilitation Act, a number of OPM regulations concerning the collection and retention of medical information, including some of the very regulations that cross-reference the EEOC regulations, appear to be inconsistent with the standards set forth above. In addition, certain provisions of 29 C.F.R. § 1614 appear to be inconsistent with these standards. Some of these provisions are discussed below.

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Specific Provisions

1. 5 C.F.R. Part 339 -- Medical Qualification Determinations

Part 339 addresses the types of medical documentation agencies may obtain from their employees, and also delineates the circumstances under which agencies may require or, alternatively, may request an employee to have a medical examination. Part 339 and the nondiscrimination requirements of the Rehabilitation Act both strive to limit, in different respects, the circumstances under which agencies may obtain medical documentation about applicants or employees. The interaction between these provisions, which regulate medical exams and inquiries from significantly different perspectives, raises important questions that may impact the employment of people with disabilities in the federal government and that therefore merit further examination.

First, current ADA and Rehabilitation Act standards emphasize that employers face limitations in the amount and detail of medical information they may obtain. In contrast, Part 339 defines "medical documentation" in a way that allows agencies to seek extensive medical information. For example, Part 339 allows detailed information about prognosis, including plans for treatment. Although the duration of an impairment is an important factor in assessing whether an individual has a disability within the meaning of the Rehabilitation Act, analysis of "disability" would not require consideration of information about the timing (or the nature) of suggested treatments. Similarly, the definition of "medical documentation" in Part 339 includes information about the circumstances of onset of a condition, findings from previous evaluations, treatment, and responses to treatment. The Workgroup believes that treatment and responses to treatment are not relevant to the legal analysis of "disability." Additionally, the circumstances surrounding onset of a medical condition may not be necessary to determine the duration of an impairment and may be irrelevant for evaluating its severity.

Part 339 limits the circumstances under which an agency may require an employee to have a medical examination. However, because this rule is not written from the nondiscrimination perspective, it may permit examinations in circumstances the Rehabilitation Act would not. For example, agencies are permitted to require medical examinations for jobs with medical standards before "selection," which is probably before a job offer is made. In addition, for active employees in jobs with medical standards, Part 339 allows agencies to require medical examinations on "a regularly recurring, periodic basis after appointment." Under nondiscrimination standards, periodic medical examinations for public safety positions would be permissible if they were narrowly tailored. Determination of whether a particular federal employee is in a "public safety position" would need to be made on a case-by-case basis, and many federal jobs with medical standards probably would not fit this description. Finally,

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under Part 339, agencies may require a psychiatric examination if a current medical examination "indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others." *Id.* at § 339.301(b)(3). Nondiscrimination standards allow medical examinations when there is a reasonable belief, based on objective evidence, that an employee will pose a direct threat due to a medical condition. The absence of a physical explanation for certain behavior or actions, standing alone, does not necessarily establish objective evidence for a psychiatric examination.

Part 339 also states that agencies may offer medical examinations "in any situation where the agency needs additional medical documentation to make an informed management decision." This language sets no limits on when an agency may offer a medical examination to an employee as long as the examination is judged to be in the interests of management. Although this provision includes specific examples that would be consistent with nondiscrimination principles, specifically reasonable accommodation and reemployment, the language, nonetheless, is clearly too broad.

Finally, Part 339 includes language throughout addressing safety issues, but uses standards that are not as rigorous as the current "direct threat" standard. For example, in section 339.206, the regulation enumerates the limited circumstances under which an individual can be disqualified from a job with medical standards due to his medical history. At the end of this provision, the language refers to a circumstance in which "a recurrence would pose a reasonable probability of substantial harm." Additionally, in the provision about requiring psychiatric examinations, Part 339 states that such an examination may only inquire into an individual's ability to perform job duties "without undue hazard to the individual or others." 5 C.F.R. § 339.301(c)(2).

2. 29 C.F.R. § 1614.203(e) -- Nondiscrimination Restrictions on Medical Examinations and Disability-Related Inquiries

This regulation under Section 501 of the Rehabilitation Act includes only two aspects of the current nondiscrimination requirements governing medical examinations and disability-related inquiries: the prohibition on preemployment inquiries or examinations, and the standards governing inquiries or examinations that follow an offer of employment but precede the start of work. This regulation does not include the ADA's requirement that all inquiries or medical examinations of employees be "job-related and consistent with business necessity." In addition, the regulation's formulation of the two standards it does include -- the preemployment and post-offer standards -- is not entirely consistent with current nondiscrimination requirements. For example, the regulation allows federal agencies to inquire before an offer of employment into an applicant's ability to satisfy the medical qualifications of a job, with or without reasonable accommodation. This inquiry would seem

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proper only after a conditional offer of employment, in light of the prohibition

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on pre-employment disability-related inquiries. In addition, the reference in Section (e)(2) of the regulation to a "preemployment medical questionnaire" is unexplained, but current requirements would restrict the use of such a questionnaire to the post-offer period.

3. 5 C.F.R. Part 293E -- Employee Medical File System Records (Sections 293.501 - 293.511)

These sections deal largely with a subset of medical information called "occupational medical records," which are defined as occupation-related information on an employee's health status "generated in the course of diagnosis and/or employment-related treatment/examination by medical health care professionals." 5 C.F.R. § 293.502. The Workgroup understands that occupational medical records can include the results of fitness-for-duty examinations, as well as tests for exposure to hazardous materials or known carcinogens.

This subpart of the regulations raises certain issues under the Rehabilitation Act. First, although the regulations require agencies to create separate medical folders for departing employees when occupational medical records exist, they do not address the circumstances in which occupational medical records may permissibly be compiled in the first instance. As stated above, agencies may make medical or disability-related inquiries of employees only when the inquiries are job-related and consistent with business necessity. Employers may also conduct medical monitoring if it is required by medical standards established by federal law. *See* 29 C.F.R. pt.1630 app. § 1630.14(c). To the extent that these regulations would authorize agencies to compile occupational medical records about employees under any other circumstances, the regulations would be inconsistent with existing standards governing disability-related inquiries and medical examinations of employees.

Second, the regulations require agencies to request transfer of existing medical folders when they hire an individual who has previously been employed by the federal government. Thus, agencies are required to request the transfer of a new employee's existing medical folder at the same time that they receive that employee's official personnel folder. 5 C.F.R. § 293.505(a). Agencies are further required, no sooner than 30 days after appointment of a new employee, to request the medical folder of any former federal employee for whom they believe such a folder exists. 5 C.F.R. § 293.510(c). The Rehabilitation Act may, however, require limitations on the application of these provisions. To the extent, for example, that these are requests that are made after a person has become an employee, they must be job-related and consistent with business necessity.

Third, although the regulations state that an employee's medical folder should not be "routinely retrieved during the initial review process," such retrieval is permissible when "authority exists for the agency to require a medical evaluation prior to reaching a decision on

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employability." 5 C.F.R. § 293.510(c). While an agency may, according to the ADA and the Rehabilitation Act, request medical information after making a conditional offer of employment, this language might be construed to permit pre-offer inquiries in certain circumstances.

Finally, the regulations may permit agencies to disclose information that is subject to ADA and Rehabilitation Act standards governing confidentiality. While noting that "physician treatment records" are "generally not appropriate for disclosure to non-medical officials," for example, the regulations direct agencies to adopt policies distinguishing between such records and "other medical reports properly available to officials making management decisions concerning the employee." 5 C.F.R. § 293.503(n). The regulations further state that "[d]isclosure of an employee's occupational medical records to agency officials . . . will be granted only when the specific information sought is needed for the performance of official duties." 5 C.F.R. § 293.504(b). The regulations do not reference ADA and Rehabilitation Act limitations on the disclosure of medical information.

4. 5 C.F.R. § 297.401 -- Conditions for Disclosure of Records

This section of the regulations states that records retrieved from a government-wide system of records should not be disclosed without the consent of the subject of the records, unless disclosure is, among other things, to OPM employees "who have a need for the information in the performance of their duties;" requested by another agency for a civil or criminal law enforcement activity; or made to a person showing "compelling circumstances affecting the health and safety of an individual." These subsections mirror some of those set forth in the Privacy Act at 5 U.S.C. § 552a(b), and the Workgroup understands that this regulation is intended to be interpreted consistently with Privacy Act requirements. Nonetheless, the regulation does not refer to the ADA or the Rehabilitation Act, which impose different and, in many cases, more stringent restrictions on the disclosure of any medical or disability-related information that is in an employee's file.

Recommendations

The Workgroup recognizes that resolution of the problems identified in this section of the report requires consideration of several issues that are both legally and practically complex. We recommend, therefore, that the EEOC and OPM undertake a coordinated effort to resolve conflicts between OPM or EEOC regulations and applicable Rehabilitation Act standards governing the collection, retention, and disclosure of medical and disability-related information about applicants and employees. The agencies should consider whether the following changes should be made to the cited regulations, as well as any additional or alternative appropriate measures:

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1. Grouping all provisions in 5 C.F.R. that concern the collection, retention, and disclosure of medical information in a single section of those regulations.

2. Alerting agencies to the ADA and the Rehabilitation Act standards governing the collection, retention, and disclosure of medical and disability-related information.

3. Revising, as necessary, Part 339 with specific consideration of the following changes:

   - Providing updated citations to relevant ADA and Rehabilitation Act nondiscrimination standards;
   - Revising the definition of "medical documentation;"
   - Analyzing and revising those sections that govern the circumstances under which agencies may require and offer medical examinations;
   - Making any references to safety concerns consistent with the current "direct threat" standard.

4. Revising 29 C.F.R. § 1614.203(e) to incorporate the complete ADA standard for disability-related inquiries and medical examinations of applicants and employees. This revision also should incorporate or cite to an explanation of when agencies may gather disability-related information from applicants or employees to facilitate special appointing authorities and other types of affirmative action, as well as an explanation of the permissible handling of and uses for such information.

5. Modifying the sections of the regulations on occupational medical records to reflect Rehabilitation Act restrictions.

D. Part-Time Work Barriers

Findings

The issue of part-time work relates to the employment of adults with disabilities in the federal sector because, without viable options for part-time work, some adults with disabilities will be unable to enter or remain in the workforce. Although current federal part-time laws and policies are neutral in form, they may act as a barrier to employment of persons

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with disabilities. The Federal Employees Part-Time Career Employment Act of 1978, as amended, 5 U.S.C. § 3401 *et seq*. (FEPTA), was created to increase federal part-time career employment. When passing the Act, Congress explicitly recognized that part-

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time employment provides a real alternative for individuals with disabilities. 5 U.S.C. 3401 *et seq.*; 5 C.F.R. § 340.101.

1. Establishment of Part-Time Positions

Findings

Agencies are mandated under FEPTA to establish part-time career employment programs. 5 U.S.C. § 3402. Based on the responses to the Coelho letter, there is evidence that agencies may not be routinely establishing, or evaluating the need for, part-time positions within their organizations.

Recommendation

OPM should remind agencies annually of Congressional intent to promote part-time employment and should encourage agencies to expand part-time opportunities and promote part-time employment within their respective organizations.

2. Public Education

Findings

Information on the availability of part-time employment is not readily available or easily accessible. Currently, prospective part-time employees must individually review each vacancy to determine whether it is a full-time or part-time position . Since so few part-time positions are advertised, this effort is usually futile.

Recommendation

OPM should create a part-time employment Internet site, with specific vacancy announcements to promote part-time employment in the federal government. Such changes would make it easier for prospective employees to apply for part-time jobs and would generally promote part-time employment in the federal sector. OPM's existing USA Jobs site could be modified to provide a separate search category for part-time employment.

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E. Architectural Barriers at Federally Owned and Leased Facilities

Findings

Architectural barriers can pose difficulties affecting employment of adults with disabilities in the federal sector. To work in federally owned or leased buildings, adults with disabilities necessarily must be able to enter and maneuver within such buildings.

Buildings owned or leased for occupancy by the federal government are subject to the Architectural Barriers Act of 1968. The Barriers Act is intended to ensure that the buildings it covers are readily accessible to and usable by persons with disabilities. It requires that buildings and facilities be accessible if they were designed, constructed, or altered with certain federal funds since 1968, or were leased for occupancy by federal agencies since 1977. The Barriers Act also requires four agencies, the GSA, Department of Housing and Urban Development, DoD, and U.S. Postal Service, to prescribe accessibility standards and apply them in the design, construction, and alteration of buildings covered by the Act. The Access Board develops minimum requirements for the standards promulgated by these agencies and enforces the standards through the investigation of complaints alleging noncompliance under the Act. The current federal accessibility standard under the Barriers Act, in effect since 1984, is the *Uniform Federal Accessibility Standards*.

These accessibility standards can be viewed very much like building codes since they contain requirements for construction and alteration. Requirements in the accessibility standards specifically focus on making building features usable by persons with disabilities. Barriers Act requirements pertain to structural aspects of buildings, and remedies only involve changes to the building or facility.

Based on accessibility complaints received by the Access Board, the architectural barriers most commonly mentioned at federal facilities involve entrances, ramps, doors, and accessible routes connecting these features. Other facility features about which complaints often are made involve parking spaces, curb ramps, and toilet rooms. In some instances, complainants allege that buildings are inaccessible because required features are not present, i.e., there is no accessible entrance because there are steps only and no ramp. In other instances, complainants allege that accessible features, though present, do not conform with accessibility standards. For example, complaints contain allegations that ramps are too steep or do not have the required level landings; doors are too heavy, do not have sufficient maneuvering clearances, or do not have accessible hardware; the required number of accessible parking spaces is not provided or the spaces are incorrectly installed; and accessible stalls in rest rooms are not configured properly.

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Recommendations

Although procedures exist within agencies to ensure that federal construction, alteration, and leasing covered by the Barriers Act meet applicable accessibility standards, incidents of noncompliance still occur. The Workgroup recommends that all agencies do a self-evaluation of their facilities to determine compliance with the current federal accessibility standards and, to the extent that noncompliance is identified, develop a plan to bring facilities into conformance with requirements. The Access Board shall provide agencies with technical assistance in doing their self-evaluations, if necessary.

Accessibility standards issued under the Americans with Disabilities Act of 1990 are newer than the Federal standards implemented under the Barriers Act, and they generally provide for an increased degree of accessibility, especially for individuals with speech, hearing, and vision impairments. Rulemaking currently is underway which will revise and harmonize accessibility standards implemented under both the Barriers Act and the Disabilities Act. Pending completion of such rulemaking, several agencies, including the GSA, DoD, and Department of the Interior, have implemented a policy to follow whichever requirement -- the Barriers Act standard or the Disabilities Act standard -- is more stringent. The Workgroup recommends that all federal agencies implement a similar policy. A copy of the policies adopted by these agencies is attached to this report as Attachment C.

F. Other Barriers

Findings

Although OPM regulations contain several provisions that prohibit discrimination in employment and list bases for employment-related complaints, these provisions do not explicitly refer to disability as a prohibited basis for employment decision making. *See, e.g.*, 5 C.F.R. §§ 4.2 (for the competitive service, prohibiting inquiries concerning, and discrimination based on, race, political affiliation, or religious beliefs); 300.102 (setting forth policy that employment practices should be developed and used without discrimination based on race, color, religion, sex, age, national origin, political affiliation, or "other nonmerit grounds"); 300.103 (c)(same); 300.104 (c)(authorizing discrimination complaints on the basis of race, color, religion, sex, national origin, or age). Moreover, although Section 720 of the regulations requires agencies to make efforts to increase minority and female representation in the federal work force, there is no OPM regulation that notifies agencies that the Rehabilitation Act requires affirmative action on behalf of people with disabilities. The scope of the affirmative action requirements imposed by Section 501 of the Rehabilitation Act is set forth in regulations and management directives issued by the EEOC. *See* 29 C.F.R. §§ 1614.203, .601, .602; EEOC Management Directives 712 and 713.

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Recommendations

The Workgroup recommends that OPM should amend Volume 5 C.F.R. to explicitly set forth the prohibition on discrimination on the basis of disability. Additionally, OPM should amend all regulations that address discrimination to include disability as an explicitly prohibited consideration in employment decisions.

OPM should also amend all regulations that address discrimination to explicitly state that the Rehabilitation Act requires affirmative action on behalf of individuals with disabilities and should refer agencies to EEOC regulations and Management Directives for guidance on the scope of that obligation.

IV. Next Steps - Beyond November 15, 1998

To increase the employment of adults with disabilities in the federal sector, the Workgroup recommends the following:

A. Recommendations for Actions by Federal Agencies

- The Workgroup recommends that OPM and any other appropriate agencies explore measures aimed at extending to individuals with psychiatric disabilities who currently qualify for excepted appointments under Schedule B those opportunities currently available to individuals with severe physical disabilities and mental retardation who are eligible for excepted appointments under Schedule A.

- OPM, in consultation with the EEOC, should develop language for federal vacancy notices that explicitly states that reasonable accommodation is available.

- OPM should revise its regulations to require all federal agencies to include the above referenced notice in vacancy announcements and other recruiting materials.

- The EEOC should issue regulations, or other appropriate directives, providing guidelines for requiring all federal agencies to establish agency-wide, written reasonable accommodation policies and procedures for applicants and employees with disabilities. *See* Section III.B.1. of this Report.

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- The EEOC should provide a model reasonable accommodation policy which agencies may choose to adopt. *See* Section III.B.1. of this Report.

- The EEOC regulations or guidelines should provide agencies with the option of designing their own reasonable accommodation policies and procedures as long as the policies/procedures contain certain safeguards. *See* Section III.B.1. of this Report.

- The EEOC should revise 29 C.F.R. 1614.203(g) to incorporate the ADA standards for reassignment. *See* Section III.B.3. of this Report.

- The EEOC should provide guidance about the applicable ADA provisions that apply to reassignment and, specifically, about the application of the ADA's undue hardship standard.

- All federal agencies should adopt ED's Requirements for Accessible Software Design as an interim standard until the Section 508 standards are published. *See* Section III.B.4. of this Report. Agencies should not create their own, differing standards.

- All federal agencies should ensure that all hardware and software purchased, modified, or upgraded by such agencies, including purchases for Y2K compliance, are accessible to people with disabilities.

- All federal agencies should test new and current information technology systems for accessibility, and should consider upgrading or modifying any inaccessible systems used by employees or job applicants.

- All federal agencies should ensure that all employee information provided on their intranets or LANs and public information provided on their web or Internet sites is accessible to people with disabilities.

- All federal agencies should ensure that employees with disabilities receive an assessment of technology access needs, and receive the appropriate assistive technology hardware, software, or peripherals to make all information technology systems used on the job accessible.

- All federal agencies that provide training to employees of other federal agencies should review their policies on provision of interpreters and other auxiliary aids and services for people with disabilities, to ensure that their

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written policies state their obligation under the Rehabilitation Act to provide interpreter services, and that these polices are followed.

- All federal agencies should ensure that internal training opportunities are offered equally to employees with disabilities, and that interpreters or other auxiliary aids and services are planned for and provided.

- All federal agencies that provide sign language interpreter services for training and other public events should also, when requested, provide effective communications through other means such as Computer Assisted Real-time Transcription (CART) or assistive listening systems.

- The EEOC and OPM should undertake a coordinated effort to resolve conflicts between OPM or EEOC regulations and applicable Rehabilitation Act standards governing the collection, retention, and disclosure of medical and disability-related information about applicants and employees. *See* Section III.C. of this Report.

- OPM should remind agencies annually of Congressional intent to promote part-time employment and should encourage agencies to expand part-time opportunities and promote part-time employment within their respective organizations.

- OPM should create a part-time employment Internet site, with specific vacancy announcements to promote part-time employment in the federal government.

- Agencies should do a self-evaluation of their facilities to determine compliance with the current federal accessibility standards and, to the extent that noncompliance is identified, develop a plan to bring facilities into conformance with requirements.

- The Access Board shall provide agencies with technical assistance in doing their self-evaluations, if necessary.

- All federal agencies should implement a policy to follow the architectural standards set forth in the Barriers Act and the Americans With Disabilities Act.

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- OPM should amend Volume 5 C.F.R. to explicitly set forth the prohibition on discrimination on the basis of disability.

- OPM should amend all regulations that address discrimination to include disability as an explicitly prohibited consideration in employment decisions.

B. Recommendations for Actions by the President

- The Administration should draft and submit to Congress proposed legislation establishing a central point of contact and a single source of payment for assistive technology and related services for job applicants and federal employees with disabilities. *See* Section III.B.2.

C. Recommendations for Further Review and Action by the Task Force

- The Task Force should evaluate whether the federal government is currently providing effective outreach to disability rights organizations, rehabilitation agencies, and other similar entities about employment opportunities. If current practices are found to be inadequate, the Task Force should formulate specific strategies for outreach in order to increase the pool of qualified applicants with disabilities.

- The Task Force should determine what entity will serve as the central point of contact for assistive technology and services for federal job applicants and employees with disabilities who request reasonable accommodation and the source of funding for the administrative costs and accommodations provided by that entity.

- The Task Force should continue to review OPM's and EEOC's regulations and programs to determine whether they pose any other barriers to the recruitment, hiring and retention of qualified individuals with disabilities in the federal government that have not been identified in this report.

- The Task Force should evaluate the effectiveness of training federal supervisors, managers and senior executives on disability issues, including applicable laws and regulations related to the recruitment, hiring and employment of adults with disabilities.

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- The Task Force should evaluate whether federal agencies provide adequate interpreter services to their deaf employees who need such services as a form of reasonable accommodation.

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Lisa Brown

Cynthia –

Here is the draft OPM plan plus the Task Force's recommendations.

I have heard consistent complaints about the draft from government folks who have seen it.

Let's talk about the next step.

– Lu

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United States
Office of Personnel Management
Washington, DC 20415-0001

In Reply Refer To: Your References:

FEB 3 1999

Ms. Dinah Cohen
Computer/Electronic Accommodations Program
Defense Medical Information Management
U.S. Department of Defense
5111 Leesburg Pike, Suite 810
Falls Church, VA 22041

Dear Ms. Cohen:

The Federal Government has made significant hiring gains in the employment of adults with severe disabilities. However, the percentage of adults with severe disabilities in the Federal workforce still lags far behind their availability. The Presidential Task Force on Employment of Adults with Disabilities urged the President to direct the U.S. Office of Personnel Management (OPM) to develop a model plan to increase representation of adults with disabilities in the Federal workforce. OPM accepts this challenge and will convene a work group to develop the model plan.

OPM has arranged with Ron Drach to assist in this effort. He has recently spoken to you about serving on the work group I am pleased that you have agreed to participate and will help us develop the model plan. The work group will review the first rough draft and provide comments, suggestions, and recommendations. Our goal is to have a plan for submission to the White House on March 1, 1999. Since we have a short time frame, we have scheduled our first meeting for:

Date:	Tuesday, February 9, 1999
Time:	10:00 a.m. - 12:00 noon
Where:	Executive Conference Room, 5A06A U.S. Office of Personnel Management 1900 E Street, NW. Washington, DC 20415

Under separate cover, I will be sending you a copy of the first draft model plan. Please call Armando E. Rodriguez on (202) 606-1059 to confirm your attendance or if you have any questions. I look forward to seeing you on February 9, 1999.

Sincerely,

Mary Lou Lindholm

Mary Lou Lindholm
Associate Director
for Employment

arodrig@opm.gov

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2/9/99

DRAFT - 1

INCREASING THE REPRESENTATION OF ADULTS WITH DISABILITIES IN THE FEDERAL GOVERNMENT:

A MODEL PLAN

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United States
Office of
Personnel
Management

202-606-1059 office phone

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March 1999

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PREFACE

On November 15, 1998, the President's Task Force on Employment of Adults with Disabilities issued it's first report to the President. Entitled "Recharting the Course," the report contained several recommendations for achieving greater inclusion of adults with disabilities in the Nation's workforce, including the Federal government. Among these, the Task Force recommended that:

The President direct agencies and departments to implement a model plan to be developed by the Office of Personnel Management to increase the representation of adults with disabilities in the Federal workforce.

Vice President Gore accepted the Task Force's report on behalf of the Administration at a December 14, 1998, meeting and directed Office of Personnel Management (OPM) to develop the Model Plan by March 1, 1999.

INTRODUCTION

While the Federal government has made significant hiring gains, the percentage of adults with severe disabilities in the Federal workforce still lags far behind their availability. The President directed the Office of Personnel Management to develop a model plan to increase representation of adults with disabilities in the Federal workforce that:

1. helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs; targeted

2. encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers;

3. urges all departments and managers to recruit widely for positions at all levels of the Federal workforce, including at the GS- 13 to 15 and senior executive service levels, and

4. collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the Federal workforce.

OPM is pleased to submit this Model Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal government a model employer for people with disabilities.

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FEDERAL EMPLOYMENT OPPORTUNITIES FOR STUDENTS WITH DISABILITIES

GOAL I: Help Departments and Agencies Provide Opportunities for Students with Disabilities to Participate in Internship and Student Employment Programs.

A. Use the flexibilities of the Student Educational Employment Program to bring students with disabilities into agency's shortage category, as well as other, occupations.

1) Agencies are encouraged to use the Student Educational Employment Program (STEP) appointing authorities to develop additional student, intern, or fellowship programs to meet their specific agencies' operational needs. OPM has consolidated the Cooperative Education, Stay-in-School, Federal Junior Fellowship, and Summer Aid Programs into a more effective new program so agencies can tailor programs to attract students with disabilities.

2) Continue promotional efforts already underway to bring attention to the Student Employment Program to Federal hiring officials and students. OPM will:

- continue to reach out to colleges and universities with disabled students for participation in the Student Employment Program;
- establish master agreements with the schools so that departments and agencies can use them and tailor them for their specific use;
- serve as a clearinghouse for all students interested in Student Employment Program opportunities but needing assistance in finding out which agencies may be recruiting;
- develop additional materials for students with disabilities, including some in Spanish, that encourage Student Employment Program as a way of paying for college education.

- ensure alternative formats are available

B. Broaden and expand agency participation in the Workforce Recruitment Program for College Students with Disabilities (WRP).

1) The Workforce Recruitment Program (WRP) is a free resource for public and private employers to identified qualified temporary and permanent employees from a variety of fields. Applicants are highly motivated postsecondary students and recent graduates eager to prove their abilities in the workforce. Sponsored by the President's Committe on Employment of People with Disabilities (PCEPD) and the Department of Defense, Fiscal Year 1997 WRP recruiters conducted interviews in over 130 college campuses nationwide, identifying over 1,100 job candidates. The program found placement for 221 participants, including 216 in the Federal government.

2) Agency hiring officials should improve targeted recruitment of students with disabilities by participating in the WRP. Agencies should access the candidate database by calling the PCEPD's Job Accomodation Network (JAN) at 1-800-526-7234. Additional information for employers is available at the PCEPD's Washington, DC office at (202) 276-6200 or by accessing the *Federal Student Internship Program* section in OPM's USAJOBS@OPM.GOV website.

- Projects like SSA. Program.
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CAREER DEVELOPMENT

GOAL II: Encourage All Departments and Agencies to Give Full Consideration to Employees with Disabilities for Inclusion in Developmental Opportunities Designed to Enhance Their Leadership Skills and to Advance Their Careers.

A. Promote participation of employees with disabilities in career development programs.

1) Deapartments and agencies are encouraged to develop, implement, and monitor career development programs and intergovernmental rotational programs for mid-level, senior-level management and senior executives (e.g. general management occupational series) and professional/technical occupations so that the pool of candidates includes a representative number of persons with disabilities. Departments and agencies should:

- Ensure that internal agency employees with disabilities have an opportunity to be considered for entry-level intern programs. Entry level could include GS-5, GS-7, and GS-9.
- Create a middle-level Management Development Program to advance the careers of those at the GS-9, GS-11, and GS-12 levels for mission critical occupations.
- Create an Executive Development Program for GS-13, GS-14, and GS-15 positions as part of the agency's succession planning. Agencies would identify position(s) at the beginning of the program. As authorized by law, OPM could recruit and assess applicants for agencies who would then interview and select. At the end of the program, the participants would be better prepared to compete for employment vacancies.
- Ensure that employees with disabilities at grades GS-13, GS-14, and GS-15 receive full consideration for developmental opportunities to enhance their leadership skills and for career advancement.
- Invite employees to apply directly for career development programs, in addition to being nominated by managers and supervisors.
- Establish formal mentoring programs and ask employees to volunteer to serve as mentors for graduates of career development programs and other interested employees.
- Ensure that review panels have diversity and, when ~~appropriate~~ available, include representation of employees with disabilities.
- As part of their orientation, ensure that new supervisors are aware of their roles and responsibilities for meeting the department's or agency's strategic goals, including the recruitment and development of a diverse workforce. Arrange for periodic meetings with all

supervisors to review developments and progress related to the strategic goals.

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RECRUITMENT OF PEOPLE WITH DISABILITIES

GOAL III: Urge All Departments and Managers to Recruit Widely for Positions at All Levels of the Federal Workforce, Including at the GS 13-15 pay grades and Senior Executive Service Levels.

A. Develop department-wide or agency-wide recruitment strategies to target people with disabilities or develop such strategies in conjunction with other Federal departments and agencies.

1) Departments and agencies are encouraged to form alliances under reimbursable agreements, as authorized by law, to develop recruitment strategies that include: visiting college campuses, interviewing potential candidates, and assessing applicants for entry-level positions into the departments and agencies. The role for OPM could include: operating a clearinghouse, maintaining registers, and issuing certificates based on what departments and agencies need and desire. The alliance of departments and agencies may be organized by similar mission critical occupations or occupational needs. Representation should include line managers, human resources and civil rights\EEO professionals. The Workforce Recruitment Program (WRP) managed by the President's Committee (PCEPD) and the Department of Defense can serve as a model or starting point for further tailoring to meet agency-specific needs.

2) All government departments and agencies are further encouraged to:

- Explore ways to recruit from all sources, for all position vacancies, including positions in the Senior Executive Service and managerial and supervisory positions at GS 13-15.

- Issue department-wide or agency-wide memorandum publicizing efforts to increase the representation of people with disabilities in the Federal workforce and outline the department's or agency's own efforts to do so.

- Educate managers and supervisors on various hiring programs and flexibilities that are available to them in recruiting and retaining employees with disabilities (including disabled veterans). An initial survey of hiring officials regarding their familiarity with such programs can help identify specific training needs.

B. Provide employment information to students, faculty, and the community organizations serving people with disabilities.

1) OPM will establish representatives in its Service Centers as key "messengers" of the Model Plan as well as liaisons to the community and Federal departments and agencies. These Service Centers also work closely with the Federal Executive Boards, Federal Executive Associations and Personnel/Human Resources Councils in implementing human resource policies and

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Administration initiatives so these relationships can be tapped for carrying the message of the Model Plan.

C. Review vacancy announcements, ranking factors, and selection panels.

1) All departments and agencies should:

- Review the language used in vacancy announcements to ensure that persons with disabilities are not discouraged from applying, e.g., area of consideration. ~~appropriate~~ accommodate to agency
- Review ranking factors to ensure that they do not unnecessarily exclude persons with disabilities, e.g., must have agency experience.
- Review composition of selection panels to ensure that it is diverse and when ~~appropriate~~, include representation of persons with disabilities.

D. Use the Presidential Management Intern (PMI) Program for recruiting and advancing college graduates with disabilities.

1) OPM will continue to seek commitment from departments and agencies and will respond to their needs. OPM will continue to expand the diversity of academic disciplines. OPM will continue to reach out in the Presidential Management Intern (PMI) Program recruitment activities to include those institutions graduating significant numbers of students with disabilities. To this end, OPM will:

- Review current recruitment strategies to explore ways to increase nominations of students with disabilities into the PMI program. This can include visiting more colleges and universities with large enrollments of students with disabilities as a way of heightening the interest of those schools regarding the PMI program, recruiting graduate students and discussing the PMI program with under-graduates.
- Expand recruitment strategies to include more targeting of professional organizations and publications serving the interests of people with disabilities. Strategies should include visiting more colleges and universities with significant enrollment of students with disabilities as well as reaching out to community organizations and attending conferences.

E. Information in accessible format.

1) Departments and agencies should insure that they provide employment and other ~~appropriate~~ information in accessible format and provide them to the media and community organizations for their dissemination to people with disabilities.

F. assistive technology - provide accommodations

- Develop and participate in training and development efforts related to disability employment issues for all levels of agency management. Such training should include disability culture awareness, eliminating attitudinal barriers, communicating across cultures (between disability and able cultures), and transforming organizations to accommodate cultural differences.

- Work with OPM's Federal Executive Institute and Management Development Centers to pilot diversity training initiatives for senior management.

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number of opportunities and compare them to results. Was progress made? If not, review targeted recruitment plan and modify if necessary.

D. Hold managers and supervisors accountable for representation of employees with disabilities.

1) Departments and agencies should ensure that manager's and supervisor's performance standards include specific language related to diversity, that it is a critical element, and that be taken seriously. To this end, Departments and agencies should:

- Simi-annually, review each manager's and supervisor's accomplishments in this area and communicate the outcome. Managers and supervisors need to know that they are accountable and will be evaluated accordingly.

- Recognize managers and supervisors who are exemplary in their efforts to recruit, hire, and promote persons with disabilities.

E. Incorporate the above activities related to the employment of people with disabilities into the department's or agency's affirmative action program accomplishment report for people with disabilities to the Equal Employment Opportunity Commission (EEOC).

1) Departments and agencies should use, where feasible, existing mechanisms to monitor and evaluate progress in implementing strategies and programs for increasing the representation of people with disabilities in their workforce. Thus, departments and agencies should:

- Incorporate recruitment strategies into the department's or agency's affirmative action program.

- Use the Interagency Advisory Group Planning Committee as a vehicle to identify and report on successful and unsuccessful agency initiatives in this area.

- Regularly monitor the composition of the department's or agency's workforce and progress/successes in regards to employees with disabilities.

- Conduct exit interviews of employees with disabilities leaving the agency to determine their reason(s) for leaving. This will help the agency develop retention plans.

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Lev 202-606-6907 lpriedel@opm.gov

- Develop and participate in training and development efforts related to disability employment issues for all levels of agency management. Such training should include disability culture awareness, eliminating attitudinal barriers, communicating across cultures (between disability and able cultures), and transforming organizations to accommodate cultural differences.

- Work with OPM's Federal Executive Institute and Management Development Centers to pilot diversity training initiatives for senior management.

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number of opportunities and compare them to results. Was progress made? If not, review targeted recruitment plan and modify if necessary.

D. Hold managers and supervisors accountable for representation of employees with disabilities.

1) Departments and agencies should ensure that manager's and supervisor's performance standards include specific language related to diversity, that it is a critical element, and that be taken seriously. To this end, Departments and agencies should:

- Simi-annually, review each manager's and supervisor's accomplishments in this area and communicate the outcome. Managers and supervisors need to know that they are accountable and will be evaluated accordingly.

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- Conduct exit interviews of employees with disabilities leaving the agency to determine their reason(s) for leaving. This will help the agency develop retention plans.

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MEMORANDUM

TO: Janice Lachance
Director
Office of Personnel Management

FROM: Becky Ogle
Executive Director
Presidential Task Force on Employment of Adults with Disabilities

RE: Model Plan for Increasing the Representation of Adults with Disabilities in the Federal Government

---

The PTFEAD Task Force staff wishes to commend the Office of Personnel Management for accepting the challenge and meeting the time line of the Presidential Directive issued to OPM in December 1998 to develop a "model plan" for hiring adults with disabilities in the federal government. However, I am deeply dismayed that the Task Force was not invited to participate, at any level, in the discussions around the development of this plan. I am equally disappointed that the Task Force officially received the draft plan from OPM on March 2, 1999, only one day after the deadline, and therefore with little or no time to respond adequately.

Mark Hunker and I have had several conversations with respect to the release of this plan. My advice to Mark was simple: "don't release it, because we'll be laughed out of the community." As I am sure you know, many eyes are watching the developments of the Task Force initiatives. For this reason and my belief that a stronger plan must be developed, I cannot endorse the document as presented to me today.

The Task Force's major concern is the complete omission of the Section 2 Federal Personnel Review Group's recommendations. There were three categories of the group's recommendations: one for actions to be taken by federal agencies, and another for actions by the President, and third, recommendations for further review by the Task Force. The first category, which is relevant to the OPM plan, had 24 concrete areas for action. While we recognize that not all of these recommendations could be included, either due to legal issues, issues of jurisdiction or other reasons, the omission of all recommendations is quite disturbing.

For example, I was surprised to learn that in the 1982 version of the Federal Personnel Manual,

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OPM described the types of disabilities that would make an individual eligible for excepted appointment. The Manual was rescinded several years ago, however, and OPM has not replaced it. As a result, agencies lack guidance on how to evaluate whether a particular applicant is eligible for an excepted appointment. There are multiple questions stemming from this lack of guidance such as, which agency jobs are covered; what benefits and exemptions are provided by excepted appointment and more.

Upon advice from the Vice President's office this afternoon, they expressed a desire to extend the deadline in order to create a plan of action that has everyone's support. Tony Coelho has expressed a similar desire, and is very committed to seeing a plan of action that President Clinton, as CEO of the largest employer, can be proud to embrace.

We see this as a golden opportunity for collaboration and cooperation. It is not our intention to diminish any of the efforts of OPM. This is a particularly important and sensitive topic that deserves the input from multiple federal entities in its development. We hope OPM will use the Task Force to facilitate the development of a "model plan" through the Committee on Federal Government as a Model Employer of which you are the Chair.

I look forward to your response and to our future work toward the full inclusion of adults with disabilities in the federal government.

cc: Lisa Brown, Counsel to the Vice President
Cynthia Rice, Office of Domestic Policy
Tony Coelho, Vice Chair, PTFEAD

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Cynthia A. Rice 04/05/99 11:49:36 AM

Record Type: Record

To: Thomas A. Kalil/OPD/EOP

cc: Lisa M. Brown/OVP @ OVP, J. Eric Gould/OPD/EOP
Subject: Re: Q re: Accessibility of Technology for Employees with Disabilities

Thanks Tom

---------- Forwarded by Cynthia A. Rice/OPD/EOP on 04/05/99 11:43 AM ----------

Thomas A. Kalil
04/05/99 09:21:13 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:
Subject: Re: Q re: Accessibility of Technology for Employees with Disabilities

This is the reaction from OMB.

---------- Forwarded by Thomas A. Kalil/OPD/EOP on 04/05/99 09:21 AM ----------

Lewis W. Oleinick
04/02/99 01:06:21 PM

Record Type: Record

To: Thomas A. Kalil/OPD/EOP
cc:
bcc:
Subject: Re: Q re: Accessibility of Technology for Employees with Disabilities

Tom

Here are my thoughts on the draft paragraph you sent to me. My comments are in red. As you can see at a glance most of the paragraph is new policy. However, with crafting, it could be made consistent with Section 508.

-- Lew

> Federal employers should take the following measures to ensure the accessibility of technology for their employees with disabilities: Adopt the Department of Education's Requirements for Accessible Software Design as an interim standard until the Section 508 standards are published (significant new policy --

OMB has not seen the Department of Education's Requirement and since we haven't it is impossible to determine if the Department's Requirements would constitute an undue burden on government agencies -- the threshold established by Section 508. There are other agencies with similar guidelines that might be equally as good or better -- SSA and DOD for example.); ensure that all hardware and software purchased, modified, or upgraded by such agencies are accessible to people with disabilities (significant new policy -- note the use of the wording "all hardware and software." Requiring "all hardware and software," not just hardware and software that is to be used by an employee with special needs, could have extremely large cost implications for every agency. The policy of Section 508 specifies that the information technology provide "comparable" access for users with special needs.); test new and current information technology systems for accessibility and consider upgrading or modifying any inaccessible systems used by employees or job applicants (significant new policy -- note the use of the wording "any inaccessible systems." Here, as above, the cost consequences of requiring "any inaccessible system" to be converted into an accessible system are unpredictable. The sentence could easily be modifed to be consistent with existing policy by adding at the end of the sentence "with disabilities."); ensure that all employee information provided on their interdepartmental computer networks as well as public information provided on their Web or Internet sites is accessible to people with disabilities (This statement is problematic in two regards -- (a) it is an unclear sentence, i.e., what does "all employee information" mean? and (b) the policy of Section 508 specifies that the information technology provide "comparable" access for users with special needs.); and ensure that employees with disabilities receive an assessment of technology access needs, and receive the appropriate assistive technology hardware, software, or peripherals to allow them to perform their job. ~~to make all information technology systems used on the job accessible.~~ (Again the wording "all information technology systems used on the job" regardless of whether the employee with the disability ever interacts with it, is an expansion of existing policy. My proposed revision, in blue, alleviates this.)

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Thomas A. Kalil
04/07/99 05:14:12 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:
Subject: DOJ creates Section 508, 25 page survey that most likely will conclude that agencies are doing horribly with accessibility of IT

---------- Forwarded by Thomas A. Kalil/OPD/EOP on 04/07/99 05:14 PM ----------

Lewis W. Oleinick
04/07/99 04:56:27 PM

Record Type: Record

To: Thomas A. Kalil/OPD/EOP, Lisa B. Fairhall/OMB/EOP

cc:
Subject: DOJ creates Section 508, 25 page survey that most likely will conclude that agencies are doing horribly with accessibility of IT

SUMMARY:

DOJ recently released a 25 page survey for CIOs to complete regarding the state of the agency's IT accessibility. An evaluation of agency IT accessibility is required by Section 508. The current version of the DOJ survey is biased to identify a prevelance of inaccessible technology at most agencies. The survey was sent to agency heads by the Attorney General on April 2nd, 1999. The survey is "one way, but not the only way, to comply with the legal duty of self-evaluation." In order to determine if it would be possible to come up with a better type of survey that may be less biased Steve Colgate, CIO DOJ, and John Wodatch, division director for civil rights for the disabled, have agreed to come to OMB on Monday April 12th, 1999 from 2:00-2:30pm in Room 10236 of the NEOB. You are invited to attend.

BACKGROUND:

I was informed of the existence of this webpage April 6th in the morning. The site includes a 25 page survey for CIOs to complete regarding the state of an agency's efforts to make their Information Technology accessible to persons with disabilities.

The URL is:
http://www.usdoj.gov/crt/508/508home.html

This site contains instructions for Federal agencies to begin to comply with Section 508 -- IT Accessibility. The instructions found on the DOJ webpage were prepared without OMB input.

The site's preamble states:

> On April 2, 1999, the Attorney General issued a memorandum to the heads of all Federal agencies advising them of the requirements of Section 508 and providing instructions for conducting self-evaluations of their electronic and information technology.
>
> As the initial step for implementing Section 508, all Federal agencies and departments must report to the Attorney General by June 15, 1999, the extent to which their electronic and information technology is accessible to and usable by people with disabilities. The Attorney General will use these evaluations as the basis for a Report to the President by February 7, 2000. The information provided by Attorney General to assist in the self-evaluation process is available on this web site.

In a Q&A section of the webpage, DOJ indicates that:

> "Staff at the Department of Justice have developed the Component Questionnaire because it provides an easy, time-efficient, step-by-step method for evaluating the extent to which your technology is accessible to persons with disabilities. Use of the Questionnaire is one way, but not the only way, to comply with the legal duty of self-evaluation."

The Statutory requirements for the report reads:

> (c) AGENCY EVALUATIONS.--Not later than 6 months after the date of enactment of the Rehabilitation Act Amendments of 1998, the head of each Federal department or agency shall evaluate the extent to which the electronic and information technology of the department or agency is accessible to and usable by individuals with disabilities described in subsection (a)(1), compared to the access to and use of the technology by individuals described in such subsection who are not individuals with disabilities, and submit a report containing the evaluation to the Attorney General.

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Clinton Presidential Records
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OA/Box Number: 15430

FOLDER TITLE:
Disability-OPM-Model Plan II [1]

Richard Stalcup

rx44

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Suzanne Seiden 606-1657
OPM sbseiden@opm.gov

Mary Strand

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"Strand, Mary" <MASTRAND @ opm.gov>
06/01/99 12:59:19 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: "Hunker, Mark" <MEHUNKER @ opm.gov>, Lewis Lorraine Pratte <LPLEWIS @ opm.gov>
Subject: Revised Model Plan and Guide

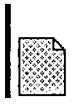
To:

Cynthia Rice, Domestic Policy Council
Lisa Brown, Office of the Vice President
Bill McKinnon, Task Force
Richard Horne, Task Force
Vivian Cole (for Peggy Mastroianni and Sharon Rennert), EEOC
Mary Lou Mobley, DOJ
Lisa Fairhall, OMB

From: Suzanne Seiden, OPM
Mary Strand, OPM

Thanks to all for getting back to us so quickly with your comments on the Plan and Guide. We're attached revised drafts that reflect some additional changes we've made based on your input.

If you have any questions, please Suzanne Seiden at 606-1657. Her e-mail address is sbseiden@opm.gov.


- att1.unk

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Message Sent To:

Cynthia A. Rice/OPD/EOP
"'brown_lm@a1.eop.gov'" <brown_lm @ a1.eop.gov>
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"'mary.l.mobley@usdoj.gov'" <mary.l.mobley @ usdoj.gov>
"'mckinnon-william@dol.gov'" <mckinnon-william @ dol.gov>
"'vivian.cole@eeoc.gov'" <vivian.cole @ eeoc.gov>
"'horne-richard@dol.gov'" <horne-richard @ dol.gov>

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with severe disabilities have not shared in this employment prosperity.

The Federal Government ~~is committed to~~ should take the lead ~~in~~ recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. ~~The objective is eliminating widespread barriers to gainful employment for people with disabilities~~. To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. The Plan addresses the following specific goals:

- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities;
- Collect and maintain data to monitor success; and
- Urge departments and agencies to establish agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities, consistent with guidances from the Equal Employment Opportunity Commission.

~~In addition, the Plan reminds agencies of their responsibilities to provide, when requested~~, a ~~reasonable accommodation to an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency~~.

OPM ~~is pleased to~~ provides the Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Plan ~~is the first step to help~~ will assist Federal employers to fulfill the commitment to becoming a model employer.

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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

GOAL I: ***"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."***

Vacancy Announcements:

MOVED FROM MIDDLE OF SECTION:

- Federal employers should include language for vacancy announcements that states that reasonable accommodations will be considered for applicants or employees with a disability when such an accommodation is requested.

Recruitment Strategies

- Federal employers should develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors ~~of when~~ successful recruitment efforts of people with disabilities ~~is evident~~. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons ~~between of~~ the Plan ~~and to~~ the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Plan efforts and best practices.

MOVED FROM END OF SECTION:

- Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules; job sharing, and dissemination of employment and other information in alternative formats.

- Federal employers ~~are also urged to~~ should review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

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- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13 to 15, in order to attract candidates from inside and outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

  - Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security or Supplemental Security Income disability benefits and have been prepared to work. Employers may request resumes--

    - By telephone: (757) 441-3362;
    - By fax: (757) 441-3374; or
    - By Email: projable@opm.gov.

    Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling (912) 744-2085.

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For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at: www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide.* Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, **OPM** is available to provide governmentwide or agency-specific data.

- **OPM** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Plan.

- Federal employers should educate and train managers and supervisors on various hiring programs and resources available to them in recruiting, promoting, and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

Special Appointing Authorities

- **OPM** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

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Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

5 CFR 316.302(b)(5) and 5 CFR 316.402(b)(5) for hiring 30 percent or more disabled veterans. These authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

5 CFR 315.604 for hiring disabled veterans enrolled in a VA training program. This authority is used to hire disabled veterans eligible for training under the Department of Veterans Affairs (VA) vocational rehabilitation program (38 U.S.C. chapter 31). The veterans may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program the veterans are not Federal employees for most purposes, but are beneficiaries of the VA. Upon successful completion, the host agency and VA give the veterans Certificates of Training showing the occupational series and grade levels of the positions for which trained. The Certificates of Training allows any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements similar to those available for disabled veterans under 5 CFR 315.604).

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL II: ***"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."***

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the Federal workforce.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status.

  OPM will continue to expand the diversity of academic disciplines in the PMI Program.

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OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

GOAL III: ***"Encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."***

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Career development and related program review is encouraged to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- **OPM,** through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

GOAL IV: ***"Collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce."***

- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- **OPM**, in its oversight role, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

GOAL V: *Urges departments and agencies to establish agency-wide reasonable accomodation policies and procedures for applicants and employees with disabilities, consistent with guidances from the Equal Empoyment Opportunity Commission.*

- A reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for a job, to perform job duties, or to enjoy equal benefits and privileges of employment. Federal departments and agencies are required, when requested, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.[1]

- The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies should explore ways to insure their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new enforcement guidance on Reasonable Accommodation issued by the Equal Employment Opportunity Commission (EEOC) on March 1, 1999. Free copies of this and other EEOC guidances can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made. Please consult the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*, for additional information on types of reasonable accommodation.

[1] An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation. As mentioned previously, the Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (PCEPD) is an excellent technical assistance resource in the area of reasonable accommodation.

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- Types of accommodations include worksite modifications; part-time employment; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, or readers; and reassigning employees. For more information, please refer to the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*.

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INTRODUCTION

The Federal Government must strive to create and maintain a sound, diverse, and cooperative work environment. Equal opportunity in employment for all people, regardless of race, color, sex, age, religion, national origin, sexual orientation, or disability should be the common goal across government. However, persons with disabilities are often overlooked as a source of employable talent.

On March 13, 1998, President Clinton addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities. The Task Force was charged with creating a coordinated and aggressive national policy to bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general adult population.

This guide and its companion piece, *"Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government,"* was developed in support of the Task Force's efforts and recommendations. The purpose of this guide is to provide guidance, information, and references to aid Federal employers in their efforts to hire and advance employees with disabilities.

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LEGAL FRAMEWORK

There are several laws which support and encourage the employment, retention, and advancement of people with disabilities.

1) **Section 501 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in Federal employment.[1] The law:

- Requires employers to make "reasonable accommodations" to applicants and employees with disabilities. Such accommodations may involve restructuring the job, modifying work schedules, adjusting or modifying examinations, providing readers or interpreters, and acquiring or modifying equipment and/or facilities (including the use of adaptive technology such as voice recognition software).

- Prohibits selection criteria and standards which tend to screen out disabled persons, unless such procedures have been determined through a job analysis to be job-related and consistent with business necessity.

- Requires Federal agencies in the Executive branch to develop affirmative employment action programs for hiring, placement, and advancement of persons with disabilities. Affirmative action should be an integral part of ongoing agency personnel management programs. Persons with disabilities should be employed in all grade levels and occupational series commensurate with their qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of job structure or design, or because of architectural, transportation, communication, procedural, or attitudinal barriers.

2) **Section 508 of the Rehabilitation Act of 1973** requires Federal agencies to procure and use only accessible electronic and information technology, unless it poses an undue burden to do so. Federal agencies will be required to comply with standards promulgated by the Architectural and Transportation Barriers Compliance Board (the Access Board) that take effect on August 7, 2000.

3) **The Vietnam Era Veterans' Readjustment Assistance Act of 1974.** In furtherance of the policy of promoting "the maximum of employment and job

[1] Section 501 was amended by the Rehabilitation Act Amendment of 1992 to apply the ADA's employment standards to all non-affirmative action employment discrimination claims filed by Federal applicants or employees. 29 U.S.C. § 791(g).

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advancement opportunities within the Federal Government for disabled veterans and certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement," this act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans' Readjustment Appointment (VRA). The act also ensures that all veterans are considered for employment under merit system rules and requires a separate affirmative action plan for the hiring, placement, and advancement of disabled veterans. (Please note, however, that this law does not provide any preferences to disabled veterans or to veterans of the Vietnam era.)

4) **The Civil Service Reform Act of 1978** requires "fair and equitable" treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for privacy and constitutional rights.

5) **The Americans with Disabilities Act (ADA) of 1990** covers employers in the private sector and state and local governments. The substantive standards of the ADA which are applicable to the Federal government through the Rehabilitation Act can be found at 42 U.S.C. §§ 12111 *et. seq.* and 42 U.S.C. §§ 12201-204 and 12210.

6) **The Veterans Education and Employment Program Amendments of 1991** require expanded job opportunities for veterans and disabled veterans through the Veterans Readjustment Appointment (VRA) Authority.

7) **The Architectural Barriers Act**, enforced by the Access Board, requires that buildings and facilities be accessible to people with disabilities if they were designed, built, or altered with certain Federal funds, or leased for occupancy by Federal agencies after 1968. When individuals with disabilities are unable to use a building because there are no accessible parking spaces, no curb ramps, no ramps at the entrance, no accessible rest rooms, no accessible drinking fountains, no raised lettering on signs, or other barriers exist, they may file a complaint with the Access Board.

8) **The Pregnancy Discrimination Act** amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. This amendment requires that employers treat pregnancy and related conditions as any other short-term disability.

9) **Title 5, United States Code, Sections 3312 and 3318** require that any

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disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management before the position can be filled. This includes an agency medical disqualification of a 30 percent or more disabled veteran for assignment to another position in a reduction in force.

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ROLES AND RESPONSIBILITIES

The following Federal and State entities have responsibilities concerning the employment of people with disabilities:

Equal Employment Opportunity Commission (EEOC)

The EEOC is responsible for regulating and enforcing the Federal program for equal employment opportunity, developing the regulations and policies governing non-discrimination requirements, oversight of the development and implementation of Federal agencies' affirmation action programs, and adjudicating claims of disability discrimination in the Federal government. Instructions on affirmative action plans for the disabled may be found in EEOC's Management Directives 712 and 713.

EEOC's Management Directive 713 requires that Federal agencies submit Annual Affirmative Action Program Plans and accomplishment reports. This directive is pursuant to the EEOC's obligation and authority under Section 501 of the Rehabilitation Act of 1973.

EEOC is also responsible for approving or disapproving each agency wide affirmative action program plan; rating the accomplishments of each agency; and communicating results of evaluations to each agency with instructions for submission of a revised agency wide plan if required. EEOC will work closely with Federal Government personnel to assist in creating and implementing effective affirmative employment programs.

Guidelines on reasonable accommodation and non-discrimination of people with disabilities are published by the EEOC. Most of these documents can be downloaded from EEOC's Internet website at: http://www.eeoc.gov.

In addition, EEOC issues an annual report on employment of individuals with disabilities in the Federal Government to the Congress of the United States.

U.S. Office of Personnel Management (OPM)

OPM provides nationwide program leadership, development, and coordination for the employment of people with disabilities, including veterans with service-connected disabilities. This includes providing direction, guidance, and technical support to agency heads, directors of personnel, agency personnel offices and officials; developing recruitment policy and appointing authorities; providing information on

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employment methods and program development to departments and agencies; developing publications for use in promoting employment; developing, monitoring, and modifying examining procedures to facilitate the employment consideration of qualified applicants with disabilities; and developing medical policy and realistic medical and suitability standards.

OPM takes the lead role in promoting reemployment of employees with or recovered from compensable injuries or illnesses, and fostering research and demonstration projects on disability related issues. Further, OPM maintains consistent liaison with the national offices of Federal, private, community, and other organizations concerned with the employment of people with disabilities.

President's Committee on Employment of People with Disabilities

The President's Committee on Employment of People with Disabilities (PCEPD) is a small Federal agency whose mission is to communicate, coordinate, and promote public and private efforts to enhance the employment of people with disabilities. The PCEPD provides information, training, and technical assistance related to the employment of people with disabilities. Some of the projects and resources developed by the PCEPD include:

- The Job Accommodation Network (JAN), a toll-free information service on workplace accommodations and the employment provisions of the Americans with Disabilities Act. Anyone may call JAN at (800) 232-9675 or (800) 526-7234. One can also obtain information from the JAN Website: http://www.jan.wvu.edu/english/homeus.htm.

- The Workforce Recruitment Program (WRP) for college students with disabilities, a joint venture with the Department of Defense which identifies college and university students with disabilities seeking summer and permanent jobs. Federal employers may access the candidate database by calling the PCEPD's Job Accommodation Network (JAN) at (800) 526-7234.

- Education Kits containing fact sheets on timely disability employment issues. These and a list of publications are available by calling (202) 376-6200.

- The PCEPD's Website on the Internet is http://www.pcepd.gov. It provides visitors direct access to their publications, speeches, press releases, statistical data, workplace laws, and other related topics affecting the employment of persons with disabilities.

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Federal Employers

Federal agency managers and supervisors are responsible for the employment and advancement of people with disabilities. This includes recruitment, hiring, training, career development, mentoring support and providing reasonable accommodations when requested.

Career development and promotion opportunities, training, awards, and other similar programs should be an integral part of an agency's responsibilities towards employees with disabilities. Further, Federal employers should make reasonable accommodations, when requested, to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the agency can demonstrate that the accommodation(s) would impose an undue hardship on the operation of its program.

Federal employers are encouraged to establish procedures to ensure that the employment and advancement of people with disabilities meet affirmative action program objectives, diversity planning, emphasis, and accountability. Action should be taken to eliminate discrimination against applicants or employees with disabilities due to barriers in agency facilities. Federal employers should also ensure that there are no personnel or management policies, practices or procedures which restrict hiring, placement and advancement of people with disabilities.

It is illegal for a Federal agency to discriminate in employment against qualified individuals with disabilities. Anyone who believes he or she has been subjected to discrimination on the basis of disability may file a complaint with the employing agency's equal employment opportunity (EEO) office. Departments and agencies should refer to EEOC's MD-110 and 29 CFR, Part 1614, for additional guidance on the EEO complaint process.

State and Other Rehabilitation Service Resources

Vocational rehabilitation counselors are available at State Vocational Rehabilitation Agencies (SVRAs) and their local offices. They can be easily reached by phone. The extent and types of services offered may vary from State to State, but most SVRA counselors are able to do some or all of the following:

- Explain disabilities;
- Prepare certification documents;
- Refer qualified applicants and provide follow-up assistance for placements made;

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- Provide assistance when individuals with disabilities employed under excepted appointing authorities are upgraded or downgraded or when problems arise in regard to these employees;
- Evaluate the rehabilitation needs of Federal employees who become disabled and advise managers and supervisors about services available;
- Purchase special equipment that individuals with disabilities need to perform their jobs;
- Locate readers for persons who are visually impaired, interpreters for persons who are hearing impaired, and personal assistants for individuals with disabilities;
- Advise about modification(s) needed to overcome architectural, transportation, and communication barriers;
- Participate in training programs for Federal employees, managers and supervisors relating to subjects such as reasonable accommodations, modification of jobs or worksites, and other related subjects;
- Arrange for Federal employees, managers, and supervisors to tour rehabilitation centers, workshops, campus facilities for students with disabilities, and independent living centers.

While State vocational rehabilitation agencies are a primary source of rehabilitation services, a number of other organizations can also be helpful. For example:

- U.S. Department of Education, Rehabilitation Services Administration;
- U.S. Architectural and Transportation Barriers Compliance Board;
- U.S. Department of Transportation;
- U.S. Department of Veterans Affairs, Vocational Rehabilitation Program;
- President's Committee on Employment of People with Disabilities and their Job Accommodation Network (JAN);
- General Services Administration;
- Local and State Committees on Employment of People With Disabilities;
- University medical centers and counseling programs;
- Gallaudet University (Washington, DC); and
- Advocacy organizations for persons with disabilities.

Also, employees with disabilities within the agency are another vital resource. Many of them are active in advocacy groups, serve on agency advisory committees, and are experts on various aspects of disability and rehabilitation.

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DEFINITIONS AND TERMS

Person with a disability: The Rehabilitation Act of 1973, as amended, defines a "person with a disability" as an individual who:

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities (such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). A "physical or mental impairment" means:

  1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculosketal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genito-urinary, hemic and lymphatic, skin, and endocrine; or

  2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- Has a record of such an impairment (this means that the person has a history of, or has been classified -or misclassified- as having a mental or physical impairment that substantially limits one or more major life activities); or

- Is regarded as having such an impairment; this includes individuals who are perceived to have disabilities.

Qualified person with a disability: A qualified person with a disability refers to a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question.

Invisible (hidden) disabilities: These are disabilities that are not readily apparent, such as chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, and learning disabilities.

Targeted disabilities: Targeted disabilities, as defined by the Equal Employment Opportunity Commission (EEOC), are disabilities "targeted" for emphasis in affirmative action planning. These are: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine. EEOC recognizes that some disabilities that are not targeted are nevertheless just as

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severe or more severe than some disabilities that are targeted.

Drug addicts and alcoholics: The Americans with Disabilities Act of 1990 amended the Rehabilitation Act (1973) definition of an individual with a disability to **exclude** "individuals currently engaging in the illegal use of drugs" regardless of whether it can be shown to adversely affect job performance or safety. Federal employers are no longer required to offer a firm choice or last chance agreement[s] unless mandated by agency policy or a collective bargaining agreement. Managers should consult with their agency Human Resources, EEO, and legal counsel.

Persons with Human Immunodeficiency Virus (HIV): Protection under the Rehabilitation Act begins the moment a person becomes infected with HIV.

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REASONABLE ACCOMMODATION

Federal departments and agencies are required, **when requested**, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency. An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation.[2]

A reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment. There are many types of accommodations such as worksite modifications; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, readers; and reassigning employees.

Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, his/her specific disability and the existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. In all cases, the applicant or employee should be consulted before an accommodation is made. Accommodations are highly individualized and what may be successful for one individual with a disability may not be appropriate for another. The value and nature of a particular accommodation may be clarified by considering questions such as:

- Does the disability require the reasonable accommodation?
- Does the reasonable accommodation remove the workplace barrier that is preventing the individual from effectively applying for a job, performing a job, or gaining access to the benefits and privileges of employment?
- Will the accommodation give the person the opportunity to function, participate, or compete on an equal basis with others?
- Are there alternatives that would accomplish the same purpose?

In determining undue hardship, consider the following factors:

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[2] Departments and Agencies should consult the Enforcement Guidance on Reasonable Accommodation issued by the EEOC on March 1, 1999.

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- Overall size of the agency, with respect to the number of employees, number and type of facilities, and size of budget;
- Type of agency operation; and
- Nature and cost of the accommodation.

Reasonable accommodations are as varied as the needs of the individuals involved, the type of position in question, and ingenuity of the agency. Some examples are provided below:

Special Testing

Federal employers may not use any test or other selection criterion that screens out or tends to screen out people with disabilities, unless the test is job-related for the position in question and consistent with business necessity, and there is no reasonable accommodation. They are required to select and administer tests to insure that the scores of applicants or employees who have disabilities that impair sensory, manual, or speaking skills accurately reflect the ability of the applicant to do the job in question rather than disabilities of the applicant. The following factors merit additional attention:

Modifying Written Examinations: The objective is to eliminate any artificial barriers which would prevent persons with disabilities from demonstrating their capabilities in the examination process. Modification of examination procedures can include modifying test administration methods. Consideration should be given to scheduling individual or small group testing, allowing extra time, and using examiners specifically trained for this task. Accommodations may include: braille, large-print, or tape-recorded tests for persons who are visually impaired; reading to individuals who are blind or persons with reading disabilities; writing for persons who have difficulties using their hands; providing sign language interpreters to explain test procedures and directions for taking tests; and waiving verbal portions of some tests for individuals who are hearing impaired.

Modifying exam content: If an applicant's disability causes some part of a test to be unusable or inappropriate, it may be necessary to modify exam content or to develop alternate materials which measure the same knowledge, skills, and abilities that do not screen out people with disabilities. OPM has modified certain examinations for persons who are hearing and visually impaired and may be able to offer advice about types of modifications.

Accessible Examination Facilities: Examinations must be offered in accessible

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facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible parking, etc.), steps should be taken to remove those barriers or, when this is not feasible, to arrange for use of an alternate location.

Many people with disabilities, even those with severe disabilities, do not need special testing. As a rule, persons who are visually or hearing impaired will require special testing. Others for whom special arrangements often are made include persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons whose arms or hands are paralyzed or spastic, persons with brain damage, and persons with learning disabilities such as dyslexia.

Restructuring Jobs

Job restructuring is one of the principal means by which qualified people with disabilities can be accommodated. Job restructuring, however, does not alter the essential function of the job. Federal employers should identify which factors make a job incompatible with an individual's disability and, if possible, eliminate them so that the capabilities of the person may be used to the best advantage. This may involve changing job content by isolating and eliminating non-essential duties through reassignment, or altering the method of task accomplishment.

Three things must occur before job restructuring:

- Federal employers must understand the capabilities of individuals and identify limitations prior to job restructuring. The person with a disability should be consulted first. Supplemental information can be obtained through consultation with specialists in the field of vocational rehabilitation.

- Careful job analysis to determine the exact demands of positions must also precede job structuring. Inputs by those with intimate knowledge of the tasks involved, such as supervisors and persons who currently perform the tasks or have performed them in the past, should be included in the analysis process. This enables the most accurate differentiation to be made between basic functions and those which are non-essential and can be reassigned.

- To identify the essential functions of a position, focus on the purpose in performing the function and the result to be accomplished and not on a description of how the function is usually performed. Although it may be essential to perform certain functions, it often is irrelevant how the function is performed. A person, due to a disability, may need to perform an essential

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function in a different way from other employees. The different manner of performing an essential function may involve a reasonable accommodation.

The restructuring and job analysis processes should also be used in creating positions, modifying existing position descriptions, developing recruitment strategies, determining selection criteria, designing performance plans, determining training needs, and other human resource initiatives.

Modifying Worksites

Changes in the work environment enable people with disabilities to more effectively perform job duties. Alterations may consist of: rearranging files or shelves for accessibility to wheelchair users; braille labeling for persons with visual impairments; raising or lowering equipment to provide comfortable working heights; installing special holding devices on desks, machines, or benches; using adaptive technology such as voice recognition systems; or providing special heating or air conditioning units for persons who are sensitive to environmental temperature.

Work locations should be reviewed by supervisors; Disability Employment Program Managers, SVRA counselors; building managers; and persons with disabilities to identify needed worksite modifications.

Accessible Facilities

Reasonable accommodation is different from architectural accessibility and program accessibility. For buildings not covered by existing accessibility statutes, provisions of accessibility may be an aspect of reasonable accommodation. In such cases, reasonable accommodation might include physical modification of facilities or relocation of particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by people with disabilities.

Accommodations that may need to be made involve eliminating barriers in the physical design of the environment. This is a broader concern than modification of the worksite environment. It consists of eliminating major obstacles in the way of people with disabilities getting to and from the worksite. Physical and/or structural changes should be made in order to create as barrier-free an environment as practicable. Eliminating architectural barriers through such means as ramps, wider doorways, elevators, work platforms, and handrails often make the work facility more usable by all employees, not just those with disabilities.

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Adjusting Work Schedules

Some people with disabilities possess great productive potential which is not utilized because they cannot meet the requirements of a standard 40-hour work week. By taking advantage of the flexibility of alternative work schedules, accommodations can be made for various disabilities. For example, people with mobility impairments may find it difficult to maneuver during peak periods on public transportation systems and may require an earlier or later work day. In another instance, employees requiring medical treatments may need a flexible schedule on certain days of a week. Employees requiring shorter hours may be accommodated by use of a part-time schedule or a job sharing arrangement.

Assistive Devices

Many assistive devices are available to people with disabilities. Such devices can ensure successful job performance, enabling people with disabilities to perform tasks they would not otherwise be able to do or to increase the quantity, quality, or efficiency of their work. Before purchasing any special equipment, the individual requesting a reasonable accommodation should be consulted as to what is needed and/or wanted.

In certain cases, the Department of Veterans Affairs or State vocational rehabilitation office may provide the assistive device to the individual requesting a reasonable accommodation.

Federal employers are authorized to purchase equipment if it is determined that the use of the equipment is necessary in transaction of the official business of the agency. In determining whether the purchase of a device should be authorized, consideration should be given to how well the employee could perform the job without the equipment and whether the principal benefit would be better job performance by the employee.[3]

Readers and Interpreters

Readers: Many Federal employers have found that the best way of providing reading assistance to employees who are blind or have visual impairments is to have other employees provide this service as needed. In most cases, this amounts to a

[3] Section 508 of the Rehabilitation Act requires Federal agencies to procure and use only accessible electronic and information technology. Refer to the section on Legal Framework.

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relatively small fraction of an employee's workday. Federal employers have the administrative authority to assign employees to provide reading services on a part-time or "as required" basis. This service can be classified under "other duties as assigned."

An agency that chooses to assign an agency employee as a reader must ensure that the person is properly trained and able to fulfill this function. For assistance in identifying necessary training for readers, agencies should consult with the Federal and State resources indentified in Appendices 2 and 3.

Federal employers may also hire readers for blind employees. Generally, a reader will be assigned to provide reading assistance to a specific employee. For this reason, the blind or visually-impaired employee should be involved in the selection process.

Providing reading assistance to a blind or visually-impaired employee in no way relieves the agency of the responsibility to provide clerical, secretarial, and/or administrative support to that employee in those instances where the employee's position entitles or requires such assistance. In most cases, the person providing clerical, secretarial, or administrative support will also provide reading assistance.

Interpreters: Much of the day-to-day communication may be accomplished by employees who have learned basic sign language. Many co-workers of persons who are deaf or have hearing impairments have taken it upon themselves to learn sign language and some Federal employers offer courses for their employees. When employees have gained sufficient skill in sign language, they may provide day-to-day communication services for their co-workers who are deaf or those who have hearing impairments.

Federal employers have the authority to assign other employees to provide these services on a part-time or "as required" basis. Individuals may also be hired to provide interpreter assistance on a full-time, part-time, or intermittent basis.

There are some instances where employees would not be expected to possess the high degree of interpreting skills which might be necessary for the individual who is deaf or hard of hearing to communicate effectively. Thus, service contracts may be used to obtain interpreting services from outside sources in situations such as conferences, training courses, meetings, or court appearances.

Federal employers may make excepted appointments of readers, interpreters, and other personal assistants 5 CFR 213.3102(ll). This and other special hiring

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authorities applicable to persons with disabilities are explained in later sections of the handbook (see section on hiring options).

Above all, agencies should keep in mind that it is their responsibility to provide sign language interpretation that enables a person who is deaf to have access to the same information being communicated by hearing employees.

Flexible Leave Policies

Federal employers have the authority to adopt flexible leave policies that will accommodate people with disabilities. While the administration of the leave system is subject to certain laws and regulations, departments and agencies can adopt flexible leave policies that will accommodate people with disabilities. Instances may include the following:

- When extreme weather conditions make it difficult for mobility-impaired employees to get to or from work. For example, employees are generally expected to report for work after snow removal has been accomplished. However, in many cases, snow removal equipment makes travel by mobility-impaired individuals even more difficult by creating snow drifts at the curb cuts. Federal employers can adopt separate leave policies for situations such as this but should identify in advance employees who would be covered by the extended policy.

- When temporary building conditions adversely affect performance or health, such as extremes of heat or cold which could affect persons with neurological disorders or respiratory ailments.

Leave policies may also include granting extended leave without pay for illness or disability. Whatever flexibility is used, they should be carefully detailed to prevent misunderstanding and should be consistently applied for all appropriate employees.

Reassignment

In cases of current Federal employees who become disabled after employment, or whose disabilities are aggravated during their careers, Federal employers have a responsibility to make every effort for their continued employment. An employee who, because of a disability, is unable to continue to perform the duties of his or her current position may have other options available than applying for disability retirement. The first step should be to explore the possibility of accommodating the

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disabled employee in his or her current position. Minor job modifications or changes in the physical environment are often all that is needed to allow a disabled employee to continue working productively.

Agencies must consider reassignment as a reasonable accommodation when an employee, due to a disability, can no longer continue performing the essential functions of his/her current position, with or without reasonable accommodation. A Federal employer should always first attempt to provide reasonable accommodation in an employee's current position. If that is not possible, then a Federal employer must look for a vacant position that is equivalent to the employee's current position in terms of a number of factors, including grade, level of work assignments, pay, benefits, and geographic location. If no equivalent vacancy exists, then the employer must look for a lower position that is as close as possible to the employee's current position. Although this is a non-competitive process, the employee must be qualified for the vacant position. In order to determine the employee's qualifications for a vacant position, the employer should consult with the employee about his/her work experience, skills, and education.

Eliminating Transportation Barriers

One of the most difficult problems people with disabilities face is transportation to the worksite. Federal employers can do a great deal to help people with disabilities solve their personal transportation problems. Such assistance can consist of helping employees form car pools, helping people with disabilities locate co-workers with whom they may car pool; or allocate parking spaces to employees with disabilities.

Drivers who provide transportation to Federal employees with disabilities may make use of parking privileges for people with disabilities who ride with them. The General Services Administration has ruled that Federal employers are to give these persons the same priority in assignment of parking spaces that they give persons with disabilities.

Minimal Cost Accommodations

In many cases, the cost of a job or work environment accommodation can be minimal. A few examples are as follows:

- To accommodate a person who uses a wheelchair, reasonable accommodations may include the ability to access the building, the office, and files. The desk must be the right height to accommodate the wheelchair. This may be

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accomplished by raising the desk using wooden blocks to prop it up, and then moving furniture so that the employee may freely move around the office. Files can be placed to make them easily accessible.

- An individual with arthritis experiencing difficulty with maintaining stamina during the workday may be accommodated by providing flexibility in work hours, and a recliner to allow change in body positions to cut down on fatigue.

- Visual aids, screen readers, and enlargers; voice activated software; and braille computers may assist people who are blind or visually impaired. Initial contact should start with the office responsible for information technology (IT) management.

The concept of reasonable accommodation also applies to recruitment, training, promotion, reassignment, and developmental assignments. For example, merit promotion vacancy announcements could be brailled or taped to provide equal access to employees or applicants who are blind or visually impaired. In order to give people with disabilities opportunities to attend formal training programs, Federal employers are authorized to use training funds to provide special services, such as interpreters, readers, and brailling or taping of course materials.

Federal employers wishing to learn more about reasonable accommodation policies and guidelines may wish to contact the Equal Employment Opportunity Commission (EEOC). Free copies of their published guidance on reasonable accommodation and other issues pertaining to non-discrimination against people with disabilities can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

Additional Efforts: Retraining, Details, and Disability Retirement

Retraining: Federal employers should consider retraining disabled employees for positions for which they have the basic qualifications and capabilities. Although there are initial expenses involved, the result will justify the expenditure if the employee and the position are matched carefully beforehand.

Details: In instances where the employee's ability to perform the duties of an available position are in question, or to encourage an employee to accept a voluntary reassignment, the use of a temporary detail assignment may help. If performance in the position is acceptable, consideration can then be given to making the reassignment permanent.

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Disability Retirement: Before an employee can qualify for disability retirement, the employee's agency must attempt to reasonably accommodate the employee. The specific type of accommodation can vary depending on the position and the medical condition. If the employee cannot be accommodated in his or her current position, the agency must consider reassignment. If an employee refuses to accept a reasonable accommodation in the current or reassigned position, the employee loses eligibility for disability retirement.

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HIRING OPTIONS

Agency personnel offices work with State vocational rehabilitation agencies (SVRAs), the Department of Veterans Affairs, Gallaudet University and other various organizations to locate and identify qualified people with disabilities. In addition, many Federal employers participate in focused job fairs and campus recruitment visits to identify qualified people with disabilities. Hiring may be accomplished through the competitive hiring process or, if the qualifications are met, through the use of excepted service appointment authorities.

Federal employers may use a variety of hiring options to bring people with disabilities into their workforce. Descriptions of key options are listed below.

Competitive Appointments

Most Federal employees obtain jobs competitively. Applicants apply directly to the hiring departments and agencies for most positions. Federal employers use a variety of assessment tools in evaluating applicants and conducting hiring. If passing a written test is required, special testing arrangements are available, if requested. Once this process is completed, an agency may select from a list of qualified people from the appropriate list of eligible candidates to fill vacancies. The agency may then interview and make a selection for the vacancy. Special interview "reasonable accommodation" arrangements may be made, if requested.

Time-limited Appointments

An agency may fill a position using a temporary or term appointment when the need for an employee's services is not permanent. Temporary appointments are made not to exceed one year, with one 1-year extension. The work must not be permanent in nature. In contrast, term appointments are made for a period of more than one year but not to exceed four years.

Term appointments are appropriate when there is project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

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Student Employment Programs

The Student Educational Employment Program helps Federal employers find the right people to fill current and future hiring needs. The program also gives students the opportunity to get hands-on experience in their chosen career field. The program has two major components; Student Temporary Employment and Student Career Experience.

Student Temporary Employment opportunities range from summer jobs to positions that can last as long as the student is enrolled. The Federal job does not have to be related to the student's academic field of study.

Student Career Experience opportunities include formal periods of work and study while the student attends school. This requires a commitment by the student, the school, and the Federal employer. Work experience is directly related to the student's academic field of study. After successfully completing the educational and work requirements, the student is eligible for permanent job opportunities.

Presidential Management Intern (PMI) Program

The PMI Program is designed to attract to the federal service outstanding graduate students from a wide variety of academic disciplines who have an interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals eligible to be nominated for the PMI Program are graduate students completing a master's or doctoral-level degree from an accredited college or university during the current academic year.

Students are nominated for the PMI Program by the appropriate dean, director or chairperson of their graduate academic program. All nominees are evaluated by an OPM-developed structured assessment process. Selection as a PMI finalist is based on review of the PMI application and the structured assessment process.

PMIs receive an initial two-year appointment. During the two-year internship, PMIs experience structured orientation and graduation training programs facilitated by OPM, as well as seminars, briefings, conferences, on-the-job training, rotational assignments, and other developmental opportunities arranged by participating Federal employers.

After successfully completing the two-year program, PMIs may be eligible for conversion to a permanent position and further promotional opportunities.

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Appointment Under Special Authorities

The Federal Government's hiring options include excepted service special appointing authorities for people with disabilities. Federal employers are authorized to use these authorities when considering certain people with disabilities (those who have a severe physical, cognitive or emotional disability or a history of having such disabilities or are perceived as having such disabilities). The authorities provide a unique opportunity to demonstrate the potential to successfully perform the essential duties of a position with or without reasonable accommodation in the workplace.

- **Schedule A, 5 CFR 213.3102(t) for Hiring People with Mental Retardation.** This authority is used to appoint persons with cognitive disabilities (mental retardation) who meet the eligibility requirements. Upon completion of 2 years of satisfactory performance the employee may qualify for conversion to the competitive service.

- **Schedule A, 5 CFR 213.3102(u) for Hiring People With Severe Physical Disabilities.** This authority is used to appoint persons with severe physical disabilities who (1) under a temporary appointment have demonstrated their ability to perform duties satisfactorily; or (2) have been certified by a counselor from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affair's Vocational Rehabilitation Office as likely to succeed in performance of duties. Upon completion of two years of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

- **Schedule B, 5 CFR 213.3202(k) for Hiring People Who Have Recovered from Mental Illness.** This authority permits appointments at Grades GS-15 and below when filled by individuals who: (l) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; (2) are certified to a specific position by a State vocational rehabilitation counselor or a Department of Veterans Affairs counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the position to which they will be appointed, and that any residual disability is not job related. Employment under this authority may not exceed 2 years following each significant period of mental illness.

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In addition, Federal employers can use the following authority to provide assistance to employees with disabilities:

- **Schedule A, 5 CFR 213.3102(ll) for Hiring Readers Interpreters, and Other Personal Assistants.** This authority permits appointments of readers, interpreters, and personal assistants for employees with severe disabilities when filled on a full-time, part-time, or intermittent basis. Upon completion of at least one year of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

Disabled Veterans

- **30 Percent or More Disabled Veterans.** Federal employers may give a noncompetitive temporary appointment of more than 60 days (see 5 CFR 316.302(b)(4)) or a term appointment (see 5 CFR 316.402(b)(4)) to a veteran:

  - retired from active military service with a disability rating of 30 percent or more; or

  - rated by the Department of Veterans Affairs (VA) within the preceding year as having a compensable service-connected disability of 30 percent or more.

  There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement.

  The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment.

- **Disabled Veterans Enrolled in VA Training Programs, 5 CFR 315.604.** Disabled veterans eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a Federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA. The training is tailored to individual needs and goals so there is no set length. If the training is intended to prepare the individual for eventual appointment in the agency rather than just work experience, the agency must insure that the training will enable the veteran to meet qualification requirements for the position.

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Upon successful completion, the VA and the host agency give the veteran a Certificate of Training showing the occupational series and grade level of the position for which trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

Certification

An individual who is physically disabled is considered to have met OPM qualification standards for either a temporary competitive service appointment or an excepted service Schedule A appointment when an appropriate certification is received from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affairs. The certification is prepared by a counselor on the basis of job-site inspection, analysis of job tasks, and evaluation of the proposed appointee's abilities and disabilities. The certification must state that in the counselor's judgement the proposed appointee is able to perform the duties of the position and is physically qualified to do the work safely. The certification must be supported by a medical report and a narrative statement documenting the counselor's conclusions. Factors to be discussed include training, education, work history, modification of job or worksite if needed, and limitations of the proposed appointee.

The certification required for an excepted service Schedule A appointment of an individual who is mentally retarded need only state that the individual has the ability to perform the duties of the position; is physically able to do the job safely; and can maintain himself or herself in the work environment. No medical report is required.

The certification required for appointment of individuals with psychiatric disabilities under an excepted Schedule B appointment must include documentation of a history of mental illness which includes periods of hospitalization or outpatient treatment within the previous two years; a statement by a psychologist or psychiatrist as to the individual's capability to function in the work setting; and a statement indicating that the individual is currently unemployed or has had a significant period of substantially disrupted employment within the previous two years.

Any certificate issued under the authority of an SVRA or Department of Veterans Affairs counselor and other related medical records must be maintained in a medical folder, rather than the official personnel folder (OPF) for persons with disabilities.

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DEALING WITH DIFFERENT DISABILITIES

Mobility Impairments

Countless injuries, diseases, and conditions can cause mobility impairments that affect an individual's ability to find and keep a job. Some disabilities are acquired at birth. Others stem from accidents or illnesses later in life. Basic mobility, coordination and balance, strength and endurance, and other aspects of body function may be affected.

Many people who have mobility impairments use adaptive equipment of one kind or another. Mobility aids are especially common, and the most ordinary are canes, crutches, walkers, and wheelchairs. Artificial limbs (arms and legs), and body braces are also used.

One may wish to consider the following suggestions when interacting with individuals who have mobility impairments:

- When scheduling a job interview or meeting, make sure the location is wheelchair accessible.
- Do not hold the person's wheelchair or assume the individual wants to be pushed; always ask first.
- A wheelchair is considered part of the person's personal space. Offer assistance but do not insist. If the person needs help, he or she will accept the offer and tell exactly what will be helpful.
- Put yourself at the wheelchair user's eye level, whenever possible.
- Do not be surprised if the person transfers from a wheelchair to a piece of furniture or gets out of the wheelchair to move about. Not all wheelchair users are paralyzed; many can walk with the aid of canes, braces, or crutches.
- If a person uses crutches, a walker, or some other assistive equipment, offer assistance with coats, bags, or other belongings.
- Ensure non-slip floor coverings for the safety of a person who uses crutches and extra maneuvering space.

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- Do not be sensitive about using words like "walking" or "running." People in wheelchairs use the same words.

Blindness and Visual Impairments

The term "blindness" should be reserved for complete loss of sight, even with the best corrective lenses. For lesser disabilities, "visual impairment" is a better description. In visually impaired persons overall sight may not be affected, only the edges or a part of the visual field may be obscured, or there may be no central vision although side or peripheral vision still exists. A person's visual acuity may also change under different light conditions.

Most blind persons get around on their own by using a guide dog or cane. Visually impaired persons may not need mobility aids. For many jobs, vision simply is not necessary. Successful employment of blind and visually impaired individuals depends upon thorough job analysis, enlightened employer acceptance, and proper management support. One may wish to consider the following suggestions when interacting with individuals who have blindness or visual impairments:

- If the person seems to need assistance, offer one's services. If a person who is blind needs guidance through a door or to a chair, let the person take one's arm and follow the motion of one's body. Guide his or her hand or arm to the back of the chair. If one approaches steps, mention how many and the direction.

- Speak directly to the individual who is blind or visually impaired. Speak in a normal tone of voice.

- Introduce other people in the room or have them introduce themselves. This will assist the individual in orienting himself or herself to the room and its occupants.

- Never touch or distract a service guide dog without first asking the owner.

- When giving directions, do not use references a person cannot see. "Over there" is not a good way of describing a location. When using directional words, use them with the orientation of the person who is blind or visually impaired.

- Tell the individual when one is leaving the room.

- When guiding a person into a new or strange surrounding, one may want to describe special features or decorations.

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- One should be prepared to read aloud information that is written, or ask the person if he or she would like a reader.

- When interviewing or meeting with people with visual impairments, ensure a well lit area and avoid sharp contrasts of light and dark areas.

- If offering a seat, place the individual's hand on the back or arm of the chair and let him or her sit down by him or herself.

Deafness and Hearing Impairments

Electronic devices can often compensate for partial hearing impairment. Individuals who are hard of hearing usually speak clearly and communicate in the usual manner. They may be placed in almost any type of position, except those for which acute hearing is a safety requirement.

Extra time and interest may be required during oral communications settings, such as interviews and meetings. Communication problems should not be regarded as indicative of more extensive impairments and should not be allowed to obscure an applicant's knowledge, skills and abilities. In complex situations, it is desirable to obtain the services of a professional sign language interpreter.

Many persons who are deaf or hard of hearing can speak understandably. Those that do not speak well may communicate by sign language, writing notes, using gestures, and demonstrating concepts or problems. One may wish to consider the following suggestions when interacting with individuals who are deaf or hard of hearing:

- When speaking with someone who is deaf or hard of hearing, face the person directly. Gain his or her attention before starting a conversation by a gentle touch.

- When speaking to persons who are deaf or hard of hearing, use meaningful facial expressions and gestures to emphasize one's intent and attitude. This substitutes for voice tone. Try to find a quiet place away from computers, telephones, and other sources of noise.

- Not all people who are deaf or hard of hearing know or use sign language. Do not assume they need an interpreter.

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- If using a sign language or oral interpreter, speak directly to the person who is hearing impaired, not the interpreter. Face the light, speak clearly, in a normal tone of voice, and keep one's hands away from one's face.

- If one cannot understand the person with a hearing impairment, do not be afraid to ask him or her to repeat. If this approach does not work, one can ask if it would be helpful to communicate by writing or using a computer terminal.

Invisible (Hidden) Disabilities

There are many invisible disabilities such as asthma, arthritis, heart disease, environmental illness, AIDS, chronic fatigue, psychiatric or mental illnesses, attention deficit hyperactivity disorder, and learning disabilities.

If an applicant brings the condition to the prospective employer's attention, one may ask whether the condition might have an impact on his or her work and if there are any necessary accommodations.

A person who has recovered from a heart attack may be able to resume arduous work to which he or she previously was accustomed or may be so weakened that even administrative work is too stressful. Managers and supervisors do not need to be overcautious, as fitness for duty can be determined only by a medical specialist.

Some people with learning disabilities have adapted to their limitations, through classes, counseling sessions, or through life itself. Many can compensate for their problems so well that it is barely noticeable. A strong match between the person's strengths and the work to be performed is particularly important to the learning disabled individual. A careful job analysis is essential in determining the task and competency requirements of the job. Rehabilitation counselors can be very helpful to candidates by assisting them in assessing their strengths and finding jobs that utilize their strong points.

For additional information regarding a description of invisible disabilities, please see the resources section of this handbook.

Mental Retardation

Many people with mental retardation have average or superior abilities in some respects. While it is true that some people who are mentally retarded may not be

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able to think, reason or remember as well as other people, it is important to remember that they are proficient in some ways and deficient in others. Mental retardation should not be confused with mental illness or behavioral and emotional problems. The effect of the disability can be lessened, and skills and abilities increased, through rehabilitation, special education and experience on the job.

People who have mental retardation usually want to be independent and responsible for their own support. The object should be to reduce the need for learning details, exercising judgment, and finding new solutions to problems.

Success on the job often depends upon the willingness of others to devote reasonable time and interest to helping the individual adjust initially and meet new challenges as they arise. One of the greatest obstacles to equal employment opportunity for these individuals is persistent lack of employer confidence in, and lowered expectations of their capabilities. One may wish to consider the following suggestions when interacting with individuals with mental retardation:

- For the most part, one should talk to the individual in the same manner as anyone else, but be more specific.
- In an interview setting, ask questions and occasionally repeat responses to insure effective communication.
- Provide information as to where things are located, such as time clock, lockers, restroom, cafeteria, drinking fountain, supply room, etc.
- Take care to explain about working hours, proper dress for the job, work station location, rate of pay, reporting official, and transportation options.

People with Psychiatric Disabilities

For the purposes of employment, a person with a psychiatric disability is one who has experienced a mental or emotional difficulty that currently is under control to the extent that the individual is able to function effectively and satisfactorily in a specific job. The qualifications of people with psychiatric disabilities must be given the same consideration as those of other applicants. One may wish to consider the following suggestions when interacting with individuals who have a psychiatric disability:

- Talk to the individual as one would to anyone else.

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- Through personal demeanor, show that one trusts the individual's ability to control his or her behavior.

Muscular or Neurological Limitations

Muscular or neurological disabilities may affect motor ability and/or speech. Intelligence is not affected. Some involuntary or halting movement or limitation of movement in one or more than one appendage may be observed, as well as some lisping, indistinct speech or flatness of tone due to lack of fine motor control of the tongue and lips. The severity and functional effects of the disability vary from person to person. Unless the person is severely disabled, or has the involvement of other disabilities, no accommodation may be needed during an interview setting or meeting.

If the person's speech is difficult, one should ask him or her to repeat what was said. Some people who have severe cerebral palsy, for example, find it more effective to communicate by writing, typing or using communication boards or electronic devices.

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INTEGRATING PEOPLE WITH DISABILITIES INTO THE WORKFORCE

The President's Committee on Employment of People with Disabilities has a six-step process for integration. It consists of:

1) **Commitment** - Let the people in the agency know of the commitment to employ, advance and retain people with disabilities. Workforce diversity includes people with disabilities.

2) **Recruitment** - Let the Personnel/Human Resource office and Disability Employment Program Managers know that one is aggressively seeking job candidates with disabilities. Send agency vacancy announcements to disability-related organizations and Federal employers. State the agency's interest in receiving applications from people with disabilities on the job announcement.

3) **Interviewing** - Look at the essential functions and competency requirements of the job, the qualifications of the individual, and the availability of reasonable accommodations. Do not let the disability distract from evaluating the candidate's qualifications.

4) **Placement** - Test accommodations and adaptations once the person is on the job. Ask the employee with a disability to help in the process.

5) **Training** - Any employee's success hinges on proper orientation and training. Insure that all such agency programs are available and accessible to employees with a disability. This includes training programs that may lead to upward mobility and career advancement.

6) **Awareness/Sensitivity** - Train managers, supervisors, and employees about disability myths and misconceptions. An educated workforce will be better able to ensure the success of employees with disabilities.

Interviewing

Interviewing people with disabilities is the same as interviewing people who are not disabled. In general, the selecting official should ask all applicants about their qualifications, experience, and skills for doing the job.

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However, there are some guidelines that are specific to people with disabilities. Unless an individual is seeking appointment under one of the special excepted appointment authorities, a selecting official should **only** ask questions about the person's ability to do the job. The office should make sure that all questions are job-related. The focus of the interview should be on the individual's ability to successfully perform the essential functions of the job and demonstrating the competencies or knowledge, skills, and abilities needed to perform the job. "Essential functions" are the tasks that are fundamental and intrinsic to the job. Understanding essential functions and the competencies required to perform those functions is particularly important to prepare for applicant interviews.

If the person indicates that he or she has a disability which makes it difficult to perform particular functions of a job, or if the selecting official believes that a person's disability may make it difficult to perform certain job functions, the selecting official may ask job-related follow-up questions, such as: describe how you can perform the job. The answer to such questions will indicate whether a reasonable accommodation is needed to enable the individual to perform the essential functions of the job. Allow the applicant to request reasonable accommodation. **It is the responsibility of the job applicant to inform the employer of any accommodation needs**. However, employers should not make a general assumption that an individual with a disability will be unable to do a certain part of the job, or that a reasonable accommodation will be needed.

Career Development

One of the major problems facing people with disabilities is underutilization of their knowledge, skills, and abilities. Developmental details and reassignments can be used as a means of providing on-the-job training which will enhance opportunities for promotion. In addition, it is easy to fall into the trap of isolating employees with disabilities from others. Make sure employees with disabilities have opportunities not only to work with others on group projects, but, when appropriate, to take on leadership roles.

Federal employers should ensure that employees with disabilities are given full consideration for inclusion in upward mobility programs, and that they are aware of career counseling. Recognize that people with disabilities have career goals. Agency managers should sit down with employees and talk about goals. Identify role models and mentors for disabled employees or encourage them to do so. Every effort should be made to ensure that disabled employees reach their maximum potential.

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Performance Evaluation

People with disabilities should be held accountable for their work performance. Supervisors are responsible for communicating performance expectations to their employees and monitoring and appraising their work. When the individual with a disability begins a job, he or she should be given a clear description of the job, and the specific duties. Employees should be provided with encouragement and feedback regarding their work performance. It is important to ensure that when evaluating a person with a disability, aspects of their physical or mental disability are not held against them. They should be evaluated for their ability to do a job with the appropriate accommodations. For example, it would be inappropriate to negatively evaluate an individual who uses a wheelchair for not attending a meeting, when the meeting was held in a physically inaccessible building.

If an employee with a disability cannot perform satisfactorily after a full and fair trial period, then his or her employment should be terminated. No supervisor or manager owes a job to any person with a disability. The goal and the only obligation is equal employment opportunity. The same job-related performance criteria should be applied to disabled employees that is applied to all other employees. If it becomes necessary to terminate the appointment of a disabled employee, the Human Resources or Personnel Office will help in making this decision and taking appropriate action.

Awards

People with disabilities should have equal opportunity to receive incentive awards (special achievement/act or performance), quality step increases and all other agency-sponsored or non-agency sponsored awards. Efforts should not be limited to special awards programs geared specifically to those who are disabled.

Training

Give employees with disabilities an equal chance to benefit from training and development opportunities. Ensure that classes are held in accessible facilities, and as necessary, that materials are available in large print for persons who are visually impaired, interpreters are provided for participants who are hearing-impaired, or other accommodations are made. Any training which would provide growth opportunities that will allow disabled employees to advance in their careers should be encouraged. Such training could include developmental detail assignments, lateral reassignments, and leadership training.

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PROMOTING THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

Communication is the key to increasing organizational understanding and support for the employment of people with disabilities. The positive portrayal of employees with disabilities can greatly affect the public's perception, and enhance self worth of affected employees. What one says and writes can enhance their dignity and promote positive attitudes about their abilities. There are a number of target groups to be reached: the disabled community, the rehabilitation establishment, the agency workforce, students, and community groups.

Communicating messages or events such as planned initiatives, programs or exhibits, employee success stories, activities and accomplishments, and training and career development opportunities will enhance the employment and advancement of people with disabilities. One of the most effective and efficient media for some messages are internal memorandum or personal contact with the organization head, managers, supervisors and employees. Messages may also be integrated into existing media, such as an agency newsletter.

Other communications media may also be considered:

- Agency publications
- Bulletin boards
- Press releases
- Film or slide-tape presentations
- Local newspapers
- Local radio and television stations
- Chambers of Commerce
- Trade and technical magazines
- Community organizations newsletters
- Flyers
- Web sites

An agency's public affairs office may be able to assist in preparing professional copy or in maximizing one's communication tools. Outside organizations such as the President's Committee on Employment of People with Disabilities, Veterans' service organizations (VSOs), Federally Employed Women, State Vocational Rehabilitation Centers, and local news media may be able to help in the preparation of materials.

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Experience has shown that programs and initiatives require dedicated and sustained support from departmental and agency leadership to achieve success. Thus, a clearly articulated commitment of agency leadership to achieving the goal of greater inclusion for adults with disabilities in the Federal workforce is critical to transforming such an aim into reality at the agency level.

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APPENDIX 1: STATISTICAL INFORMATION

The Office of Personnel Management (OPM) published a *Statistical Profile of People with Disabilities in the Federal Workforce* in 1998. Copies of the report can be obtained by calling OPM's Office of Diversity at (202) 606-1059. Some of the findings are listed below:

- Despite downsizing and employment changes, the representation of persons with disabilities in the Federal Government since 1992 has remained fairly stable near 7% of the workforce. In 1997, the approximately 127,076 employees with disabilities represented 7.2% of the Federal Executive Branch workforce.

- The average pay of Federal employees with disabilities lags below the overall average Federal employee pay. A higher proportion of Federal employees with disabilities are in lower grade occupations.

- Nearly two thirds of our Federal employees with disabilities are in professional, administrative and technical occupations. This is a positive factor given that, in 1992, 40% of Federal employees with disabilities were in blue-collar and clerical occupations; jobs with more limited pay and advancement opportunities. However, other employment indicators merit further scrutiny.

- Of the 195,903 new hires in FY 1997, only 11,847, or 5.7% were people with disabilities.

- Over half (55%) of all new FY 1997 hires with disabilities were hired into blue-collar and clerical occupations. While these occupational groups have constituted traditional employment vehicles for persons with disabilities, these employment pipelines offer limited career advancement opportunities and will continue shrinking due to changes in Federal agency operations.

- From FY 1992 thru FY 1997, there has been some decline in the use of special non-competitive hiring authorities, such as Schedule A, for severely physically handicapped and mentally retarded persons, and Schedule B, for persons recovered from mental illness. During FY 1997, five special hiring authorities for persons with disabilities accounted for 11 percent of all new hires of employees with disabilities.

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APPENDIX 2: FEDERAL RESOURCES

1) **President's Committee on Employment of People with Disabilities (PCEPD)**
1331 F Street, NW
Washington, DC 20004-1107
Phone: (V) (202) 376-6200
(TDD) (202) 376-6205

Website: http://www.pcepd.gov
EMAIL: info@pcepd.gov

2) **President's Committee Job Accommodation Network (JAN)**
918 Chestnut Ridge Road, Suite 1
West Virginia University - PO Box 6080
Morgantown, WV 26506-6080
Phone: (V) (800) 526-7234
(TDD) (800) 232-9675

Website: http://www.pcepd.gov and click on JAN or go directly to JAN at http://janweb.icdi.wvu.edu/english/homeus.htm

3) **Equal Employment Opportunity Commission**
1801 L Street NW (Federal Sector Programs)
Washington, DC 20507
Phone: (V) (800) 669-3362
(TDD) (800) 800-3302

Website: http://www.eeoc.gov

For specific Federal employment questions, call the "ATTORNEY OF THE DAY" at (202) 663-4599.

4) **Department of Labor: Office of Federal Contractor Compliance Programs (OFCCP)**
[administers Federal contractor compliance for affirmative action in the employment of people with disabilities]
Department of Labor
Frances Perkins Building,
200 Constitution Avenue NW
Washington, DC 20210
Phone: (V) (888) 376-3227
(V) (202) 219-9475
(TDD) (202) 208-0452

Website: http://www.dol.gov/dol/esa

5) **U.S. Office of Personnel Management**[for Federal employment information]
1900 E Street, NW
Washington, DC 20415
Phone: (V) (202) 606-2700
(TDD) (912) 744-2299

Website: http://www.opm.gov

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APPENDIX 3: STATE VOCATIONAL AND REHABILITATION AGENCIES

State Vocational and Rehabilitation Agencies provide a number of services for persons with disabilities. Services include counseling, evaluation, training, and job placement. For more information, call or write the office nearest you. Internet addresses for each agency can be accessed at:

www.nchrtm.okstate.edu/ncrtm_links/state_VR.html

ALABAMA
Dept. of Rehabilitation Services
PO Box 11586
Montgomery, AL 36111-0586
(334) 281-8780
Toll free: (800) 441-7607

ALASKA
Division of Vocational Rehabilitation
801 W. 10th Street, Suite 200
Juneau, AK 99801-1894
Voice/TDD: (907) 465-2814
Toll Free: (800) 478-2815

ARIZONA
Rehabilitation Services Admin. (930A)
1789 West Jefferson, NW (2nd Floor)
Phoenix, AZ 85007
(602) 542-3332
Voice/TDD: (602) 542-6049

ARKANSAS
Department of Education
Arkansas Rehabilitation Services
Div. of Vocational & Technical Education
PO Box 3781
Little Rock, AR 72203
(501) 296-1616
Toll Free: (800) 330-0632

CALIFORNIA
Department of Rehabilitation
830 K Street Mall
Sacramento, CA 95814
Voice/TDD: (916) 445-3971

COLORADO
Division of Vocational Rehabilitation
110 16th Street, 2nd Floor
Denver, CO 80202
Voice/TDD: (303) 620-4153

CONNECTICUT
State Department of Social Services
Bureau of Rehabilitation Services
Division of Client Services
10 Griffin Road North
Windsor, CT 06095
(860) 298-2000
Toll Free: (800) 537-2549
TDD: (860) 298-2231

DELAWARE
Department of Labor
Division of Vocational Rehabilitation
4425 North Market Street
PO Box 9969
Wilmington, DE 19809-0969
(302) 761-8300
Voice/TDD: (302) 761-8349

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DISTRICT OF COLUMBIA
Department of Human Services
DC Rehabilitation Services Administration
800 9th Street, SW, Fourth Floor
Washington, DC 20024
(202) 645-5703

FLORIDA
Dept. of Labor and Employment Security
Division of Vocational Rehabilitation
2002 Old Augustine Road, Building A
Tallahassee, FL 32399-0696
(850) 488-6210
Voice/TDD: (850) 488-2867

GEORGIA
Department of Human Resources
Division of Rehabilitation Services
2 Peachtree Street, NW, 23rd Floor
Atlanta, GA 30330-3166
Voice/TDD: (404) 657-3000

GUAM
Department of Vocational Rehabilitation
122 Harmon Plaza, Room B-201
Harmon Industrial Park, GU 96911
011-671-475-4645
001-671-475-4635 (Consumer Information)

HAWAII
Department of Human Services
Division of Vocational Rehabilitation
and Services for the Blind
PO Box 339
Honolulu, HI 96809
(808) 586-5355
(808) 586-5366

IDAHO
Division of Vocational Rehabilitation
650 West State-L. B. Jordan Bldg, Rm 150
Boise, ID 83720-0096
Voice/TDD: (208) 334-3390
Toll Free: (800) 856-2720

ILLINOIS
Department of Rehabilitation Services
623 East Adams Street
Springfield, IL 62794
(217) 785-0218
Toll Free: (800)ASK-DORIS
TDD: (217) 782-5734

INDIANA
Division of Disability, Aging and
Rehabilitation Services
402 West Washington Street, Rm W-451
PO Box 7083
Indianapolis, IN 46207-7083
(317) 232-1147
Toll free: (800) 545-7763
TDD Toll free: (800) 962-8408

IOWA
Department of Education
Div. of Vocational Rehabilitation Services
510 East 12th Street
Des Moines, IA 50319
Voice/TDD: (515) 281-4311
Toll free: (800) 532-1486

KANSAS
Dept. of Social and Rehabilitation Services
300 SW Oakley-Biddle Building, 1st Floor
Topeka, KS 66606
(913) 296-3911
TDD: (913) 296-7029

KENTUCKY
Department of Vocational Rehabilitation
209 Street Clair
Frankfort, KY 40601
Voice/TDD: (502) 564-4440
Toll free: (800) 372-7172
TDD: (502) 564-6742

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LOUISIANA
Department of Social Services
Louisiana Rehabilitation Services
8225 Florida Blvd.
Baton Rouge, LA 70806-4834
(504) 925-4168
Toll free: (800) 737-2958
Voice/TDD: (504) 925-4179

MAINE
Department of Labor,
Division of Vocational Rehabilitation
35 Anthony Avenue
Augusta,, ME 04333-0150
(207) 624-5300
Toll free: (800) 332-1003
Voice/TDD: (207) 624-5322

MARIANA ISLANDS
Vocational Rehabilitation Division
Comm. of Northern Mariana Islands
PO Box 1521
Saipan, Mariana Islands 96950
011-670-234-6538

MARYLAND
State Department of Education
Division of Rehabilitation Services
2301 Argonne Drive
Baltimore, MD 21218
(410) 554-9385
TDD: (410) 554-9412

MASSACHUSETTS
Massachusetts Rehabilitation Commission
4 Point Place, 27-43 Wormwood Street
Boston, MA 02210
(617) 727-2172
TDD: (617) 727-9063

MICHIGAN
Michigan Rehabilitation Services
Michigan Jobs Commission
PO Box 30010
Lansing, MI 48909
(517) 373-3390
Toll free: (800) 605-6722
TDD: (517) 373-4035

Family Independence Agency
Disability Determination Service
PO Box 30011
Lansing, MI 48909
(517) 373-7830
(517) 373-4533
Toll free: (800) 366-3404

MINNESOTA
Michael Coleman, Assistant Commissioner
Department of Economics and Security
Rehabilitation Services Branch
390 North Robert Street, 5th Floor
Street Paul, MN 55101
(612) 296-1822
TDD: (612) 296-3900

MISSISSIPPI
Nell C. Carney, Executive Director
Department of Rehabilitation Services
Vocational Rehabilitation Division
1281 Highway 51
PO Box 22806
Madison, MS 39110
(601) 853-5100
Toll free: (800) 443-1000

MISSOURI
Don Gann, Assistant Commissioner
State Department of Education
Division of Vocational Rehabilitation
3024 W. Truman Blvd.
Jefferson City, MO 65109
Voice/TDD: (573) 751-3251

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MONTANA
Dept. of Public Health & Human Services
Disability Services Division
PO Box 4210
Helena, MT 59604-4210
Voice/TDD: (406) 444-2590

NEBRASKA
State Department of Education
Div. of Vocational Rehabilitation Services
PO Box 94987
Lincoln, NE 68509
(402) 471-3649
Voice/TDD: (402) 471-3659

NEVADA
Nevada Rehabilitation Division
505 East King Street, Room 502
Carson City, NV 89710
Voice/TDD: (702) 687-4440

NEW HAMPSHIRE
State Department of Education
Division of Adult Learning & Rehabilitation
78 Regional Drive, Bldg 2
Concord, NH 03301
Voice/TDD: (603) 271-3471

NEW JERSEY
Div. of Vocational Rehabilitation Services
135 East State Street, CN 398
Trenton, NJ 08625-0398
(609) 292-5987
Voice/TDD: (609) 292-2919

NEW MEXICO
Department of Education
Division of Vocational Rehabilitation
435 Street Michaels Drive, Bldg D
Santa Fe, NM 87505
Toll free: (800) 235-5387
Voice/TDD: (505) 827-3500

NEW YORK
New York State Education Department
Office of Vocational and Educational
Services for Individuals with Disabilities
One Commerce Plaza, Room 1606
Albany, NY 12234
(518) 474-2714
Toll free: (800) 222-JOBS
TDD: (518) 486-3773

NORTH CAROLINA
Department of Human Resources
Div. of Vocational Rehabilitation Services
PO Box 26053
Raleigh, NC 27611
(919) 733-3364
Voice/TDD: (919) 733-5924

NORTH DAKOTA
Department of Human Services
Division of Vocational Rehabilitation
Dacotah Foundation Bldg
600 S. Second Street, Suite IB
Bismarck, ND 58504-5729
(701) 328-8950
Toll free: (800) 755-2745
TDD: (701) 328-8968

OHIO
Rehabilitation Services Commission
400 East Campus View Blvd.
Columbus, OH 43235-4604
Voice/TDD: (614) 438-1210
Toll free: (800) 282-4536, ext. 1210

OKLAHOMA
Department of Rehabilitation Services
3535 NW 58, Suite 500
Oklahoma City, OK 73112
(405) 951-3400

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OREGON
Department of Human Resources
Division of Vocational Rehabilitation
Human Resources Bldg,
500 Summer Street, N.E.
Salem, OR 97310-1018
(503) 945-5880
TDD: (503) 378-3933

PENNSYLVANIA
Office of Vocational Rehabilitation
Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17120
(717) 787-5244
Voice/TDD: (717) 783-8917
Toll free: (800) 442-6351

PUERTO RICO
Administration for Vocational Rehabilitation
PO Box 191118
San Juan, PR 00919-1118
(809) 725-1792

RHODE ISLAND
Department of Human Services
Office of Rehabilitation Services
40 Fountain Street
Providence, RI 02903-1898
(401) 421-7005
TDD: (401) 421-7016

SOUTH CAROLINA
Vocational Rehabilitation Department
1410 Boston Avenue
PO Box 15
West Columbia, SC 29171
(803) 896-6504
Voice/TDD: (803) 896-6635

SOUTH DAKOTA
Department of Human Services
Division of Rehabilitation Services
East Highway 34, Hillsview Plaza
c/o 500 E. Capitol
Pierre, SD 57501-5070
Voice/TDD: (605) 773-3195
Toll free: (800) 265-9684

TENNESSEE
Rehabilitation Services
Department of Human Services
Citizens Plaza State Office Bldg
400 Deaderick Street, 15th Floor
Nashville, TN 37248-0060
Voice/TDD: (615) 313-4714

TEXAS
Texas Rehabilitation Commission
4900 North Lamar
Austin, TX 78751
(512) 483-4001
Toll free: (800) 628-5115

UTAH
Utah State Office of Rehabilitation
250 East Fifth South
Salt Lake City, UT 84111
Voice/TDD: (801) 538-7530
Toll free: (800) 473-7530

VERMONT
Vocational Rehabilitation Division
103 South Main Street
Waterbury, VT 05671-2303
Voice/TDD: (802) 241-2186

VIRGIN ISLANDS
Virgin Islands Dept. of Human Services
Div. for Disabilities and Rehabilitation Services
1303 Hospital Ground, Hansen Complex
Saint Thomas, VI 00802
(809) 774-0930

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VIRGINIA
Department of Rehabilitation Services
4901 Fitzhugh Avenue
PO Box 11045
Richmond, VA 23230
(804) 367-0316
Voice/TDD: (804) 367-0315
Toll free: (800) 552-5019

WASHINGTON
Department of Social and Health Services
Division of Vocational Rehabilitation
PO Box 45340
Olympia, WA 98504-5340
Voice/TDD: (360) 427-2135
Toll free: (800) 637-5627

WEST VIRGINIA
Division of Rehabilitation Services
State Capitol Complex
PO Box 50890
Charleston, WV 25305-0890
(304) 766-4600
Voice/TDD: (304) 766-4970
Toll free: (800) 642-3021

WISCONSIN
Department of Workforce Development
Division of Vocational Rehabilitation
2917 International Lane, 3rd Floor
PO Box 7852
Madison, WI 53707-7852
(608) 243-5600
TDD: (608) 243-5601

WYOMING
Department of Employment
Division of Vocational Rehabilitation
1 East Herschler Building
Cheyenne, WY 82002
(307) 777-7385
Voice/TDD: (307) 777-7389

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APPENDIX 4: REFERENCES AND REGULATIONS

I. General Medical Personnel Guidance

Law:

A. The Americans with Disabilities Act of 1990 - 42 U.S.C. §§ 12101 et seq.

B. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq.; See also, 29 U.S.C. §§ 791(g), 794(d) (Incorporating standards of Americans with Disabilities Act into the Rehabilitation Act)

C. The Family and Medical Leave Act of 1993, Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, et seq. Title I of the Act applies to non-Federal employees and certain Federal employees and is administered by the Department of Labor. Title II of the Act applies to most Federal employees and is administered by the Office of Personnel Management.

Regulation:

A. 5 CFR 339, Medical Qualification Determinations, March 8, 1989

B. 29 CFR 1614, Equal Employment Opportunity Commission

NOTE: Part 1614 of the Federal sector Equal Employment Opportunity (EEO) complaint processing regulations replace part 1613, with the objective of promoting greater administrative fairness in the investigation and consideration of Federal sector EEO complaint by creating a process that is quicker and more efficient. Every Federal employee and applicant for Federal employment has the right to use the administrative EEO discrimination complaints process.

C. For most Federal employees, 5 CFR Part 630, Subpart L, Family and Medical Leave.

NOTE: The final rule became effective on January 6, 1997.

D. For certain Federal employees, including Postal Service employees, 29 CFR Part 825, The Family and Medical Leave Act of 1993.

NOTE: The final rule became effective on February 6, 1995.

Information:

A. Equal Employment Opportunity Commission (EEOC)

CLINTON LIBRARY PHOTOCOPY

1. EEOC - *ADA Enforcement Guidance: Preemployment Disability Related Questions and Medical Examinations*, October 10, 1995

   NOTE: This document provides the EEOC's position under the Americans with Disabilities Act of 1990, on preemployment disability-related questions and medical examinations.

2. EEOC - *EEOC Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities*, March 25, 1997

   NOTE: This guidance is designed to facilitate the full enforcement of the ADA with respect to individuals alleging employment discrimination based on psychiatric disabilities; respond to questions and concerns expressed by individuals with psychiatric disabilities regarding ADA; and answer questions posed by employers about how principles of ADA analysis apply in the context of psychiatric disabilities.

3. EEOC - *The Family and Medical Leave Act, The Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964*

   NOTE: This fact sheet was prepared by the Equal Opportunity Commission's (EEOC) Office of Legal Counsel. It is intended to provide technical assistance on some common questions that have arisen about the Americans with Disabilities Act of 1990 (ADA) and Title VII of the Civil Rights Act of 1964 (Title VII) when the Family and Medical Leave Act of 1993 (FMLA) also applies.

4. EEOC - *Compliance Manual Section on the Definition of the Term "Disability"*

5. EEOC - *Interim Enforcement Guidance on the Application of the ADA to the Disability-based Distinctions in Employer Provided Health Insurance*

6. EEOC - *Questions and Answers About Disability and Service Retirement Plans Under the ADA*

7. EEOC - *Enforcement Guidance on Workers' Compensation and the ADA*

8. EEOC - *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA*

9. EEOC - *Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person is a "Qualified Individual with a Disability"*

B. U.S. Office of Personnel Management (OPM)

CLINTON LIBRARY PHOTOCOPY

1. OPM - *Operating Manual - Qualification Standards for General Schedule Positions*, August, 1994, prepared by OPM's Washington Service Center

   NOTE: This operating manual replaces the Qualification Standards Handbook for General Schedule Positions.

3. OPM - *The Role of the Agency Medical Review Officer (MRO [4])*, March, 1996, prepared by OPM's Staffing Reinvention Office

4. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, December, 1994, prepared by OPM's Personnel Resources and Development Center

5. OPM - *Developing and Conducting the Structured Situational Interview: A Practical Guide,* January, 1994, prepared by OPM's Personnel Resources and Development Center

6. OPM - *Family-Friendly Leave Policies for Federal Employees: Employee Brochure*, November 1997, prepared by OPM's Workforce Compensation and Performance Service

7. OPM - *Federal Employee Entitlement Under the Family and Medical Leave Act of 1993*, December 1996, prepared by OPM's Workforce Compensation and Performance Service

C. Social Security Administration (SSA)

1. U.S. Department of Health and Human Services, Social Security Administration - *Disability Evaluation Under Social Security*, January, 1995

   NOTE: This new publication replaces the October, 1992 edition of *Disability Evaluation Under Social Security*. It is intended to provide physicians and other health professionals with an understanding of the disability programs administrated by the Social Security Administration, how each program works, and the kinds of medical information a health professional can furnish to help ensure sound and prompt decisions on disability claims.

II. Aeromedical-FAA Medical Standards and Certification

Law:

[4] See Section VI, Information (E, F) for HHS Drug Testing Medical Review Officer Source List and Manual for Federal Workplace Drug Testing Programs

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A. 49 U.S.C. 106 (G), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45303.

Regulation:

A. 14 CFR Part 67, Federal Aviation Regulations, Medical Standards and Certification, recently revised, March, 1996, See 61 Federal Register 11256, March 19, 1996

NOTE: This establishes medical standards for airman (e.g., pilots) who have to hold an FAA issued medical certificate.

Information:

A. U.S. Department of Transportation, Federal Aviation Administration, Office of Aviation Medicine, *FAA Guide for Aviation Medical Examiners*, Revised 1992

NOTE: This 1992 revision supersedes previous editions of the *FAA Guide* which should now be discarded.

III. Conduct or Performance Problems Involving Medical Considerations

NOTE: See Section I, Information (A) for information regarding an Agency's right to order/offer a medical or psychiatric examination.

IV. Excepted Service Appointing Authorities for Persons with Disabilities

Schedule A:

A. 5 CFR 213.3102(II) - This hiring authority applies to readers, interpreters and other personal assistants for other employees with a severe disability(ies).

B. 5 CFR 213.3102(t) - This hiring authority applies to persons with mental retardation.

C. 5 CFR 213.3102(u) - This hiring authority applies to persons with severe physical disabilities.

Schedule B:

A. 5 CFR 213.3202(k) - This hiring authority applies to persons who are mentally restored.

Veteran Specific:

A. 5 CFR 316.402(b)(5) - This hiring authority applies to 30 percent or more Disabled Veterans.

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Information:

A. OPM - *People with Disabilities in the Federal Government - A Statistical Profile*, July, 1998, prepared by OPM's Office of Diversity

B. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, (PRDC-94-11), December, 1994, prepared by OPM's Personnel Research and Development Center

NOTE: This publication replaces the 1980 *Guide for Administering Examinations to Handicapped Individuals for Employment Purposes*.

V. Disability Retirement (CSRS and FERS)

Regulation:

A. CSRS - 5 CFR Part 831, Civil Service Retirement System, Disability Retirement, September 22, 1993

Information:

A. CSRS - Documentation in Support of Disability Retirement Application, July, 1984

B. CSRS - OPM Pamphlet *Information for Disability Annuitants*, March, 1995

C. CSRS - Application for Immediate Retirement, January, 1990

Regulation:

A. FERS - 5 CFR Part 844, Federal Employees Retirement System - Disability Retirement, 1995

Information:

A. FERS - Documentation in Support of Disability Retirement Application, August, 1987

B. FERS - OPM Pamphlet *Information for FERS Disability Annuitants*, October, 1995

C. FERS - Application for Immediate Retirement, March, 1988

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VI. Drug and Alcohol Testing[5]

Executive Order:

A. Drug-Free Federal Workplace, Executive Order 12564, 51 Federal Register 32,889 (1986)

NOTE: Executive Order 12564 requires that the Head of each Executive Agency establish a program to test for the use of illegal drugs by employees in safety or security-sensitive positions.

Law:

A. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 468, codified at 5 U.S.C. § 7301 note (1987)

B. The Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143, Title V, 105 Stat. 952 (1991)

NOTE: This Act requires that a program be established to test for the use of alcohol or controlled substances. This program is mandated for Federal Aviation Administration (FAA) employees whose duties include responsibility for safety-sensitive functions and for any other Federal employee whose position requires a Commercial Drivers License (CDL) under Federal Highway Administration (FHWA) regulations.

C. Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 42 U.S.C. § 290ee-1 et seq., as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. § 290dd et seq., Pub. L. 102-321, 106 Stat. 367 (1992) (codified at 42 U.S.C. § 201 note)

D. Federal Employee Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570, Title VI, 100 Stat. 3207-157 (1986)

NOTE: This Act requires agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.

Regulation:

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[5] See Section IX, Information (A) for information regarding the role of OPM in the adjudication of medical objections to preference eligibles who test positive on a preemployment drug screen.

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A. 5 CFR Part 792, Federal Employees' Health and Counseling Programs

B. 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing

NOTE: This regulation is issued by the Federal Highway Administration (FHWA) and contains the requirements applicable to positions requiring Commercial Drivers' License (CDL).

C. 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

NOTE: This regulation is issued by the U.S. Department of Transportation (DOT) and contains the technical procedures designed for use when testing is required pursuant to 49 CFR Part 382.

Mandatory Guidelines:

A. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Register Vol. 59, No. 110, June 9, 1994

NOTE: This establishes mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to Executive Order 12564.

Information:

A. National Institute on Drug Abuse - *Model Plan for a Comprehensive Drug-Free Workplace Program*, 1990

B. U.S. Department of Transportation - *Alcohol & Drug Rules - An Overview*, February, 1994

C. U.S. Department of Health and Human Services - Substance Abuse and Mental Health Services Administration - *Basic Information on Breath Alcohol Testing for Implementation of the DOT Rules*, February, 1995

D. U.S. Department of Health and Human Services - An Overview of HHS Division of Workplace Programs (Federal Drug and Alcohol Program Oversight Responsibility)

E. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer Manual for Federal Workplace Drug Testing Programs*, 1997

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NOTE: This manual applies to Federal agency drug testing programs that come under Executive Order 12564 and the Department of Health and Human Services (HHS) Mandatory Guidelines. The Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) programs have drug testing program requirements that may differ from those required by HHS. Therefore, Medical Review Officers (MROs) must be aware of those differences in reviewing results for other Federally regulated programs.

F. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer (MRO) Source List*, March 3, 1996

VII. Hearing Conservation

Regulation:

A. 29 CFR 1910.95, Occupational Noise Exposure Standard, U.S. Department of Labor, Occupational Safety and Health Administration

Information:

A. U.S. Department of Labor, OSHA Guideline *Occupational Noise Exposure Compliance Assistance Guideline*, 1991

B. U.S. Department of Labor, Occupational Safety and Health Administration, *Hearing Conservation*, (OSHA Publication 3074), 1995

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are exposed to excessive/high noise levels that could cause hearing loss.

VIII. Infectious Diseases (HIV/AIDS, Hepatitis, Tuberculosis, etc.) Involving Employee Relations

Regulation:

A. 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogens, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: A bloodborne pathogen's protection program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are potentially exposed to infectious blood or body fluids as part of their employment.

Information:

CLINTON LIBRARY PHOTOCOPY

A. OPM - *HIV/AIDS Policy Guidelines,* August 30, 1995, prepared by OPM's Office of Employee Relations

NOTE: These guidelines replace FPM letter 792-21, "Acquired Immune Deficiency Syndrome (AIDS) in the Workplace."

B. U.S. Department of Health and Human Services, Social Security Administration - *A Guide to Social Security and SSI Disability Benefits for People with HIV Infection*, May, 1997

C. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, September 8, 1995/Vol. 44/No. RR-11, *Essential Components of a Tuberculosis Prevention and Control Program, Screening for Tuberculosis and Tuberculosis Infection in High-Risk Populations*

D. U.S. Department of Labor, Occupational Disease - *Claims for Pulmonary Tuberculosis*, FECA Bulletin No. 95-20, June 21, 1995

E. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, October 28, 1994/Vol. 43/No. RR-13 1994, *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities*

IX. Medical Disqualifications of Veterans Preference Eligibles (TP, CP, CPS, XP)

Law:

A. 5 U.S.C., Sections 3312 and 3318, Preference Eligibles

Regulation:

A. 5 CFR 339.306 Medical Qualification Determinations

B. 5 CFR 351.702(d) Reduction in Force

Information:

A. Interagency Advisory Group, Memorandum for Directors of Personnel, dated March 14, 1997, "OPM Adjudication of Medical Disqualifications to Preference Eligibles"

NOTE: This is a reminder that in accordance with Title 5, United States Code, Sections 3312 and 3318, and 5 CFR 339, Medical Qualification Determinations, any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management (OPM) **before** the position can be filled.

CLINTON LIBRARY PHOTOCOPY

B. OPM - *Procedures Guide in Processing Medical Objections to Preference Eligibles*, March, 1996, prepared by OPM's Staffing Reinvention Office

C. OPM - *Typical Reasons for Not Sustaining Agency Medical Passover Requests*, March, 1996, prepared by OPM's Staffing Reinvention Office

X. Medical Records

Law:

A. Privacy Act of 1974, 5 U.S.C. 552a

Regulation:

A. 5 CFR Part 293, Subpart E, Employee Medical File System Records, prepared by OPM's Office of Workforce Information

B. 5 CFR Part 297, Privacy Procedures for Personnel Records, prepared by OPM's Office of Workforce Information

C. 29 CFR 1910.1020(d)(l) (1990) Access to Employee Exposure and Medical Records, U.S. Department of Labor, Occupational Safety and Health Administration

D. 29 CFR 1904 (June 1986), A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics

E. 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient's Records (This regulation applies only to Employee Assistance Program (EAP) records)

Information:

A. OPM/GOVT-10 "Employee Medical File System Records," 57 Federal Register, 35,722, (August 10, 1992), prepared by OPM's Office of Workforce Information

B. OPM Medical Record Procedures, (covered in OPM's Operating Manual) *The Guide to Personnel Recordkeeping*, prepared by OPM's Office of Workforce Information

C. U.S. Department of Labor, Occupational Safety and Health Administration, *Access to Medical and Exposure Records*, (OSHA Publication 3110), 1993

XI. Mental Health Issues

NOTE: See Section I, Regulation (A), for specific information regarding an Agency's right to order/offer a medical or psychiatric examination.

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XII. OWCP Issues

Law:

A. 5 U.S.C. 8101 et seq. The Federal Employees Compensation Act, as amended

Regulation:

A. 20 CFR Parts 1 to 25, Federal Employees Compensation Act

B. 5 CFR Parts 353, Restoration to Duty from Uniform Service or Compensable Injury (Interim Regulations, September 1, 1995)

Information:

A. OPM - Pamphlet *Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses*, January, 1992, prepared by OPM's Staffing Reinvention Office

B. U.S. Department of Labor - *Injury Compensation for Federal Employees* (A Handbook for Employing Agency Personnel), (Publication CA-810), February, 1994

C. U.S. Department of Labor, *Questions and Answers About the Federal Employees' Compensation Act*, (Publication CA-550), September, 1988

D. U.S. Department of Labor, *Resource Book - Training for Federal Employing Agency Compensation Specialists*, 1994

XIII. Pregnancy Related Issues

Law:

A. Pregnancy Discrimination Act, P.L. 95-555, October 31, 1978, 92 Stat. 2076, 42 U.S.C. § 2000e(k)

Regulation:

A. 29 CFR § 1604.10(b), See also, 29 CFR Pt. 1604 App. (Questions and Answers on the Pregnancy Discrimination Act)

XIV. Respiratory Protection Program

Regulation:

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A. 29 CFR 1910.134, Respiratory Protection, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers must wear respirators to protect themselves from actual or potential airborne hazards.

B. 29 CFR Part 1910.1001, Occupational Exposure to Asbestos, June 29, 1995, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

C. 29 CFR Part 1910.1200, Hazard Communication, March 11, 1994, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

XV. Safety and Occupational Health Programs

Law:

A. Occupational Safety and Health Act of 1970, 84 Stat. 1590, Public Law 91-596, Section 19, Federal Agency Safety Programs and Responsibilities, December 29, 1970

NOTE: This act is to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; and by providing for research, information, education and training in the field of occupational safety and health.

Federal Regulation:

A. 29 CFR 1910.151, Medical Services, U.S. Department of Labor, Occupational Safety and Health Administration

B. 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, U.S. Department of Labor, Occupational Safety and Health Administration

C. 29 CFR 1910.1200, Hazardous Communication, U.S. Department of Labor, Occupational Safety and Health Administration

D. 5 CFR Part 339.205, Medical Evaluation Programs, Medical Surveillance Program

XVI. Veterans and the Civil Service

Information:

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A. OPM - *VetGuide, Federal Employment Policy Handbook: Veterans and the Civil Service,* December, 1998, prepared by OPM's Employment Service

NOTE: VetGuide explains the special rights and privileges that veterans enjoy in Federal civil service employment. The guide conveniently summarizes in one place material from many laws and regulations that affect the employment of veterans. The guide will help Federal personnel specialist ensure that veterans receive the advantages they have earned.

B. The Office of Personnel Management (OPM) administers entitlement to veterans' preference in employment under Title 5, United States Code, and oversees other statutory employment requirements in Titles 5 and 38. (Title 38 also governs veterans' entitlement to benefits administered by the Department of Veterans Affairs (VA).

XVII. Violence in the Workplace

Information:

A. OPM - *Dealing with Workplace Violence: A Guide for Agency Planners*, written by the Office of Workforce Relations, February 1998

B. U.S. Department of Labor, Occupational Safety and Health Administration - *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, (OSHA Publication 3148), 1996

C. U.S. Department of Justice, United States Marshals Service - *Security in the Workplace: Improving the Safety of Federal Employees,* (USMS Pub. No.61) September, 1995

D. U.S. Department of Justice - *Combating Workplace Violence: Guidelines for Employers and Law Enforcement*, International Association of Chiefs of Police (publication funded by Office of Justice Programs, Bureau of Justice Assistance)

E. U.S. Department of Justice, National Institute of Justice - *Understanding and Preventing Violence*, February, 1994

F. U.S. Department of Justice, National Institute of Justice - *Psychoactive Substances and Violence*, February, 1994

G. U.S. Department of Justice, National Institute of Justice - *The Cycle of Violence*, September, 1992

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H. ADA Information Brief, Volume 1, Number 4, *Violence and Workers with Psychiatric Disabilities: Myths and Facts*[6]

I. Worldwide Web Information: *Partnership Against Violence Network (PAVNET).* The Departments of Justice, Agriculture, Education, Housing and Urban Development, and Labor. A database of programs dealing with violence. Access through the Web at: www.pavnet.org.

[6] Listed with permission of the Washington Business Group on Health

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Cynthia A. Rice 06/29/99 11:42:18 AM

Record Type: Non-Record

To: J. Eric Gould/OPD/EOP@EOP

cc:
Subject: Model Plan

Eric -- you went to Eddie's meeting on the mangement directive. Where does that stand and is there any paper I can read?

---------- Forwarded by Cynthia A. Rice/OPD/EOP on 06/29/99 11:41 AM ----------

Lisa M. Brown@OVP

06/29/99 11:39:15 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP, J. Eric Gould/OPD/EOP@EOP

cc: Edward W. Correia/WHO/EOP@EOP
Subject: Model Plan

The Civil Rights Div is meeting with the Civil Div tomorrow, and will then send their comments to OPM on Thursday or Friday. Apparently their redline will look a little intimidating, but the changes fall in four categories:

1. Affirmative Action
2. Disability issues
3. Disability etiquette (how you talk about people with disabilities)
4. Stylistic and readability

Liz Savage is going to call OPM to set the framework for the changes so that OPM won't freak out when they get the document. I called OPM (Suzanne Seidan (sp?), the new GC, is handling it) to introduce Liz and said that DOJ was acting in good faith. Suzanne is understandably frustrated by the time it took for DOJ to get out their comments, but seems fine about trying to address their concerns. EEOC also just provided additional comments (I am routing them to you right now), which is similarly frustrating to her. She is worried about the general delay in getting out the Plan, and I said the WH wants to take the time to make sure we have a good strong Plan but that we would also work with her to keep the pressure on folks to bring this to completion soon. She is going to call me once we have all the comments to talk about a realistic deadline. I also told her we would help facilitate resolution of disagreements on issues.

There is one major issue to be addressed. The EEOC is saying that the Plan should not address affirmative action b/c affirmative action is addressed in the Management Directive. DOJ disagrees. Eddie Correia has been handling the Directive, so I will ask his views on this issue. This is one on which we will probably need to weigh in.

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Lisa M. Brown @ OVP

05/31/99 09:15:11 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, J. Eric Gould/OPD/EOP

cc:
Subject: Comments re OPM draft

For your eyes ONLY -- Liz gave this to me confidentially. There are a few changes from the last draft. I told them to send it, but to add something in the opening about knowing they put alot of work into the Plan and acted in good faith, but . . . .

---------- Forwarded by Lisa M. Brown/OVP on 05/31/99 09:13 AM ----------

Liz.Savage@intmail.usdoj.gov
05/28/99 07:11:00 PM

Record Type: Record

To: Lisa M. Brown@OVP@EOP

cc:
Subject: Comments re OPM draft

Lisa -

This is the version you should read -

thanks - liz

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CLINTON LIBRARY PHOTOCOPY **UPDATED 5/28/99**
5:00 PM

Analysis by the Department of Justice of the OPM Model Plan

"People with Disabilities in the Federal Government: An Employment Guide"

The Department of Justice strongly opposes release of the OPM Model Plan in its current form and believes it would prove embarrassing to the Administration. The Plan omits any discussion of affirmative action, a concept which should be at the core of any Model Plan for Federal sector disability employment. The document also contains legally inaccurate statements and uses outdated language that would prove offensive and demeaning to people with disabilities. As drafted, the Plan conflicts with many objectives that have been carefully formulated by the Administration over the last six years with appropriate input from people with disabilities and other interested parties.

The following comments are not exhaustive, but represent the Department's best efforts, given the 24-hour turnaround time requested of us.

Major Issues

1. The Plan does not adequately set out the legal standard of section 501 of the Rehabilitation Act, that the Federal government must not only refrain from discrimination and provide reasonable accommodation, but engage in affirmative action employment practices. The Plan fails to include important elements of affirmative action, such as EEOC's model reasonable accommodation procedures and the obligation to consider taking steps in individual cases that would exceed what is required under reasonable accommodation. See EEOC's April 30, 1999, draft Management Directive 715 at 32-33.

2. Much of the language reflects stereotypes of people with disabilities and appears to be based on outdated "medical" or "charity" models of disability accommodation which many find offensive.

3. More emphasis should be placed on the Federal government's legal obligations. The Plan either fails to discuss, or inadequately discusses, the following issues:

   - the duty to provide effective communication through the use of appropriate auxiliary aids and services, except where doing so would pose an undue hardship;

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- the duty to conduct individualized assessments of a person's ability to perform essential job functions;
- "program access" and the architectural standards for new construction and alterations requirements (without such an explanation, the discussion of modifying Federal work sites for reasonable accommodation becomes less intelligible);
- the prohibition of discrimination on the basis of association with a person with a disability, such as the spouse of someone who has HIV;
- the duty to ensure that reasonable accommodations are provided to Federal employees when contractors are used to provide services to Federal employees -- such as training on new computer software;
- the Federal government's obligations under the Family and Medical Leave Act;
- the duty to make transportation services available to employees (e.g., shuttle services) accessible to employees with disabilities; and
- the duty to keep disability-related personal information, including medical documentation, confidential and separate from standard employee files.

Specific Comments

- Throughout the document, change:
  - "the disabled" to "persons with disabilities" and "disabled employees" to "employees with disabilities;"
  - "the hearing impaired" or "individuals who are hearing impaired" to "individuals with hearing impairments" or "individuals who are deaf or hard of hearing;" and
  - "the blind" or "the visually impaired" to "people who are blind" or "people who have visual impairments."
- Throughout the document, there are statements to the effect that reasonable accommodations need only be provided upon request. This contradicts the EEOC's draft Management Directive 715 that there are circumstances under which it is appropriate as a matter

of affirmative action for a Federal employer to initiate a conversation about reasonable accommodation.

- P2, second bulleted paragraph: This statement is incomplete. It ignores the obligation to make individualized assessments and provide reasonable accommodations in all cases.

- P3, paragraph 4: The employment provisions of the ADA do not apply directly to the Federal government; the definitions and standards for determining discrimination are only applicable because they have been incorporated by reference into the Rehabilitation Act.

- P6, third bulleted para: Change the language to: "Education kits containing timely fact sheets on disability employment issues."

- P8: State vocational rehabilitation programs should not be the primary source of rehabilitation services to Federal employees. The emphasis should be on Federal sources such as the Job Accommodation Network, Department of Education, Department of Veterans Affairs, and the Access Board. The Federal government should not request employees with disabilities to become clients of State vocational rehabilitation programs. While State rehabilitation agencies provide special equipment for people with disabilities who are employed in the private sector or with State or local governments, it is less appropriate for the Federal government to seek or such assistance for items needed for reasonable accommodation or as part of an affirmative action program.

- P9, third bulleted paragraph: Give the example of a facial disfigurement.

- P9, "Targeted Disabilities:" Although the term "targeted disabilities" is defined, it is not a central concept in the Model Plan. Unlike the EEOC's draft Management Directive 715, there is no special emphasis placed on hiring and promoting people with targeted disabilities as part of the Federal government's affirmative action obligations.

- P11: first paragraph: The discussion on reasonable accommodation should start by indicating that Federal employers are required to provide reasonable accommodation to the known disabilities of an employee. In addition, language should be added indicating that, as a matter of affirmative action, there are certain circumstances under which Federal employers should

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initiate a conversation about reasonable accommodations consistent with the EEOC's draft Management Directive 715.

- P11, third paragraph: Add language emphasizing that the employer should enter into an interactive process with the employee. Add after the third sentence,"An accommodation that has worked for an individual in the past may need to be re-evaluated as the person's disability changes in nature or severity."

- P12: Take out references to "special" testing. Refer instead simply to "testing" or "testing with appropriate accommodations."

- P12: In the first sentence under "Special Testing," it is unclear what is meant by the phrase "and there is no reasonable accommodation."

- P12: In the paragraph entitled, "Modifying Written Examinations:"

  - clarify what is meant by the phrase "this task;"

  - clarify that sign language interpreters may be needed to communicate the substance of the test, not just to explain test procedures and directions for taking the test; a better statement would simply be "and providing sign language interpreters for persons who are deaf or hard of hearing;" and

  - change "verbal portions" to "aural portions."

- P13: Change the second paragraph to read:

  "Many people with disabilities, even those with severe disabilities, may not need testing accommodations. Others for whom testing accommodations are often made include persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons who have limited mobility or motor control of their arms or hands, persons with brain damage, and persons with learning disabilities such as dyslexia. In many of these instances, extended time for testing is appropriate."

- P13: In the second bulleted paragraph, change the word "tasks" to "objectives" so that it does not infer that there is only one way of doing something.

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- P14: The section entitled "Accessible Facilities" should be redrafted to reflect section 504 requirements for program accessibility in existing facilities and for readily accessible new construction and alterations. This would provide the backdrop for the discussion of modifications to the work site as part of the reasonable accommodation obligation.

- P15: In the second paragraph under "Assistive Devices," replace the text with a broader statement emphasizing Federal resources.

- P15: Change the third paragraph under "Assistive Devices" to read in full:

  > "Federal employers are authorized to purchase equipment if it is determined that the use of the equipment is a reasonable accommodation that will enable an employee with a disability to better perform the essential functions of his or her job. Even if equipment is not required as a matter of reasonable accommodation, its purchase is authorized if it is in furtherance of the Federal government's affirmative action obligations." The footnote may be retained.

- PP15-16, "Readers and Interpreters." It is inappropriate in many circumstances for the Federal government to ask other employees to provide "reading" services as needed for employees who have visual impairments. It is inappropriate in most circumstances for the Federal government to ask other employees to act as sign language interpreters for employees who are deaf or hard of hearing. Unless they have been hired for those purposes, other employees will likely not have the skills or training to provide effective communication to the person with a disability. Additionally, this is likely to cause resentment among the colleagues of the person with a disability, who are being taken away from the work for which they were hired to perform. Trained, qualified personnel should be hired instead. In most instances, the cost of these accommodations will not rise to the level of undue hardship to the Federal government. There should also be a discussion of the need to provide verbal descriptions of training videos for persons who have visual impairments and for captioning training videos for persons with hearing impairments. There should be a discussion of the increased need for sign language interpreters during office meetings, training, and whenever job duties are shifted. The current draft gives only narrow examples of when it is appropriate to contract for sign language interpreters "conferences,

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training courses, meetings, or court appearances" incorrectly implying that the need for sign language interpreters will be rare.

- P17, "Flexible Leave Policies:" It is unclear whether the discussion is meant to imply that persons with disabilities may get additional administrative leave or simply be allowed to take annual leave during snow emergencies on a liberal leave basis.

- P17: The last paragraph under "Flexible Leave Policies" should be redrafted to reflect the Federal government's obligations under the Family and Medical Leave Act. The government must, in most circumstances, allow an employee to take up to six weeks of leave without pay for illness or disability. As a matter of reasonable accommodation or affirmative action, the government may grant additional leave without pay for persons with disabilities; this is where flexibility is appropriate.

- P18, "Eliminating Transportation Barriers:" According to EEOC guidance, transportation to the work site is not a subject for reasonable accommodation. It is, however, an appropriate subject for affirmative action. The statement should include the provision of parking for persons with mobility impairments or disabilities affecting stamina.

- P19, second bulleted paragraph: Change the second sentence to read, "Initial contact should start with the person with a disability and the office responsible for information technology (IT) management." Mention GSA's Center for IT Accommodation, the Department of Education's Disability Access Resource Center, and the Computerized Accommodation Program (CAP) at the Department of Defense as being available to provide technical assistance.

- P19, first full "non-bulleted" paragraph: change the reference from "special services" to "reasonable accommodation."

- P19-20, "Details" and "Disability Retirement:" These sections are confusing and go beyond what should be in a discussion of reasonable accommodation.

- P21, "Competitive Appointments:" Change the fourth sentence to "Appropriate auxiliary aids and services leading to effective communication and other reasonable accommodations should be provided during all aspects of job application, including testing and interviewing." Delete the rest of the paragraph.

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- P23: Change the parenthetical remark in the second sentence to read, "those who have severe physical, cognitive, or psychiatric disabilities or who have a history of or are regarded as having such disabilities."

- P23. In the third bulleted paragraph, insert "and" between statements (1) and (2).

- P24. Change reference from "30 Percent or More Disabled Veterans" to "Veterans with Disabilities of 30 Percent or More."

- P24. In the first non-bulleted paragraph under "Disabled Veterans," include a statement that reasonable accommodations must be provided during any written test.

- P25. Change the last paragraph to read, "Any of these certificates must be maintained in a separate, confidential folder, rather than in the person's official personnel folder (OPF)."

- P26. Change the fourth bulleted paragraph to read, "For prolonged conversations, sit down so you are at the eye level of the wheelchair user."

- P26. In the fifth bulleted paragraph, change "are paralyzed" to "have paralysis" and change the last phrase to read "many can walk with or without the aid of canes, braces, or crutches."

- P27. Change the second sentence of the page to read, "People who use wheelchairs often use the same words."

- P27. Change the first three sentences of the first paragraph under "Blindness and Visual Impairments" to read, "The terms 'blindness' and 'visual impairment' may mean either a complete or partial loss of vision. With many, only the edges or a part of the visual field may be obscured, or there may be no central vision although side or peripheral vision still exists."

- P27. Change the second sentence of the second paragraph under "Blindness and Visual Impairments" to read, "People with visual impairments may or may not use these or other mobility aids."

- P27. Change the third sentence in the first bulleted paragraph to read, "Tell him or her where the chair is in relation to the person."

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- P27. Add to the end of the fourth bulleted paragraph: "Service animals are not pets."

- P28. In the first bulleted paragraph, add the word "trained" before "reader."

- P28. Delete the third bulleted paragraph.

- P28. Change the second sentence under "Deafness and Hearing Impairments" to read, "Individuals may be deaf or hard of hearing and be able to speak clearly."

- P28. Change the last sentence of the second paragraph under "Deafness and Hearing Impairments" to read, "In many situations, it is necessary to obtain the services of a qualified sign language interpreter to provide effective communication, if the person who is deaf or hard of hearing uses sign language as his or her primary means of communication. Other accommodations that may be required include the use of real-time captioning, where a stenographer works to display aural communication on a computer monitor or screen in 'real time.'"

- P28. Delete the first two sentences of the third paragraph under "Deafness and Hearing Impairments."

- P28. In the first bulleted paragraph under "Deafness and Hearing Impairments," change the second sentence to, "Gain his or her visual attention before starting a conversation."

- P28. Add to the end of the second bulleted paragraph under "Deafness and Hearing Impairments," "and with adequate lighting."

- P29. Delete the third and fourth paragraphs under "Invisible (Hidden) Disabilities."

- P30. In the second paragraph, change the first part of the first sentence to read, "People who have mental retardation, like others, may want..."

- P30. Delete the first two sentences under "People with Psychiatric Disabilities."

- P30. Add the following bullets under "People with Psychiatric Disabilities:"

    - As many psychiatric medications cause extreme thirst, upon request allow the person to have access to beverages even where food and drink are normally prohibited.

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- Consider offering a flexible schedule to allow the person to deal with medication issues, insomnia, fatigue, or other conditions that often accompany psychiatric disabilities.

- P31. Delete the first bulleted paragraph.

- P31. Change the last paragraph to read, "If the person's speech is difficult to understand, ask him or her to repeat what was said. Some people who have severe cerebral palsy or other muscular or neurological disabilities may communicate by writing, typing, or using a communication board or other electronic device."

- P33. The second paragraph must be edited to conform with EEOC's guidance on pre-employment inquiries.

- P33. In the first sentence under "Career Development," add "many" before "people with disabilities."

- P33. Change the last sentence to read, "Every effort should be made to ensure that employees with disabilities like others are given the opportunity to reach their maximum potential."

- P34. In the third sentence, change "clear description of the job" to read "clear description of the essential functions of the job."

- P34. In the second paragraph, delete the second sentence. Modify the third sentence to read, "Federal employers must provide equal employment opportunity."

- P34. Change the second sentence under "Training" to read, "Ensure that classes are held in accessible facilities, and, as necessary to provide effective communication, that materials are available in electronic format, large print, Braille, or audio cassette for persons with visual impairments, trained note takers and sign language interpreters or real-time captioning are provided to persons who are deaf or have hearing impairments, or other appropriate reasonable accommodations are made."

- P35. Delete the third sentence in the opening paragraph. Change "the disabled community" to "people with disabilities."

- P36. Delete "at the agency level" in the last line.

- P48. Under "Schedule B:" Change the language "persons

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who are mentally restored" to reflect the regulatory language which is less offensive.

P49. At the top of the page, change "30 percent or more Disabled Veterans" to "Veterans with Disabilities of 30 percent or more."

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Cynthia A. Rice 05/26/99 11:21:38 AM

Record Type: Non-Record

To: Andrea Kane/OPD/EOP, J. Eric Gould/OPD/EOP
cc:
bcc:
Subject: Re: Cardin letter

This gives me an idea.... if the President does a disability event June 4th, why not try to plug WtW there.... funds to help long term welfare recipients with disabilities go to work?
Andrea Kane

Andrea Kane 05/26/99 10:40:22 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:
Subject: Re: Cardin letter

---------- Forwarded by Andrea Kane/OPD/EOP on 05/26/99 10:40 AM ----------

Caroline R. Fredrickson 05/26/99 09:26:48 AM

Record Type: Record

To: Andrea Kane/OPD/EOP

cc:
Subject: Re: Cardin letter

I think it's a good idea as is the idea of trying to work it into a speech. The UI/family leave issue played well in the Grambling commencement speech which was on work/family overall. Maybe we can look to an event where the stress will be on helping people help themselves and focus on work incentives improvement act [a hot issue now on the Hill], WTW and other related issues.

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Cynthia A. Rice 05/27/99 07:15:14 PM

Record Type: Record

To: Lisa M. Brown/OVP

cc: J. Eric Gould/OPD/EOP
Subject: Shorter description of the two actions

Here's a shorter description that the one pager I just sent you:

We are nearly ready to announce two executive actions to help increase the employment of people with disabilities in the federal workforce. The first will be a directive to federal agencies to implement an employment plan for people with disabilities prepared by the Office of Personnel Management at the Vice President's request. The directive will ensure agencies 1) recruit widely people with disabilities for positions at all levels; 2) establish agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities; 3) provide career opportunities for people with disabilities, including equal opportunity to obtain managerial and executive training and compete for promotions; and 4) collect and maintain data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce. The second action will be an executive order, to be followed by regulations, which will change the civil service rules to ensure that people with psychiatric disabilities 1) will be covered by the same appointing authority which facilitates hiring of individuals with other disabilities and 2) will be allowed to acquire competitive civil service status after two years of service as individuals with other disabilities now can. These stricter standards for mental disabilities were put in place over 20 years ago, and Mrs. Gore, in a speech at Dartmouth in January, announced that OPM would examine ways to eliminate these disparities.

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President Clinton andVice President Gore: Increasing Employment of People with Disabilities
5/27 DRAFT

Today, President Clinton and Vice President Gore will take executive action to increase federal hiring of people with disabilities and to ensure federal hiring rules treat mental illness like any other disability. The President will direct federal agencies to implement an employment plan for people with disabilities prepared at the Vice President's request and will sign an executive order eliminating the federal government's stricter hiring standards for psychiatric disabilities, an issue highlighted by Mrs. Gore earlier this year.

Directing Federal Agencies to Implement Plan for Hiring People with Disabilities. On December 14th, the Vice President asked the Office of Personnel Management (OPM) to develop a model plan to increase the representation of adults with disabilities in the federal workforce. Today, the President will direct federal agencies and departments to implement this plan to:

- Recruit widely people with disabilities for positions at all levels;
- Establish agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities;
- Ensure career opportunities for people with disabilities, including equal opportunity to obtain managerial and executive training and compete for promotions;
- Collect and maintain data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce.

This plan, *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, will be released with an employment guide -- a compendium of laws, tools and guidance for agencies to use as they recruit, hire, train and promote people with disabilities.

Signing Executive Order Expanding Hiring Authority for Adults with Psychiatric Disabilities. On January 14th, Tipper Gore announced that OPM would explore measures to eliminate the stricter standards applied to federal hiring practices for adults with psychiatric disabilities. Today, the President will sign an executive order eliminating these outdated, twenty-year-old rules which will:

- Ensure that individuals with psychiatric disabilities are given the same opportunities as persons with severe physical disabilities or mental retardation. The civil service rules will be changed to ensure that people with psychiatric disabilities will be covered by the same appointing authority used for individuals with other disabilities.
- Permits adults with psychiatric disabilities the ability to acquire competitive civil service status after two years of service. This authority will allow adults with psychiatric disabilities the same opportunity for conversion into the competitive civil service as employees with other disabilities.

Implementing Actions Recommended by Presidential Task Force. Both actions to be taken today were recommended by the President's Task Force on Employment of Adults with Disabilities under the leadership of Labor Secretary Alexis Herman, chair, and Tony Coelho, vice chair.

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Cynthia A. Rice 05/26/99 02:15:34 PM

Record Type: Non-Record

To: lisa m. brown/ovp @ ovp
cc: J. Eric Gould/OPD/EOP
bcc: Records Management
Subject: Re: OPM edits and letter

Great. Thanks Eric. Can you check one thing: I think the stat on 75% unemployment rate relates to people with severe disabilities...I'd use the Task Force report as your guide.

Lisa -- I think we should get the plan comments to OPM ASAP and insist on a revised plan by COB Friday. Since you're already talking to them on the EO do you want to do so on this? I'm happy to but don't want to confuse them.

FYI: at yesterday's message meeting, everyone was gung ho about having this announced next Friday so we're really on the hook for this now!

J. Eric Gould 05/26/99 01:57:29 PM

J. Eric Gould 05/26/99 01:57:29 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Lisa M. Brown/OVP @ OVP
cc:
Subject: OPM edits and letter

reflecting both your comments. thanks

POTUSLT.W

OPMEDITS.W

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Draft Cover Letter for "A Plan for Employment of People with Disabilities in the Federal Government."

America is enjoying great prosperity, with the prospect of an even brighter future as we head into the next century. Our economy is the strongest it has been in a generation. Since I have been President, there have been more than 18 million new jobs; and unemployment is as low as it has been in 29 years. Still, we cannot consider ourselves truly successful until all Americans, including the 30 million working-age adults with disabilities, have access to the tools and opportunities they need to achieve economic independence.

Today, the Americans with Disabilities Act is making it possible for millions of Americans to participate more fully in our society. However, 9 years after the ADA's passage, the unemployment rate among working-age Americans with disabilities is still far too high. Almost 75 percent of working-age Americans with disabilities remain unemployed. If America is to live up to its promise of equal opportunity, and if our economy is to continue to strengthen and expand, we must be able to draw on the untapped energy and creativity of this large and capable segment of our population.

On March 13, 1998, I highlighted the issue of unemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities, whose purpose is to address the unemployment of people with disabilities. This Task Force was charged with creating a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented me with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations. My FY 2000 budget includes a historic new $2 billion initiative that removes significant barriers to work for people with disabilities. It includes the Work Incentives Improvement Act, which invests $1.2 billion in providing health care and employment services for people with disabilities so they can work; a new $700 million investment in a $1,000 tax credit for workers with disabilities; and an increase of $35 million, in assistive technologies that make it possible for individuals with disabilities to work.

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the Federal government be a model employer for people with disabilities. That is why in November, the Vice President directed the office of Personnel Management to develop a model plan to increase the representation of adults with disabilities in the Federal work force. Today I am pleased to release that plan and companion guide book, which provides resources and advice for agencies on recruitment and hiring, reasonable accommodation, career development and promotion, and monitoring and evaluating progress in hiring people with disabilities. I direct every agency to implement this plan immediately.

With the strength of our economy and the enormous talent pool of people with disabilities, it is important that the Federal government be a leader in creating an environment that promotes the ability of individuals with disabilities to be a part of our nation's workforce.

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Suggested Edits to OPM Draft of Plan for Employment of People With Disabilities in the Federal Government

Throughout the paper: Omit bold and underline for "OPM". Also, general instructions should be consistent: "Agencies should" and "OPM will"

Title Page

Omit: "Model" in title (reflect the change of title throughout the document).

Table of Contents

Change: "Recruitment and ~~Placement~~" to "Recruitment and Hiring".

Sections are rearranged as reflected below.

Introduction

Replace first three paragraphs with:

"Since President Clinton took office, the American economy has added nearly 18 million new jobs, and unemployment is the lowest in three decades. The unemployment rate among all working-age adults with disabilities, however, is nearly 75 percent.

The Federal Government is committed to take the lead in charting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as a close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. The plan addresses the following specific goals:

- Recruitment and Hiring;
- Reasonable Accommodation;
- Career Development and Promotion; and
- Monitoring and Evaluating Progress."

Omit the fourth paragraph beginning, "In addition, ..."

Fifth paragraph, first sentence: OPM ~~is pleased to~~ provides the ~~Model~~ Plan for government wide....

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Last sentence: The ~~Model~~ Plan ~~is the first step to help~~ will assist Federal employers to fulfill this commitment...

Recruitment and Hiring

Goal: ~~Urges~~ [A]ll departments and managers ~~to~~ should widely recruit people with disabilities for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels.

Because it is a long section, it should be broken up as: "Vacancy Announcements" (for the first bullet); "Recruitment Strategies" (after the first bullet); "Special Appointing Authorities" (after the bullet, 'Federal employers should ensure that managers and supervisors understand and use various hiring programs...'); and "Employment Opportunities for Students" (inserted after the CFR reference on hiring disabled veterans).

Second paragraph: OPM will benchmark best practices in public and private sectors ~~when~~ of successful recruitment efforts of people with disabilities...

Third paragraph, second sentence: These messengers will serve as liaisons ~~of~~ between the ~~Model~~ Plan ~~to~~ and the community....

Fourth paragraph, "... in order to attract people with disabilities from inside and outside the federal government."

Paragraph, "Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness." This paragraph needs to be modified to reflect the pending Executive Order to be announced by Mrs. Gore.

Omit the third to last bullet: "Before recruiting, Federal employers will review internal human resource policies..."

Second to last bullet, "Federal employees should include language for vacancy announcements..." should be moved up as the first bullet of the entire section.

Last bullet: "Federal employers ~~are also urged to~~ should review their programs to determine if part-time employment opportunities could be created..." -- Could OPM add more to this language, describing options agencies have?

A separate section on Employment Opportunities for Students is not necessary. The key points should be added to the end of this section:

"OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the federal workforce."

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"OPM will serve as clearinghouse for all students interested in Student Educational Employment Program opportunities."

"OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies."

"OPM will develop cooperative education agreements with schools in order for Federal employers to tailor them for specific uses."

Also include bullets on PMI and outreach efforts.

Reasonable Accommodation

Goal: Employers should establish agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities.

Up front language should be added making the point that reasonable accommodation is current law, i.e., "The law requires reasonable accommodation in the workplace and it is the policy of this Administration to ensure reasonable accommodation is available to all employees."
First bullet, "A reasonable accommodation is an adjustment or alteration ~~made to a job and/or the work environment~~ that enables people with disabilities to ~~perform the duties of the position~~ apply for jobs, to perform job duties, or to enjoy equal benefits and other privileges of employment...

After the first bullet, insert new bullet: "Agency-wide policies should make it easy and simple to request an accommodation. They should provide for a fair, prompt and balanced review of an accommodation request and a meaningful dialogue between supervisor and employee where necessary."

In the second bullet, "The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies should explore ways to insure their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new Enforcement Guidance on Reasonable Accommodation issued by The Equal Employment Opportunity Commission (EEOC), on March 1, 1999. Free copies of this and other EEOC guidance can be obtained by calling 1(800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov. (Delete the cite to the EEOC Guidelines).

The reasonable accommodation process developed by the federal government workgroup should be cited in the Plan as an example of a good process and should be fully included in the more comprehensive "Employment Guide".

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Career Development

Goal: "~~Encourages~~ [A]ll departments and agencies ~~to~~ should give full consideration to employees with disabilities for promotion and inclusion in..."

First bullet: "Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, promotions, managerial and executive training and other career development opportunities..."

Monitoring and Evaluating Progress

Goal: "Collects and maintains data to monitor the success..."

Second to last bullet, re: federal employers are encouraged to recognize managers and supervisors... should be moved to "Career Development" section.

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United States Office of Personnel Management

FAX TRANSMITTAL SHEET

Date: 5-11
Number of Pages

OFFICE OF THE DIRECTOR
1900 E STREET, NW., ROOM 5H09
WASHINGTON, DC 20415-0001

Please Deliver To:

Name: Lisa Brown	
Office: OVP	Room:
Telephone:	

From:

Name:	Mary Strand	
Office:	OPM	Room:
Telephone:	(202) 606-1000	FAX Number: (202) 606-2183

Remarks

(1) Changes to model Plan

(2) DRAFT EO on Psy. Disabilities w/ Preamble

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05/11/99 TUE 13:55 FAX 202 606 2163 OFFICE OF THE DIRECTOR 002

CHANGES FROM 4/19 HIGHLIGHTED

APR 29 1999

ACCESSING OPPORTUNITY

A Model Plan *for* Employment of People With Disabilities in the Federal Government

United States Office of Personnel Management

Employment Service

Theodore Roosevelt Building
1900 E Street, NW
Washington, DC 20415-9800

202-606-1059
www.opm.gov

ES DO-04
March 1999

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with disabilities have not shared in this employment prosperity.

The Federal Government should take the lead in recharting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. The objective is eliminating widespread barriers to gainful employment for people with disabilities.

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a Model Plan. The Model Plan addresses the following specific goals:

- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities; and
- Collect and maintain data to monitor success.

In addition, the Model Plan reminds agencies of their responsibilities to provide, when requested, a reasonable accommodation to an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.

OPM is pleased to provide the Model Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Model Plan is the first step to help Federal employers fulfill this commitment and become a model employer.

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MODEL PLAN

- RECRUITMENT AND PLACEMENT -

GOAL I: ***"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."***

- Federal employers should develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors when successful recruitment efforts of people with disabilities is evident. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons of the Model Plan to the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Model Plan efforts and best practices.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13-15, in order to attract candidates from outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at 1-800-526-7234.

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- The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

- Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security disability benefits and have been prepared to work. Employers may request resumes—

  - By telephone: (757) 441-3362;
  - By fax: (757) 441-3374; or
  - By Email: projable@opm.gov.

  Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling OPM at (912) 744-2085.

  For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also

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appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, ***OPM*** is available to provide governmentwide or agency-specific data.

- ***OPM*** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Model Plan.

- Federal employers should educate and train managers and supervisors on various hiring programs and resources available ~~to them~~ in recruiting and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

- ***OPM*** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

  Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

  Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

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5 CFR 316.302(b)(5) and 5 CFR 316.402(b)(5) for hiring 30 percent or more disabled veterans. These authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

5 CFR 315.604 for hiring disabled veterans enrolled in a VA training program. This authority is used to hire disabled veterans eligible for training under the Department of Veterans Affairs (VA) vocational rehabilitation program (38 U.S.C. chapter 31). The veterans may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program the veterans are not Federal employees for most purposes, but are beneficiaries of the VA. Upon successful completion, the host agency and VA give the veterans Certificates of Training showing the occupational series and grade levels of the positions for which trained. The Certificates of Training allows any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements similar to those available for disabled veterans under 5 CFR 315.604).

- Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules, job sharing, and dissemination of employment and other information in alternative formats.

- Federal employers should include language for vacancy announcements that states that reasonable accommodations are available to applicants or employees with a disability when such an accommodation is requested.

- Federal employers are also urged to review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL II: ***"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."***

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status.

  OPM will continue to expand the diversity of academic disciplines in the PMI Program.

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OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

GOAL III: ***"Encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."***

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Career development and related program review is encouraged to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- ***OPM***, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

GOAL IV: ***"Collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce."***

- ***OPM*** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- ***OPM***, in its oversight role, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

- A reasonable accommodation is an adjustment or alteration made to a job and/or the work environment that enables people with disabilities to perform the duties of the position. Federal departments and agencies are required, when requested, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.[1]

- The concept of reasonable accommodation applies to recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies should explore ways to insure their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. The Equal Employment Opportunity Commission (EEOC) is responsible for regulations governing reasonable accommodation and should be contacted by Federal employers needing additional guidance in this matter.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential duties of the particular job, the work environment, and the reasonableness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made.

- Types of accommodations include worksite modifications; part-time employment; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, readers, personal assistants; and reassigning or retraining employees. For more information on this matter, please refer to the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*.

[1] An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation. As mentioned previously, the Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (PCEPD) is an excellent technical assistance resource in the area of reasonable accommodation.

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Cynthia A. Rice Re: Americorps Q&A (partial) (1 page)	11/14/97	P6/b(6)
002. email	To Stacie Spector from Christa Robinson re: Americorps (1 page)	11/15/97	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15459

FOLDER TITLE:
Welfare-Work-W2W Partnership-Cessna [12]

Rhonda Young
2009-1414-S
ry769

RESTRICTION CODES

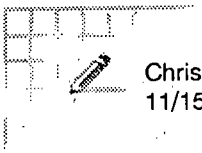
Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]



Christa Robinson
11/15/97 01:14:44 PM

Record Type: Record

To: Stacie Spector/WHO/EOP, Ann F. Lewis/WHO/EOP

cc: Cynthia A. Rice/OPD/EOP, Diana Fortuna/OPD/EOP, Laura A. Graham/WHO/EOP

Subject: Americorps

Unfortunately we will not be able to highlight the Americorps volunteers who worked at the Cessna Child Care facility b/c the Americorps program was suspended (and remains suspended for a few more weeks) due to improprieties at the Cessna site. One of the charges uncovered by the Americorps review was that the child care center was taking care of children of the managers at Cessna, not just trainees in the program. The President will still tour the child care center (with Still Photos only), but he will not refer to Americorps in his speech. The sign in the cut away will refer to child care at Cessna, and will not mention Americorps. Also, no one will be wearing Americorps t-shirts.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Michaeal Barr, Jonathan Orszag, Jose Cerda III from Paul J. Weinstein re: several issues (2 pages)	02/04/98	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15458

FOLDER TITLE:
Welfare-Work-Tax Credits [2]

Rhonda Young
2009-1414-S
ry1178

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
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Paul J. Weinstein Jr. 02/04/98 09:24:05 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: Several Issues

FYI. Please see child care and welfare reform sections.
---------- Forwarded by Paul J. Weinstein Jr./OPD/EOP on 02/04/98 09:20 AM ----------

Paul J. Weinstein Jr. 02/03/98 03:03:54 PM

Record Type: Record

CLINTON LIBRARY PHOTOCOPY

To: Michael.Barr @ Treas.Sprint.Com @ inet

cc: Jonathan Orszag/OPD/EOP, Jose Cerda III/OPD/EOP
Subject: Several Issues

1. Child Care/LIHTC proposal -- What is the status of the proposal to promote the availability of child care facilities in low-income neighborhoods that has been floated to the DPC and the NEC? As you know, this proposal would amend the Low Income Housing Tax Credit (LIHTC) Law to permit the tax credit to subsidize common areas within a housing credit property even if that area is made available to individuals who do not reside within the property. The provision could be limited to make sure that the basic purpose of the Housing Credit program would not be undermined. In addition, the proposal would be budget neutral.

I am getting a lot of pressure from the First Lady's Office and from B. Reed regarding this idea. Tax Policy's initial reaction was very negative. They implied that changing this rule would open up a floodgate of other types of facilities that the LIHTC could subsidize in common areas within a housing credit property. I do not understand this analysis, since we are proposing that only child care facilities be eligible.

Do I need to talk to Karl S. about this. I would like to resolve this issue in the next couple of weeks.

2. CDFI Reauthorization -- When do we plan to drop a bill? Let us know so we can see if there is any interest in this issue on the President's or Vice President's behalf. I think the VP might want to do an event.

By the way, I hope you were pleased with the State of the Union. It included CDFI and LIHTC.

3. Tradeable Welfare Tax Credits -- Bruce R. wants to know what Treasury thinks of making the welfare tax credits tradeable. He would like an opinion from your office and Tax Policy as soon as possible. Nothing too long, a page or so would be fine.

As you know, there is currently a tax credit available to businesses when they hire a person off welfare.

The idea of making these tax credits tradeable would permit the business doing the hiring to trade its tax credit to other entities, often called intermediaries or service providers, that do the actual locating and training of the welfare recipients. Often, these intermediaries are not-for-profits.

This is how it would work: A business could give its credit to an intermediary after 6 months if the employee was still working at the company (in other words, demonstrating some type of retention). The premise would be to increase the incentives for small businesses to hire welfare recipients because they would not have to train someone and it would give the business the ability to increase the amount it would pay the intermediary for the finding and training of new employees.

4. CRA and Regulation B -- Last Friday, Gene Sperling and others met with the Greenlining Coalition. The Coalition told Gene that in separate meetings with Rubin, Greenspan, and Levitt, they were led to believe that Treasury and the Federal Reserve would be interested in ways to expand CRA to other sectors of the financial service industry (investment banks, insurance companies, mortgage lenders, etc.). They also suggested that the Treasury Secretary indicated some support for reviewing Reg B. Gene's meeting with this group did not go well, it was very combative, but we are supposed to get back to them in two weeks.

Please respond to the following:

a) Did the Secretary indicate and interest in expanding CRA? What do you know about Greenspan and Levitt's position on this issue?

b) It was my understanding that your fair lending working group rejected taking on Reg. B. Is that correct? If you did reject that proposal, what was your rationale? If you did not address Reg B., what do you think of reviewing it. Does Treasury support Gene Ludwig's position and why?

I know this is a lot of material, but we do want to know where the Department is positioned on these matters before we consider moving forward.

Thanks.

CLINTON LIBRARY PHOTOCOPY

Message Sent To:

Cynthia A. Rice/OPD/EOP
Andrea Kane/OPD/EOP
Diana Fortuna/OPD/EOP
Jennifer L. Klein/OPD/EOP
Nicole R. Rabner/WHO/EOP

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Handwritten note (partial) (1 page)	nd	P6/b(6)
002. note	Handwritten note (partial) (1 page)	12/10	P6/b(6)
003. list	Re: # of welfare recipients who need to work (partial) (1 page)	nd	P6/b(6)
004. email	To Cynthia A. Rice from Peter R. Orzag re: Jobs (1 page)	07/23/97	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15458

FOLDER TITLE:
Welfare-Work-Job Creation Studies

Rhonda Young
2009-1414-S
ry762

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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Peter R. Orszag 07/23/97 10:49:42 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:
Subject: Jobs

Your list was good. I would lean toward inviting Jon Gruber from Treasury (a new DAS in Economic Policy, who's an economics prof at MIT and is good on labor market stuff). His number is 622 0563. The benefit is that we are not then exposed to any last-minute Larry Summers attack. The cost, as you correctly point out, is that the group may be getting a bit big.

Jon is a good guy and would be cooperative. But it's a close call, and I don't feel strongly one way or the other -- I'll certainly defer to you on it.

Thanks,
Peter

CLINTON LIBRARY PHOTOCOPY

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Cynthia A. Rice from Barry J. Toiv (partial) (1 page)	09/23/97	P6/b(6)
002. email	To Bruce N. Reed from Cynthia A. Rice re: Federal Hiring Update (1 page)	09/22/97	P5, b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15458

FOLDER TITLE:
Welfare-Work-Federal Hiring Updates [2]

Rhonda Young
2009-1414-F
ry761

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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Cynthia A. Rice 09/22/97 06:41:37 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP
cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP
bcc: Records Management
Subject: Re: Federal Hiring Update

One way to avoid embarrassing him too much and preventing possible leaks is for you to send the note only to poor performers, who had not as of Aug 22nd --

Met at least 5% of their hiring goal (Commerce, HUD, Justice, State, EPA, NASA); or
Met at least 10% of their hiring goal (Commerce, Defense, Education, Energy, HUD, Interior, Justice, State, Transportation, Treasury, EPA, NASA)

(SEC has met 0% of its commitment, but since they are an independent agency, we would have to have communication approved by the Counsel's office).

Revising the note to say something like:

I thought you would be interested to see that as of August 22nd, the Office of Personnel Management shows your agency as having met less than __% of its federal welfare hiring commitment. As you may know, agencies have been asked to report fiscal year 1997 welfare hires by November 15th. If you have any questions, please contact Susan Valaskovic at the National Performance Review at 632-0354.

Bruce N. Reed

CLINTON LIBRARY PHOTOCOPY

Bruce N. Reed
09/22/97 09:11:17 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
Subject: Re: Federal Hiring Update

(b)(6)

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Handwritten notes (5 pages)	11/10	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15453

FOLDER TITLE:
Welfare-Regulations-TANF-NPRM-Issues-10/97 & 11/97 [1]

Rhonda Young
2009-1414-S
ry1175

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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11/10

DS

(1) Measure outcomes / not old way of looking at stats
straight-jacket up front

(2) Attitude about former waivers
→ POTUS glad gone flex

→ want info to take to Congress

CLINTON LIBRARY PHOTOCOPY

Bruce

wants to know whether people are being treated

DS We want to know how many + for what reasons
some reasons may be legit

Gork What is it that we don't mind that we do

06

- Two part formula to state only
Special needs
→ college students

DS ~~We can~~ My inclination is to let states play
out that Congress gave them — let them
Don't start w/ assumption that

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DS Forgive me if I don't have confidence that we will go after bad actors

Want Deserve that

Noone can ever say that President didn't give state the flexibility Congress intended

Do we micromanage industries or look for patterns

OG We are stretching data authority already

Jack Couldn't we set threshold
→ Reach a certain level
→ Then withhold

More than certain amt of gaming, then

DS Don't think we have authority

Waivers

DS

Legal issues:
- Denial of credit/debit
+ Corrective compliance plan

Since we granted waivers → we have to be careful that Congress intended they would have the POTUS have discretion "good"

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BP

Hard to keep eye on ball

→ Doesn't make sense for state playing by totally different rules to get high performance bonus

DS

We want to reform outcomes

Some of the most innovative states would be denied bonuses

OG

If state w/ 2 year time limit at extension does better than state w/ 5 year, we should reward

a lot of relationship issues at stake re: bonuses

DS

I think POTUS would say: Give them every flexibility but hold them to work requirements

---

OS

- Trick is finding one kind of penalty to link to child support

→ Think we can do it

CLINTON LIBRARY PHOTOCOPY

DS Can base on intent; real pattern (4)

JL Have to set threshold

BR Abuse provide significant pattern of abuse, we will do X
w/o defining

But don't think we can say we will be watching and if we find something we will go to Congress

---

AP = Almy Burden on HHS to prove that eligibility criteria caused caseload reduction
Reg seem to have evolved differently
seem to take broader view of elig than warranted

OG Statute same sent stall

Feedback from DPC/OMB was to tighten up
List range of items
State gives info
If we doubt, we'll have to prove they're wrong

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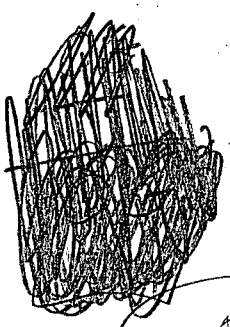
(5)

OG = Our rules in past carried a delay
We didn't want to back off from that
This comes to =
if fingerprinting enforces old delay rule
can count reduction.

EK — Still would look at policies not fingerprinting
Ask Thurlkeld and will report it
just the way I report other delay actions
Then HHS does with this info what it does w/
all delay actions
@ No reason to treat this case



Want Elena to work out

DPC to do softball #1

(1) Think "significant pattern" w/o too specific
(2) Think whether different way to sort it
(3) Different types of relief

HHS to look @ waivers ↔ go tighter than they will willing to go

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. note	Handwritten notes (2 pages)	4/3	P5
002. note	Handwritten notes (3 pages)	4/4/97	P5
003. note	Handwritten note (1 page)	04/04/97	P5
004. note	Handwritten note (3 pages)	04/04	P5
005. note	Handwritten note (1 page)	04/03	P5
006. note	Handwritten note (1 page)	03/26/97	P5
007. note	Handwritten note (1 page)	4/9	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15451

FOLDER TITLE:
Welfare-Privatization-Texas I [2]

Rhonda Young
2009-1414-S
ry1173

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

4/3

USDA

720-7711

Marriane
Undersecretary

Yvette

Cheryl

CLINTON LIBRARY PHOTOCOPY

10% welfare

Do we want to say s.t. about Wisconsin

Spell out that must be done by waiver in Ag

Ag can say no to other states

Q: will we draw the same line for Wisconsin? And that they won't be able to go statewide

Make clear that Wisconsin won't be happy

CLINTON LIBRARY PHOTOCOPY

Wisconsin will raise hell
if they are not given equal consideration

USDA likes idea of "experimental"
that includes only Texas

Don't want to allow Wisco ~~to at~~
go beyond Texas

But we need to decide
2 tests or one

Options for WSC

→ (1) Do what they want

(2) Draw the same as Texas
+ let it go statewide

(3) Draw same line as Texas
and ~~it~~ don't allow
statewide or limit
by time allowed

Waiver okay
for 2 min waiver

→ USDA position

Cheryl
USDA

4/4/97

Sooner rather than later we will have to make decision on other states

→ Need decision on Wisconsin

From Dan Glickman *

CLINTON LIBRARY PHOTOCOPY

CLINTON LIBRARY PHOTOCOPY

Texas — should it have a time limit?

- If it's an experiment has to have one.

USDA proposal

- No one can privatize decision-making
- No one else can go state-wide besides Texas

Texas — should it have a time limit?

- If it's an experiment has to have one.

CLINTON LIBRARY PHOTOCOPY

USDA proposal

- No one can privy decision-making
- No one else can go statewide besides Texas

Cheryl
USDA

4/4/97

Sooner rather than later we will have to make decision on other states

→ Ned Dawson on Wisconsin

CLINTON LIBRARY PHOTOCOPY

From Dan Glickman *
(Chief of Staff)

Bruce

4/4

Q = Has Admin made decision

Admin has not made a decision

Complicated issue

We're hoping to resolve it soon

[Keep it away from POTUS]

Are you getting a lot of pressure?

A - We got lots of waiver requests

Treating like any other

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CLINTON LIBRARY PHOTOCOPY

Q: POTUS mtd w/ labor leaders
Did they discuss?

A: They discussed a lot of issues
welfare, how to budget
broad discussion

Q: Is there an "internal admin report"
A: Interest groups are our foremost concern. We fought to preserve
~~A: Reference to part of the report~~
preliminary staff document which ~~misrepresents~~ differing views
NO intention of doing anything to
~~had~~ F-S

For Melissa
→ How we want to spin back
w/ Pol → not back too far

Follow up w/

+ Melissa

CLINTON LIBRARY PHOTOCOPY

Melissa

Q- I understand GW Bush has called Saddam a liar because he promised

A- All I'm aware of is that people from state of Texas have ~~talked~~ been talking to

Also- Agriculture mentioned contained WISC decision believe we need to make one soon.

Tell Bruce

Melissa

690-5673(F)

- Post heard about our compromise from Ag

(1) No Post

(2) No

(3)

(4) or Jennifer

4/3

Monaban

Harriet Rabb

- not demo
- will look into contract approval process if there's a hook → do once and not again

CLINTON LIBRARY PHOTOCOPY

HCFA

- line reflects our understanding of the law

John

- do not practical that we would really say "no" to other states
- Don't have a very impressive track record

John Sharp 3/26/97

Andrea Cowan
512-463-4976

real simple deal

integrated enrollment – get computers to talk to each other

5 places to get benefits. Jimmy Joe

Bush – privatize the whole world

Inside deal. Bobby knows nothing about it.

Best course – told McEntee – feds say before we privatize the world, issue waiver for integrated enrollment.

One-stop shopping – would cut 2,000, but deal w/through attrition.

In any given town, it's a bunch of folks related to ~~the~~ whoever is the state senator at the time, ~~sooner or later~~ They write some things down and then people start getting checks. complicated –

Calf looking at a new gate. – Bush

Bush-hoping like hell we don't give him the whole waiver.

CLINTON LIBRARY PHOTOCOPY

Yvette + Cheryl Marcias 4/9

Secretary Glickman

CLINTON LIBRARY PHOTOCOPY

→ expressed concern about language that it would be a test

Tell B+E

→ ~~Cost~~ has reservations about having it become an operational alternative

→ we had had that it the language that was Stone

Would like to put in letter to Texas that this is a one-time experiment

Language like original memo

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	For the President from Carol Rasco and Jack Lew re: Status of Welfare Reform Implementation (5 pages)	08/21/96	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15449

FOLDER TITLE:
Welfare-Interagency Implementation Group

Rhonda Young
2009-1414-S
ry1172

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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cc: Reed
Ben-Ami
Fortuna
Drye

cc Cynthia, Lyn

See my email to Jack Lew

THE PRESIDENT HAS SEEN
-96

Carol Rasco
Jack Lew
Chron

THE WHITE HOUSE

WASHINGTON

96 AUG 21 P2:45

SEP - 3 1996

August 21, 1996

MEMORANDUM FOR THE PRESIDENT

FROM: Carol Rasco and Jack Lew

CLINTON LIBRARY PHOTOCOPY

SUBJECT: Status of Welfare Reform Implementation

This memo will update you on efforts to ensure that welfare reform is implemented smoothly and effectively.

We have formed an inter-agency working group to coordinate implementation, which met for the first time on August 9 and will meet on a weekly basis. We have established three subgroups. One will monitor key implementation milestones, identify and resolve issues, and ensure deadlines are met. A second group is developing proposals to expand job opportunities for those leaving welfare. A third group will coordinate Presidential welfare events. Separate work is going forward on developing proposals to correct the major flaws in welfare reform which you have identified.

One key element of implementation is work with the states through the National Governors' Association (NGA), the National Conference of State Legislators (NCSL), and the American Public Welfare Association (APWA) to ensure smooth federal-state communication. Intergovernmental Affairs is coordinating Cabinet agency contact with state and local officials on all implementation issues. NGA, NCSL, and APWA will meet on implementation issues on September 9 and 10, including governors' senior policy staff, state legislative leaders, and state social service commissioners. Intergovernmental Affairs is working with NGA to negotiate the agenda of that meeting, including making Federal officials available for briefings.

This memo summarizes the work of the subgroup dealing with implementation. There are a tremendous number of difficult implementation challenges raised by the bill. All affected agencies are at work developing their own timelines and work plans. We will be compiling these agency plans so that there is one overall framework for monitoring implementation. The following is a list of some of the main deadlines and challenges that we have so far identified.

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) BLOCK GRANT

As you know, the bill creates the new block grant to replace AFDC and requires that states transform their AFDC systems to TANF by July 1997. There are several major issues that we will be tracking as HHS manages this transition:

CLINTON LIBRARY PHOTOCOPY

- Early Implementation -- States have the option of implementing the block grant immediately, and it is financially advantageous for them to do so. Some states may be ready to go immediately on enactment. We will be working to clarify with HHS the process and timetable for approving these plans. You should know that many states, including California, will need to seek approval from their state legislatures before submitting plans. No states are expected to call special sessions this fall on these issues.

- Regulations -- HHS is preparing a preliminary list of areas in which it sees a need to regulate under the statute. We will be working with HHS to ensure that the new program is appropriately, but not overly, regulated.

- Guidance to States -- HHS is also considering issuing guidance to states on how to construct their new block grant plans. We will be working closely with HHS on this guidance to ensure that it is useful and helpful to the states.

- Approved Waivers -- The bill lets states continue to operate existing waivers. However, the bill's language is unclear about the scope of these provisions, especially the treatment of work requirements and time limits. It appears that the bill's drafters did not intend to exempt states from the work participation rates, but only to provide them with some flexibility in defining work activities. In addition, waivers that apply to only a few counties in a state can not be extended to the entire state.

  As for time limits, Michigan has waivers that do not include a time limit on benefits and has indicated it will continue on this course in the plan it submits, rather than adopt time limits as required by the bill. New Hampshire may follow suit. Whether the intent of the waiver provisions can be clarified by administrative action has yet to be determined. Deciding upon the best course for clarifying the intent of the waiver provisions -- seeking legislation or through regulation (which would be our first preference) -- will be one of the implementation group's first major issues.

- Pending and Future Waivers -- HHS has approved eight waivers in the past two days, three of which arrived after you announced you would sign the bill (D.C., Idaho, and Kansas). Wisconsin is not yet approved. HHS is prepared to act on future waiver requests until July 1, 1997 should states ask for them.

- Other issues -- There are a whole series of operational issues the group will be addressing including the establishment and management of the Performance Bonus Fund and the Contingency Fund.

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CHILD SUPPORT ENFORCEMENT

The bill requires an increased Federal role and significant state activity in this area. States must have enabling legislation in place by the end of their 1997 sessions. Federal data processing systems have be able to interact with state systems by October 1997. We must develop a registry of new hires and a case registry, and enhance the Federal Parent Locator Service. HHS has scheduled training conferences and set up joint working groups with the states. One change of interest is that states will no longer be required to pass the first $50 of monthly support collections to the family receiving assistance as of October 1, 1996.

IMMIGRANTS

Obviously, the cross-cutting impact of the immigrant provisions of the bill will be a central concern on implementation. Among the key impacts:

- Food Stamps -- Upon enactment, legal aliens applying for food stamps will no longer be eligible. Immigrants currently receiving benefits will lose them at the time of their regularly scheduled recertification. These recertifications would begin immediately upon enactment, with all such immigrants to be removed from the program within one year of enactment. About 900,000 participants (including 300,000 children) will be ineligible in the first year; approximately 250,000 participants will lose benefits in the first three months after enactment.

- Supplemental Security Income (SSI) -- Upon enactment, most immigrants who apply for SSI will not be eligible. Current immigrant recipients will get benefits until the Social Security Administration (SSA) determines they are no longer eligible. By March 1997, SSA must send notices to the 1.1 million current recipients who may be legal immigrants and request evidence of their citizenship status. If the immigrant provides evidence that he or she is not eligible or fails to respond, SSA will notify the individual that benefits will be stopped. The amount of time the recipient has to respond to the first notice appears to be at SSA's discretion, although all redeterminations must be completed within one year of enactment. SSA is exploring timing options, with the intent of providing recipients as much time as possible within the law to naturalize. An estimated 300,000 to 400,000 recipients are expected to come off the rolls.

We will be focusing on two overarching issues in implementing these and the other immigration provisions:

- Verification -- Developing a workable and fair system of verifying citizenship status that meets the needs of the various systems affected is a daunting challenge. The legislation outlines ambitious timelines, and an administration workgroup is already at work putting proposals and options together.

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- Naturalization -- In anticipation of the restrictions on benefits, many immigrants have already applied for citizenship and many more will apply as the restrictions take effect. INS has been working on initiatives to speed up the naturalization process. The Citizenship U.S.A. initiative is designed to respond to the large increase in applications and expects to naturalize 1.2 million immigrants this fiscal year. INS is also working with SSA and OMB on a new regulation that will waive English and civics test requirements for immigrants with certain serious disabilities and perhaps establish a special waiver for many disabled immigrants receiving SSI.

FOOD STAMPS -- NON-IMMIGRANT PROVISIONS

Eligibility for 18-50 Year-old Childless Adults -- Most able-bodied adults without children will now be limited to 3 months of food stamps in a 36-month period if they are not working or participating in a work or workfare program. For current recipients, this limit is effective 3 months after enactment. One million current recipients will become ineligible within six months. Households remain ineligible for the balance of the 36-month period unless they obtain work or get a slot in a job training or workfare program.

Making the extensive changes to their computer systems to determine the eligibility of individuals who are dropped from the rolls and to track new recipients against the time limits will be a major implementation challenge to states.

Benefit Levels -- Changes to the standard income deduction and the excess shelter deduction will reduce benefits for nearly all of the 25 million monthly participants. Food stamp allotments will still increase under these changes, but much less than under prior law. The impact increases over time -- by 2002, average benefits will be nearly 20% lower.

These provisions involve relatively simple computer changes. The Department of Agriculture (USDA) expects most states will be able to implement them on October 1 and January 1, respectively, without delay.

OTHER KEY PROVISIONS

SSI for Children -- The bill tightens SSI eligibility for children with disabilities. Upon enactment, new applicants who do not meet the new standard will be ineligible. Current recipients will get benefits until SSA makes a redetermination that they are no longer eligible. Children whose cases must be reviewed will receive notices by January 1997. Those found no longer eligible will be sent a notice that benefits will be stopped. In certain cases, benefits may continue until the first level of appeal is completed. The bill calls for all redeterminations to be completed within one year of enactment. An estimated 285,000 initial notices will be sent and an estimated 190,000 children are expected to come off the rolls. SSA is working on the plan for the timing of the release of the first notices and the subsequent processes.

Medicaid -- The Medicaid program faces two major challenges in implementation: (1) delinking eligibility for Medicaid from the welfare system, and (2) assessing the impact on pending and existing waivers. The Health Care Financing Administration is working closely with other parts of HHS and with SSA to meet these challenges.

Child Care -- The bill block grants several child care programs, effective at the beginning of the fiscal year. While these changes are mostly positive, the timeframe for implementation is challenging.

Monitoring and Evaluation -- One key overarching issue will be to ensure that agencies are establishing effective research, evaluation, and monitoring capabilities to identify the impact of these dramatic changes on the individuals and institutions involved.

JOB OPPORTUNITIES

The interagency working group on the welfare jobs issue is nearing completion of a package of options. At this point it appears that the components will likely be: about $1 billion in enhancements to the Work Opportunities Tax Credit passed in the minimum wage bill; a $100 million expansion of the Community Develpoment and Financial Institutions program to enhance economic development in distressed areas; a $3 billion spending program to place one million hard-to-employ welfare recipients in unsubsidiezed jobs, with the key feature of withholding full payment to States until successful job placement and retention.

NEED FOR LEGISLATION

Work has begun on developing proposals to correct the major flaws in the welfare reform bill. Among those you have noted are: (1) the too-deep cuts in the Food Stamp Program, including the cap on the amount that can be deducted for shelter costs when determining an individual's eligibility; (2) the denial of Federal assistance to legal immigrants and their children, and the state option to do the same; and (3) the failure to provide Food Stamp support to unemployed childless adults who are willing to work, but not offered a work slot.

Additional issues requiring corrective action include: (1) the failure to provide sufficient contingency funding for States that experience a serious economic downturn; and (2) the lack of a provision for in-kind vouchers for children whose parents reach the five-year Federal time limit without finding work.

CONCLUSION

We will keep you up to date on developments as we go forward.

cc: Leon Panetta

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Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. email	To Jeanne Lambrew, et al, from Diana Fortuna re: San Diego (1 page)	07/01/98	P5
001b. email	Fowarded to Cynthia Rice from Diana Fortuna re: San Diego (2 pages)	07/06/98	P5
002. email	To Robert N. Weiner, et al, from Diana Fortuna re: San Diego Issue (1 page)	06/25/98	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15449

FOLDER TITLE:
Welfare-Immigrants-San Diego [3]

Rhonda Young
2009-1414-S
ry1171

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Diana Fortuna 07/01/98 05:29:45 PM

Record Type: Record

To: Jeanne Lambrew/OPD/EOP, Robert N. Weiner/WHO/EOP, Cynthia A. Rice/OPD/EOP, Emil E. Parker/OPD/EOP

cc:

Subject: San Diego

We have tentatively concluded that we don't have a legal basis to tell San Diego county not to turn over to the INS the names of TANF or food stamp recipients that they have reason to believe may be undocumented immigrants. This is based on our tentative conclusion that the county came into possession of this information in a legitimate way, using a legitimate unified application to TANF/food stamps. (I should note that Maria Echaveste just called me about this, because an advocate called her.)

The next question is whether we should explore doing something about this prospectively -- i.e., requiring or at least suggesting that states alter their unified applications for tanf, food stamps, and Medicaid so that the forms don't require undocumenteds to disclose that they are undocumented -- for food stamps and Medicaid only, since we have no control over what states ask for TANF. Instead, they would check some kind of all-purpose "I'm not eligible" box, which could include situations other than being undocumented. The programmatic theory behind this is that it is the only way their kids will get signed up for Medicaid and food stamps. Legally, not sure if we have the latitude. Jeanne, I know you guys are focusing intently on how to improve the Medicaid application to sign up kids, so you may have dealt with this issue already. Should we explore this?

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Diana Fortuna 07/06/98 10:25:52 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
Subject: fyi re: San Diego

---------- Forwarded by Diana Fortuna/OPD/EOP on 07/06/98 10:30 AM ----------

Diana Fortuna 07/06/98 10:25:32 AM

Record Type: Record

CLINTON LIBRARY PHOTOCOPY

To: Maria Echaveste/WHO/EOP
cc:
bcc: Records Management
Subject: Re: San Diego

Right. There don't appear to be any legal obstacles that federal agencies can raise to prevent the county from taking this step. DOJ, USDA, and HHS all conferred, with White House counsel participating. But you can say that we remain ready to listen to their arguments to the contrary, and that we will explore whether there is anything the agencies can do about this prospectively -- i.e., do states need to be collecting this information going forward.

Maria Echaveste

Maria Echaveste 07/06/98 10:15:06 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP
cc:
bcc:
Subject: Re: San Diego

Diana--thanks--it was Cecilia Munoz of NCLR who was in such a panic--I'm going to call her this am to tell her we've reviewed this as carefully and conscientiously as possible and there is just no way to provide assistance here. Right?
Diana Fortuna

Diana Fortuna 07/01/98 04:47:10 PM

Record Type: Record

To: Maria Echaveste/WHO/EOP

cc:

Subject: San Diego

Thanks for your message. I'd be interested in which advocate you spoke to. We did go over this issue very thoroughly with DOJ, HHS, USDA, and WH Counsel, and we didn't come up with any legal argument that would allow us to tell San Diego not to do this. But obviously we need to listen to any and all arguments, in case there are any we hadn't thought of. I'm happy to talk more about this at your convenience.

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what happened?

Diana Fortuna 06/25/98 03:54:36 PM

Record Type: Record

To: Robert N. Weiner/WHO/EOP, Jack A. Smalligan/OMB/EOP, Julie A. Fernandes/OPD/EOP, Emil E. Parker/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP, Lesley A. Pate/OPD/EOP, Nicolette Highsmith/OMB/EOP, Andrea Kane/OPD/EOP

Subject: San Diego issue

I'm calling a quick conference call together for tomorrow morning, because the advocates have identified a problem that appears to need quick action, including coordination among agencies:

San Diego County plans to send letters next Wednesday 7/1 to all families where the child is on food stamps or TANF, but the parent is not (so-called "child only" cases) and where the parent has not given welfare authorities a Social Security number. The letter will say that the county has reason to believe that the parent is an illegal alien, so they're turning over the name and address to the INS.

USDA and HHS have preliminarily evaluated this action. USDA thinks it's not legal under food stamp law. HHS isn't sure -- states may have flexibility under TANF to do this kind of thing, so they think the legal question is one that DOJ must answer. The question for DOJ is whether this is permissible under the welfare law's provision that states and locals can give the INS names of people who they believe are illegal. (We probably need to have the language of that part of the statute in front of us.)

Our role is to (1) help HHS get DOJ to look at the TANF question expeditiously; and (2) make sure USDA acts expeditiously if this is illegal (advocates say USDA may not act very forcefully because their relationship is with the state, not the county).

On the call will be USDA, HHS, and someone from the Deputy's office at DOJ -- maybe Allison Stollenwerk. The Deputy's office seems like the right part of DOJ to me. It's more of a legal question than an INS question, but we're not ready to call OLC. Let me know if you disagree, Rob.

Our options might be to notify the county and say we have concerns; that it's clearly not an appropriate action for food stamps, and say DOJ is evaluating whether it's appropriate for TANF and so they should wait for the results of our review. (The advocates would love it if we could direct the country not to do this, but who knows if we can.) The advocates' first priority is to stop the letters from going out on Wednesday, a goal we should share if the action isn't legal.

Presumably many of these parents are in fact illegal aliens, but many may not be as well. And this will have a chilling effect for kids eligible for these benefits, as illegal parents will probably pull their citizen kids out of food stamps or TANF and go underground. This will also add to the confusion around public charge.

Randy Moss

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	To Bruce Reed, et al, from Cynthia Rice re: welfare (1 page)	7/17/97	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 11026

FOLDER TITLE:
Welfare-Budget-Conference-VIP Docs [3]

Rhonda Young
2009-1414-S
ry1167

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Cynthia A. Rice 07/17/97 06:31:33 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Laura Emmett/WHO/EOP, Virginia N. Rustique/WHO/EOP

Subject: Just heard a well placed welfare conference rumour

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I heard that the House may offer to the Senate:

1) Labor runs formula part of program; HHS gives competitive grants
2) 90% formula, 10% competitive, but could increase to 15% competitive if needed to keep Senate HHS-advocates happier
3) No set-asides within competitive for rural or cities
4) Lower small state minimum to .25% (which is good for cities)
5) Senate performance bonus, which is bad for us.
6) House provisions on Pennington
7) Keep Amerasians, Cuban-Haitians, but not Kennedy too-disabled-to naturalize or Medicaid 5 year ban exemption for kids

All around, not a bad deal for us. We're not supposed to know this, so don't let Republicans know we do.

Major arguments continue between the Senate and the House on FLSA; SSI State Supplements; and future disabled legal Immigrants.

Message Sent To:

Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Emil E. Parker/OPD/EOP
Janet Murguia/WHO/EOP
Barry White/OMB/EOP
Larry R. Matlack/OMB/EOP
Keith J. Fontenot/OMB/EOP
Jack A. Smalligan/OMB/EOP

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Christopher Edley to Colleagues re: Draft Memorandum on the President's Race Report (19 pages)	09/04/98	P5
002. report	DPC Race Initiative Proposals (3 pages)	10/21/97	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15431

FOLDER TITLE:
Race Initiatives

Richard Stalcup

rx58

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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Jozé,
FYI.
Scot
x51047

September 4, 1998

To: Colleagues and Comrades

Through: Phil Caplan
Staff Secretary

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From: Christopher Edley, Jr.
Professor of Law

RE: Draft Memorandum on the President's Race Report: Background

As most of you know, we are scheduled to give the President by September 10th the first of several memos on the evolving content of his report to the nation on race – a.k.a., the race book. The attached draft still has some holes, but I wanted to make it available for the weekend.

I am especially interested in reactions to the "workplan" elements that are outlined. These ideas reflect a lot of conversations and meetings with NEC, DPC, OMB and WH Counsel staff – though not as many as we would have liked, due to vacation schedules. As the memorandum indicates, this is an evolving process, and more specificity about the themes, options and program details must come over the next two months.

Maria Echaveste has called a meeting for Tuesday at 4 p.m. to collect and discuss reactions to this draft. I and the team working with me would be delighted to hear from people before or after then. In particular, the following contacts are good for providing your reactions:

Christopher Edley (**edley@law.harvard.edu;** pager 1-800-864-8444, pin 182-9507);
Michele Cavataio, John Goering, Scott Palmer, PIR

Principal contacts with whom we are working:

DPC	Kagan, Weinstein, Cerda, Cohen, Orzag, Fernandes
NEC	Sperling, Kaplan, Rouse, Parker, Shireman
Counsel	Ruff, Correia
OMB	Mathews, Gotbaum, Deich, Wachino, Barry White, Redburn
OPL	Moore
IGA	Ibarra, Cutler
Communications	Lewis, Blumenthal, Waldman
CEA	Blank
Other	Echaveste, Begala

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Draft v6

September 9, 1998

MEMORANDUM FOR THE PRESIDENT

From: Christopher Edley, Jr.
Professor of Law

Through: Maria Echaveste
Deputy Chief of Staff

Re: Progress Report on the Race Book, and Request for Interim Guidance

This memorandum is organized in the following sections:

I. Introduction, process and organization of the effort
II. The Vision (book chapter 2), and basic themes
III. The Workplan (book chapter 6)
IV. Leadership (book chapter 7)
V. Next steps, and summary of decisions requested

I. INTRODUCTION, PROCESS AND ORGANIZATION OF THE EFFORT

The purpose of this memorandum is to review our progress, confirm our general direction, and solicit interim guidance on a few substantive matters. Most important, Part II is a first attempt to sketch your "vision" of One America with racial justice and equal opportunity in the 21st century. Then, Part III adds some flesh to key portions of the "workplan" chapter outline you have already seen, offering a partial menu of ideas.[1] We want to know if this conceptual framework makes

---

[1]The current detailed (and daunting) outline of the book is at Tab A. The chapter outline is:

Introduction: One America in the 21st Century
Chapter 1: Where Is America On Race, And Where Are We Going?
Chapter 2: More Than A Dream: Racial And Ethnic Justice In The 21st Century
Chapter 3: Wrestling Lessons: Honest, Constructive Engagement Of Our Vexing Differences
Chapter 4: Promising Practices: How To Build Bridges That Connect People Across Lines Of Class And

sense, and if we are heading for the right mix of bold and pedestrian, thematic and programmatic. White House policy staff are fully engaged and have both contributed to this workplan material and reviewed this memorandum. Important disagreements and special concurrences are noted in this document or accompanying memoranda.

We hope to complete the workplan menu within two weeks and, based on your tentative approval of several ideas, proceed with more detailed policy development between now and early November. This is key: I want these first stages of developing the workplan to emphasize thoughtfulness and boldness in the selection of the challenges, goals, themes and general strategies, connecting those to the vision. The next step, for greater detail over the next two months, is to figure out more concretely what ought to be done by whom (federal government? parents?). Throughout, Maria Echaveste will ensure that the interests of the policy councils are well regarded, that the formal clearance process is used when appropriate, and that I can appeal to you with any conflicts we cannot resolve in a timely way.

We have four working groups to help prepare the policy, or "workplan" chapter. These are co-led by the appropriate NEC or DPC staff and me. As yet, they do not span the entire range of subjects you may want to cover, but they are a good start:

- Education
- Economic Development and Employment Opportunity
- Criminal Justice and Community Security
- Civil Rights Enforcement

We also have less elaborate collaborative discussions moving forward on: Health, Strengthening Families, Native Americans, and Democracy/Civic Engagement. The "book team" includes a handful of PIR staff, and the addition soon of Terry Edmonds. I'm confident that several White House and OMB staff will also play critical roles, as they have in preparation of this document.

Outreach: Finally, Maria has assigned Minyon Moore and OPL the overall responsibility for coordinating external consultations by the outreach offices and, through Cabinet Affairs, conversations with key appointees in the agencies. Throughout September, many members of your staff will be making calls or conducting meetings with some 400 individuals, asking about the proposed framework for your report, the most important actions you should take after the Advisory Board's work, and any elements they think it is especially important for you to communicate in your report. We will share some of the substantive responses with you, but all of them will be weighed by the book team.

	Color, Creating Community And Opportunity
Chapter 5:	The Record Of The Clinton-Gore Administration
Chapter 6:	A Workplan For Our Nation
Chapter 7:	Leadership For One America
Chapter 8:	Conclusion

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II. The Vision Chapter, and Basic Themes

This section summarizes my best sense of your central vision for the book -- chapter 2 in the current outline. It builds on earlier material sent to you by Sidney Blumenthal and by me, as well as previous statements by you. In the book, the vision discussion will be preceded by an introduction and by the chapter describing where America has been and is on race, including demographics, discrimination, disparities, and intergroup relations. While not yet in your language, what follows is an effort to capture the key ideas and their interrelationships. At the end of the section, we also want to engage you on some cross-cutting questions, such as the role of government.

(a) Why is this subject so important for us to tackle?

- *Renewing America for the new century:* For six years, I have worked to prepare America for the challenges of the 21st century. We have put our fiscal house in order, taken important steps to strengthen the international economic system, worked at home and abroad to create a post-cold war national security framework, launched an investment program in vital areas of education, training, new technologies and environmental protection. One additional area, without which we cannot succeed in the decades ahead, is overcoming the divisions of race and ethnicity so that we can be One America, united in a web of mutuality that gives us the strength to be our best as individuals, as communities and as a nation.

- *Global and historical context:* The difficulty of the problem is evident not only from our own national history, but from events around the world – even today. The conflict is commonplace, as differences give rise to hatreds and then bloodshed. As President, I've seen it over and over again, and struggled to find ways that, through our actions and example, this nation could help troubled societies see their shared humanity and find peace. But make no mistake: This struggle to build peace and strength out of differences is a struggle against deep failings and sinfulness that seem inherent in the human spirit. In my own religious tradition, sin can be overcome through struggle and faith, and it is a never-ending struggle. We should expect no easier a task when it comes to dealing with our differences here in America.

- *The stakes:* On a more practical plane, making diversity a source of strength rather than division promises great rewards in social peace and home and economic success globally.

- *New complexity:* The civil rights movement of three and four decades ago was largely framed in black and white, but led to bursts of energy and progress for other minorities

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and for women. Today's diversity gives us great opportunities, but also more complex challenges.

- *Cause for confidence:* There is cause for confidence, because our ideals and values are far more than words locked behind glass in the National Archives. They are an incandescent beacon for peoples worldwide, and the lodestar by which we chart our own course and criticize our missteps. Our noblest moments and wisest leaders are marked not by the exploitation of difference, but by recalling us to the commitments of equality, tolerance, opportunity and justice. In my life, I have seen this most profoundly in the struggle against racial segregation and bigotry. No nation matches our capacity for moral greatness.

(b) **What would it mean to have a full measure of racial justice and opportunity in America? What would our relationships be like, and what would society look like?**

- *Vision of community:* [Celebration of our diversity, not mere tolerance of our differences; building inclusive communities and organizations to take advantage of the benefits and strengths that flow from diversity. (Examples from forums, correspondence, etc.)]

"One America" does not mean that we lose our ethnic identities, becoming some homogenized undifferentiated mass. We can be proud of our cultural identities and distinctiveness, and at the same time be proud of and loyal to America – indeed, that is one of the most important elements of our nation's greatness.

In religion, for example, scholars tell us that we are the most observant of developed nations, and that freedom of religion and separation of church and state are important parts of the explanation. We are a nation full of religious individuals, yet we do not all worship in the same way. Indeed, our civic values are that we tolerate and respect different religious traditions, and celebrate the legal and civic values that make diversity possible. We are proud of that diversity, and together with tolerance, recognize it as a defining greatness of America. And much of the rest of the world recognizes this too.

So, too, with our racial and ethnic diversity. Our greatness in the decades ahead depends not merely on overcoming prejudice and bigotry rooted in our differences, and not only in tolerating differences. We must instead celebrate those differences as a source of richness and strength. Our personal lives are enriched by this diversity, and our society and economy are strengthened by it.

In the community of America, the things that connect us must be stronger than those that divide us. A "community" means shared interests. But we must also have a shared concern for our collective advancement, and mutual concern for each other. Transcending differences, while respecting them, is part of creating such a community.

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So there is a delicate balance, because we have far too much to lose if we retreat into ethnic enclaves – walled off from one another by prejudice, stereotypes or even simple ignorance and misunderstanding. We sacrifice greatness and goodness, richness and riches, if by circumstance or choice we separate ourselves into subcommunities along the very fracture lines that have traced our national racial tragedies since Europeans arrived on these shores.

- *Vision of opportunity:* [Opportunity enjoyed so equally that there is no discernable legacy of slavery, colonization or conquest; of Jim Crow or internment. (Examples from forums, correspondence etc.)]

  We have legacies of slavery, conquest and colonialism; of Jim Crow and racist immigration quotas. The inheritance is evident in the patterns of our lives: the racially isolated communities, the gaping disparities in educational achievement, employment, criminal victimization and wealth; the still too-rare close friendships across lines of race. This inheritance is a burden to our spirits and a tax on our prosperity. Perhaps most tragically, for too many of our fellow citizens, the legacy has shackled dreams that are every American's inalienable right. This is wrong, and we can do better.

  One way our children and grandchildren will know when we have achieved racial justice and opportunity is that the evidence of America's legacy of inequality will be found only in history books, and not in brutal social and economic disparities surrounding them.

- *Vision of responsibility:* Responsibilities of citizenship; responsibility to reach out to others; responsibility of each of to combat whatever stereotypes and fears we may have; and responsibility to take advantage of opportunities. (Examples from forums, letters, etc.) We must do this for our children and their children. We must do this to honor those who have sacrificed over the generations in earlier battles, including civil rights battles, to put our sacred civic values into practice. And I believe we must do this to honor the God who has created us all equal, and blessed our nation in so many countless ways.

(c) **Why is this vision preferable to alternative, competing visions?**

- Why embracing "equal opportunity" is necessary, but insufficient alone to produce a full measure of justice and fairness in One America.

- Why color blindness makes sense, and why it doesn't.

- Why assimilation as Americans is important, but not an assimilation that seeks to erase our diverse identities. Is tolerance of differences sufficient, or must there be more?

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III. THE WORKPLAN CHAPTER

The purpose of this chapter is to explain the most important steps the nation must take over the next decade in pursuit of your vision of racial justice and opportunity, as described earlier in the book. As with the promising practices chapter, you want to provide inspiring "news you can use" to people in communities and organizations across the nation who are looking for ideas. The workplan is organized by policy sectors, and within each sector it will contain federal, state, local, private and personal elements. This is *not* just about the federal government, or government generally. Few items will have FY 2000 budget impacts, although several will have "down payments" in Administration accomplishments and earlier proposals. (The ideas which follow reflect substantial contributions from DPC, NEC and OMB; this memorandum has been through an accelerated clearance process. Comments from your advisors are noted in this document or in appended memoranda.)

The book should be highly thematic, avoiding an exhaustive and mind-numbing recitation of comprehensive programmatic details. But it must contain just enough pointed recommendations to leave the reader with a sense that you have provided concrete direction, not just rhetoric. This also entails being very selective – not *every* good idea for addressing *every* important problem. In areas where thoughtfulness or clarity requires more program detail, the final document can use textual boxes set apart from the flow of the narrative.

Two final points. The boldness you have requested in policy ideas seems in some cases to come in the statement of a national goal ("close disparities in education achievement by X percent"), and in other cases may not be evident until we offer specific public or private interventions to advance the goal. Relatedly, in the stating the goals we have repeatedly between brave aspirations and statements that are more cautious and achievable. We need your general guidance on this.

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§ 6.2 THE EDUCATION SECTION OF THE WORKPLAN

Apart from the economy, I assume that education will be the clear first-among-equals in your workplan for the nation, receiving disproportionate emphasis throughout the book. Despite improvements over the last several decades, racial disparities in opportunity and achievement persist throughout the education pipeline, and these disparities are powerful obstacles to achieving your vision. We've tolerated it for too long. It is wrong. Therefore, the workplan focuses on areas of significant disparity that have the greatest impact on educational outcomes. It also emphasizes the instrumental and ethical necessity of heightened responsibility and accountability.

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In addition, racial isolation, often in combination with poverty concentration, remains a problem both among and within our schools, presenting barriers to achievement, excellence, and to your vision of mutual understanding and community. This is the third pillar of the education workplan.

– Outline of the section

Introduction/Context

- Education is primary [only central?] to achieving my vision. This requires:

  (1) eliminating racial disparities in educational opportunity and achievement;
  (2) reinforcing responsibility and strengthening accountability for administrators, teachers and students, as well as for the political institutions governing education; and
  (3) promoting racial and economic integration in education.

- These problems have long gone unsolved because they are difficult and because race has divided us, but also because we need to reassess the roles of the different levels of government and of the family in education. The old formulas need revision, the old problems need new thinking, and the old values need new life.

- We need to provide every family, regardless of race or zip code, with an Education Bill of Rights.[2]

(a) **Close the racial gap in opportunity and achievement.** Notwithstanding important progress, significant racial disparities in achievement persist. We must close these gaps and raise the bar for everyone. This means overcoming racial disparities in the

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[2] Such a Bill of Rights might include the following:
(1) Every child shall have a parent or other adult actively engaged in his/her learning and have access to support services to help that child achieve to his/her full potential.
(2) Every child shall have access to early learning opportunities.
(3) All parents have the right to send their children to equitably funded schools that are accountable for their child's learning.
(4) Every child shall have access to high-quality teachers.
(5) Every child shall be held to high expectations and standards and have access to challenging curricula.
(6) Every child shall have access to adequate facilities and modern technology.
(7) Every LEP child shall have access to the tools necessary to help him/her learn English within three years.
(8) Every child shall learn in a safe environment.
(9) All parents and children shall have the right to choose to attend racially and ethnically integrated schools.
(10) Every high school graduate shall have the financial support and opportunity to go to college.

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educational opportunity available to every child – including both resources and expectations – and simultaneously insisting on high standards for achievement. Beyond this, we must improve our ability to make targeted, individualized efforts to ensure that every child succeeds to his or her full potential. Among the key elements of an education bill of rights for equal opportunity and achievement:

- *Parenting and early childhood:* Ensure that every child has a parent or other adult actively engaged in that child's learning, and that every young child has access to early learning opportunities.

- *Teaching:* Improve the quality of teacher training, ensure that high-quality teachers are equitably distributed, and ensure that teachers promote high expectations for students of all races.

- *Curriculum and standards:* Ensure that every child has access to challenging curricula tied to high standards, and that tracking does not prevent any child from achieving his or her full potential. Students of color are often tracked into special education and out of honors courses.

- *English acquisition:* Guarantee each LEP child an effective opportunity to master English, and hold students and educators accountable for success.

- *Infrastructure:* Close the racial disparity in full access to adequate facilities and modern technology.

- *Post-secondary attainment:* Overcome racial disparities in high school graduation rates, and in college participation, retention and graduation rates.

(b) **Institute greater accountability and heightened responsibility for administrators, teachers, students and public officials.** Without much stronger mechanisms for accountability, the goals of closing disparities in opportunity and achievement are mere aspirations, not commitments. Moreover, to break the back of inertia and complacency we will have to design interventions that target the political, bureaucratic and jurisdictional impediments to sustained reform. The Voluntary National Test is such an intervention, as is public school choice, and we must build on such approaches while providing needed safeguards against abuses.

- *Tests and accountability:* Use the best assessment methods, including national tests, to build broader and deeper systems that will hold administrators, teachers, and students accountable for educational achievement. The accountability should flow "up" from parents and "down" from Federal taxpayers and presidential leadership. The range of tools, both carrots and sticks, should stretch from more effective parental action, to

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political mobilization, to school reconstitution or receivership, to fiscal incentives – and everything in between.

- *Governance and leadership:* If eliminating the disparities in opportunity and achievement require modifications of our traditional structure of roles and authority, so be it. We need new ways to think about old problems.

(c) **Promote integration and diversity in education to enrich the learning experience for all students.** We also care about integration, so that students have the opportunity to learn together in ways that dissolve stereotypes and improve race relations. Parents and students should have a right to chose an integrated education. But, after a burst of progress in the late 1960s and early 1970s, segregation in K-12 education is worsening. For example, a recent study reports that one-third of black and Hispanic students attend schools with more than 90 percent minority enrollment, and almost nine in 10 of those schools are predominantly poor. High-quality integrated schools provide a more complete educational experience for all students than high-quality segregated schools. Conversely, ineffective, racially isolated schools in high-poverty areas present our greatest obstacle to closing the disparities in opportunity and achievement.

- *Educate the public on the value of inclusion, diversity and integration -- reviving that ideal:* An inclusive community of students and educators can: improve teaching and learning by enriching the learning environment with diverse perspectives; strengthen students' critical-thinking skills by challenging their existing perspectives; teach students how to interact comfortably with people different from themselves and thereby how to function as good neighbors, colleagues and citizens in our diverse democratic society; improve students' preparation for employment by teaching them the value of diverse perspectives, how to function in diverse business settings, and how to communicate effectively in our increasingly diverse domestic marketplace and the expanding global marketplace; and foster the advancement of knowledge by spurring study in new areas of concern.

- *Reduce racial segregation and isolation among schools:* This is not a call for massive, federally mandated strategies where there is no constitutional violation demanding court-supervised remedies. Instead, parents and educators should make use of a range of measures such as magnet schools, multidistrict transfer programs, and so forth. Most important, we must better appreciate the important stake we have in making diversity work in the world of our children. Schools of unquestioned excellence are the easiest to make and keep diverse.

- *Reduce segregation within schools:* Even in diverse schools, evidence shows that students are often resegregated into racially homogenous classes through tracking and other mechanisms, thereby reducing their opportunities to learn together and have

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positive cross-racial interactions.

- *Inclusion in higher education:* Promote access and diversity in higher education, and foster the educational benefits of diversity. Mend, don't end, affirmative action. And wherever possible, use creative race-neutral mechanisms in admissions and in the K-12 pipeline. Ensure that in sustaining the crucial role of HBCUs, HSIs, and Tribal colleges (which are integrated) we don't "excuse" historically white institutions from the principle of excellence-through-inclusion.

-- Discussion issues on the education workplan

- Are you comfortable with the three major pillars: closing the race gap in opportunity and achievement; accountability and governance; attacking racial isolation?

- Do the bulleted items capture your personal priorities? Are any high priorities missing? Can any of them be demoted for attention in textual boxes rather than in your narrative?

- Can we explore some rethinking of the federal role in order to tackle these disparities?

*

§ 6.4 CRIMINAL JUSTICE AND COMMUNITY SECURITY

From hate crimes to crack houses, from police misconduct to police hiring, from disparate incarceration rates to racial profiling -- barely a week goes by without some aspect of crime and criminal justice standing as a lightening rod for racial and ethnic tensions. No area is more freighted with divisive stereotypes and misunderstanding. Yet it must be tackled with vigor because victimization and criminality destroy communities and families, just as they fuel alienation and division.

-- Outline of the section

Introduction/Context

- Racial disparities exist in both the realities and perceptions of crime and the administration of justice: communities of color disproportionately bear the social, economic, and personal costs of crime, and, according to polls, have less confidence in the fairness of the criminal justice system than do whites.

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- Building One America requires building a criminal justice system that serves and treats Americans of all races fully and fairly, and thereby closes the trust gap while making community security a right enjoyed equally.

(a) **Community Security: Eliminate racial disparities in victimization.** The right to be secure cannot be discounted by race. Every American is entitled to live in a safe community, and the race of residents shouldn't tell us the crime rate. From 1992 to 1997, rates of violent crime in America have decreased, but disparate victimization rates persist. Tackling this problem directly is part of the opportunity agenda, as well as a matter of decent fairness. The Administration's record has numerous elements, which we can build upon and target to close the disparities.

(b) **Keep young people out of the criminal justice system, and for those who have contact with it, make it their last.** Racial minorities, especially young, black males, are more likely than whites to be both the offenders and victims of certain crimes, including violent crimes. Furthermore, one third of young, black men are presently under the supervision of the criminal justice system (on probation, in prison, or on parole), and the chance that a young, black male will go to prison during his lifetime is nearly 30%. The realities are flatly inconsistent an American vision of racial justice and equal opportunity.

(c) **Build greater fairness and trust in the criminal system**. Several past and present factors contribute to mistrust in our criminal justice system among persons of color, including negative interactions, disparities in the administration of justice (incarceration, sentencing, death penalty), and lagging diversity in law enforcement (police, prosecutors, judges, juries). Without more trust, creating safe communities is impossible, because legitimacy, support and cooperation don't come free.

- *Prohibit the use of racial profiling*:[3] No American should be subject to disparate application of the state's policing power because of his/her race. Statistically efficient allocation of resources, some claim, justifies impositions on innocent persons, while perpetuating stereotypes and contributing to tensions. Targeting based on color, without individualized evidence, is rarely if ever fair and just.

- *Pursue zero tolerance for racially suspect police misconduct and brutality:* While the vast majority of police are dedicated public servants who deserve our respect and support, several high-profile cases illustrate that incidents of police misconduct and brutality motivated by racial animus still occur. We are deeply divided in perceptions of the magnitude of the problem.

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[3]Profiling will also be considered in the "Wrestling Lessons" chapter, as one of the hard questions that forces us to think about differences in values and perceptions.

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- *Eliminate racial discrimination and unjustified disparities in incarceration, sentencing, and imposition of the death penalty.*

- *Increase diversity and representation in the criminal justice system.*

– Discussion issues on the criminal justice workplan

- Can we speak of community safety as a "right", and the racial disparities in victimization as flatly inconsistent with your vision? If so, are disparities a fair index of this aspect of racial justice and opportunity?

- Should we "prohibit" racial profiling, or "restrict" it?
- Similarly, should we tackle disparities in rates of incarceration, presumably with targeted attention to prevention, diversion and post-incarceration?

- Can we assume that the primary public sector role is state and local, or do you envision continued growth in the federal role?

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§ 6.7 THE CIVIL RIGHTS ENFORCEMENT SECTION OF THE WORKPLAN

We have considered distributing the civil rights law enforcement issues in several sectoral subsections – as components of the education or jobs strategies, for example. But for now, I want to press ahead as sketched below because the audience will appropriately expect some attention to the traditional antidiscrimination enforcement agenda. This also permits you to teach about this unfinished work. Moreover, the best opportunities for boldness are in cross cutting issues, among them: policy judgments about the lawfulness under Title VI of persistent resource disparities; retooling agency enforcement strategies to emphasize proactive technical assistance and voluntary action; and rethinking the legal framework and enforcement priorities to reflect our 21st century diversity.

We are joined at the hip with Chuck Ruff, and will cooperate in his effort to put before you suggested civil rights enforcement priorities for the next two years.

– Outline of the section

Introduction/Context

- Persistence of discrimination, and of enforcement backlogs.

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- We have opportunities to strengthen and more aggressively enforce civil rights principles, and also support appropriate voluntary actions that promote equal opportunity and access. This includes defending disparate impact doctrine, and defending affirmative action.

- The traditional agenda needs renovation to (i) increase its efficiency at handling the retail problem of discrimination; (ii) contribute more directly to the opportunity agenda in education, jobs and community economics; (iii) reflect our 21st century diversity.

(a) **Overcome racial disparities in opportunity by expanding the use of civil rights enforcement.** Civil rights enforcement can play an especially important role in overcoming barriers to educational and economic opportunity, and we should strengthen and focus civil rights enforcement to complement the opportunity agenda.

- *Strengthen antidiscrimination laws and enforcement procedures:* For example, we could amend Title II, which prohibits discrimination in public accommodations, to include businesses that provide goods and services. At present, racial discrimination in retail sales (e.g., the Eddie Bauer case in which a black teenager was ordered by a security guard to strip off his shirt because he did not have a sales receipt) does not raise a strong federal cause of action. We nearly abandoned pattern and practice investigations during the 1980s. That was wrong.

- *Use Title VI to address racial disparities:* No federal money should be spent in a manner that supports unjustified racial disparities in opportunity. For example, in education, Title VI prohibits policies and practices that have an unjustified disparate impact on select racial groups in terms of access to educational resources, tracking into challenging courses, the use of unvalidated high stakes tests, and more. We should strengthen Title VI enforcement.

- *How much discrimination is there?* We should expand research on the extent of racial discrimination, using the best available methodologies (testers where appropriate), in such areas as employment, housing, and access to capital. The results of such testing should be published in an annual report card.

(b) **Fully address all forms of discrimination affecting our increasingly diverse population by strengthening civil rights laws and enforcement.** We must retool our civil rights laws and refocus enforcement efforts to fully address civil rights issues affecting our diverse citizenry.

- *New immigrants:* Strengthen laws and enforcement to promote the rights of new immigrants. For example, in immigration and employment, we could expand enforcement against labor abuses in "sweatshops," the victims of which are often new immigrants of Hispanic or Asian origin, and amend present laws to stabilize the

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immigration status of persons who report labor abuses so those persons do not fear reprisal, official or private.

- *Language acquisition:* Promote the rights of LEP populations. For example, in education, we could develop regulations to clarify the *Lau* standard concerning what legal requirements schools must meet in educating LEP students.

- *Learning your rights:* Educate immigrant and LEP populations about civil rights laws and mechanisms. We should promote outreach to immigrant and LEP populations whose rights are protected but who are underutilizing civil rights laws.

(c) **Address discrimination and disparities by promoting voluntary efforts in conjunction with enforcement of civil rights laws.** In addition to reacting to civil rights complaints, civil rights enforcement agencies should act proactively to encourage and support voluntary compliance with civil rights laws and values.

- *Expand civil rights consultations and clarify legal standards:* There are civil rights areas where both the law and policy are unclear and where people of good will may be managing inappropriate programs. We should act to clarify legal standards and to encourage actors to seek guidance concerning their civil rights obligations. We could promote laws or regulations encouraging voluntary consultations with civil rights agencies. If an actor voluntarily submits his/her practice for civil rights review, he/she is safe harbored and/or any agreement approved by the civil rights agency following that review would be defended by the federal government if later challenged by a third party.

- *Expand proactive enforcement:* Absent a formal complaint, where potential civil rights violations are discovered, civil rights agencies should follow up with the party to correct the injustice. If discussions are not fruitful, the enforcement agency reserves the right to launch a more formal civil rights enforcement examination. For example, in education, the Department of Education's Office of Civil Rights (OCR) recently learned of a Georgia education policy that placed students into gifted and talent programs based solely on IQ test scores, despite the fact that the IQ test was not validated for that purpose nor validated to be the *sole* factor for any purpose. This policy led to a disproportionately low number of minority students being admitted to gifted and talented programs. OCR consulted with Georgia officials, and the policy was properly amended.

(d) **Mend, don't end, affirmative action as enforcement remedy and voluntary measure to promote access and inclusion**

(e) **[Hate crimes.]**

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– Discussion issues on the civil rights workplan

- After further interagency discussion, we will need policy guidance about a number of Title VI issues.

- Should we develop a package addressing "the new diversity"?

- How much technical assistance should be done proactively to implement "mend don't end" in various sectors?

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IV. THE LEADERSHIP CHAPTER

Following the workplan chapter, you can challenge leaders in a range of sectors to do their part, and combine this with a vision of locally-based efforts to use the promising practices and devise locally-oriented workplans. Finally, in this chapter you should describe the ongoing mechanism within the White House to help support the sectoral leadership, community-based leadership, and the Federal government elements of your workplan.

(a) Challenges for sectoral leadership

We expect, by the publication date, to have worked successfully with leadership groups in a few sectors, prompting them to develop a list of action steps tailored to their sector, and a practical strategy for implementation. A brief status report on what we have initiated follows.

- *Higher Education:* With staff support from the American Council on Education, a core group of college and university presidents is working to establish a broader coalition that will lead a coordinated campaign to educate the public about the value of diversity in higher education and to share campus practices that promote diversity. We expect them to launch the effort, designed with Frank Greer as lead consultant, sometime this fall. (There is a possibility of using a White House event to bless the undertaking.)

- *Faith Community:* Sandy Cloud of the National Conference for Community and Justice has agreed to lead a steering committee in convening, on October 22 and October 23, an implementation summit at which a group of faith leaders will write and commit to a practical work plan for both national and community-based action, and devise a coalition mechanism for follow through. This will include special efforts to reach those faith communities that have not traditionally been leaders in racial justice. In addition, at your September 11 breakfast for religious leaders, you will have an opportunity to mention

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Sandy Cloud's leadership, and encourage those in the room to respond positively to the effort.

- *Corporate:* Secretary Daley will informally convene a group of CEOs in October to identify the most appropriate elements of a corporate sector initiative, and strategies for enlisting support from key executives. In preparation for that session, White House and agency staff will brainstorm with some current and former Administration officials in corporate leadership.

- *Youth:* We are organizing a team of White House staff and representatives from national youth-oriented organizations to prepare a workplan intended for widespread endorsement and dissemination. (The outside collaborators will include USSA, Young Democrats, Young Republicans, the youth divisions of the NAACP, Urban League, La Raza and the Congress of Asian Pacific American Youth.) Tentatively, we think the plan's three major components will be: (i) a national campaign to educate the youth sector about the intricacies and history of race and racism; (ii) an initiative to improve race-related curriculum and teaching in grades K-16; and (iii) a mechanism to ensure youth sector involvement.

(b) Options for an ongoing structure to carry out your work plan

While the work plan is not yet completed, we know that there will be some general components which will require continuity and should compose the major responsibilities of the new entity:

- Policy making (including research and data collection)
- Outreach and leadership development (including technical assistance to communities)
- Communication campaign (including an awards program)
- Support for promising practices (such as a clearinghouse, conferences, grant funding)

The work plan lays out an ambitious agenda that will require the involvement of several players. With such an extensive scope of work, a coordinating body for the federal sector, and for liaison with non-federal actors is needed to ensure continued momentum and follow up from outside efforts. Non-federal leaders engaged on the workplan will expect a central point of contact and technical assistance.

Option A: President's Council for One America

A1: President's Council for One America Plus an External Advisory Committee
The continuing effort could take a form similar to the Council for Environmental Quality or the Office of Science and Technology Policy. This arrangement would be short of the ONDCP model which has a large staff, a significant budget, and substantial operating

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authority. The council, created by Executive Order, would be run by an Assistant to the President (as Executive Director) with a small staff and a blue ribbon advisory committee. A council staff should include a policy component, which would work with existing White House policy offices and federal agencies to promote data collection and research and to develop and monitor policies to overcome disparities and eliminate discrimination. It would also have a communications component, which would help lead a public education campaign, support a promising practices clearinghouse, and conduct outreach to help improve race relations.

Pros:
- Location places the Presidency squarely behind racial reconciliation effort
- Relatively stable structure
- Staff appointed by you ensures White House control
- Advisory committee offers opportunity for showcasing diverse leadership, provides credibility in building partnerships

Cons:
- Location and staffing make the stakes high
- Advisory committee requires support and nurturing; the familiar headaches

A2: *President's Council for One America, No Advisory Committee*

This option would be the same as option A1 but it would not include an Advisory Committee.

Pros:
- Staff would not be distracted by the day-to-day demands of managing an Advisory Committee

Cons:
- Lacks the outside validation that an Advisory Committee can provide

Option B: Dedicated Staff reporting to the Office of the Chief of Staff

An Assistant to the President with a small staff, reporting to the Chief of Staff's office, could take responsibility for managing Administration efforts.

Pros:
- Closely linked to you and the White House
- At the center of activity

Cons:
- Not a formal structure, may not be stable
- May not be viewed publicly as a significant enough commitment

Option C: Private Foundation Model

C1: One America Foundation

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The structure could take the form of a private foundation, established at your urging and supported to varying degrees by the federal government, similar to the Points of Light Foundation. The goals of the foundation could include promoting research on issues of race, promoting a public education campaign to support racial reconciliation, and supporting community efforts to improve race relations. Such a foundation could perhaps best complement a separate policy-making effort within the federal government.

Pros:
- Serves as umbrella to coordinate several areas of activity
- Independence
- Ability to raise money

Cons:
- May not be viewed as closely connected to the White House
- Requires someone's time and attention to pull together

C2: *Clinton Library Model*

This option is similar to the Foundation model above except that it would be an endeavor for you after your final term ends, possibly as part of the Clinton library. Staff could begin immediately to design the structure.

Pros:
- More time to put together the funding and structure
- You will have more time to devote to it

Cons:
- Delays significant Presidential involvement for a few more years
- May be partisan resistance to participating in activities because of close alignment with this Administration

V. NEXT STEPS

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Attachments:

- Current book outline.
- NEC memorandum on employment issues
- ???

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FYI to all DPC staff from EK

THE WHITE HOUSE

WASHINGTON

October 18, 1997

MR. PRESIDENT:

Please note that many of these proposals are still in the formative stage.

Phil Caplan

Copied Reed Kagan COS

THE PRESIDENT HAS SEEN
10-21-97

BRUCE

I like the way much and would like to meet w/ you, Clinton + relevant staff to be then soon to discuss then + a couple specific dialogue/initiatives for school/workplace

Alexis Herman

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THE PRESIDENT HAS SEEN
10-21-97

DPC Race Initiative Policy Proposals

Education

- Teaching Initiative -- Previously announced proposal to prepare and recruit teachers for high-poverty urban and rural communities.

- Urban Education Initiative -- Select 15-20 urban school districts as Education Opportunity Zones, which would receive additional monies for implementing a program of standards-based school reform, including measures to promote public school choice, end social promotions, remove bad teachers, and reconstitute failing schools. The Department of Education has requested $320 million for FY 99 for this program.

- School Construction Proposal -- Support our own proposal from last year; the Daschle-Gephardt bill; or an alternative approach.

- College/School Partnerships -- Propose a grant program to promote strong partnerships between colleges and high-poverty middle and high schools. Through these partnerships, colleges would encourage students to take demanding courses, while providing academic enrichment and intensive mentoring, tutoring, and other support services. The Department of Education has requested $200 million for FY 99 for this initiative.

- Communications Strategy for Maintaining Diversity in Higher Education -- Issue departmental report and give speech or town hall on the value of diversity in higher education; identify and highlight effective outreach and recruitment efforts in report and/or speech; invite educational leaders to White House to discuss the importance of the issue. Do not become Admissions Dean-in-Chief (i.e., do not recommend or endorse particular admissions criteria or strategies).

- Attacking Racial Separation Within Schools -- Department of Education report on best practices for helping students reach across racial barriers; grants to support model projects.

Economic Empowerment

- Empowerment Zones, Round 2 -- Announce the Second Round Empowerment Zones designees. (There is some interagency dispute about the timing of this proposal, given our inability to come up with grant money to complement the tax incentives.)

- Housing Portability -- Announce package of proposals including expanding the home ownership voucher program, encouraging the use of exception rents to open suburban housing markets, eliminating obstacles to portability of Section 8 vouchers, and reducing mortgage denial rates for minorities by working with mortgage and real estate industry.

- Fair Lending Initiative -- Announce initiative that might include an examination of

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THE PRESIDENT HAS SEEN
10-21-97

certain lending practices on minorities' access to capital, measures to improve the collection and analysis of data on loan denials, and increased resources for testing and enforcement (see below).

Transportation Infrastructure Development -- Propose tax reforms to stimulate spinoff development from transit projects and aid development of urban intercity bus facilities.

Assisting the Unbanked -- Announce the electronic funds transfer regulation, which may bring up to 10 million individuals into the banking system.

Health

Initiative to Reduce Health Disparities -- Adopt multi-faceted program, largely focused on education and outreach, to reduce racial disparities in heart disease and stroke; breast, cervical, and other cancer; diabetes; infant mortality; AIDS; and immunizations. HHS, OMB, and Chris Jennings are in the midst of developing cost estimates for this initiative.

Crime

Community Policing Initiative -- Target funds from the COPS program to hire new police officers and support community organizations in underprotected high-crime, largely minority neighborhoods (e.g., public housing communities); also use COPS money to promote diversity training for police and establish citizen academies to help community residents understand police procedures; promote minority recruitment in law enforcement through existing grant program.

Community Prosecuting Initiative -- Develop an initiative to give communities an incentive to experiment with community prosecution, which applies the principles of community policing -- neighborhood involvement and a focus on problem solving and prevention -- to this aspect of the criminal justice system.

At-Risk Youth Prevention Efforts -- Devote $75 million currently in CJS appropriations bill, which we proposed as part of the President's juvenile crime strategy, to targeted programs for at-risk and minority youth (convince DOJ to drop plans for distributing funds by formula); launch a new fight to get crime bill prevention programs funded in next year's budget process.

Indian Country Law Enforcement Initiative -- In line with recommendations of Departments of Justice and Interior (due on October 31), transfer law enforcement authority from BIA to Justice and seek increased law enforcement resources specifically designated for Indian Country.

Civil Rights Enforcement

Enhanced Enforcement Initiative -- Request additional funds for civil rights enforcement,

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THE PRESIDENT HAS SEEN
10-21-97

tied to programmatic changes to improve coordination among federal government's civil rights offices, speed resolution of claims, and reduce backlog of cases. This initiative probably will focus on the EEOC. DPC, OMB, and other offices are currently working on cost estimates.

Hate Crimes Initiative -- Announce a package of proposals at the November 10 hate crimes conference, including measures to enhance enforcement of hate crimes laws, improve collection of statistics, initiate educational activities, and amend the current federal hate crimes statute.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Judy Chesser and Web Phillips to Jack Smalligan and Melinda Haskins re: Prisoner Provision in Jeffords/Kennedy (1 page)	06/09/99	P5
002. email	Sandra Yamin to Janet Murguia, Fredrickson, Chow, et. Al. re: Work Incentives Improvement Act (partial) (1 page)	06/04/99	P5
003. fax	Melinda Haskins fax re: Draft Program Integrity and Administrative Reforms (1 page)	04/20/99	P5
004. letter	Dennis Burke to Jacob Lew re: Work Incentives Improvement Act of 1999 (4 pages)	02/09/99	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15431

FOLDER TITLE:
Disability-Work Incentives Improvement Act-T.A. to Hill-Part II

Richard Stalcup

rx56

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

DATE: June 9, 1999

TO: Jack Smalligan/Melinda Haskins

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FR: Judy Chesser/Web Phillips

RE: Additional Amendments to the Prisoner Provision in Jeffords/Kennedy

We have identified an additional problem with the Jeffords/Kennedy prisoner matching language that we would like to remedy. In addition to earlier agreed-on changes to the privacy act provisions, the attached markup has the new changes annotated as follows.

On line 20 of page 122 of the bill we propose to expand the permitted uses of the prisoner data provided to us pursuant to incentive payment memoranda of understanding (IPMOUs) authorized under section 202(x)(3)(B). Currently, the only use specifically authorized for such data is to determine whether the reported individual is receiving OASDI benefits. We propose to expand the permitted uses to include any use related to the administration of title II of the Social Security Act.

The expansion is needed to facilitate the use of prisoner data to determine whether prisoners are serving as other OASDI beneficiaries' representative payees. Without the proposed expansion, SSA would still be able to use prisoner data obtained pursuant to section 202(x)(3)(B) for this purpose. However, we have been advised by our General Counsel that before we could conduct such a match we would first have to obtain an agreement from each reporting institution under the Computer Matching and Privacy Protection Act (CMPPA). This would be the case even though we would also have an IPMOU with these same institutions.

As drafted, the CMPPA exclusion applies only to matches performed pursuant to section 202(x)(3)(B). That is to say, only for the purpose of policing the rolls for ineligible beneficiaries. The proposed revision would enable SSA to conduct other prisoner data matches related to the administration of OASDI, including representative payee matches, without having to execute both a CMPPA agreement and an IPMOU with reporting institutions. We believe this modification comports with both the Administration's and the Congress' intent in excluding this data and its use from the provisions of the CMPPA.

The modifications made to line 3 of page 124 are intended to expand similarly the uses of prisoner data under 202(x)(3)(B) that would be available to the administrators of other Federal or federally-funded cash, food, or medical assistance programs.

Finally, subparagraphs (A) and (C) of the insert on page 124 include necessary conforming amendments to circumvent this same problem in the SSI program. Subparagraph (B) of the insert is a conforming amendment that we agreed on some time ago regarding modifications to the privacy act exclusion.

pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. The Office of Management and Budget's preliminary scoring estimate indicates that the Roth substitute would increase direct spending by $19 million in FY 2000 and a total of $814 million during FYs 2000-2004. OMB estimates that S. 331 would increase receipts by $18 million in FY 2000 and by a total of $859 million during FYs 2000-2004. The net pay-as-you-go effect would be a cost of $1 million in FY 2000 and savings of $45 million during FYs 2000-2004.

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* * * * * * * *

(Do Not Distribute Outside the Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Haskins) in consultation with EIML (Matlack/Kitti/Meredith), H/P-VAPD (Miller/Farkas/ McCormick), TCJS (Haas), BRD (Barth), and EP (Minarik). GC and OIRA did not comment.
The Social Security Administration (O'Donnell) and the Departments of Education (Hansen), Health and Human Services (Nelson), Justice (Taylor), Labor (Morin) and the Treasury (Dorsey) as well as the Office of Government Ethics (Cook), Office on National Drug Control Policy (Rivait), National Council on Disability (Imparato), Domestic Policy Council (Lambrew/Rice) , Office of the Vice President (Brown), and WH Office of Public Liaison (J. Young) concur in this position.

Justice notes that the S. 331 provision to suspend payment of Social Security benefits to certain sexual offenders who remain confined by a court to public institutions upon completion of a prison term could be subject to constitutional challenge on the basis of equal protection and *ex post facto* grounds. To address this concern, Justice urges that the bill be amended to ensure such denials are based on findings that the individuals are dangerous to others or to themselves due to mental illness, mental abnormality, or other volitional impairment. On April 22nd, the Social Security Administration informally shared with the House and Senate draft language developed with Justice to address this concern.

OMB/LA clearance:_____

Administration Position To Date

The President's FY 2000 Budget assumes funding of a "Ticket to Work" initiative and Medicaid and Medicare expansions similar to those included in S. 331. On January 13th, the President announced that his balanced Budget "fully funds this vitally important initiative." In his January 19th State of the Union Address, the President urged passage of this "landmark bipartisan legislation . . . to allow people with disabilities to keep health insurance when they go to work."

(7)

Confined to Public Institutions Upon Completion of Prison Term.--

(1) In general.--Section 202(x)(1)(A) of the Social Security Act is amended--

(A) in clause (i), by striking "or" at the end;

(B) in clause (ii)(IV), by striking the period and inserting ", or"; and

(C) by adding at the end the following:

(iii) immediately upon completion of confinement as described in clause (i) pursuant to conviction of a criminal offense, is confined by court order in an institution at public expense pursuant to a finding that the individual is dangerous to others or to himself due to mental disease, mental defect, or other impairment that inhibits the individual's ability to control the dangerous behavior.".

Language agreed to by DOJ and SSA for sexual offenders

(2) Conforming amendment.--Section 202(x)(1)(B)(ii) of such Act is amended by striking "clause (ii)" and inserting "clauses (ii) and (iii)".

(3) Effective date.--The amendments made by this subsection shall apply with respect to benefits for months ending after the date of enactment of this Act.

SEC. . ADDITIONAL DEBT COLLECTION PRACTICES.

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. letter	Tony Coelho to Tom Kalil re: Department of Defense Computer Electronic/Accomodations Program (2 pages)	12/21/98	P5

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COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15430

FOLDER TITLE:
Disability-Technology [1]

Richard Stalcup

rx54

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

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PRESIDENT'S
COMMITTEE
ON EMPLOYMENT
OF PEOPLE
WITH DISABILITIES

December 21, 1998

Tom Kalil
Senior Director
National Economic Council
Old Executive Office Building
17th Street and Pennsylvania Avenue, NW
Washington, DC 20500

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Dear Mr. Kalil:

I am writing as Vice Chair of the Presidential Task Force on Adults with Disabilities to reiterate my strong support of the proposal to expand the Department of Defense Computer Electronic/Accommodations Program (CAP). A compromise, such as the one discussed at your meeting on December 4, is unacceptable.

When I discussed this subject with President Clinton and Vice President Gore, they were in agreement with my position. Let me be direct. I want legislation to expand the DoD Computer/Electronic Accommodations Program, authorize annual funding, and appropriate funding for FY 2000. I want the expanded program to serve all Federal agencies and be open to all Federal employees. Anything less compromises the purpose of the Task Force, which is full inclusion for people with disabilities throughout the Federal sector.

The Equal Employment Opportunity Commission tells us that employment of people with the severe disabilities targeted for emphasis in affirmative action programs has declined for five years in a row. This is unacceptable.

It will take decisive action to reverse unfavorable trends in Federal employment of individuals with disabilities, I want central funding, in FY 2000, for government wide summer hires through the Workforce Recruitment Program (WRP) for College Students with Disabilities cosponsored by the President's Committee and the Department of Defense. This money will be made available to all Federal agencies and will allow us to begin filling a "pipeline" with individuals qualified for careers in public service.

1331 F Street, N.W.
Washington, DC 20004-1107

202-376-6200 (Voice)
202-376-6219 (FAX)
202-376-6205 (TDD)

If you feel this will be difficult to achieve, I will be happy to speak with John Podesta. Please let me know if that will be helpful. If you need any further clarification, please contact John Lancaster at (202) 376-6200.

Thank you for your cooperation.

Sincerely,

Tony Coelho

Tony Coelho
Chairman

cc: Vice President, Albert Gore
Secretary of Defense, William Cohen
Chair of the Presidential Task Force on Adults with Disabilities, Alexis Herman

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Summary of Erskine Meeting w/Herman and Coelho (2 pages)	07/23/98	P5
002. email	FYI from National Council on Disability to Chuck Ruff (3 pages)	07/27/98	P5

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COLLECTION:
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Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15430

FOLDER TITLE:
Disability-Task Force-General [1]

Richard Stalcup

rx52

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

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Diana Fortuna 07/23/98 05:00:32 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Andrea Kane/OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: Summary of Erskine mtg w/Herman and Coelho

At the pre-meeting, we said we could hold an event where the President could say that we are working with Kennedy& Jeffords on "feasible, affordable" health care legislation, along with signing 3 of the smaller directives the task force developed. Barbara Chow didn't object. Erskine appeared very comfortable with that. He had read the briefing paper carefully and commented that he thought a number of the task force's ideas were good ones. He specifically mentioned the 3 items that cost money -- Kennedy-Jeffords, a tax credit, and the "BRIDGE" program. He was almost pushing us to make a public statement about the tax credit as well as Kennedy-Jeffords, but we said it wasn't ready yet and should be considered in the context of the long-term care initiative. We also talked about the VP doing a disability event in September where he could talk about technology and/or BRIDGE. And Gene kept saying that a lot of this could ultimately fit in the President's budget/state of the union.

At the meeting itself, Erskine immediately told Alexis and Tony that the event was a go. So everyone was in a good mood. People made a few other plugs: Tony plugged expanding the Defense Dept. CAP program to the rest of the government at some point, a good idea that Erskine liked at a meeting on disability issues over a year ago, but that we can never figure out how to implement. He also plugged the WH hiring a staffer with a disability; Minyon said she is considered someone named Jonathan Young that Tony had recommended to her. Erskine asked them for a list of qualified candidates with disabilities in case we have vacancies in a variety of jobs. Seth Harris said that the task force can help rally the disability community on issues like the patient bill of rights. Gene said maybe the TF could help rally support for the EITC for single individuals.

Interesting tidbit: Jeanne and Ceci told me that Gene called them in an upset state last night because yesterday he was asked by the President about details of the task force's proposed package -- Kennedy-Jeffords, tax credit. We don't know how the President got wind of the specifics -- whether Tony got to the President or Erskine somehow shared the briefing with him. Gene was mad because he felt unprepared, and also because he thought some of these might have been good event ideas back when we were hunting for events. (As you know, I generally leave disability issues off such lists because folks here don't believe they have wide appeal.)

FYI, the 3 orders are: 1. directing HHS to do more to inform states, consumers, employers, providers, etc. about the new state option for a Medicaid buy-in that we got enacted in the BBA. It's a great state option, but no state has taken it up yet, so we have a credibility problem when we hype it to the community. In fact, our alternative approach to Kennedy-Jeffords is trying to bribe states to adopt the BBA buy-in provision. 2. directing DOJ/EEOC to do a public information campaign on the ADA; 3. directing DOJ/EEOC/SBA to do outreach to small business on the ADA. Then in his speech, he would say we are committed to working with Kennedy and Jeffords on health legislation for people with disabilities who want to return to work. We don't know how much the proposal we're working on will cost, but we're guessing/hoping it will be $1 billion over 5 years (vs. $5b for the original Kennedy-Jeffords). We haven't figured out offsets yet. The tax credit is about $800 million.

The other 20-odd directive ideas the task force developed will continue to be refined for the task force's November report.

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Diana Fortuna 07/27/98 11:43:10 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: FYI from National Council on Disability to Chuck Ruff

The issues Marca raises to Ruff are not ones we are looking to be out front on publicly.

MEMORANDUM

TO: Charles F. C. Ruff
Counsel to the President

FROM: Marca Bristo
Chairperson, National Council on Disability

RE: Congressional Attacks on Civil Rights Laws for People with Disabilities

DATE: July 24, 1998

CC: Minyon Moore, Assistant to the President and Director of Public Liaison

---

Minyon Moore suggested that I be in touch with you regarding ongoing Congressional efforts to undermine three critical laws that protect the civil rights of people with disabilities, the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA). As a long-term adviser to the President on disability issues, I want to call your attention to these threats in the hope that you can help shore up Administration support for opposing any weakening amendments to civil rights laws.

On Sunday, we will celebrate the eighth anniversary of the signing of the ADA, and it is critical that the President and this Administration continue to support this ground breaking law and oppose any attempts to weaken it. The anniversary may focus attention on the issues raised in this letter for the press. Recently, Senators Thurmond and Helms introduced legislation in the Senate that would amend the ADA and the Rehabilitation Act to eliminate the protections these laws afford to people in prison, including prison employees.

This proposed legislation, the "State and Local Prison Relief Act" (S. 2266), is a response to the Supreme Court's unanimous decision this term in Pennsylvania Department of Corrections

v. Yeskey, which held that Title II of the ADA does apply to state and local prison facilities. I recognize that the civil rights of prisoners and prison employees with disabilities may not be an issue of great concern to many voters, but I want to emphasize that any amendment to the civil rights protections in the ADA and the Rehabilitation Act would be considered unacceptable by the leadership of the disability community. The Administration supported the application of the ADA to state and local prisons in its brief in the Yeskey case, and I am hopeful that the President will oppose and veto if necessary any legislation that would amend the ADA in this area.

In a related vein, Congressmen Livingston and Riggs and others have been working to weaken the protections provided to children with disabilities in IDEA. Under IDEA, just reauthorized last year, children with disabilities are entitled to a free and appropriate public education in the least restrictive environment consistent with their educational success from birth until they turn 22. Congressman Riggs has attached language to the House appropriations bill for the Department of Education that would remove this entitlement for some youth over age 18 who are in adult prison facilities.

In a separate amendment to the same appropriations bill, Congressman Livingston seeks to dramatically expand the ability of public schools to remove undesirable students with disabilities from the classroom without having to go through due process procedures. The most recent reauthorization of IDEA, signed by the President just last year, already includes a compromise on the contentious issue of discipline that expanded the ability of schools to remove children with disabilities from the classroom when they bring a weapon or drugs to school. Congressman Livingston and others are dissatisfied with the bipartisan compromise on discipline and are trying to reopen this thorny issue in the context of the appropriations process.

Parents of children with disabilities are fighting hard to hold the line on IDEA, but they may need a veto from the President if the Riggs, Livingston, or other amendments make it through the Congress. Secretary Riley has fought hard to protect students with disabilities and not to reopen the issue of school discipline in this Congress. When the President hosts the White House conference on School Safety in the fall, it would not be surprising for educators, particularly school boards, to fight for more "flexibility" in IDEA so that schools can more easily expel "unruly" children from the classroom. It is critical that the President not succumb to the push for more flexibility on discipline, which will translate into even more children with disabilities leaving school early without the skills they need to live independently and pursue meaningful careers.

As a disabled Clinton appointee, I see the most recent attacks on ADA, the Rehabilitation Act, and IDEA as related and highly partisan. Civil rights protections for people with disabilities are not well understood and easily mischaracterized by opponents. If Congress is successful in weakening any of these laws before they go home, we can count on more attempts to chip away at the federal protections offered children and adults with disabilities in the next Congress. I am hoping that you will be an advocate for the President to continue to hold the line on these civil rights laws, even if it means expending some political capital to do it.

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Given the President's strong civil rights record on disability issues, I am confident that he will fight attempts to weaken federal civil rights protections for children and adults with disabilities.

I am going to be in town on Wednesday, July 29 for a meeting with the President and the Task Force on Employment of Adults with Disabilities, and would love an opportunity to meet with you if your schedule permits. I will be in touch to see if we can arrange a meeting. If we cannot get together next week, I hope we will have an opportunity in the near future. Thank you for your attention to these matters.

Message Copied To:

Cynthia A. Rice/OPD/EOP
Michael Cohen/OPD/EOP
Tanya E. Martin/OPD/EOP
Jose Cerda III/OPD/EOP
Leanne A. Shimabukuro/OPD/EOP
Robert M. Shireman/OPD/EOP

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. email	Draft Statement on ADA Cases (2 pages)	10/08/99	P5
002. note	Notes re: Recent Americans with Disabilities Act Court Decisions (3 pages)	07/06/99	P5
003. fax	Memo re: Recent Supreme Court Decisions on Americans with Disabilities Act coverage (4 pages)	07/23/99	P5
004. report	DOJ Summary (2 pages)	ca. June, 1999	P5
005. memo	Disability Cases Before the Supreme Court (3 pages)	ca. March, 1999	P5

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Cynthia Rice (Subject Files)
OA/Box Number: 15430

FOLDER TITLE:
Disability-Supreme Court Cases

Richard Stalcup

rx51

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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Lisa M. Brown@OVP

10/08/99 08:11:20 AM

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Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: PLS LOOK AT THIS REVISED Re: Draft Statement on ADA Cases

I agree with Cynthia's changes. A few other comments:

1. Shouldn't it be "who are discriminated against by employers" rather than "by employees" in the third sentence of the first answer?
2. In paragraph two of the first answer, "in their employment policies"
3. Same para, following sentence: "should not be applied in a way that reaches unfair results detrimental to people with disabilities that are inconsistent" or "should not be applied to reach unfair . . ."
4. We use the word "impairment" throughout -- is this an acceptable word to the disability community?

Cynthia A. Rice@EOP

disability

Cynthia A. Rice@EOP 10/07/99 05:29:19 PM

Record Type: Record

To: Edward W. Correia/WHO/EOP@EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: PLS LOOK AT THIS REVISED Re: Draft Statement on ADA Cases

dis1007 ada statement.

With the Work Incentive Improvement Act heating up, we should finalize our answer on the ADA question. Here are my proposed edits to Eddie's version (I've put them in the form of Q&A). Can you all respond by 11:00 Friday? Thanks.

Edward W. Correia

Edward W. Correia

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ELLEN VARGYAS <Ellen.Vargyas@EEOC.GOV>
10/08/99 09:19:05 AM

Record Type: Record

To: Edward W. Correia/WHO/EOP, Cynthia A. Rice/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: PLS LOOK AT THIS REVISED Re: Draft Statement on ADA Cases

---

The second Q and A is internally inconsistent. If the point is that it is premature to make a decision regarding legislation as of now (and that seems fine to me) that should be the answer. Beginning with a "no" suggests that the Administration has rejected a legislative approach. I would suggest deleting the "no" and leaving what is now the second sentence as the answer. Alternatively, the question could be modified to read "Does the Administration currently have plans to propose or support legislation to clarify the ADA?" the current answer would then work.

>>> <Cynthia_A._Rice@opd.eop.gov> 10/07 4:29 PM >>>
(See attached file: dis1007 ada statement.doc)

With the Work Incentive Improvement Act heating up, we should finalize our answer on the ADA question. Here are my proposed edits to Eddie's version (I've put them in the form of Q&A). Can you all respond by 11:00 Friday? Thanks.

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Edward W. Correia
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To: See the distribution list at the bottom of this message

cc:
Subject: Draft Statement on ADA Cases

Here's a draft statement for your review and comment.

(See attached file: Statement on ADA Cases.doc)

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7/6 ADA

Peggy M-

Possible next steps

(1) EEOC guidance - have to do

(2) EEOC/DOJ amicus strategy
→ cases w/ mitigating reasons but substantially limited (e.g. still periods w/ difficulty working OR to control blood sugar need to eat every 2 hours)
→ "record of" past record of hospitalization
→ "regarded as" → still some things left

(3) Legislation
→ Liz Savage concerned

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Issues to be defined in courts

→ what is a mitigating circ
→ what if person chooses not to mitigate
→

Paul

→ would we create political problem for ourselves/developing Legis and not pushing it
→ if we say we want Legis other groups will push then working amdmts

options to say

(1) This left → we're going to pursue it appropriately
(2) Depending on how implanted we could be quite strong
→ we are going to argue for narrow interpretation

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(3) ADA talks about potential
→ qualifying to do the job
Supr Ct cutoff too late
→ don't get to point
qualified to do job
→ goal: not to keep people out of jobs then
should ask first qualified for...
→ are they qualified to do job?

(4) Concerned about 'potential' of case

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The Supreme Court Americans with Disabilities Act Cases: Sutton v. United Air Lines, 97-1943; Murphy v. United Parcel Service, No. 97-1992; Albertsons, Inc. v. Kirkingburg, No. 98-591

On June 22, 1999, the Court issued three decisions concerning the interpretation of the definition of the term "disability" in the Americans with Disabilities Act (ADA). In each case, a majority of the Court rejected the arguments of the United States supporting the private plaintiffs.

Only persons with "disabilities" are protected by the statute. The ADA provides a tripartite definition of "disability," which includes:

(1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment.

The Court's opinions addressed the first and third definitions.

I. Summaries

A. Sutton v. United Air Lines

In Sutton v. United Air Lines, petitioners Sutton and Hinton are twin sisters with uncorrected visual acuity of 20/200 or worse who have 20/20 vision when wearing eyeglasses. Experienced pilots, they applied to United Air Lines for positions as commercial airline pilots but were rejected because they did not meet United's minimum requirement of uncorrected visual acuity of 20/100 or better. The Supreme Court held that the assessment of whether a plaintiff satisfies the first prong of the definition — whether the impairment "substantially limits one or more of the major life activities" — should be made considering any mitigating measures used by the plaintiff. Thus, these sisters were not disabled within the first prong of the definition because they completely mitigated their impaired vision by wearing eyeglasses.

The Court rejected the argument (pressed by the United States) that mitigating measures should not be considered in evaluating disability. The Court stated that such an interpretation was inconsistent with the language of the statute;

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that, in many cases, it would require courts to engage in a hypothetical inquiry (i.e. what would this person be like if she wasn't on medication); and that it would inflate the number of disabled persons covered by the statute far beyond Congress's estimate of 43 million, the figure cited in the ADA's findings. In pressing the contrary position, the United States had urged the Court to defer to the EEOC's interpretation of its regulations. While not resolving this issue, the Court questioned whether agency regulations regarding the definition of disability are entitled to any deference.

The Court also found that the twins were not "regarded" as disabled by United within the meaning of the third prong. An employer, the Court held, may decide that it prefers candidates that meet certain physical or other criteria, so long as not meeting that criteria, in and of itself, is not an impairment that substantially limits a major life activity. Here, while the sisters did not meet the visual acuity standard, they were not regarded as substantially limited in the major life activity of working because there are a number of other positions utilizing their skills for which they qualify, such as pilot for a regional airline and pilot instructor. In its analysis of whether plaintiffs were regarded as limited in working, the Court questioned whether "working" was a major life activity, but did not issue a holding on this question.

B. Murphy v. United Parcel Service

In Murphy v. United Parcel Service, Murphy has high blood pressure but uses medication to control his condition. United Parcel Service (UPS) fired Murphy from his job as a mechanic, a position that required him to drive commercial vehicles, because UPS thought his high blood pressure disqualified him from receiving the Department of Transportation health certification required for driving commercial vehicles. The Supreme Court held that he was not disabled within the meaning of the ADA. While without the medication, Murphy would have been disabled, the Court relied on its decision in Sutton to hold that Murphy should be evaluated in his medicated state, and that when medicated his blood pressure did not substantially limit his major life activities.

The Court also found that Murphy was not "regarded" as disabled because Murphy showed only that he was regarded as unable to perform the job of mechanic when that job requires driving a commercial motor vehicle. Since there are many mechanic jobs that do not require certification for driving commercial vehicles, he failed to demonstrate that he was regarded as unable to perform a class of jobs.

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C. Albertsons, Inc. v. Kirkingburg

Albertsons, Inc. v. Kirkingburg presented the question of whether Albertsons violated the ADA when it fired Kirkingburg from his position as a truck driver because he had monocular vision and did not meet the federal vision standards set forth in DOT regulations. At the time of Kirkingburg's termination, DOT had initiated a waiver program for certain drivers with good vision in only one eye who had good driving records. Kirkingburg obtained a waiver from DOT, but Albertsons refused to reinstate him.

The Court first held that the Ninth Circuit had erred in concluding that Kirkingburg was disabled merely because he saw in a different manner than persons who have vision in both eyes. The Court held that while monocular vision "inevitably leads to some loss of horizontal field of vision and depth perception," the ADA requires individuals to prove, on an individualized basis, that these limitations are "substantial". The Court also held, consistent with its decisions in Sutton and Murphy, that the extent to which persons with monocular vision compensate for their condition by making subconscious adjustments to the manner in which they perceive depth and see peripheral objects was relevant to the determination of disability. The Court stated that it agreed with the United States' argument that people with monocular vision 'ordinarily' will meet the ADA's definition of disability and that it believed that "defendant companies will often not contest the issue."

The Court also held that Albertsons was not required to justify its decision to terminate Kirkingburg because it was merely implementing the federal vision standards established in DOT regulations. The fact that DOT had waived the regulation with respect to the respondent, the Court held, did not alter the analysis in this case. In making this determination, the Court found two facts significant. First, DOT admitted that it had no evidentiary basis for concluding that the pre-existing vision standards could be lowered consistent with public safety. Second, the waiver program "did not purport to modify the substantive content of the general acuity regulation in any way." Rather, DOT had acknowledged, according to the Court, that the purpose of the waiver program was to gather data to determine whether the existing standards could be lowered. The Court concluded that DOT's vision waiver program was simply an "experiment with safety" that the employer was not obligated to join. The Court expressed concern that requiring an employer to independently justify a federal regulatory standard was unfair, particularly where, as here, the government had determined that contemporary empirical evidence was difficult to develop. To the extent that an agency has information demonstrating that its waiver policy is consistent with public safety and incorporates its waiver policy into the substantive content of the general

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safety standards, it should meet the court's concerns and Albertsons should not excuse an employer from justifying a decision to terminate an employee who obtains such a waiver.

II. Implications

The impact of these decisions is twofold. First, the Court has excluded from the Act's coverage those persons with less serious impairments that are easily and completely corrected. Second, by rejecting our argument that disability should be determined without consideration of mitigating measures, the Court has made it more difficult to prove that those with serious but correctable impairments are covered by the Act. Among those potentially at risk for coverage are those who use prosthetic devices, as well as persons with epilepsy, diabetes, and mental illness who take medication to control the effects of those conditions.

We believe that Congress intended for the ADA to protect this second group, and do not think the Court's decision necessarily excludes them from coverage. We are developing strategies for retaining coverage, focusing on the following areas:

(1) What are the ways to prove that a person with a mitigated disability is still substantially limited in a major activity?

(2) How can we best obtain information on the physiological and day to day effects of serious disabilities?

(3) Can we expand the meaning of "major life activities?" Is that a legal or factual issue?

(4) If one is regarded as having a disability, is he or she entitled to reasonable accommodations?

(5) Is one whose disability is controlled by medication, but who is denied the opportunity to take that medication (in school or worksite), entitled to relief under the statute?

(6) How does the Act deal with someone whose condition is sometimes, but not always, controlled by medication?

(7) What proof is needed to establish a claim under the "regarded as" prong?

(8) Are there limitations on the physical characteristics employers may impose as a job qualification.

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DOJ Summary:

On May 24, 1999, the Supreme Court issued its decision in Cleveland v. Policy Management Systems Corp., No. 97-1008 (S. Ct.), addressing the interaction between a claim for disability benefits under the Social Security Act and a claim under the Americans with Disabilities Act (ADA). After suffering a stroke and losing her job, the plaintiff sought and obtained social security benefits, claiming she was unable to work because of her disability. Subsequently, she filed suit under the ADA contending that her employer discriminated against her on the basis of disability (by terminating her without reasonably accommodating her disability). The district court granted summary judgment to the employer, holding that by applying for social security benefits plaintiff had conceded that she was totally disabled (and thus could not perform the essential functions of her job, even with reasonable accommodation). The Fifth Circuit affirmed, holding that the receipt of social security benefits created a rebuttable presumption that the claimant is judicially estopped from asserting that she is a "qualified individual with a disability" (i.e., could perform the essential functions of the job even with reasonable accommodation). Although the court of appeals noted that it was theoretically conceivable that in some "limited and highly unusual set of circumstances" the two claims would not necessarily be mutually exclusive, it found that that was not the case here.

The Supreme Court unanimously (per Justice Breyer) vacated and remanded, holding that the pursuit and receipt of social security benefits does not automatically estop the recipient from pursuing an ADA claim, and does not create a "strong presumption" against the recipient's success under the ADA. The Court stated that "the two claims do not inherently conflict to the point where courts should apply a special negative presumption like the one applied by the Court of Appeals here. That is because there are too many situations in which a[] [social security benefits] claim and an ADA claim can comfortably exist side by side." The Court noted these situations arise because the ADA has the "reasonable accommodation" provision, the Social Security Act uses a set of presumptions about disabilities, the Social Security Act has a trial work period where a claimant can work and still receive benefits, an individual's disability may change over time (and thus statements made at the time of application may not reflect the individual's capacities at the time of the relevant employment decision), and in other areas of the law it is not uncommon for a complainant to make claims based on inconsistent theories and to let the legal system sort it out. In light of these examples, the Court "would not apply a special legal presumption permitting someone who has applied for, or received, [social security benefits] to bring an ADA suit only in 'some limited and highly unusual set of circumstances.'"

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At the same time, the Court further held that summary judgment for a defendant is appropriate when the plaintiff fails to make a showing sufficient to explain any apparent contradiction that arises out of a previous social security benefits claim. In other words, the plaintiff cannot create a genuine issue of material fact simply by contradicting her earlier sworn statement. Rather, to "defeat summary judgment, [plaintiff's] explanation must be sufficient to warrant a reasonable juror's concluding that, assuming the truth of, or the plaintiff's good faith belief in, the earlier statement, the plaintiff could nonetheless 'perform the essential functions' of her job, with or without 'reasonable accommodation.'"

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Disability Cases Before the Supreme Court

Discrimination of Individuals with Disabilities

Olmstead v. L.C.
The Court will review on April 21 an Eleventh Circuit opinion that Title II of the ADA and Department of Justice regulation 28 C.F.R. §35.130(d) prohibit states from confining individuals with mental disabilities in a state psychiatric hospital when those individuals could be appropriately treated in a more integrated community setting.

Policy
Unjustified segregation of persons in institutions, when community placement is appropriate, constitutes a form of discrimination (as defined by the Attorney General's Title II "integration regulation"). Unjustified segregation of persons in institutions constitutes a form of discrimination based on disability. Such segregation can stigmatize persons with disabilities as incapable or unworthy of participating in community life. Second, such discrimination can result in a form of dissimilar treatment, since persons with disabilities must give up participation in community life in order to receive the services they need, while persons without disabilities can receive the services they need without sacrificing that important interest.

The integration regulation does not impose undue costs on the State since it does not apply when compliance would require an unreasonable change in state policy of a fundamental change in the nature of the State's treatment program.

Also, note that labor unions have often resisted state efforts to move to community care in order to protect members' jobs.

A1: The ADA has been invaluable in making it possible for millions of Americans to participate more fully in society. The Court's decision recognized that the segregation of people with disabilities in institutions, by stigmatizing them and depriving them of access to public services enjoyed by others, itself has discriminatory effects of the precise type banned by the ADA. This year's budget builds on the President's longstanding commitment to pursue the objectives of inclusion, empowerment and independence for people with disabilities. The $70 million (24 percent increase) increase sought for the mental health block grant would assist states' community mental health services and help treat the most severe and hard-to-treat disorders, who are at particularly high risk of institutional placement.

A2: The ADA has been invaluable in making it possible for millions of Americans to participate more fully in society. The law has changed public attitudes and opened new opportunities to people with all types of disabilities. The Administration agrees with the Court's decision that disabled individuals have the right to live in a community setting if there are programs and services available. A goal of the ADA was to break down the barriers that separated disabled Americans from the non-

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disabled community. We think that the Court took a step in helping to ensure full integration of disabled individuals into our communities.

The Definition of Disability

Albertson's Inc. v. Kirkingburg
The Court will review in April a Ninth Circuit decision that a truck driver with monocular vision who received a Federal Highway Administration waiver of Department of Transportation vision standards for operating commercial vehicles was a qualified individual with a disability under the Americans with Disabilities Act (ADA), 42 U.S.C. §12101 et seq.

Policy
Monocular vision is frequently a disability under the ADA, because it substantially limits both the amount and quality of an individual's major life activity of seeing. The fact that it may not also limit other "normal daily activities" of the individual is of no significance, because the ADA is largely premised on the principle that individuals who are limited in one or more major life activities can overcome those limitations to perform many activities competently and effectively

Murphy v. United Parcel Serv., Inc.
The Court reviewed a Tenth Circuit ruling that a mechanic whose hypertension, when medicated, did not substantially limit him in any major life activity was not protected by the ADA.

Policy
Mitigating measures, such as taking medication to control hypertension, are not relevant in the threshold question as to whether one is disabled under the ADA. Assessing the existence of a disability without regard to mitigating measures is consistent with the ADA's basic purpose to eliminate the exclusion of individuals from the workplace because of outdated stereotypes and myths about those individual's abilities.

Sutton v. United Air Lines, Inc
The Court reviewed a Tenth Circuit decision that two airline pilot applicants whose visual impairments could be corrected with glasses or contact lenses were not substantially limited in the major life activity of seeing and, thus, were not disabled under the ADA.

Policy
Similar to *Murphy*, the question whether an individual has a disability under the ADA must be answered without regard to mitigating measures that the individual takes to ameliorate the effects of the impairment. Vision can be impaired to the point that, without eyeglasses, they can not see well enough to conduct everyday activities; thus having a physical impairment that substantially limits a major life activity.

A: The ADA has been invaluable in making it possible for millions of Americans to participate more fully in society. The law has changed public attitudes and opened new opportunities to people with all types of disabilities. The Court's ruling, on

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these three cases, is an important step in clarifying that the ADA is not just about protecting people in wheelchairs or those who are totally blind. The ADA is about protecting anyone with any significant impairment and giving them a fair opportunity to do their job.

At the same time, we are reminded that significant challenges still face the disabled. To address employment barriers for people with disabilities, the President issued an Executive Order last year establishing a task force to identify important ways to reduce barriers to work for people with disabilities. Furthermore, our budget contains a $2 billion initiative that will remove significant barriers to work for people with disabilities.

Consistency of Disability Benefits and the ADA in the Workplace

Cleveland v. Policy Management Systems Corp.
The Court reviewed a Fifth Circuit decision that the application or receipt of disability insurance benefits under SSDI creates a presumption that the applicant or recipient is estopped from asserting that she is a "qualified individual with a disability" under the ADA.

Policy
Neither application for nor recipient of SSDI warrants a presumption that the applicant can not assert that she is a "qualified individual with a disability" under the ADA. A person may have a medical condition that entitles her to disability benefits under the Social Security Act and nevertheless be a qualified individual with a disability under the ADA.. The Social Security Act permits recipients to receive benefits in certain circumstances even though they are employed in order to encourage recipients to return to work if possible. Social Security benefits and the ADA are not necessarily alternative remedies between which people with disabilities must choose. Rather they are complementary measures that provide financial support to people with physical or mental impairments who face practical barriers to work while at the same time encouraging and facilitating their efforts to return to work.

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001. entire folder	Disability-OPM-Model Plan V (50 pages)	ca. October, 1999	P5

COLLECTION:
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FOLDER TITLE:
Disability-OPM-Model Plan V

Richard Stalcup

rx50

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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C. Closed in accordance with restrictions contained in donor's deed of gift.
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b(1) National security classified information [(b)(1) of the FOIA]
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b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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Radio Address Q&A
October 16, 1999 – ~~10:45pm~~ DRAFT
10/15

Directive to Federal Agencies in Hiring People with Disabilities

Q: What did the President direct the agencies to do and why?

A: Today, the President will release *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, along with a companion *Employment Guide*, providing detailed resources for federal employees to use as they recruit, hire, train and promote people with disabilities. Under this plan, the President will direct the Federal government – the nation's largest employer with over 1.8 million workers – to immediately implement this plan and:

- Recruit people with disabilities for positions at all levels of government;
- Provide opportunities for students with disabilities;
- Ensure career opportunities for people with disabilities;
- Collect and maintain data to monitor success of people with disabilities in the federal workforce; and
- Provide reasonable accommodations for applicants and employees with disabilities.

Q: Will agencies be subject to hiring quotas?

A. No. Each agency's employment opportunities differ. Therefore, the plan asks agency and department heads to review their hiring of people with disabilities and to implement efforts to increase employment of people with disabilities. The fact is almost 75 percent of working-age Americans with disabilities are unemployed, but that does not mean they are unemployable, nor does it mean that they have nothing to offer our federal government or society.

Q: What will the cost of implementation be to agencies?

A: There is no direct cost associated with the issuance of the guidance. In implementing the provisions outlined in OPM's plan, federal agencies are being given access to a number of resources that will make their recruitment efforts and their career development planning more effective. OPM has specifically designed the plan and the guide to provide for the sharing of information and resources regarding the hiring of individuals with disabilities.

Q: What's the difference between the OPM plan and the guide?

A. The plan provides a framework for departments and agencies to help them develop strategies and initiatives designed to employ and retain persons with disabilities. Its companion piece, the guide, is a resource tool to help Federal human resource specialists, supervisors, and co-workers, understand the issues surrounding employment of people with disabilities.

Q: Doesn't this plan favor people with disabilities over other individuals such as veterans?

A. No. The plan does not direct agencies to favor those with disabilities over other applicants. It does encourage agencies to recruit people with disabilities for positions at all levels of government; provide opportunities for students with disabilities; ensure career opportunities for people with disabilities; collect and maintain data to monitor their success; and provide reasonable accommodations for applicants and employees with disabilities. The plan should be part of an overall agency strategy to address under-representation of individuals, including those with disabilities, in the workforce.

Q: How many persons with disabilities are currently employed by the Federal government?

A. As of September 30, 1998, there were over 1.8 million federal employees in the non-postal Federal executive branch, and just over 7 percent identified themselves as having a disability.

Unemployment Among People with Disabilities

Q: How many people with disabilities are unemployed?

A: Census Bureau data indicate 75 percent of people with severe disabilities are unemployed. Nationwide, some 54 million American have a disability, and about 26 million of them have disabilities characterized as severe.

Administration Efforts to Increase Employment of People with Disabilities

Q: Besides the else has the Administration done to increase employment of people with disabilities?

A: Today's action, recommended by the President's Task Force on Employment of Adults with Disabilities, is the latest of many executive actions taken by the President to increase the employment of people with disabilities, which include: issuing an executive order in June expanding hiring opportunities for people with psychiatric disabilities by eliminating the federal government's stricter hiring and promotion standards for people with those disabilities; putting in place new regulations in February to make work pay for people with disabilities receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), allowing them to earn more and still receive critical cash and medical benefits; creating the Task Force last year to create coordinated national policy to increase employment of people with disabilities in all sectors of the economy; including in his budget a historic $2 billion initiative to provide a $1,000 tax credit for work-related expenses for people with disabilities, invest in technology to help more people with disabilities work, and provide better health care and employment options for people who go to work by fully funding the Work Incentives Improvement Act.

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For more on these and other actions taken by the President and Vice President to increase opportunities for Americans with disabilities, please see the attached nine page summary.

Work Incentives Improvement Act (Kennedy-Jeffords)

Q: Yesterday, the full Ways and Means Committee passed their version of the Work Incentives Improvement Act by a bipartisan vote of 33 to 1. What is your response?

A: We are extremely pleased that the Ways and Means Committee acted on this important legislation. The President included – and fully funded – this proposal in his FY 2000 budget and strongly endorsed the Senate-passed and House Commerce Committee versions, which closely resembled it.

However, the Ways and Means bill falls short on funding for health care components which are essential incentives to returning to work. This bill does not include: (1) mandatory funding for infrastructure grants which provide an incentive for states to adopt the Medicaid buy-in portion of the legislation; (2) a mandatory demonstration that allows people who are not yet too disabled to work to buy into Medicaid; and (3) a guarantee of Medicare coverage. The lack of funding for these critical health options would extend the status quo, which requires people with a disability to eventually choose between work and health care. We hope that the bill that the full House votes on includes these important provisions, and that Congress enacts this legislation this year.

Q: Some in Congress are saying that there are not enough offsets for the bill. Indeed, neither the Senate- or Commerce Committee-passed bills had offsets. Would you support this bill if it uses the Social Security surplus?

A. The President fully paid for this bill in his FY 2000 budget, and the Finance Committee included a financing source as well. There is no excuse for the House to fail to act on this bill because it cannot agree on enough offsets to pay for it responsibly, consistent with Administration policy.

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Q: Senator Kennedy has indicated that the President made a commitment to find the offsets to pay for this legislation. Republicans are still waiting for the entitlement offsets you promised. Why aren't you living up to this commitment?

A: The President's commitment to the Work Incentives Improvement Act and its financing is and has been clear since the beginning of this debate. Financing for this legislation was included in the President's budget, and he indicated his support for the financing passed by the Senate Finance Committee. We are committed to working with the Congress to ensure adequate offsets, and our work over the last year clearly demonstrates this commitment.

Patients' Bill of Rights

Q: What is the President's position on the Patients' Bill of Rights?

A: The President called upon Congress to pass a strong, enforceable Patients' Bill of Rights. Last week, a strong bipartisan majority in the House passed the Norwood-Dingell Patients' Bill of Rights, a major victory for every family in every health plan – but there is still more work to be done. Republican leaders should resist weakening the patient protections guaranteed in the Norwood-Dingell bill or undermine the bill's bipartisan support in conference.

Americans with Disabilities Act

Q: What does the Administration think of the decisions made by the Supreme Court earlier this year on the Americans with Disabilities Act? Does the Administration plan to take new action in this area?

A: Earlier this year, the Supreme Court decided a number of important cases which interpreted the Americans with Disabilities Act (ADA). Two cases, Sutton v. United Airlines and Murphy v. United Parcel Service, Inc., held that the determination of whether an individual has a disability should take into account the use of mitigating measures. Depending on how these decisions are interpreted and applied by the lower courts, Sutton and Murphy could undermine the goals of the ADA by excluding from the Act's coverage many persons who are discriminated against by employers because of a physical or mental impairment. The most troubling possibility is that employers could refuse to hire individuals because of a physical or mental impairment but escape the Act's coverage by claiming that the individual does not have a disability because of mitigating measures.

The Administration will assess the impact of the Sutton and Murphy decisions by evaluating how they are interpreted and applied by the lower courts. We will also assess how employers are applying these decisions in their employment policies. In appropriate cases, the Administration will argue to the courts that Sutton and Murphy should not be applied to reach unfair results that are inconsistent with the original congressional intent underlying the Act. We are hopeful that the decisions will not have an adverse impact on people with disabilities.

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Q: Does the Administration currently have plans to propose or support legislation to clarify the ADA?

A: No. While the lower courts are clarifying the meaning of these decisions, it would be premature to consider legislation.

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PRESIDENT CLINTON AND VICE PRESIDENT GORE:
Increasing Opportunities for Americans with Disabilities

"Increased access to health care, more assistance at home and in the workplace, remarkable new technologies made more available: This is how we can make sure that all Americans can take their rightful place in our 21st century workplaces."

President Clinton
January 13, 1999

President Clinton and Vice President Gore are committed to expanding opportunities for Americans with disabilities and demonstrating to all Americans that people with disabilities -- given access to the workplace, health care, community services, and technology -- make significant contributions to our society and economy.

EXPANDING EMPLOYMENT OPPORTUNITIES

Fighting to Enact the Work Incentives Improvement Act (WIIA) -- The Work Incentives Improvement Act is an historic bill produced through the bipartisan efforts of Senators Jeffords, Kennedy, Roth and Moynihan in collaboration with leaders in the disability community and staff throughout the Administration. On January 13, 1999, the President announced one of his FY2000 budget initiatives, committing to the full funding of the WIIA. The Administration's budget initiative, which invests $1.2 billion over five years, will help provide better health care options for people with disabilities who work.

The Work Incentives Improvement Act will improve access to health care by: (1) expanding states' ability to provide a Medicaid buy-in to people with disabilities who return to work; (2) extending Medicare coverage, for the first time, for people with disabilities who return to work; and (3) creating a new Medicaid buy-in demonstration to help people with a specific physical or mental impairment that is not severe enough to qualify for health assistance, but is likely to lead to a severe disability in the absence of medical treatment. In addition, WIIA will modernize the employment services system by creating a "ticket" that will enable Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) beneficiaries to go to any of a number of public or private providers for vocational rehabilitation. If the beneficiary goes to work and achieves substantial earnings, providers would be paid a portion of the benefits saved. And WIIA creates a Work Incentive Grant program to provide benefits planning and assistance, facilitating access to information about work incentives, and better integrate services to people with disabilities working or returning to work.

Providing a $1,000 Tax Credit for Work-Related Expenses for People with Disabilities -- On January 13, 1999, the President announced a new proposal that will allow workers with significant disabilities to receive an annual $1,000 tax credit to help cover the formal and informal costs that are associated with employment, such as special transportation and technology. Like the Jeffords-Kennedy-Roth-Moynihan Work Incentive Act, this tax credit, which will assist 200,000 to 300,000 Americans, will help ensure that people with disabilities have the tools they need to return to work.

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Establishing the Task Force on Employment of Adults with Disabilities -- On March 13, 1998, President Clinton signed an Executive Order establishing a National Task Force on Employment of Adults with Disabilities, charged with creating a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population.

Taking Action on All of the Task Force's Formal Recommendations -- In December 1998, the Vice President accepted the report of the President's Task Force on the Employment of Adults with Disabilities. Alexis M. Herman, Secretary of Labor, chairs the Task Force and Tony Coelho, Chairman of the President's Committee on Employment of People with Disabilities, serve as Vice-Chair. The Administration has taken action on all the Task Force formal recommendations: work to pass the Work Incentive Improvement Act; work to pass a strong Patients' Bill of Rights; examine tax options to assist with expenses of work; foster interdisciplinary consortia for employment services; accelerate development and adoption of assistive technology; direct Small Business Administration to expand outreach; remove Federal hiring barriers for people with mental illness and direct the Office of Personnel Management to develop model plan for Federal hiring of people with disabilities (see below).

Signing an Executive Order Expanding Hiring Opportunities for People with Psychiatric Disabilities -- In January 1999, Tipper Gore announced that the Office of Personnel Management (OPM) would explore measures to eliminate the stricter standards that are currently applied to federal job applicants who have psychiatric disabilities. On June 4, 1999, President Clinton signed an executive order ensuring that individuals with psychiatric disabilities are given the same hiring opportunities as persons with severe physical disabilities or mental retardation. The executive order also permits people with psychiatric disabilities the same opportunity to acquire competitive civil service status after two years of successful service.

Signing the Workforce Investment Act of 1998, Improving Worker Training and Placement Options for People with Disabilities -- Last year, the President signed the Workforce Investment Act (WIA), which included the Rehabilitation Act Amendments of 1998. The new Act establishes better links between the vocational rehabilitation (VR) system and the general workforce development system. Job seekers with disabilities will have improved options for service through the mainstream worker training and placement system, as well as through the disability-specific VR system. The U.S. Department of Labor, with assistance from the Department of Education, has been providing valuable technical assistance to the network of one-stop career centers on how to provide nondiscriminatory and accessible services to people with disabilities. In addition, the Rehabilitation Act has also been strengthened to give increased options to individuals with disabilities in developing employment plans.

Helping More Americans with Disabilities Return to Work. On February 12, 1999, the Vice President announced new regulations that will increase the amount of income Americans with disabilities receiving Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI), can earn from $500 to $700 per month – and still receive critical cash and medical benefits. These regulations went into effect on July 1, 1999. This was an important step that will improve economic opportunities for at least 250,000 Americans with disabilities.

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Working on Innovative Strategies to Improve Employment of Adults with Disabilities -- Agencies within the Clinton Administration continue to work on innovative strategies to employ Americans with disabilities. The Social Security Administration, the Department of Health and Human Services, the Department of Labor and the Department of Education are all participating in inter-agency demonstration projects to expand employment opportunities for persons with disabilities. For instance, the Department of Education has awarded six systems-change grants to establish models of improved cooperation and coordination between State Vocational Rehabilitation programs, public employment/ employment training programs, and other related programs. The grants will assist in reducing barriers to employment and increasing the capacity of the State's overall employment system to serve individuals with disabilities. The focus of these systems change projects is increasing the employment rate of individuals with disabilities who are currently receiving support through public programs.

Supporting Families -- President Clinton fought for and enacted the Family and Medical Leave Act (FMLA) making workplaces more accommodating for many families that include a child or adult with a disability. In his 1999 State of the Union, the President proposed to extend the benefits of the Family and Medical Leave Act to ten million more American workers. Currently, only workers who are employed at businesses with 50 or more employees are protected. By covering workers in businesses with 25 or more workers, 10 million more American workers will be covered by the FMLA. The President also called for expanding the law to allow FMLA-eligible workers to take up to 24 hours of additional leave each year to meet specified family obligations, such as accompany one's child to dental or medical appointments.

Helping Move People from Welfare to Work -- Some of those who are having the hardest time moving from welfare to work are people with disabilities. Recognizing the special needs of this and other hard-to-place populations, the 1997 Balanced Budget Act included $3 billion to assist long-term welfare recipients obtain jobs. In addition, the FY99 budget included a number of measures designed to expand welfare to work activities. The final budget included $283 million for 50,000 new vouchers exclusively for people who need housing assistance to make the transition from welfare to work and $75 million to assist states and localities in developing flexible transportation alternatives, such as van services. For FY 2000, the President announced that he will propose an additional $1 billion for his Welfare-to-Work program to ensure that those remaining on the welfare rolls who face the greatest challenges can succeed in the workforce and to increase the employment of fathers of children on welfare so they can better support their children.

Funding a Disability Research Institute -- The Vice President recently announced that the Social Security Administration will fund a Disability Research Institute to help provide policy-makers with information and research data in the Social Security and Supplemental Security Income disability policy area, including ways to assess work ability and return-to-work strategies.

EXPANDING EDUCATIONAL OPPORTUNITIES FOR CHILDREN WITH DISABILITIES

Enacting a Stronger Individuals with Disabilities Education Act (IDEA) -- In 1997, the President signed into law a stronger Individuals with Disabilities Education Act. In FY 2000,

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IDEA will serve 6.2 million children with disabilities. The expanded IDEA reaffirms and strengthens our national commitment to provide a world class education for all our children. It ensures that our nation's schools are safe and conducive to learning for children, while scrupulously protecting the rights of our disabled students. This bill makes it clear once and for all that children with disabilities have a right to be in the classroom and to be included in school activities like work experience, science clubs and field outings. IDEA also helps all classroom teachers get the full range of teaching skills that they need to teach children with disabilities. Teachers are now required to be involved in the development of individual education plans to help disabled children succeed. In addition, President Clinton has proposed requiring that states establish performance goals for special education.

Opposing Amendments to IDEA -- In the 105th Congress, the Administration, working with parents, successfully opposed amendments to the IDEA that could have resulted in inappropriate exclusion of large numbers of students with disabilities and denial of appropriate services.

Enforcing the Individuals with Disabilities Education Act -- The Clinton Administration has supported the rights of children with disabilities under IDEA in the following Federal Court cases:; *Marie O. v. Edgar; Sacramento City Unified School District v. Holland*; *Hartmann v. Loudon County Board of Education*. In addition, in March 1999, the Supreme Court ruled in *Cedar Rapids Community School District v. Garrett F.* Before the Court, the Administration argued that students like Garrett should receive the services necessary to ensure access to an appropriate education. IDEA guarantees this, and the courts have made this guarantee clear. The Administration believes that the Individuals with Disabilities Education Act provides the mechanisms to assist school districts to tap other available financial resources when necessary.

EXPANDING THE ROOSEVELT MEMORIAL

Adding a New Statue to the FDR Memorial -- On May 2, 1997, President Clinton dedicated the Franklin Delano Roosevelt Memorial to honor the thirty-second President of the United States. On July 2, 1998, Vice President Gore announced that the FDR Memorial will soon include an additional outdoor room at the main entrance that will depict FDR in the small wheelchair he invented. Thanks to the efforts of the disability community, the Clinton-Gore Administration has selected a specific design that will show how FDR became one of our greatest presidents while he had a disability and used a wheelchair.

INCREASING ENFORCEMENT OF CIVIL RIGHTS LAWS

Vigorously Enforcing the Americans with Disabilities Act -- President Clinton has led the fight for vigorous enforcement of the Americans with Disabilities Act (ADA), the Fair Housing Act, the IDEA and other critical civil rights laws that prohibit discrimination against people with disabilities in housing, schools, workplaces and public areas across the nation.

Working to Stop Discrimination Against People With AIDS -- President Clinton supports the Supreme Court's decision in *Bragdon v. Abbott*, which reinforces the protections offered by the landmark Americans With Disabilities Act for Americans living with HIV and AIDS. The President directed the Justice Department and the Equal Employment Opportunity Commission

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to vigorously prosecute those who discriminate against people with AIDS, leading to actions against health care providers and facilities that violate the Americans with Disabilities Act.

Reducing Backlog and Expanding Alternative Dispute Resolution at Equal Employment Opportunity Commission (EEOC) -- Thanks to President Clinton, the FY99 budget included $279 million -- a $37 million increase over the previous year -- to significantly expand EEOC's alternative dispute resolution program and reduce the backlog of private sector discrimination complaints. The final budget fully funds the President's request -- providing the first real increase for EEOC in several years. This increase, the first since EEOC took responsibility for investigating violations of the ADA, will help give the EEOC the resources it needs to investigate claims of discrimination under the ADA. The President's FY2000 budget request provides $312 million for the EEOC, a 12 percent increase over 1999.

Working for Fair Housing -- In response to the increase in reported cases of serious fair housing violations, the U.S. Department of Housing and Urban Development (HUD) has committed to doubling the number of its civil rights enforcement actions by the year 2000. In addition, the President proposed and won a major expansion of HUD's Fair Housing programs. The FY99 budget expands HUD's Fair Housing programs to $40 million -- a $10 million increase over FY98 funding. That 33-percent increase includes $7.5 million for a new audit-based enforcement initiative proposed by the Administration.

Increasing Outreach -- In July 1998, the President directed key Federal civil rights agencies to increase their outreach efforts to individuals with disabilities, including those in diverse cultural communities, including immigrants, racial and ethnic minorities and rural residents.

SAVING SOCIAL SECURITY NOW

Saving Social Security -- In his State of the Union address, the President outlined his plan to save Social Security and extend the life of the Social Security Trust Fund through 2055. The President would devote 62% of the Budget surplus and increase the return on Social Security funds through private investment. The President has also committed to reserve the entire budget surplus until Congress passes a bipartisan plan to save Social Security and Medicare.

Protecting Supplemental Security Income Benefits -- In 1995, the President vetoed a budget bill that would have significantly cut cash assistance to most families with disabled children on Supplemental Security Income -- families who are struggling to care for a child at home and face extra costs for home modifications, equipment and income lost because a parent is unable to work full-time. In addition, the 1997 Balanced Budget Act ensured that 30,000 disabled children losing SSI because of the new tighter eligibility criteria kept their Medicaid coverage.

HELPING TO ENSURE THAT PEOPLE WITH DISABILITIES HAVE ACCESS TO QUALITY HEALTH CARE

Fighting to Pass a Strong, Enforceable Patients' Bill of Rights -- President Clinton has called on the Congress to pass a strong, enforceable patients' bill of rights that assures Americans the quality health care they need. The bill should include important patient protections such as: assuring direct access to specialists; real emergency room protections; continuity of care

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provisions that protect patients from abrupt changes in treatment; a fair, timely, and independent appeals process for patient grievances; and enforcement provisions to make these rights real.

Strengthening Medicare -- President Clinton is working to modernize and strengthen Medicare to prepare it for the challenges the program faces in the 21st Century. This historic initiative would make Medicare more competitive and efficient; modernize and reform Medicare's benefits, including a long-overdue prescription drug benefit and cost-sharing protections for preventive benefits; and make an unprecedented long-term financing commitment to the program that would extend the life of the Medicare trust fund to 2027.

Proposing New Initiatives to Improve Prevention and Treatment and Fairness for People with Mental Illnesses -- The President and Vice President advocated for and enacted the Mental Health Parity Act of 1996, which took steps to end discrimination based on mental illnesses. On January 14, 1999, Mrs. Gore unveiled three new major initiatives, including: an unprecedented $70 million increase in the mental health services block grant, a 24 percent increase, totaling $358 million for FY2000, which will enable states to target particularly-hard-to-reach adults and children with severe mental illnesses; the announcement of a White House Conference on Mental Health to be held this spring; and a Presidential request to the Office of Personnel Management (OPM) to explore measures to eliminate the stricter standards currently applied to federal hiring practices for adults with psychiatric disabilities (see page 2 for more).

Held the First-Ever White House Conference on Mental Health – On June 7, 1999, the first-ever White House Conference on Mental Health was held, chaired by the President's Mental Health Advisor Tipper Gore. The Clinton-Gore Administration unveiled unprecedented measures to improve mental health including ensuring that the Federal Employees Health Benefits Plan (FEHBP), the nation's largest private insurer, implements full mental health and substance abuse parity for FEHBP's beneficiaries. This, and the other proposals announced, will provide parity, improve treatment, bolster research and expand community responses to help those with mental illnesses.

Increasing Home and Community-Based Programs – In June 1999, the Supreme Court in the *Olmstead* case upheld the purposes of the ADA by recognizing that unjustified isolation of institutionalized persons with disabilities is prohibited discrimination. This decision will increase access to home- and community-based long term care services and support for these persons. On July 29, 1998, the anniversary of the ADA, President Clinton announced that the Health Care Financing Administration was directing State Medicaid Directors to provide services to people with disabilities in the most integrated setting appropriate to their needs and in conjunction with the Americans with Disabilities Act. State Medicaid Directors are being urged to conduct self-evaluations to ensure that their practices and procedures encourage rather than inhibit integration into communities. The Clinton Administration's flexibility in granting state waivers has spurred an increase in home and community- based services; since he took office, the President has approved over 300 such waivers. As a result, the number of people with developmental disabilities served in home and community waiver programs has increased significantly.

Increasing Access to Health Care and Supporting Employment for Disabled Americans -- The Balanced Budget Act of 1997 created an optional program whereby States could allow people

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with disabilities who were earning up to 250 percent of poverty to purchase Medicaid coverage. Oregon is the first state to take advantage of this policy, and they have created a program that will let individuals go to work and get or keep Medicaid. Secretary of Health and Human Services Donna Shalala has asked every governor to seriously consider this program.

Passing Meaningful Health Insurance Reform -- President Clinton signed the Health Insurance Portability and Accountability Act of 1996 which limits exclusions for pre-existing conditions, makes coverage portable and helps individuals who lose jobs maintain coverage.

Protecting the Medicaid Guarantee for People with Disabilities -- The Clinton Administration refuses to go backwards on health care coverage for Americans with disabilities -- rejecting proposals to end the Medicaid guarantee to meaningful health benefits for people with disabilities. The President vetoed the Republican's proposal in the 104th Congress to block grant the Medicaid program, preserving Medicaid coverage for six million persons with disabilities. Medicaid is often the only form of health care available to people with disabilities and allows many children and adults to receive services at home rather than in institutions. Thanks to President Clinton, the 1997 Balanced Budget Act preserved the Federal guarantee of Medicaid coverage for populations who depend on it.

INCREASING ACCESSIBILITY

Increasing Public Transportation Accessibility --The Department of Transportation and the Access Board have issued final regulations implementing the Americans with Disabilities Act (ADA) provisions for over-the-road bus (OTRB) accessibility and provides a definition of what constitutes discriminatory action. The regulation requires large fixed-route operators to achieve 50% of full fleet accessibility by October 2006 and 100% by October 2012. The Department has strengthened the regulations by including provisions making OTRB operators individually and collectively accountable for providing accessible service. Additionally, in 1998, President Clinton signed the Transportation Equity Act for the 21st Century (TEA-21), legislation that provides significantly increased resources to make our Nation's surface transportation systems accessible. The Act included increased funding for the Elderly Individuals and Individuals with Disabilities grant program.

Expanding Accessibility to the Parks and Wilderness -- In October 1997, a memorandum of understanding was signed by the Federal wilderness management agencies and a nonprofit organization called Wilderness Inquiry, Inc. (WI), to coordinate their policies to "establish a general framework of cooperation between the agencies and WI for increased opportunities for people of all abilities to use and enjoy the programs, facilities, and activities of the agencies." On November 10, 1998, President Clinton signed legislation (H.R. 4501) that requires the Secretary of Agriculture and the Secretary of the Interior to conduct a comprehensive study to improve the access for persons with disabilities to outdoor recreational opportunities (such as fishing, hunting, trapping, wildlife viewing, hiking, boating, and camping) made available to the public on the Federal lands in the National Forest System, the National Park System, the National Wildlife Refuge System, and the Bureau of Land Management.

Increasing Housing Options -- The Clinton-Gore Administration took a number of significant actions in 1998 that advanced housing policy for people with disabilities. First, HUD issued a

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statement supporting the view that institutional living does not constitute real housing for people with disabilities. On April 28, 1998, Fannie Mae announced the publication of "A Home of Your Own Guide," the first manual specifically created to provide step-by-step home buying guidance for people with disabilities. And in February, HUD Secretary Cuomo issued a directive encouraging communities to use community development block grant funds for home modifications for people with disabilities. Also, in HUD's recent Notices of Funding Availability, the agency included bonus points for developers when they seek to build structures that include "visitability" by people with disabilities.

Increasing Section 8 Funding in HUD Appropriations -- President Clinton supported the inclusion of $40 million in Section 8 funding for people with disabilities, in part to offset the displacement likely to occur as a result of "elderly-only" designation of public housing formerly occupied by people with disabilities.

Reinventing Government -- Under the leadership of Vice President Gore, the Clinton-Gore Administration is making government smaller, better managed and more efficient, creating a government that works better and costs less. The Administration is dramatically improving customer service to give all Americans the best service they've ever experienced with the government.

PROVIDING ACCESSIBLE TECHNOLOGY

Expanding the Availability of Assistive Technology -- President Clinton is working to expand the information and communications technologies that help people with disabilities work. He has proposed a $35 million investment in developing technologies such as "text to speech" for people who are blind, automatic captioning for people who are deaf, and speech recognition and eye tracking for people who cannot use a keyboard. The plan would also make these technologies more affordable by supporting new and expanded state loan programs. And in 1998, President Clinton supported and signed the Assistive Technology Act of 1998, which reauthorized State Assistive Technology Centers to provide assistive devices to needy individuals with disabilities.

Requiring the Federal Government to Provide Accessible Technology and Information -- The administration fought for and won changes to Section 508 of the Rehabilitation Act that will require Federal agencies to provide more provide accessible technology and information to their employees and customers. With these changes, the Federal government can use its considerable purchasing power to spur development of universally designed technology that is accessible to almost everyone.

Guaranteeing that the Telecommunications Revolution Benefits All -- In June 1998, the Federal Communications Commission (FCC) proposed rules that require telecommunications equipment and services be accessible to individuals with disabilities where readily achievable. The FCC has also required closed captioning of video programs for Americans with hearing disabilities; proposed improvements on Telecommunications Relay Services (TRS) to ensure that TTY users have access to telecommunications network; and proposed a requirement to expand TRS so that persons with speech disabilities have access to telecommunications.

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CREATING AN ADMINISTRATION THAT LOOKS LIKE ONE AMERICA

Appointed the Most Diverse Administration in History --President Clinton has appointed a highly talented and the most diverse Administration in history, including the appointment of record numbers of people with disabilities in the White House and throughout the Clinton-Gore Administration. The Federal government now employs more than 100,000 employees with some type of disability. President Clinton's Administration appointees include: Judith Heumann, Assistant Secretary for Special Education and Rehabilitation Services; Paul Miller, Commissioner of the Equal Employment Opportunity Commission; and Fredric Schroeder, Commissioner of the Rehabilitation Services Commission. People with disabilities serve in the Departments of Education, Health and Human Services, Housing and Urban Development, Justice, State and Transportation. President Clinton has also appointed people with disabilities to positions in such independent agencies as the National Council on Disability and the Social Security Administration, as U.S. District Court Judges and to various Presidential Committees, Commissions and Task Forces. In the White House, Charles Ruff until recently served as Counsel to the President. And Jonathan Young, Associate Director of Disability Outreach, is the first person with a disability ever appointed to do disability outreach in the White House Office of Public Liaison.

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CLINTON-GORE ADMINISTRATION TAKES NEW STEPS TO INCREASE THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

October 16, 1999 – 10/15 11:17 am DRAFT

In his Saturday radio address, President Clinton will take action to increase employment of people with disabilities, issuing a landmark plan to make the Federal government a model employer. This action will enable the federal government to benefit from a broader pool of job applicants and help sustain the nation's record economic growth by bringing more people with disabilities into the work force. The President will also call upon Congress to pass the historic, bipartisan Work Incentives Improvement Act to help people with disabilities who wish to join the workforce overcome one of their most significant barriers – the fear of losing health care coverage. Today, the President will:

DIRECT FEDERAL AGENCIES TO IMPLEMENT PLAN FOR HIRING PEOPLE WITH DISABILITIES. Since the beginning of the Clinton-Gore Administration, the American economy has added more than 19 million new jobs, and unemployment is at a 29-year low, yet over 75 percent of individuals with severe disabilities are unemployed. Last year, Vice President Gore asked the Office of Personnel Management to develop a model plan to bring more adults with disabilities into the Federal workforce.

Today, the President will release *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, along with a companion *Employment Guide*, providing detailed resources for federal employees to use as they recruit, hire, train and promote people with disabilities. Under this plan, the President will direct the Federal government – the nation's largest employer with over 1.8 million workers – to immediately implement this plan and:

- Recruit people with disabilities for positions at all levels of government;
- Provide opportunities for students with disabilities;
- Ensure career opportunities for people with disabilities;
- Collect and maintain data to monitor success of people with disabilities in the federal workforce; and
- Provide reasonable accommodations for applicants and employees with disabilities.

CHALLENGE THE CONGRESS TO PASS THE BIPARTISAN WORK INCENTIVES IMPROVEMENT ACT. On Thursday, the House Ways and Means Committee passed out its version of the Work Incentives Improvement Act. While an improvement over the bill that passed out of the House last year, which had no provision for individuals with disabilities to retain their health care coverage when they returned to work, it does not guarantee funding for the health care and employment incentives so vital to this legislation. In particular, the bill does not include: (1) mandatory funding for infrastructure grants which provide an incentive for states to adopt the Medicaid buy-in portion of the legislation; (2) a mandatory demonstration that allows people who are not yet too disabled to work to buy into Medicaid; and (3) a guarantee of Medicare coverage for eligible individuals returning to work.

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In contrast, the bill that passed the Senate by 99 to 0, as well the bill that passed unanimously out of the House Commerce Committee, provide mandatory funding of the grant and demonstration provisions within this legislation. Under the leadership of Senators Jeffords, Kennedy, Roth and Moynihan, and Representatives Bliley, Dingell, Lazio and Waxman, the bill has received broad based bipartisan support. President Clinton will call on the House, which is scheduled to vote on this legislation this week, to finish the job so that people with disabilities who want to work do not have to wait another day.

CALL ON CONGRESS TO PASS RESPONSIBLE, LONG OVERDUE HEALTH AND BUDGET LEGISLATION THIS YEAR. The President will reiterate the call he made in his press conference to pass a strong, enforceable Patients' Bill of Rights and enact a responsible budget that saves Social Security, strengthens and modernizes Medicare, and continues to pay down our debt, keeping interest rates low and the economy growing.

THE CLINTON-GORE ADMINISTRATION'S LONGSTANDING COMMITMENT TO INCREASE OPPORTUNITY FOR PEOPLE WITH DISABILITIES. Today's action is the latest of many executive actions taken by the President to increase the employment of people with disabilities, including: issuing an executive order in June expanding hiring opportunities for people with psychiatric disabilities by eliminating the federal government's stricter hiring standards for people with those disabilities; putting in place new regulations in February to make work pay for people with disabilities receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), allowing them to earn more and still receive critical cash and medical benefits; creating the Task Force last year to create coordinated national policy to increase employment of people with disabilities in all sectors of the economy; including in his budget a historic $2 billion initiative to provide a $1,000 tax credit for work-related expenses for people with disabilities, invest in technology to help more people with disabilities work, and provide better health care and employment options for people who go to work by fully funding the Work Incentives Improvement Act.

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Cynthia A. Rice 10/08/99 01:20:26 PM

Record Type: Record

To: Anna Richter/OPD/EOP@EOP
cc:
bcc: Records Management@EOP
Subject: Word from OMB

Yes a few useful edits -- though they look like nitpicking there is a substantive reason behind each.

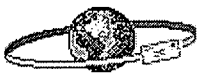
In no particular order (I'm cutting and pasting from various emails).

That is why my budget fully funds the Work Incentives Improvement Act, ~~which invests~~ **investing** $1.2 billion over 5 years in health care and employment services so people with disabilities can work. This legislation was unanimously endorsed by the House Commerce Committee on May 19th **and has been cosponsored by a majority of the House of Representatives,** and passed the Senate 99-0 on June 16th.

The reference in the third paragraph to the task force established by EO 13078 should be to the **Presidential**, not National, Task Force.

On June 4, 1999, I signed an executive order eliminating the federal government's stricter hiring **and promotion** standards for people with psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year.

Anna Richter



Anna Richter
10/08/99 12:57:57 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP
cc:
Subject: Any Word from OMB?

CLINTON LIBRARY PHOTOCOPY

plus OMB

October 8, 1999 – 11:00 am draft

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

Since I became President, we have created over 19 million new jobs and unemployment is as low as it has been in 29 years. Still, almost 75 percent of working-age Americans with severe disabilities remain unemployed. If this nation is to live up to its promise of equal opportunity, and our economy is to continue to strengthen and expand, we must draw on the untapped energy and creativity of these millions of capable Americans.

One of the most glaring barriers to work for people with disabilities is that they frequently become ineligible for Medicaid or Medicare if they go back to work, putting them in the untenable position of choosing between health care coverage and work. That is why my budget fully funds the Work Incentives Improvement Act, which invests $1.2 billion over 5 years in health care and employment services so people with disabilities can work. This legislation was unanimously endorsed by the House Commerce Committee on May 19th and passed the Senate 99-0 on June 16th. It is time for Congress to finish the job, and pass the Work Incentives Improvement Act immediately. People with disabilities who want to work should not have to wait one more day.

Vice President Gore and I have already taken a number of steps to increase the employment of people with disabilities. On March 13, 1998, I signed Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities to create a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented the Vice President with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations.

As we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must also lead by example and make the federal government a model employer of people with disabilities. On June 4, 1999, I signed an executive order eliminating the federal government's stricter hiring standards for people with psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. And last December, the Vice President directed the Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the federal work force.

Today I am pleased to release that plan, *Accessing Opportunity: The Plan for Employment of*

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People with Disabilities in the Federal Government, and the companion employment guide prepared by OPM. These documents give agencies detailed and practical information on ways to recruit people with disabilities for positions at all levels of government; provide opportunities for students with disabilities; ensure career opportunities for people with disabilities; collect and maintain data to monitor their success; and provide reasonable accommodations for applicants and employees with disabilities.

I therefore direct each agency and department to implement this plan immediately and to bring qualified people with disabilities into the federal workforce. This plan is a measure of the federal government's commitment to empowering people with disabilities; now is the time for us to fulfill that commitment.

WJC

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Draft 10/14/99 9:15 am
Sam Afridi

PRESIDENT WILLIAM J. CLINTON
RADIO ADDRESS ON EXPANDING OPPORTUNITIES FOR AMERICANS WITH DISABILITIES
October 16, 1999

Good morning. Work is an important part of who we are as Americans. It connects us with our community and provides dignity for our families. And today, more Americans are working than ever before. We've created more than 19 million new jobs in the last six and a half years and unemployment is at a 29-year low. This morning I want to talk about what we must do to make sure people with disabilities who are willing and able to contribute can be a part of that prosperity.

In spite of the good economic news, almost three out of four Americans with severe disabilities who want to work are not working. That's not just a missed opportunity for Americans with disabilities. It's a missed opportunity for America.

If we want to keep our economy growing with continued low inflation and low unemployment, we must draw on the untapped potential of those who are not sharing in our nation's prosperity. We can strengthen core values like fairness and dignity while we strengthen our economy.

That's why I established a Presidential Task Force on the Employment of Adults with Disabilities last year to help remove the barriers that prevent people with disabilities from going to work. In December, Vice President Gore received the first set of recommendations by the Task Force—and I'm proud to say that we have taken action on every one.

The budget I proposed last January would invest more than $2 billion in health care, tax credits and new technologies for people with disabilities. I also signed an executive order to expand job opportunities for people with psychiatric disabilities by ensuring that the federal government's hiring ~~and promotion~~ standards are the same for these workers as they are for people with severe physical disabilities or mental retardation. to eliminate unfair employment barriers

Today, I am announcing new steps that I am taking to ensure that when it comes to the employment of people with disabilities, the federal government leads by example. This morning, I am directing every federal agency and department to take specific action to expand opportunities to more people with disabilities in all levels of the federal workforce—from the entry level to the senior ranks.

The plan I am issuing today—entitled "Accessing Opportunity"—calls on agencies to recruit and promote people with disabilities, reach out to students with disabilities, and provide reasonable accommodations for applicants and employees with disabilities.

First the the federal gov't has set forth a plan . . .

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I am calling on our federal human resources agency—the Office of Personnel Management—to ensure that every agency gets the help it needs to implement these commitments.

The federal government is the nation's largest employer—and I want it to be a model for private industry. Accessing Opportunity will help do just that.

But there's more we must do together to tackle the challenge. One of the biggest barriers facing people with disabilities is the fear of losing their health insurance when they get a job. Under current law, many people with disabilities cannot keep their Medicaid or Medicare coverage if they work—creating a tremendous disincentive to work.

There's a common sense bipartisan bill to change that. It's called the Work Incentives Improvement Act and it was sponsored by Republican Senators Jeffords and Roth and Democratic Senators Kennedy and Moynihan. It will make sure that people with disabilities don't lose their health care when they gain a job. It will give workers with disabilities the option to buy into Medicaid and extends Medicare coverage for people with disabilities who return to work.

The legislation passed the Senate 99 to zero. A bipartisan majority in the House has already cosponsored it. I say to Congress: finish the job, send me that bill, don't water it down, and I'll sign it. Americans with disabilities who want to work shouldn't have to wait one more day.

By passing a strong, enforceable Patients' Bill of Rights earlier this month, Congress showed what we can achieve when we choose progress over partisanship. By passing the Work Incentives Improvement Act, we can keep America working. The time for action in this Congress is quickly running out. I urge the leadership to seize this opportunity. Make this a season of progress—not a winter of politics. Let's finish the job the American people sent us here to do.

Thanks for listening.

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Cynthia A. Rice 10/14/99 10:01:56 PM

Record Type: Record

To: Anna Richter/OPD/EOP

cc:

Subject: Presidential memorandum

Here are a couple more changes if you can get Staff Secretary to make them. The world won't end if they aren't made

Third paragraph: Should be "Presidential Task Force..." not "National Task Force" (we gave them this edit before but it wasn't made

Fourth paragraph: delete "and promotion" from sentence on standards for people with psychiatric disabilities. Yes OMB urged us to add it, but OPM says its wrong.

Firth paragraph, first sentence: capitalize and italicize *Employment Guide*

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Radio Address
Q&A
October 16, 1999 – 10/14 8:45pm DRAFT

Directive to Federal Agencies in Hiring People with Disabilities

Q: What did the President direct the agencies to do and why?

A: Today, the President directed federal agencies and departments to implement a model plan to increase the representation of adults with disabilities in the federal workforce. Under this plan, agencies will:

- Recruit people with disabilities for positions at all levels of government;
- Provide opportunities for students with disabilities;
- Ensure career opportunities for people with disabilities;
- Collect and maintain data to monitor success of people with disabilities in the federal workforce; and
- Provide reasonable accommodations for applicants and employees with disabilities.

These actions will enable the federal government to benefit from a broader pool of job applicants, provide opportunities for employment for people with disabilities, and help the federal government serve as a role model for private industry. If this nation is to live up to its promise of equal opportunity, and our economy is to continue to strengthen and expand, we must draw on the untapped energy and creativity of these millions of capable Americans.

The plan, *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, will be released with a companion employment guide, providing detailed resources for federal employees to use as they recruit, hire, train and promote people with disabilities.

Q: Will agencies be subject to hiring quotas?

A. No. Each agency's employment opportunities differ. Therefore, the plan asks agency and department heads to review their hiring of people with disabilities and to implement efforts to increase employment of people with disabilities. The fact is almost 75 percent of working-age Americans with disabilities are unemployed, but that does not mean they are unemployable, nor does it mean that they have nothing to offer our federal government or society.

Q: What will the cost of implementation be to agencies?

A: There is no direct cost associated with the issuance of the guidance. In implementing the provisions outlined in OPM's plan, federal agencies are being given access to a number of resources that will make their recruitment efforts and their career development

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planning more effective. OPM has specifically designed the plan and the guide to provide for the sharing of information and resources regarding the hiring of individuals with disabilities.

Q: What's the difference between the OPM plan and the guide?

A. The plan provides a framework for departments and agencies to help them develop strategies and initiatives designed to employ and retain persons with disabilities. Its companion piece, the guide, is a resource tool to help Federal human resource specialists, supervisors, and co-workers, understand the issues surrounding employment of people with disabilities. The plan is about 10 pages and the guide is over 50 pages.

Q: Doesn't this plan favor people with disabilities over other individuals such as veterans?

A. No. The plan does not direct agencies to favor those with disabilities over other applicants. It does encourage agencies to recruit people with disabilities for positions at all levels of government; provide opportunities for students with disabilities; ensure career opportunities for people with disabilities; collect and maintain data to monitor their success; and provide reasonable accommodations for applicants and employees with disabilities. The plan should be part of an overall agency strategy to address under-representation of individuals, including those with disabilities, in the workforce.

Q: How many persons with disabilities are currently employed by the Federal government?

A. As of September 30, 1998, there were over 1.8 million federal employees in the non-postal Federal executive branch, and just over 7 percent identified themselves as having a disability.

Unemployment Among People with Disabilities

Q: How many people with disabilities are unemployed?

A: Census Bureau data indicate 75 percent of people with severe disabilities are unemployed. Nationwide, some 54 million American have a disability, and about 26 million of them have disabilities characterized as severe.

Administration Efforts to Increase Employment of People with Disabilities

Q: Besides the else has the Administration done to increase employment of people with disabilities?

A: Today's action, recommended by the President's Task Force on Employment of Adults with Disabilities, is the latest of many executive actions taken by the President to increase the employment of people with disabilities, which include: issuing an executive order in

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June expanding hiring opportunities for people with psychiatric disabilities by eliminating the federal government's stricter hiring and promotion standards for people with those disabilities; putting in place new regulations in February to make work pay for people with disabilities receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), allowing them to earn more and still receive critical cash and medical benefits; creating the Task Force last year to create coordinated national policy to increase employment of people with disabilities in all sectors of the economy; including in his budget a historic $2 billion initiative to provide a $1,000 tax credit for work-related expenses for people with disabilities, invest in technology to help more people with disabilities work, and provide better health care and employment options for people who go to work by fully funding the Work Incentives Improvement Act.

For more on these and other actions taken by the President and Vice President to increase opportunities for Americans with disabilities, please see the attached nine page summary.

Work Incentives Improvement Act (Kennedy-Jeffords)

Q: INSERT NEW Q&A FROM HEALTH TEAM

A.

Q: Some in Congress are saying that there are not enough offsets for the bill. Indeed, neither the Senate- or Commerce Committee-passed bills had offsets. Would you support this bill if it uses the Social Security surplus?

A. The President fully paid for this bill in his FY 2000 budget, and the Finance Committee included a financing source as well. There is no excuse for the House to fail to act on this bill because it cannot agree on enough offsets to pay for it responsibly, consistent with Administration policy.

Q: Senator Kennedy has indicated that the President made a commitment to find the offsets to pay for this legislation. Republicans are still waiting for the entitlement offsets you promised. Why aren't you living up to this commitment?

A: The President made a commitment to deliver on this legislation, and he delivered on it. It was included in this year's balanced budget, and he indicated his support for the financing passed by the Senate Finance Committee. We are committed to working with the Congress to ensure adequate offsets, and are more than open to reviewing alternative financing mechanisms, but the President's commitment to this legislation and it's financing is and has been clear since the beginning of this debate.

Patients' Bill of Rights

Q: What did the President say today about the Patients' Bill of Rights?

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A: The President called upon Congress to pass a strong, enforceable Patients' Bill of Rights. Last week, a strong bipartisan majority in the House passed the Norwood-Dingell Patients' Bill of Rights, a major victory for every family in every health plan – but there is still more work to be done. Republican leaders should resist weakening the patient protections guaranteed in the Norwood-Dingell bill or undermine the bill's bipartisan support in conference, and ensure that the Patients' Bill of Rights is paid for without using the Social Security surplus.

Americans with Disabilities Act

Q: What does the Administration think of the decisions made by the Supreme Court earlier this year on the Americans with Disabilities Act? Does the Administration plan to take new action in this area?

A: Earlier this year, the Supreme Court decided a number of important cases which interpreted the Americans with Disabilities Act (ADA). Two cases, Sutton v. United Airlines and Murphy v. United Parcel Service, Inc., held that the determination of whether an individual has a disability should take into account the use of mitigating measures. Depending on how these decisions are interpreted and applied by the lower courts, Sutton and Murphy could undermine the goals of the ADA by excluding from the Act's coverage many persons who are discriminated against by employers because of a physical or mental impairment. The most troubling possibility is that employers could refuse to hire individuals because of a physical or mental impairment but escape the Act's coverage by claiming that the individual does not have a disability because of mitigating measures.

The Administration will assess the impact of the Sutton and Murphy decisions by evaluating how they are interpreted and applied by the lower courts. We will also assess how employers are applying these decisions in their employment policies. In appropriate cases, the Administration will argue to the courts that Sutton and Murphy should not be applied to reach unfair results that are inconsistent with the original congressional intent underlying the Act. We are hopeful that the decisions will not have an adverse impact on people with disabilities.

Q: Does the Administration currently have plans to propose or support legislation to clarify the ADA?

A: No. While the lower courts are clarifying the meaning of these decisions, it would be premature to consider legislation.

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PRESIDENT CLINTON AND VICE PRESIDENT GORE:
Increasing Opportunities for Americans with Disabilities

"Increased access to health care, more assistance at home and in the workplace, remarkable new technologies made more available: This is how we can make sure that all Americans can take their rightful place in our 21st century workplaces."

President Clinton
January 13, 1999

President Clinton and Vice President Gore are committed to expanding opportunities for Americans with disabilities and demonstrating to all Americans that people with disabilities -- given access to the workplace, health care, community services, and technology -- make significant contributions to our society and economy.

EXPANDING EMPLOYMENT OPPORTUNITIES

Fighting to Enact the Work Incentives Improvement Act (WIIA) -- The Work Incentives Improvement Act is an historic bill produced through the bipartisan efforts of Senators Jeffords, Kennedy, Roth and Moynihan in collaboration with leaders in the disability community and staff throughout the Administration. On January 13, 1999, the President announced one of his FY2000 budget initiatives, committing to the full funding of the WIIA. The Administration's budget initiative, which invests $1.2 billion over five years, will help provide better health care options for people with disabilities who work.

The Work Incentives Improvement Act will improve access to health care by: (1) expanding states' ability to provide a Medicaid buy-in to people with disabilities who return to work; (2) extending Medicare coverage, for the first time, for people with disabilities who return to work; and (3) creating a new Medicaid buy-in demonstration to help people with a specific physical or mental impairment that is not severe enough to qualify for health assistance, but is likely to lead to a severe disability in the absence of medical treatment. In addition, WIIA will modernize the employment services system by creating a "ticket" that will enable Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) beneficiaries to go to any of a number of public or private providers for vocational rehabilitation. If the beneficiary goes to work and achieves substantial earnings, providers would be paid a portion of the benefits saved. And WIIA creates a Work Incentive Grant program to provide benefits planning and assistance, facilitating access to information about work incentives, and better integrate services to people with disabilities working or returning to work.

Providing a $1,000 Tax Credit for Work-Related Expenses for People with Disabilities -- On January 13, 1999, the President announced a new proposal that will allow workers with significant disabilities to receive an annual $1,000 tax credit to help cover the formal and informal costs that are associated with employment, such as special transportation and technology. Like the Jeffords-Kennedy-Roth-Moynihan Work Incentive Act, this tax credit, which will assist 200,000 to 300,000 Americans, will help ensure that people with disabilities have the tools they need to return to work.

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Establishing the Task Force on Employment of Adults with Disabilities -- On March 13, 1998, President Clinton signed an Executive Order establishing a National Task Force on Employment of Adults with Disabilities, charged with creating a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population.

Taking Action on All of the Task Force's Formal Recommendations -- In December 1998, the Vice President accepted the report of the President's Task Force on the Employment of Adults with Disabilities. Alexis M. Herman, Secretary of Labor, chairs the Task Force and Tony Coelho, Chairman of the President's Committee on Employment of People with Disabilities, serve as Vice-Chair. The Administration has taken action on all the Task Force formal recommendations: work to pass the Work Incentive Improvement Act; work to pass a strong Patients' Bill of Rights; examine tax options to assist with expenses of work; foster interdisciplinary consortia for employment services; accelerate development and adoption of assistive technology; direct Small Business Administration to expand outreach; remove Federal hiring barriers for people with mental illness and direct the Office of Personnel Management to develop model plan for Federal hiring of people with disabilities (see below).

Signing an Executive Order Expanding Hiring Opportunities for People with Psychiatric Disabilities -- In January 1999, Tipper Gore announced that the Office of Personnel Management (OPM) would explore measures to eliminate the stricter standards that are currently applied to federal job applicants who have psychiatric disabilities. On June 4, 1999, President Clinton signed an executive order ensuring that individuals with psychiatric disabilities are given the same hiring opportunities as persons with severe physical disabilities or mental retardation. The executive order also permits people with psychiatric disabilities the same opportunity to acquire competitive civil service status after two years of successful service.

Signing the Workforce Investment Act of 1998, Improving Worker Training and Placement Options for People with Disabilities -- Last year, the President signed the Workforce Investment Act (WIA), which included the Rehabilitation Act Amendments of 1998. The new Act establishes better links between the vocational rehabilitation (VR) system and the general workforce development system. Job seekers with disabilities will have improved options for service through the mainstream worker training and placement system, as well as through the disability-specific VR system. The U.S. Department of Labor, with assistance from the Department of Education, has been providing valuable technical assistance to the network of one-stop career centers on how to provide nondiscriminatory and accessible services to people with disabilities. In addition, the Rehabilitation Act has also been strengthened to give increased options to individuals with disabilities in developing employment plans.

Helping More Americans with Disabilities Return to Work. On February 12, 1999, the Vice President announced new regulations that will increase the amount of income Americans with disabilities receiving Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI), can earn from $500 to $700 per month – and still receive critical cash and medical benefits. These regulations went into effect on July 1, 1999. This was an important step that will improve economic opportunities for at least 250,000 Americans with disabilities.

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Working on Innovative Strategies to Improve Employment of Adults with Disabilities -- Agencies within the Clinton Administration continue to work on innovative strategies to employ Americans with disabilities. The Social Security Administration, the Department of Health and Human Services, the Department of Labor and the Department of Education are all participating in inter-agency demonstration projects to expand employment opportunities for persons with disabilities. For instance, the Department of Education has awarded six systems-change grants to establish models of improved cooperation and coordination between State Vocational Rehabilitation programs, public employment/ employment training programs, and other related programs. The grants will assist in reducing barriers to employment and increasing the capacity of the State's overall employment system to serve individuals with disabilities. The focus of these systems change projects is increasing the employment rate of individuals with disabilities who are currently receiving support through public programs.

Supporting Families -- President Clinton fought for and enacted the Family and Medical Leave Act (FMLA) making workplaces more accommodating for many families that include a child or adult with a disability. In his 1999 State of the Union, the President proposed to extend the benefits of the Family and Medical Leave Act to ten million more American workers. Currently, only workers who are employed at businesses with 50 or more employees are protected. By covering workers in businesses with 25 or more workers, 10 million more American workers will be covered by the FMLA. The President also called for expanding the law to allow FMLA-eligible workers to take up to 24 hours of additional leave each year to meet specified family obligations, such as accompany one's child to dental or medical appointments.

Helping Move People from Welfare to Work -- Some of those who are having the hardest time moving from welfare to work are people with disabilities. Recognizing the special needs of this and other hard-to-place populations, the 1997 Balanced Budget Act included $3 billion to assist long-term welfare recipients obtain jobs. In addition, the FY99 budget included a number of measures designed to expand welfare to work activities. The final budget included $283 million for 50,000 new vouchers exclusively for people who need housing assistance to make the transition from welfare to work and $75 million to assist states and localities in developing flexible transportation alternatives, such as van services. For FY 2000, the President announced that he will propose an additional $1 billion for his Welfare-to-Work program to ensure that those remaining on the welfare rolls who face the greatest challenges can succeed in the workforce and to increase the employment of fathers of children on welfare so they can better support their children.

Funding a Disability Research Institute -- The Vice President recently announced that the Social Security Administration will fund a Disability Research Institute to help provide policy-makers with information and research data in the Social Security and Supplemental Security Income disability policy area, including ways to assess work ability and return-to-work strategies.

EXPANDING EDUCATIONAL OPPORTUNITIES FOR CHILDREN WITH DISABILITIES

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Enacting a Stronger Individuals with Disabilities Education Act (IDEA) -- In 1997, the President signed into law a stronger Individuals with Disabilities Education Act. In FY 2000, IDEA will serve 6.2 million children with disabilities. The expanded IDEA reaffirms and strengthens our national commitment to provide a world class education for all our children. It ensures that our nation's schools are safe and conducive to learning for children, while scrupulously protecting the rights of our disabled students. This bill makes it clear once and for all that children with disabilities have a right to be in the classroom and to be included in school activities like work experience, science clubs and field outings. IDEA also helps all classroom teachers get the full range of teaching skills that they need to teach children with disabilities. Teachers are now required to be involved in the development of individual education plans to help disabled children succeed. In addition, President Clinton has proposed requiring that states establish performance goals for special education.

Opposing Amendments to IDEA -- In the 105th Congress, the Administration, working with parents, successfully opposed amendments to the IDEA that could have resulted in inappropriate exclusion of large numbers of students with disabilities and denial of appropriate services.

Enforcing the Individuals with Disabilities Education Act -- The Clinton Administration has supported the rights of children with disabilities under IDEA in the following Federal Court cases:.; *Marie O. v. Edgar; Sacramento City Unified School District v. Holland*; *Hartmann v. Loudon County Board of Education*. In addition, in March 1999, the Supreme Court ruled in *Cedar Rapids Community School District v. Garrett F.* Before the Court, the Administration argued that students like Garrett should receive the services necessary to ensure access to an appropriate education. IDEA guarantees this, and the courts have made this guarantee clear. The Administration believes that the Individuals with Disabilities Education Act provides the mechanisms to assist school districts to tap other available financial resources when necessary.

EXPANDING THE ROOSEVELT MEMORIAL

Adding a New Statue to the FDR Memorial -- On May 2, 1997, President Clinton dedicated the Franklin Delano Roosevelt Memorial to honor the thirty-second President of the United States. On July 2, 1998, Vice President Gore announced that the FDR Memorial will soon include an additional outdoor room at the main entrance that will depict FDR in the small wheelchair he invented. Thanks to the efforts of the disability community, the Clinton-Gore Administration has selected a specific design that will show how FDR became one of our greatest presidents while he had a disability and used a wheelchair.

INCREASING ENFORCEMENT OF CIVIL RIGHTS LAWS

Vigorously Enforcing the Americans with Disabilities Act -- President Clinton has led the fight for vigorous enforcement of the Americans with Disabilities Act (ADA), the Fair Housing Act, the IDEA and other critical civil rights laws that prohibit discrimination against people with disabilities in housing, schools, workplaces and public areas across the nation.

Working to Stop Discrimination Against People With AIDS -- President Clinton supports the Supreme Court's decision in *Bragdon v. Abbott*, which reinforces the protections offered by the

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landmark Americans With Disabilities Act for Americans living with HIV and AIDS. The President directed the Justice Department and the Equal Employment Opportunity Commission to vigorously prosecute those who discriminate against people with AIDS, leading to actions against health care providers and facilities that violate the Americans with Disabilities Act.

Reducing Backlog and Expanding Alternative Dispute Resolution at Equal Employment Opportunity Commission (EEOC) -- Thanks to President Clinton, the FY99 budget included $279 million -- a $37 million increase over the previous year -- to significantly expand EEOC's alternative dispute resolution program and reduce the backlog of private sector discrimination complaints. The final budget fully funds the President's request -- providing the first real increase for EEOC in several years. This increase, the first since EEOC took responsibility for investigating violations of the ADA, will help give the EEOC the resources it needs to investigate claims of discrimination under the ADA. The President's FY2000 budget request provides $312 million for the EEOC, a 12 percent increase over 1999.

Working for Fair Housing -- In response to the increase in reported cases of serious fair housing violations, the U.S. Department of Housing and Urban Development (HUD) has committed to doubling the number of its civil rights enforcement actions by the year 2000. In addition, the President proposed and won a major expansion of HUD's Fair Housing programs. The FY99 budget expands HUD's Fair Housing programs to $40 million -- a $10 million increase over FY98 funding. That 33-percent increase includes $7.5 million for a new audit-based enforcement initiative proposed by the Administration.

Increasing Outreach -- In July 1998, the President directed key Federal civil rights agencies to increase their outreach efforts to individuals with disabilities, including those in diverse cultural communities, including immigrants, racial and ethnic minorities and rural residents.

SAVING SOCIAL SECURITY NOW

Saving Social Security -- In his State of the Union address, the President outlined his plan to save Social Security and extend the life of the Social Security Trust Fund through 2055. The President would devote 62% of the Budget surplus and increase the return on Social Security funds through private investment. The President has also committed to reserve the entire budget surplus until Congress passes a bipartisan plan to save Social Security and Medicare.

Protecting Supplemental Security Income Benefits -- In 1995, the President vetoed a budget bill that would have significantly cut cash assistance to most families with disabled children on Supplemental Security Income -- families who are struggling to care for a child at home and face extra costs for home modifications, equipment and income lost because a parent is unable to work full-time. In addition, the 1997 Balanced Budget Act ensured that 30,000 disabled children losing SSI because of the new tighter eligibility criteria kept their Medicaid coverage.

HELPING TO ENSURE THAT PEOPLE WITH DISABILITIES HAVE ACCESS TO QUALITY HEALTH CARE

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Fighting to Pass a Strong, Enforceable Patients' Bill of Rights -- President Clinton has called on the Congress to pass a strong, enforceable patients' bill of rights that assures Americans the quality health care they need. The bill should include important patient protections such as: assuring direct access to specialists; real emergency room protections; continuity of care provisions that protect patients from abrupt changes in treatment; a fair, timely, and independent appeals process for patient grievances; and enforcement provisions to make these rights real.

Strengthening Medicare -- President Clinton is working to modernize and strengthen Medicare to prepare it for the challenges the program faces in the 21st Century. This historic initiative would make Medicare more competitive and efficient; modernize and reform Medicare's benefits, including a long-overdue prescription drug benefit and cost-sharing protections for preventive benefits; and make an unprecedented long-term financing commitment to the program that would extend the life of the Medicare trust fund to 2027.

Proposing New Initiatives to Improve Prevention and Treatment and Fairness for People with Mental Illnesses -- The President and Vice President advocated for and enacted the Mental Health Parity Act of 1996, which took steps to end discrimination based on mental illnesses. On January 14, 1999, Mrs. Gore unveiled three new major initiatives, including: an unprecedented $70 million increase in the mental health services block grant, a 24 percent increase, totaling $358 million for FY2000, which will enable states to target particularly-hard-to-reach adults and children with severe mental illnesses; the announcement of a White House Conference on Mental Health to be held this spring; and a Presidential request to the Office of Personnel Management (OPM) to explore measures to eliminate the stricter standards currently applied to federal hiring practices for adults with psychiatric disabilities (see page 2 for more).

Held the First-Ever White House Conference on Mental Health – On June 7, 1999, the first-ever White House Conference on Mental Health was held, chaired by the President's Mental Health Advisor Tipper Gore. The Clinton-Gore Administration unveiled unprecedented measures to improve mental health including ensuring that the Federal Employees Health Benefits Plan (FEHBP), the nation's largest private insurer, implements full mental health and substance abuse parity for FEHBP's beneficiaries. This, and the other proposals announced, will provide parity, improve treatment, bolster research and expand community responses to help those with mental illnesses.

Increasing Home and Community-Based Programs – In June 1999, the Supreme Court in the *Olmstead* case upheld the purposes of the ADA by recognizing that unjustified isolation of institutionalized persons with disabilities is prohibited discrimination. This decision will increase access to home- and community-based long term care services and support for these persons. On July 29, 1998, the anniversary of the ADA, President Clinton announced that the Health Care Financing Administration was directing State Medicaid Directors to provide services to people with disabilities in the most integrated setting appropriate to their needs and in conjunction with the Americans with Disabilities Act. State Medicaid Directors are being urged to conduct self-evaluations to ensure that their practices and procedures encourage rather than inhibit integration into communities. The Clinton Administration's flexibility in granting state waivers has spurred an increase in home and community- based services; since he took office, the President has approved over 300 such waivers. As a result, the number of people with

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developmental disabilities served in home and community waiver programs has increased significantly.

Increasing Access to Health Care and Supporting Employment for Disabled Americans -- The Balanced Budget Act of 1997 created an optional program whereby States could allow people with disabilities who were earning up to 250 percent of poverty to purchase Medicaid coverage. Oregon is the first state to take advantage of this policy, and they have created a program that will let individuals go to work and get or keep Medicaid. Secretary of Health and Human Services Donna Shalala has asked every governor to seriously consider this program.

Passing Meaningful Health Insurance Reform -- President Clinton signed the Health Insurance Portability and Accountability Act of 1996 which limits exclusions for pre-existing conditions, makes coverage portable and helps individuals who lose jobs maintain coverage.

Protecting the Medicaid Guarantee for People with Disabilities -- The Clinton Administration refuses to go backwards on health care coverage for Americans with disabilities -- rejecting proposals to end the Medicaid guarantee to meaningful health benefits for people with disabilities. The President vetoed the Republican's proposal in the 104th Congress to block grant the Medicaid program, preserving Medicaid coverage for six million persons with disabilities. Medicaid is often the only form of health care available to people with disabilities and allows many children and adults to receive services at home rather than in institutions. Thanks to President Clinton, the 1997 Balanced Budget Act preserved the Federal guarantee of Medicaid coverage for populations who depend on it.

INCREASING ACCESSIBILITY

Increasing Public Transportation Accessibility --The Department of Transportation and the Access Board have issued final regulations implementing the Americans with Disabilities Act (ADA) provisions for over-the-road bus (OTRB) accessibility and provides a definition of what constitutes discriminatory action. The regulation requires large fixed-route operators to achieve 50% of full fleet accessibility by October 2006 and 100% by October 2012. The Department has strengthened the regulations by including provisions making OTRB operators individually and collectively accountable for providing accessible service. Additionally, in 1998, President Clinton signed the Transportation Equity Act for the 21st Century (TEA-21), legislation that provides significantly increased resources to make our Nation's surface transportation systems accessible. The Act included increased funding for the Elderly Individuals and Individuals with Disabilities grant program.

Expanding Accessibility to the Parks and Wilderness -- In October 1997, a memorandum of understanding was signed by the Federal wilderness management agencies and a nonprofit organization called Wilderness Inquiry, Inc. (WI), to coordinate their policies to "establish a general framework of cooperation between the agencies and WI for increased opportunities for people of all abilities to use and enjoy the programs, facilities, and activities of the agencies." On November 10, 1998, President Clinton signed legislation (H.R. 4501) that requires the Secretary of Agriculture and the Secretary of the Interior to conduct a comprehensive study to improve the access for persons with disabilities to outdoor recreational opportunities (such as

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fishing, hunting, trapping, wildlife viewing, hiking, boating, and camping) made available to the public on the Federal lands in the National Forest System, the National Park System, the National Wildlife Refuge System, and the Bureau of Land Management.

Increasing Housing Options -- The Clinton-Gore Administration took a number of significant actions in 1998 that advanced housing policy for people with disabilities. First, HUD issued a statement supporting the view that institutional living does not constitute real housing for people with disabilities. On April 28, 1998, Fannie Mae announced the publication of "A Home of Your Own Guide," the first manual specifically created to provide step-by-step home buying guidance for people with disabilities. And in February, HUD Secretary Cuomo issued a directive encouraging communities to use community development block grant funds for home modifications for people with disabilities. Also, in HUD's recent Notices of Funding Availability, the agency included bonus points for developers when they seek to build structures that include "visitability" by people with disabilities.

Increasing Section 8 Funding in HUD Appropriations -- President Clinton supported the inclusion of $40 million in Section 8 funding for people with disabilities, in part to offset the displacement likely to occur as a result of "elderly-only" designation of public housing formerly occupied by people with disabilities.

Reinventing Government -- Under the leadership of Vice President Gore, the Clinton-Gore Administration is making government smaller, better managed and more efficient, creating a government that works better and costs less. The Administration is dramatically improving customer service to give all Americans the best service they've ever experienced with the government.

PROVIDING ACCESSIBLE TECHNOLOGY

Expanding the Availability of Assistive Technology -- President Clinton is working to expand the information and communications technologies that help people with disabilities work. He has proposed a $35 million investment in developing technologies such as "text to speech" for people who are blind, automatic captioning for people who are deaf, and speech recognition and eye tracking for people who cannot use a keyboard. The plan would also make these technologies more affordable by supporting new and expanded state loan programs. And in 1998, President Clinton supported and signed the Assistive Technology Act of 1998, which reauthorized State Assistive Technology Centers to provide assistive devices to needy individuals with disabilities.

Requiring the Federal Government to Provide Accessible Technology and Information -- The administration fought for and won changes to Section 508 of the Rehabilitation Act that will require Federal agencies to provide more provide accessible technology and information to their employees and customers. With these changes, the Federal government can use its considerable purchasing power to spur development of universally designed technology that is accessible to almost everyone.

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Guaranteeing that the Telecommunications Revolution Benefits All -- In June 1998, the Federal Communications Commission (FCC) proposed rules that require telecommunications equipment and services be accessible to individuals with disabilities where readily achievable. The FCC has also required closed captioning of video programs for Americans with hearing disabilities; proposed improvements on Telecommunications Relay Services (TRS) to ensure that TTY users have access to telecommunications network; and proposed a requirement to expand TRS so that persons with speech disabilities have access to telecommunications.

CREATING AN ADMINISTRATION THAT LOOKS LIKE ONE AMERICA

Appointed the Most Diverse Administration in History --President Clinton has appointed a highly talented and the most diverse Administration in history, including the appointment of record numbers of people with disabilities in the White House and throughout the Clinton-Gore Administration. The Federal government now employs more than 100,000 employees with some type of disability. President Clinton's Administration appointees include: Judith Heumann, Assistant Secretary for Special Education and Rehabilitation Services; Paul Miller, Commissioner of the Equal Employment Opportunity Commission; and Fredric Schroeder, Commissioner of the Rehabilitation Services Commission. People with disabilities serve in the Departments of Education, Health and Human Services, Housing and Urban Development, Justice, State and Transportation. President Clinton has also appointed people with disabilities to positions in such independent agencies as the National Council on Disability and the Social Security Administration, as U.S. District Court Judges and to various Presidential Committees, Commissions and Task Forces. In the White House, Charles Ruff until recently served as Counsel to the President. And Jonathan Young, Associate Director of Disability Outreach, is the first person with a disability ever appointed to do disability outreach in the White House Office of Public Liaison.

10/99

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Cynthia A. Rice 10/14/99 09:44:05 PM

Record Type: Record

To: Samir Afridi/WHO/EOP@EOP
cc: Devorah R. Adler/OPD/EOP@EOP, Jeanne Lambrew/OPD/EOP@EOP
bcc: Records Management@EOP
Subject: Re: radio draft

A few small things:

1) Date should be 10/16 I believe, even though taped tomorrow

2) 3rd graph: statistic should be 'almost three out of four Americans with severe disabilities...'

3) 5th graph, last line: I'd say 'severe physical disabilities or mental retardation' not the other way around (since the feds hire more of the latter that's usually how OPM says it)

4) 6th graph -- it would help to say somewhere that by taking this action we're implementing a Task Force recommendation

5) 6th graph -- no need to say "every federal agency and every department" could just say the first but OK to leave in if you like the flow

6) Plan name is "Accesing Opportunity"

7) 7th graph -- pls add "recruit and promote people with disabilities" -- then you might want to use "expand" as verb for students

8) And then there's the issue of mentioning OPM. Suzanne Seiden is being very insistent -- you can call her yourself if you want to hear more (301/718-0165). Maybe you could add at the end of graph 7 something like "Our federal human resources agency, the Office of Personnel Management, will make sure every agency gets the help they need to implement these important commitments."?

You'll hear from our health team separately.

Samir Afridi

Samir Afridi
10/14/99 08:51:35 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP

cc:

CLINTON LIBRARY PHOTOCOPY

Samir Afridi
10/14/99 08:51:35 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP

cc:
Subject: radio draft

here's a start...

Draft 10/14/99 8:45 pm
Sam Afridi

PRESIDENT WILLIAM J. CLINTON
RADIO ADDRESS ON EXPANDING OPPORTUNITIES FOR AMERICANS WITH DISABILITIES
October 15, 1999 change date 10/16

Good morning. Work is an important part of who we are as Americans. It connects people with their community and provides dignity for a family. I want to talk to you about how we can help more Americans gain the dignity of work and be a part of our prosperity. Not just because it's the fair thing to do—but because it's good for our society.

After all, America's economy continues to grow strong and steady. We have created more than 19 million new jobs in the last six and a half years—and unemployment is at a 29 year-low. Now, one of the questions is: How do we keep our economy growing with low inflation and low unemployment? And one of the answers is by drawing on the untapped energy and potential of those who are not sharing in our nation's prosperity.

In spite of the economic good news, almost three out of four Americans with severe disabilities who want to work are not working today. That's not just a missed opportunity for Americans with disabilities. It's a missed opportunity for America.

That's why I established a Presidential Task Force on the Employment of Adults with Disabilities last year to help remove the barriers that prevent people with disabilities from going to work. In December, Vice President Gore accepted the first set of recommendations by the Task Force—and we have taken action on every one.

In fact, the budget I proposed last January would invest more than $2 billion to provide better health care options for people with disabilities who work—a $1,000 tax credit to offset the costs of special transportation and other work-related expenses—and resources for new technologies to open new opportunities for people with disabilities. I also signed an executive

Make clear delivering on one of most significant recs of Task Force

order to expand federal job opportunities for people with psychiatric disabilities by ensuring that the federal government's hiring and promotion standards are the same for these workers as they are for people with mental retardation or severe physical disabilities. reverse

Today, I am announcing new steps that I am taking to see to it that when it comes to the employment of people with disabilities, the federal government leads by example. This morning, I am directing every federal agency and every department to take specific action to expand opportunities to more people with disabilities in all levels of the federal workforce—from the entry level to the senior ranks.

and promote

The plan I am issuing today—entitled "Access Opportunity"—calls on agencies to recruit people with disabilities, ~~promote~~ ing opportunities for students with disabilities, and provide reasonable accommodations for applicants and employees with disabilities.

expand

The federal government is the nation's largest employer—and I want it to be a model for private industry. Access Opportunity ing will help do just that.

But there's more we must do together to tackle the challenge. One of the biggest barriers facing people with disabilities is the fear of losing their health insurance when they get a job. Under current law, many people with disabilities cannot work and keep their Medicaid or Medicare coverage—creating a tremendous disincentive to work.

There's a common sense bipartisan bill to change that. It's called the Work Incentives Improvement Act and it was sponsored by Republican Senators Jeffords and Roth and Democratics Senator Kennedy and Moynihan. It will make sure that people with disabilities don't lose their health care when they gain a job. It will give workers with disabilities the option to buy into Medicaid and extends Medicare coverage for people with disabilities who return to work.

The legislation passed the Senate 99 to zero. A bipartisan majority in the House has already cosponsored it. Congress needs to finish the job, send me that bill, don't water it down, and I'll sign it???? Americans with disabilities who want to work shouldn't have to wait one more day. That's one more way we can ensure that our nation benefits from the enormous talent pool of people with disabilities.

By passing a strong, enforceable Patients' Bill of Rights earlier this month, Congress showed what we can achieve when we choose progress over partisanship. By passing the Work Incentives Improvement Act, we can keep moving ahead and keep America working.

Thanks for listening.

I asked our human resources org, the Off of PM, I asked the Office of P, the government

CLINTON LIBRARY PHOTOCOPY

CLINTON LIBRARY PHOTOCOPY

Cynthia A. Rice 10/14/99 10:06:58 PM

Record Type: Record

To: Anna Richter/OPD/EOP@EOP

cc:

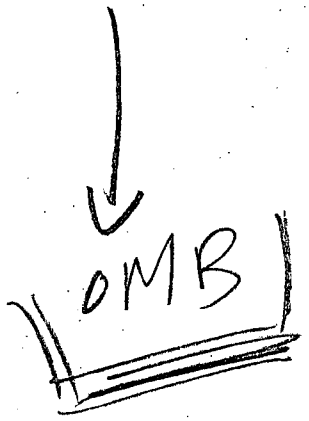
Subject: Presidential memorandum

Here are a couple more changes if you can get Staff Secretary to make them. The world won't end if they aren't made

Third paragraph: Should be "Presidential Task Force..." not "National Task Force" (we gave them this edit before but it wasn't made

Fourth paragraph: delete "and promotion" from sentence on standards for people with psychiatric disabilities. Yes OMB urged us to add it, but OPM says its wrong.

Firth paragraph, first sentence: capitalize and italicize *Employment Guide*



CLINTON-GORE ADMINISTRATION TAKES NEW STEPS TO INCREASE THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

October 16, 1999 – 10/14 8:45 pm DRAFT

In his Saturday radio address, President Clinton will take action to increase employment of people with disabilities, ~~directing the federal government – the nation's largest employer – to take new steps to hire more people with disabilities~~. This action will enable the federal government to benefit from a broader pool of job applicants and help us sustain our nation's record economic growth by bringing more people with disabilities into the work force. The President will also call upon Congress to pass the historic, bipartisan Work Incentives Improvement Act to help more people with disabilities go to work and ensure they can keep health care coverage when they do. And finally, the President will urge the Congress to make this a season of progress, not a winter of politics, and to finish the job the American people sent them here to do.

DIRECTING FEDERAL AGENCIES TO IMPLEMENT PLAN FOR HIRING PEOPLE WITH DISABILITIES. Last year, Vice President Gore asked the Office of Personnel Management to develop a model plan to bring more adults with disabilities into the federal workforce. Today, the President will release this comprehensive plan and direct federal agencies and departments to implement it immediately. Under this plan, the federal government – the nation's largest employer with over 1.8 million workers – will:

- Recruit people with disabilities for positions at all levels of government;
- Provide opportunities for students with disabilities;
- Ensure career opportunities for people with disabilities;
- Collect and maintain data to monitor success of people with disabilities in the federal workforce; and
- Provide reasonable accommodations for applicants and employees with disabilities.

This plan will help address the unacceptably high levels of unemployment among people with disabilities. Since the beginning of the Clinton-Gore Administration, the American economy has added more than 19 million new jobs, and unemployment is at a 29-year low, yet over 75 percent of individuals with severe disabilities are unemployed. If this nation is to live up to its promise of equal opportunity, and our economy is to continue to strengthen and expand, we must draw on the untapped energy and creativity of these millions of capable Americans.

The President will release the plan, *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, along with a companion Employment Guide, providing detailed resources for federal employees to use as they recruit, hire, train and promote people with disabilities.

TODAY'S ACTION IS JUST THE LATEST ADMINISTRATION STEP TO INCREASE OPPORTUNITY FOR PEOPLE WITH DISABILITIES. Today's action, recommended by the President's Task Force on Employment of Adults with Disabilities, is the latest of many executive actions taken by the President to increase the employment of people with disabilities, which include: issuing an executive order in June

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expanding hiring opportunities for people with psychiatric disabilities by eliminating the federal government's stricter hiring ~~and promotion~~ standards for people with those disabilities; putting in place new regulations in February to make work pay for people with disabilities receiving Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI), allowing them to earn more and still receive critical cash and medical benefits; creating the Task Force last year to create coordinated national policy to increase employment of people with disabilities in all sectors of the economy; including in his budget a historic $2 billion initiative to provide a $1,000 tax credit for work-related expenses for people with disabilities, invest in technology to help more people with disabilities work, and provide better health care and employment options for people who go to work by fully funding the Work Incentives Improvement Act.

URGING THE HOUSE TO PASS THE BIPARTISAN WORK INCENTIVES IMPROVEMENT ACT. This historic new legislation removes significant barriers to work for people with disabilities. It gives workers with disabilities the option to buy into Medicaid; extends Medicare coverage for people with disabilities who return to work; creates a new Medicaid buy-in demonstration; and improves employment services. Under the leadership of Senators Jeffords, Kennedy, Roth and Moynihan, and Representatives Bliley, Dingell, Lazio and Waxman, the bill has received broad based bipartisan support. It passed the Senate 99-0 in June and has been voted out of the House Commerce Committee unanimously. President Clinton will call on the House now to finish the job, so that people with disabilities who want to work do not have to wait another day.

CALLING ON CONGRESS TO DO THE JOB THE AMERICAN PEOPLE SENT THEM HERE TO DO. The President will reiterate the call he made in his press conference earlier this week to make this a season of progress, not a winter of politics and to finish the job the American people sent them here to do by passing a strong, enforceable Patients' Bill of Rights and enacting a responsible budget that saves Social Security, strengthens and modernizes Medicare, honors the priorities of the American people, and continues to pay down our debt, keeping interest rates low and the economy growing. Congress should put an end to reckless partisanship, to gimmicks and gamesmanship.

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PRESIDENT CLINTON AND VICE PRESIDENT GORE: ECONOMIC OPPORTUNITIES FOR ALL AMERICANS

January 13, 1999

"Increased access to health care; more assistance at home and in the workplace; remarkable new technologies: that is how we will make sure that all Americans, no matter what their abilities, can take their place in the workplace."

President Bill Clinton
January 13, 1999

Today, President Clinton will unveil a historic new initiative that will remove significant barriers to work for people with disabilities. This three-part budget initiative, which invests $2 billion over five years, will help provide better health care options for people with disabilities who work, a $1,000 tax credit for work-related expenses, and invest in technology that can enhance their ability to participate in the workplace.

REMOVING THE BARRIERS THAT STOP PEOPLE WITH DISABILITIES FROM GOING TO WORK. Since the President and Vice President took office, the American economy has added 17.7 million new jobs, and unemployment is at a 29-year low; however, the unemployment rate among working-age adults with disabilities is nearly 75 percent. People with disabilities often become ineligible for Medicaid or Medicare if they work, putting them in the difficult position of choosing between health care coverage and work. In addition, advances in technology and communications are often not accessible to people with disabilities.

A HISTORIC PLAN TO IMPROVE ECONOMIC OPPORTUNITY FOR AMERICANS WITH DISABILITIES. The President's budget proposal will include a three-part initiative to bring greater opportunity to Americans with disabilities:

- **Funding the Work Incentives Improvement Act**. Health care, particularly prescription drugs and personal assistance, is essential for people with disabilities who work. The President's budget fully funds the Work Incentive Improvement Act, that would:

  Improve access to health care by:

  -- Expanding states' ability to provide a Medicaid buy-in to people with disabilities who return to work;
  -- Extend Medicare coverage, for the first time, for people with disabilities who return to work;
  -- Create a new Medicaid buy-in demonstration to help people with a specific physical or mental impairment that is not severe enough to qualify for health assistance, but is likely to lead to a severe disability in the absence of medical treatment;

  Modernize the employment services system by creating a "ticket" that will enable SSI or SSDI beneficiaries to use a range of public or private providers for vocational rehabilitiation. If the person goes back to work and achieves substantial earnings, providers would be paid a portion of the benefits saved;

  Create a Work Incentive Grant program to provide benefits planning and assistance, facilitate access to information about work incentives, and better integrate services to people with disabilities working or returning to work.

- **Providing a $1,000 Tax Credit For Work-Related Expenses For People With Disabilities**. Under the President's proposal, workers with significant disabilities would receive an annual $1,000 tax credit to help cover the costs associated with employment, including, special transportation and technology;

- **Improving Access to Assistive Technology**. This new initiative will accelerate the development and adoption of information and communications technologies that can improve the quality of life for people with disabilities and enhance their ability to participate in the workplace.

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CLINTON-GORE ADMINISTRATION TAKES NEW STEPS TO INCREASE THE EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

October 9, 1999

In his Saturday radio address, President Clinton will urge Congress to build on its constructive work on the Patients' Bill of Rights by passing a bill with even greater bipartisan support: the Work Incentives Improvement Act. This measure, included in the President's budget, passed the Senate unanimously and has been co-sponsored by a majority of the House. The President will encourage the House to act now and send him the bill before Congress recesses for the year. The President also will release a comprehensive plan to bring more people with disabilities into the workforce, and will order all federal departments and agencies to implement this action plan.

BARRIERS TO WORK FOR PEOPLE WITH DISABILITIES. Since the beginning of the Clinton-Gore Administration, the American economy has added more than 19 million new jobs, and unemployment is at a 29-year low. Yet over 75 percent of individuals with severe disabilities are unemployed. One of the most difficult obstacles to work is health insurance: under current law, people with disabilities often become ineligible for Medicaid or Medicare if they work, forcing them to choose between health care and employment. Today, the President will take steps to remove these barriers by:

URGING THE HOUSE TO PASS THE BIPARTISAN WORK INCENTIVES IMPROVEMENT ACT. This historic new legislation removes significant barriers to work for people with disabilities. It gives workers with disabilities the option to buy into Medicaid; extends Medicare coverage for people with disabilities who return to work; creates a new Medicaid buy-in demonstration; and improves employment services. Under the leadership of Senators Jeffords, Kennedy, Roth and Moynihan, and Representatives Bliley, Dingell, Lazio and Waxman, the bill has received broad based bipartisan support. It passed the Senate 99-0 in June and has been voted out of the House Commerce Committee unanimously. President Clinton will call on the House now to finish the job, so that people with disabilities who want to work do not have to wait another day.

DIRECTING FEDERAL AGENCIES TO IMPLEMENT PLAN FOR HIRING PEOPLE WITH DISABILITIES. Last year, Vice President Gore asked the Office of Personnel Management to develop a model plan to bring more adults with disabilities into the federal workforce. Today, the President will release that plan and direct federal agencies and departments to implement it. The plan includes guidance on how to:

- Recruit people with disabilities for positions at all levels of government;
- Provide opportunities for students with disabilities;
- Ensure career opportunities for people with disabilities;
- Collect and maintain data to monitor their success; and
- Provide reasonable accommodations for applicants and employees with disabilities.

The plan, *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, will be released with a companion employment guide. In issuing his directive, the President will emphasize the Administration's commitment to making more Americans with disabilities an active part of the nation's workforce.

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10/14

Megan Maloney

↳ need pres paper by noon tomorrow

~~Abbe~~

Talk to Sara about drafting

Pres paper should track education

1) start w/ executive action problem it's addressing what it will do

2) More needs to be done Congress has before it → Jeff-K

3) Other things matter to Amer people they should get onto → touch too on patents

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Cynthia A. Rice 10/08/99 07:55:41 PM

Record Type: Record

To: Samir Afridi/WHO/EOP@EOP
cc: jeanne lambrew/opd/eop@eop, devorah r. adler/opd/eop@eop, j. eric gould/opd/eop@eop, karin kullman/opd/eop@eop
bcc:
Subject: RE EDITS TO RADIO ADDRESS

Can you make these edits? I'd like to beef up the directive description, and the VP and OPM really do deserve some credit

Today, I am announcing new steps to make sure the federal government leads by example. The Vice President asked the Office of Personnel Management to develop a model plan for increasing the federal government's hiring of people with disabilities so that we could serve as a model throughout the country. This morning, I am directing every federal agency and department to implement that plan and take specific action to recruit and expand opportunities for more people with disabilities in all levels of the federal workforce -- from the entry level to the senior ranks. Under this plan, agencies will recruit people with disabilities for positions at all levels of government; provide opportunities for students with disabilities; ensure career opportunities for people with disabilities; collect and maintain data to monitor their success; and provide reasonable accommodations for applicants and employees with disabilities.

Also in graph 2 and 4 you use patients' instead of patients

Samir Afridi

Samir Afridi
10/08/99 06:36:39 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP
cc: jeanne lambrew/opd/eop@eop, devorah r. adler/opd/eop@eop, j. eric gould/opd/eop@eop, karin kullman/opd/eop@eop
bcc:
Subject: Re: DRAFT Directive

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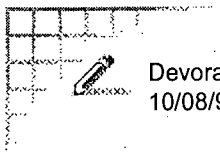


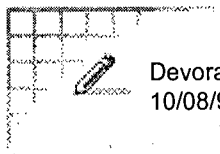
Devorah R. Adler
10/08/99 07:57:00 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP

cc:
Subject: edits to press release

---------- Forwarded by Devorah R. Adler/OPD/EOP on 10/08/99 07:57 PM ----------



Devorah R. Adler
10/08/99 07:14:01 PM

Record Type: Record

To: Samir Afridi/WHO/EOP@EOP, Joshua S. Gottheimer/WHO/EOP@EOP

cc: Jeanne Lambrew/OPD/EOP@EOP, Karin Kullman/OPD/EOP@EOP, Anna Richter/OPD/EOP@EOP
Subject: edits to press release

Hello --

Chris thought this was very good. We have only a few small edits (in bold below.)

Please call with questions. Thanks.

Devorah

Draft 10/8/99 6:00 p.m.
Sam Afridi

PRESIDENT WILLIAM J. CLINTON
RADIO ADDRESS ON THE PATIENTS' BILL OF RIGHTS AND WORK INCENTIVES IMPROVEMENT ACT
October 9, 1999

Good morning. This week, the House of Representatives took an important step in protecting the health and improving the lives of working families. In the face of significant pressure to do otherwise, Democrats and Republicans joined together to pass a strong, enforceable Patients' Bill of Rights.

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The House declared that patients' must have fundamental rights--the right to the nearest emergency room care--the right to see a specialist--the right to know you can't be forced to switch doctors in the middle of a cancer treatment or a period of pregnancy--the right to hold your health care plan accountable if it causes you or a loved one grave harm.

But those rights will not be real until that bill becomes law. So when House and Senate negotiators meet, Republican leaders must resist the temptation to water-down the bill or load it with special interest poison pill provisions that they know I can't sign.

The overwhelming victory in the House reflected the will of the American people to put patients' first. But this week's vote demonstrated something else. It also showed once again that by working across party lines, we can do right by working families.

Now's the time to work in that same spirit to meet another vital challenge for which there is tremendous bipartisan support—making it possible for more people with disabilities to experience the dignity of work and share in our nation's prosperity.

Despite today's record strong economy, three out of four Americans with disabilities who want to work are not working. That's not just a missed opportunity for Americans with disabilities. It's a missed opportunity for America.

One of the biggest barriers facing people with disabilities is the fear of losing their health insurance when they get a job. Under current law, many people with disabilities cannot work and keep their Medicaid or Medicare coverage—creating a tremendous disincentive to work. I'll give you one example.

I met a man in New Hampshire not long ago who was injured in a skiing accident—paralyzed from the waist down. He desperately wanted to take a job that paid $28,000 a year but he would have lost his health coverage and been saddled with medical expenses to the tune of $40,000 a year. No one should have to choose between taking a job and paying their medical bills.

Wouldn't it be better if that man were able to earn a salary—pay taxes—be a part of the community and a role model by proving what one can do if given a chance to live up to their God-given potential?

There's a common sense bipartisan bill **-- called the Work Incentives Improvement Act --** that will make that happen. It **was** sponsored by Republican Senators Jeffords **and Roth** and Democratic Senators Kennedy **and Moynihan,** and it will make sure that people with disabilities don't lose their health care when they gain a job. It will give workers with disabilities the option to buy into Medicaid and extends Medicare coverage for people with disabilities who return to work.

The legislation recently passed the Senate 99 to zero. **A bipartisan majority in the House**

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has already cosponsored it. Congress needs to finish the job, send me the bill, and I'll sign it. Americans with disabilities who want to work shouldn't have to wait one more day.

Today, I am announcing new steps to make sure the federal government leads by example. This morning, I am directing every federal agency and department to take specific action to recruit and expand opportunities for more people with disabilities in all levels of the federal workforce—from the entry level to the senior ranks.

That's one more way we can ensure that our nation benefits from the enormous talent pool of people with disabilities. By passing the Patients' Bill of Rights this week, Congress showed what we can achieve when we choose people over partisanship. By passing the **Work Incentives Improvement Act**, we can build on that progress and keep America working.

Thanks for listening.

Draft 10/8/99 6:00 p.m.
Sam Afridi

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PRESIDENT WILLIAM J. CLINTON
RADIO ADDRESS ON THE PATIENTS' BILL OF RIGHTS AND WORK INCENTIVES IMPROVEMENT ACT
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The legislation recently passed the Senate 99 to zero. It passed a House Committee on a unanimous vote. Congress needs to finish the job, send me the bill, and I'll sign it. Americans with disabilities who want to work shouldn't have to wait one more day.

Today, I am announcing new steps to make sure the federal government leads by example. This morning, I am directing every federal agency and department to take specific action to recruit and expand opportunities for more people with disabilities in all levels of the federal workforce—from the entry level to the senior ranks.

That's one more way we can ensure that our nation benefits from the enormous talent pool of people with disabilities. By passing the Patients' Bill of Rights this week, Congress showed what we can achieve when we choose people over partisanship. By passing the Kennedy-Jeffords legislation, we can build on that progress and keep America working.

Thanks for listening.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. entire folder	Disability-OPM-Model Plan IV [1] (110 pages)	ca. October, 1999	P5

CLINTON LIBRARY PHOTOCOPY

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15430

FOLDER TITLE:
Disability-OPM-Model Plan IV [1]

Richard Stalcup

rx48

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advise between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

DRAFT Q&A for Radio Address – 4:45 pm 10/8/1999
(Does not include ones on Jeffords-Kennedy)

Directive to Federal Agencies in Hiring People with Disabilities

Q: What did the President direct the agencies to do and why?

A: Today, the President directed federal agencies and departments to implement a model plan to increase the representation of adults with disabilities in the federal workforce. Under this plan, agencies will:

- Recruit people with disabilities for positions at all levels of government;
- Provide opportunities for students with disabilities;
- Ensure career opportunities for people with disabilities;
- Collect and maintain data to monitor their success; and
- Provide reasonable accommodations for applicants and employees with disabilities.

These actions will enable the federal government to benefit from a broader pool of job applicants, provide opportunities for employment for people with disabilities, and help the federal government serve as a role model for private industry. If this nation is to live up to its promise of equal opportunity, and our economy is to continue to strengthen and expand, we must draw on the untapped energy and creativity of these millions of capable Americans.

The plan, *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, will be released with a companion employment guide, providing detailed resources for federal employees to use as they recruit, hire, train and promote people with disabilities.

Q: Will agencies be subject to hiring quotas?

A. No. Each agency's employment opportunities differ. Therefore, the plan asks agency and department heads to review their hiring of people with disabilities and to implement efforts to increase employment of people with disabilities. The fact is almost 75 percent of working-age Americans with disabilities are unemployed, but that does not mean they are unemployable, nor does it mean that they have nothing to offer our federal government or society.

Q: What will the cost of implementation be to agencies?

A: There is no direct cost associated with the issuance of the guidance. In implementing the provisions outlined in OPM's plan, federal agencies are being given access to a number of resources that will make their recruitment efforts and their career development planning more effective. OPM has specifically designed the plan and the guide to provide for the sharing of information and resources regarding the hiring of individuals with disabilities.

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Q: What's the difference between the OPM plan and the guide?

A. The plan provides a framework for departments and agencies to help them develop strategies and initiatives designed to employ and retain persons with disabilities. Its companion piece, the guide, is a resource tool to help Federal human resource specialists, supervisors, and co-workers, understand the issues surrounding employment of people with disabilities. The plan is about 10 pages and the guide is over 50 pages.

Q: Doesn't this plan favor people with disabilities over other individuals such as veterans?

A. No. The plan does not direct agencies to favor those with disabilities over other applicants. It does encourage agencies to recruit people with disabilities for positions at all levels of government; provide opportunities for students with disabilities; ensure career opportunities for people with disabilities; collect and maintain data to monitor their success; and provide reasonable accommodations for applicants and employees with disabilities. The plan should be part of an overall agency strategy to address under-representation of individuals, including those with disabilities, in the workforce.

Q: How many persons with disabilities are currently employed by the Federal government?

A. As of September 30, 1998, there were 124,139 employees with disabilities in the non-postal Federal executive branch, or 7.1 percent of the workforce. This is the number of people who voluntarily identified themselves as having a disability.

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CLINTON LIBRARY PHOTOCOPY

October 8, 1999 – 10:00 am draft

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

Since I became President, we have created over 19 million new jobs and unemployment is as low as it has been in 29 years. Still, almost 75 percent of working-age Americans with severe disabilities remain unemployed. If this nation is to live up to its promise of equal opportunity, and our economy is to continue to strengthen and expand, we must draw on the untapped energy and creativity of this large and capable segment of our population.

One of the most glaring barriers to work for people with disabilities is that they frequently become ineligible for Medicaid or Medicare if they go back to work, putting them in the untenable position of choosing between health care coverage and work. That is why my budget fully funds the Work Incentives Improvement Act, which invests $1.2 billion over 5 years in health care and employment services so people with disabilities can work. This legislation was unanimously endorsed by the House Commerce Committee on May 19th and passed the Senate 99-0 on June 16th. It is time for Congress to finish the job, and pass the Work Incentives Improvement Act immediately. Let's not make people with disabilities who want to work wait one more day.

Already Vice President Gore and I have taken a number of steps to increase the employment of people with disabilities. On March 13, 1998, I signed Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities to create a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented the Vice President with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations.

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the federal government be a model employer of people with disabilities. That is why, on June 4, 1999, I signed an executive order eliminating the federal government's stricter hiring standards for people with psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. That is also why the Vice President directed the Office of Personnel Management (OPM) last December to develop a plan to increase the representation of adults with disabilities in the federal work force.

Today I am pleased to release *Accessing Opportunity: The Plan for Employment of People with*

Disabilities in the Federal Government and the companion employment guide prepared by OPM to provide information for agencies on how to recruit people with disabilities for positions at all levels of government; provide opportunities for students with disabilities; ensure career opportunities for people with disabilities; collect and maintain data to monitor their success; and provide reasonable accommodations for applicants and employees with disabilities. Today, I direct each and every agency and department to implement this plan immediately and do everything you can to bring qualified people with disabilities into the federal workforce. It is critically important that the federal government benefit from the enormous talent pool of people with disabilities and that the federal government play a leading role in promoting the ability of individuals with disabilities to be a part of our nation's workforce.

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THE CLINTON-GORE ADMINISTRATION TAKES NEW STEPS TO INCREASE THE EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

DRAFT: October 9, 1999

In his Saturday radio address, President Clinton will urge Congress to build on its success in acting on the Patients' Bill of Rights to pass a bill with even greater bipartisan support: the Work Incentives Improvement Act. This bill, including in the President's budget, passed the Senate unanimously and has been co-sponsored by a majority of the House of Representatives. The President will encourage the House to act now and send him this bill to sign before Congress adjourns. The President also will direct all federal departments and agencies to act to increase employment of people with disabilities by implementing a plan to have people with disabilities in the federal government.

Barriers to Work for People with Disabilities. Since the beginning of the Clinton-Gore Administration, the American economy has added more than 19 million new jobs, and unemployment is at a 29-year low. Yet over 75 percent of individuals with severe disabilities are unemployed. One of the most difficult obstacles to work is health insurance – people with disabilities often become ineligible for Medicaid or Medicare if they work, forcing them to choose between health care and employment. Today, the President will take steps to remove these barriers by:

- **Urging the House of Representatives to Act Now to Pass the Bipartisan Work Incentives Improvement Act.** This historic new legislation removes significant barriers to work for people with disabilities. It gives workers with disabilities the option to buy into Medicaid; extends Medicare coverage for people with disabilities who return to work; and creates a new Medicaid buy-in demonstration to help people with a specific physical or mental impairment that is expected to lead to a severe disability without medical assistance. The bill also improves employment services. This bill, which was included in the President's budget, passed the Senate in June by a vote of 99 to 0 and was voted out of the House Commerce Committee unanimously under the leadership of Senators Jeffords, Kennedy, Roth, and Moynihan and Representatives Bliley, and Dingell, Lazio and Waxman

- **Directing Federal Agencies to Implement Plan for Hiring People with Disabilities.** Last year, Vice President Gore asked the Office of Personnel Management (OPM) to develop a model plan to increase the representation of adults with disabilities in the federal workforce. Today, the President will direct federal agencies and departments to implement this plan to:
  - Recruit people with disabilities for positions at all levels of government;
  - Provide opportunities for students with disabilities;
  - Ensure career opportunities for people with disabilities;
  - Collect and maintain data to monitor their success; and
  - Provide reasonable accommodations for applicants and employees with disabilities.

  This plan, *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, will be released with a companion employment guide, providing detailed resources for federal employees to use as they recruit, hire, train and promote people with disabilities.

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04D

TALKING POINTS
EMPLOYMENT OF PEOPLE WITH DISABILITIES
PLAN & GUIDE
US OFFICE OF PERSONNEL MANAGEMENT
October 9, 1999

"If America is to continue to grow and prosper, if we are to lead the challenging global economy of the 21st century, we cannot afford to ignore the talents, energy, and creativity of the 54 million Americans with disabilities." – President William Jefferson Clinton, October 7, 1997

- In November 1998, the Presidential Task Force on Employment of Adults with Disabilities issued its first report, "Recharting the Course." The report offered several recommendations for both public and private employers to increase the employment of people with disabilities in the workforce.

- As part of the initiative to encourage the Federal government to employ more people with disabilities, President Clinton announced efforts to make the Federal government a model employer.

- **Accessing Opportunity – The Plan for Employment of People with Disabilities in the Federal Government.** In support of the Task Force recommendations, the U.S. Office of Personnel Management (OPM) developed a plan to provide agencies the tools to hire and develop people with disabilities to achieve a fully diverse workforce. The plan will help ensure that departments and agencies:

  - Recruit widely for positions at all levels;
  - Provide opportunities for students with disabilities;
  - Give full consideration to employees with disabilities for inclusion in developmental opportunities;
  - Collect and maintain data to monitor success; and
  - Provide reasonable accommodations for qualified applicants and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission.

- **People With Disabilities in the Federal Government – An Employment Guide.** A companion piece to the plan, the guide provides agencies with a detailed resource on employing people with disabilities. The guide addresses issues such as:

  - reasonable accommodation,
  - hiring options,
  - dealing with different disabilities, and
  - integrating people with disabilities into the workforce.

Both the Plan and the Guide will be available in alternate formats, including large print, Braille, audio cassette, and computer disk.

FAX TRANSMITTAL FROM

THE OFFICE OF THE GENERAL COUNSEL
U.S. OFFICE OF PERSONNEL MANAGEMENT

TO: Cynthia Rice

of _____

phone _____ **fax** 456-7431

FROM: SUZANNE SEIDEN

GENERAL COUNSEL

phone (202) 606-1700 **fax (202) 606-2609**

DATE: October 8th

TOTAL NUMBER OF PAGES (including cover sheet): 2

COMMENTS: Re: Disability Plan & Guide

Attached are:

1. Fact sheet
2. ~~Director's Message for the Plan~~ -

Q&As to follow shortly.

Suzanne

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Cynthia A. Rice 10/08/99 12:13:07 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Jeanne Lambrew/OPD/EOP@EOP, Devorah R. Adler/OPD/EOP@EOP, J. Eric Gould/OPD/EOP@EOP, Karin Kullman/OPD/EOP@EOP

Subject: Pls look ASAP ASAP at this document needed for tomorrow's radio address

opm1008 POTUS LTR w EL ed

I just reached many of you by phone to explain why I need you to look at this ASAP. A last minute decision was made to change the radio address topic and we are currently on for a radio address TOMORROW on employment of people with disabilities which will primarily be about why we need to pass the Work Incentives Improvement Act but will also include releasing an OPM plan relating to employment of people with disabilities in the federal government (Lisa and David have been most involved in this). This memorandum from the President simply tells the agencies why its a good plan and directs them to use it. It also includes rhetoric on WIIA and other disability issues.

I need edits by 12:45 TODAY. Because the radio address is in Chicago and a final version needs to be prepared by staff secretary for the President's actual signature we don't have much time. ,Unfortunately if I do not hear from you I will have to assume you don't have any edits.

Message Sent To:

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7/19 Employment Plan

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CLINTON LIBRARY PHOTOCOPY

Cynthia A. Rice 10/08/99 09:56:54 AM

Record Type: Record

To: Samir Afridi/WHO/EOP@EOP

cc: Jeanne Lambrew/OPD/EOP@EOP, Devorah R. Adler/OPD/EOP@EOP, J. Eric Gould/OPD/EOP@EOP, Karin Kullman/OPD/EOP@EOP

Subject: Radio address

Hello. I understand you're writing the radio address. Just fyi so you know who's doing what at DPC ---

Jeanne and/or Devorah of our health team will feed you information on the Work Incentives Improvement Act, the so-called Jeffords-Kennedy bill. If you don't know (I don't think you were here then) the President last gave speeches on this June 4th and June 16th and we issued a written statement May 19th and it was in the State of the Union and I'm sure there are others I don't remember.

I'm responsible for the directive the President will issue to the agencies regarding employment of people with disabilities in the federal government -- the point is that while pushing Congress to enact critically important legislation, the President is taking steps now to increase the employment of people with disabilities. I will email you a draft directive shortly (it may be edited a bit as it goes through staff secretary etc). The President will be directing the agencies to implement a plan prepared by the Office of Personnel Management. OPM should be mentioned in the address as well as the Vice President, who actually directed OPM last December to develop the plan and who's been a leader on these issues and deserves credit.

Obviously we'll produce press paper that includes both these things.

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Needs checking by OPM

2 Counsel

October 8, 1999 DRAFT – 9:30 am draft

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

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Already Vice President Gore and I have taken a number of steps to increase the employment of people with disabilities. On March 13, 1998, I signed Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities to create a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented the Vice President with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations.

One of the most glaring barriers to work for people with disabilities is that they frequently become ineligible for Medicaid or Medicare if they go back to work, putting them in the untenable position of choosing between health care coverage and work. That is why my budget fully funds the Work Incentives Improvement Act, which invests $1.2 billion over 5 years in health care and employment services so people with disabilities can work. This legislation was unanimously endorsed by the House Commerce Committee on May 19th and passed the Senate 99-0 on June 16th. It is time for Congress to finish the job, and pass the Work Incentives Improvement Act immediately. Let's not make people with disabilities who want to work wait one more day.

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the federal government be a model employer of people with disabilities. That is why, on June 4, 1999, I signed an executive order eliminating the federal government's stricter hiring standards for people with psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. That is also why the Vice President directed the Office of Personnel Management (OPM) last December to develop a plan to increase the representation of adults with disabilities in the federal work force.

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Disabilities in the Federal Government and the companion employment guide prepared by OPM to provide information for agencies on how to recruit people with disabilities for positions at all levels of government; provide opportunities for students with disabilities; ensure career opportunities for people with disabilities; collect and maintain data to monitor their success; and provide reasonable accommodations for applicants and employees with disabilities. Today, I direct each and every agency and department to implement this plan immediately and do everything you can to bring qualified people with disabilities into the federal workforce. It is critically important that the federal government benefit from the enormous talent pool of people with disabilities and that the federal government play a leading role in promoting the ability of individuals with disabilities to be a part of our nation's workforce.

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THE ECONOMY UNDER PRESIDENT CLINTON:
Continuing Strong Growth – More than 19 Million New Jobs
October 8, 1999

The American Economy Created Over 19 million new jobs under President Clinton and Growth Continues to be Robust. In 1992, the American economy was barely creating jobs, wages were stagnant, and the unemployment rate was 7.5 percent. Six years ago, President Clinton put in place a bold new three-part economic strategy of cutting the deficit to help reduce interest rates and spur business investment; investing in education, health care, science and technology so that America was prepared to meet the challenges of the 21st century; and opening markets abroad so that American workers would have a fair chance to compete and win across the globe.

- **19.4 Million New Jobs Under President Clinton**. Since President Clinton took office, the economy has added 19.4 million new jobs -- that's 3.4 million more new jobs in six years than were created during the entire eight years of the Reagan Administration (19.4 million under Clinton vs. 16.0 million under Reagan).

- **Unemployment At 4.2 Percent in September – The Lowest in 29 years.** In 1992, the unemployment rate was 7.5 percent. In September, the unemployment rate was 4.2 percent. The unemployment rate has been below 5 percent for 27 months in a row -- that is the lowest unemployment rate in 29 years.

- **Highest Share of New Jobs in Private Sector in 50 Years.** Since President Clinton and Vice President Gore took office, the private sector of the economy has added 18.0 million new jobs -- with 2.3 million jobs added in the past year. Under President Clinton and Vice President Gore, 93 percent of the 19.4 million new jobs have been in the private sector -- that's the highest percentage in 50 years.

- **Fastest and Longest Real Wage Growth in Two Decades.** Last month, average hourly earnings increased 0.5 percent. Under President Clinton and Vice President Gore, real wages have risen 6.6 percent compared to *declining* 4.3 percent during the Reagan and Bush years. After adjusting for inflation, wages increased almost 2.7 percent in 1998 -- that's the fastest real wage growth in more than two decades and the third year in a row and the longest sustained growth since the early 1970s.

- **Construction Jobs Are Coming Back.** Under President Clinton and Vice President Gore, construction jobs are coming back: after losing 662,000 jobs in construction during the previous four years, 1.7 million new construction jobs have been added since January 1993 -- that's a faster annual rate than any other Administration since Harry S. Truman was President.

- **Manufacturing Jobs Are Rising Under President Clinton, But Are Being Hurt by Slow International Growth.** After losing 2.1 million manufacturing jobs between 1981 and 1992, the economy has created 253,000 new manufacturing jobs since January 1993. In the auto industry, after losing 46,000 jobs in the auto industry during the Bush Administration, we have 165,000 new auto jobs during the Clinton-Gore Administration. And for the first time since the 1970s, America has led the world in auto production for four years in a row.

- **Unemployment Remains Historically Low for African Americans and Hispanics.** Under President Clinton and Vice President Gore, the African-American unemployment rate has fallen from 14.1 percent in January 1993 to 8.3 percent in August 1999. Hispanic unemployment rate has dropped from 11.3 percent in January 1993 to 6.7 percent in August 1999.

- **Inflation -- Lowest Since 1950s.** Inflation remains virtually non-existent, with the underlying core rate of inflation at 1.9 percent in the last 12 months – the lowest rate in 33 years. In 1998, the GDP price index rose 1.0 percent – its lowest level since the 1950s.

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Lisa

October 8, 1999 DRAFT – 8:30 am draft

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

Since I became President, we'~~ve~~ have created over XX million new jobs and unemployment is as low as it has been in XX years [use new numbers to be released 10/8]. Still, almost 75 percent of working-age Americans with severe disabilities remain unemployed. If this nation is to live up to its promise of equal opportunity, and our economy is to continue to strengthen and expand, we must draw on the untapped energy and creativity of this large and capable segment of our population.

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One of the most glaring barriers to work for people with disabilities is that they frequently become ineligible for Medicaid or Medicare if they go back to work, putting them in the untenable position of choosing between health care coverage and work. That~~'s~~ is why my budget fully funds the Work Incentives Improvement Act which invests $1.2 billion over 5 years in health care and employment services so people with disabilities can work. This legislation was unanimously endorsed by the House Commerce Committee on May 19th and passed the Senate 99-0 on June 16th. It~~'s~~ is time for Congress to finish the job, and pass the Work Incentives Improvement Act immediately. Let's not make people with disabilities who want to work wait one more day.

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the federal government be a model employer ~~for~~ of people with disabilities. That is why, ~~in~~ on June 4, 1999, I signed an executive order eliminating the federal government's stricter hiring standards for people with psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. That is also why ~~in December,~~ the Vice President directed the Office of Personnel Management (OPM) last December to develop a plan to increase the representation of adults with disabilities in the federal work force.

Lowe

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10/7 DRAFT

Q&A on Supreme Court's ADA Decisions

Q: What does the Administration think of the decisions made by the Supreme Court earlier this year on the Americans with Disabilities Act? Does the Administration plan to take new action in this area?

A: Earlier this year, the Supreme Court decided a number of important cases which interpreted the Americans with Disabilities Act (ADA). Two cases, Sutton v. United Airlines and Murphy v. United Parcel Service, Inc., held that the determination of whether an individual ~~is disabled~~ has a disability should take into account the use of mitigating measures. Depending on how these decisions are interpreted and applied by the lower courts, Sutton and Murphy could undermine the goals of the ADA by excluding from the Act's coverage many persons who are discriminated against by employees because of a physical or mental impairment. The most troubling possibility is that employers could refuse to hire individuals because of a physical or mental impairment but escape the Act's coverage by claiming that the individual ~~is not disabled~~ does not have a disability because of mitigating measures.

The Administration will assess the impact of the Sutton and Murphy decisions by evaluating how they are interpreted and applied by the lower courts. We will also assess how employers are applying these decisions in the employment policies. In appropriate cases, the Administration will argue to the courts that Sutton and Murphy should not be applied in way that reaches unfair results that are inconsistent with the original congressional intent underlying the Act. We are hopeful that the decisions will not have an adverse impact on ~~disabled employees~~, people with disabilities. ~~However, if the decisions o undermine the fundamental goals of the ADA, we will explore other options, including legislative changes to the ADA's definition of disability~~.

Q: Does the Administration plan to propose or support legislation to clarify the ADA?

A: No. While the lower courts are applying these Supreme Court cases, it would be premature to consider legislation.

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Cynthia A. Rice 10/07/99 05:39:17 PM

Record Type: Record

To: sbseiden@opm.gov @ inet

cc: See the distribution list at the bottom of this message
Subject: Revised Memorandum for Agencies

The radio address may still be on the nuclear test ban treaty, but if it is not, then employment of people with disabilities is Plan B. Until plans are more final I have not told others outside this email (except Liz Savage at DOJ).

opm1007 POTUS LTRHere is a revised version of the memorandum to agencies that the President would sign. Please respond by COB tonight or as soon as possible if you have edits. I'll need to get this to White House staff secretary in the morning. Thanks

Message Copied To:

Lisa M. Brown/OVP@OVP
Edward W. Correia/WHO/EOP@EOP
J. Eric Gould/OPD/EOP@EOP
Jeanne Lambrew/OPD/EOP@EOP
Devorah R. Adler/OPD/EOP@EOP

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CLINTON LIBRARY PHOTOCOPY

October 7, 1999 DRAFT – 5:30 pm draft

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SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

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CLINTON LIBRARY PHOTOCOPY

Lana Dickey
10/07/99 06:02:53 PM

Record Type: Record

CLINTON LIBRARY PHOTOCOPY

To: Cynthia A. Rice/OPD/EOP@EOP

cc:

Subject: National Disability Employment Awareness Month

Is this OK? I can fax it to you.

For Immediate Release September 30, 1999

NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH, 1999

- - - - - - -

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

As Americans, we define ourselves in many ways -- not only by our families and communities, but also by our work; not only by who we are, but also by what we do for a living. Millions of Americans with disabilities, however, do not share that experience because their path to the world of work has been strewn with barriers. At a time when the unemployment rate in our Nation is at the lowest level in a generation -- 4.2 percent -- a staggering 75 percent of Americans with disabilities remain unemployed, even though the vast majority of them want to work.

One of the greatest barriers to employment for people with disabilities is that, under current law, they often become ineligible for Medicaid or Medicare if they work. That is why I have challenged the Congress to pass the bipartisan Work Incentives Improvement Act. This proposed legislation would extend Medicare coverage for people with disabilities who return to work and improve access to health care through Medicaid. No American should ever be forced to choose between health care coverage and employment, and this legislation will help ensure that no one has to make that choice.

In addition to fully funding the Work Incentives Improvement Act, my Administration's proposed budget includes a $1,000 tax credit to help people with disabilities offset the cost of special transportation and other work-related expenses. We are also seeking to double our investment in such assistive technology as braille translators, mobile phones, and voice recognition software that give disabled citizens the tools they need to make the transition to work. And in June of this year, I signed an Executive order to expand employment opportunities for

people with psychiatric disabilities and set an example for the private sector by ensuring that the Federal Government's hiring and promotion standards are the same for these workers as they are for people with mental retardation or severe physical disabilities.

Next year our Nation will celebrate the 10th anniversary of the Americans with Disabilities Act and the 25th anniversary of the Individuals with Disabilities Education Act -- the two landmark pieces of legislation that transformed our country's disability policy and set a standard for other nations around the world. However, putting an end to negative attitudes and shattering destructive stereotypes will require the concerted efforts of all sectors of society. Until we integrate Americans with disabilities as full participants in our social fabric, we will never reach our employment goals.

This year, in addition to rededicating ourselves to breaking down employment barriers, we will highlight the achievements of people with disabilities in areas such as journalism, entertainment, and the arts. People like journalist John Hockenberry prove that a wheelchair need not be an obstacle to traveling the world to report breaking news. Artists like blind sculptor Michael Naranjo and deaf painter Alex Wilhite illustrate that having a disability can be the vehicle for advancing the arts in novel ways. Performers like Laurie Rubin, a classically trained vocalist, show us that blindness need not prevent one from taking the great stage of the opera.

To recognize the enormous potential of individuals with disabilities and to encourage all Americans to work toward their full integration into the workforce, the Congress, by joint resolution approved August 11, 1945, as amended (36 U.S.C. 121), has designated October of each year as "National Disability Employment Awareness Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 1999 as National Disability Employment Awareness Month. I call upon Government officials, educators, labor leaders, employers, and the people of the United States to observe this month with appropriate programs and activities that reaffirm our determination to fulfill both the letter and spirit of the Americans with Disabilities Act.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

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WILLIAM J. CLINTON

CLINTON LIBRARY PHOTOCOPY

October 7, 1999 DRAFT

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

Since I became President, we've created over XX million new jobs and unemployment is as low as it has been in XX years [use new numbers to be released 10/8]. Still, almost 75 percent of working-age Americans with severe disabilities remain unemployed. If this nation is to live up to its promise of equal opportunity, and our economy is to continue to strengthen and expand, we must draw on the untapped energy and creativity of this large and capable segment of our population.

Already Vice President Gore and I have taken a number of steps to increase the employment of people with disabilities. On March 13, 1998, I signed Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities to create a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented me with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations.

One of the most glaring ~~problems is~~ barriers to work for is that people with disabilities frequently become ineligible for Medicaid or Medicare if they go back to work, putting them in the untenable position of choosing between health care coverage and work. That's why my budget fully funds the Work Incentives Improvement Act which invests $1.2 billion in health care and employment services so people with disabilities can work. This legislation was unanimously endorsed by the House Commerce Committee on May 19th and passed the Senate 99-0 on June 16th. It's time for Congress to finish the job, and pass the Work Incentives Improvement Act immediately. Let's not make people with disabilities who want to work wait one more day.

over 5 years

(check)

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the federal government be a model employer for people with disabilities. That is why in on June 4, 1999 I signed an executive order eliminating the federal government's stricter standards for psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. That is also why in December, the Vice President directed the Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the federal work force.

Today I am pleased to release *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government* and the companion employment guide prepared by OPM to provide information for agencies on how recruit people with disabilities for positions at all levels; provide opportunities for students with disabilities; ensure career opportunities for people with disabilities; collect and maintain data to monitor the success; and provide reasonable accommodations for applicants and employees with disabilities. Today, I direct each and every agency and department to implement this plan immediately and do everything you can to bring qualified people with disabilities into the federal workforce. It is critically important that the federal government benefit from this enormous talent pool of people with disabilities and that the federal government play a leading role in promoting the ability of individuals with disabilities to be a part of our nation's workforce.

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5:00 pm

October 7, 1999 DRAFT

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CLINTON LIBRARY PHOTOCOPY

Cynthia A. Rice 10/05/99 03:45:13 PM

Record Type: Record

To: Karin Kullman/OPD/EOP@EOP
cc: j. eric gould/opd/eop@eop, devorah r. adler/opd/eop@eop
bcc:
Subject: Re: jeffords-kennedy scheduling request

As we discussed, the event would be a push for Jeffords-Kennedy, and the federal hiring announcment would be a way for the President to say he's doing everything we can to increase the employment of people with disabilities in the federal government in the meantime.

Below is a summary we wrote this summer when we thought this announcement would be ready earlier, and a draft of the letter the executive memorandum to the Cabinet the Presidnet would sign. Devorah -- can you all look carefully at the letter and tell me if you want any changes?

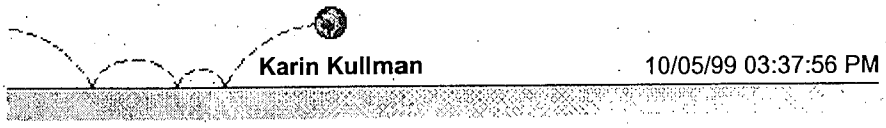
opm1005 POTUS LTR

Directing Federal Agencies to Implement Plan for Hiring People with Disabilities. On December 14th, the Vice President asked the Office of Personnel Management (OPM) to develop a model plan to increase the representation of adults with disabilities in the federal workforce. Today, the President will direct federal agencies and departments to implement this plan to:

- Recruit widely people with disabilities for positions at all levels;
- Provide opportunities for students with disabilities;
- Ensure career opportunities for people with disabilities, including giving full consideration to employees with disabilities for promotions and career development opportunities;
- Collect and maintain data to monitor the success;
- Provide reasonable accommodations for qualified applicants and employees with disabilities;

This plan, *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*, will be released with an employment guide -- a compendium of laws, tools and guidance for agencies to use as they recruit, hire, train and promote people with disabilities.

Karin Kullman



Karin Kullman 10/05/99 03:37:56 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP, J. Eric Gould/OPD/EOP@EOP, Devorah R. Adler/OPD/EOP@EOP

cc:

Subject: jeffords-kennedy scheduling request

This morning we talked about submitting a scheduling request to do a Jeffords-Kennedy event, at which the President could announce the Federal plan for hiring people with disabilities. Can I get some info. about both the federal plan and what we would want to say about Jeffords-Kennedy so I can draft the scheduling proposal?

Thanks!

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Melissa G. Green
10/05/99 10:49:54 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP

cc:
Subject: Re: Can you send me your latest one pager

is this what you wanted
---------- Forwarded by Melissa G. Green/OPD/EOP on 10/05/99 10:49 AM ----------

Jason Furman
10/05/99 10:23:50 AM

Record Type: Record

To: Melissa G. Green/OPD/EOP@EOP

cc: patrick m. dorton/opd/eop@eop
Subject: Re: Can you send me your latest one pager

The latest on pager on jobs. JOBS.902.do

A new employment report will be coming out this Friday.

DRAFT-- THE ECONOMY UNDER PRESIDENT CLINTON:
Continuing Strong Growth – More than 19 Million New Jobs
September 3, 1999

The American Economy Created Over 19 million new jobs under President Clinton and Growth Continues to be Robust. In 1992, the American economy was barely creating jobs, wages were stagnant, and the unemployment rate was 7.5 percent. Six years ago, President Clinton put in place a bold new three-part economic strategy of cutting the deficit to help reduce interest rates and spur business investment; investing in education, health care, science and technology so that America was prepared to meet the challenges of the 21st century; and opening markets abroad so that American workers would have a fair chance to compete and win across the globe.

- **19.4 Million New Jobs Under President Clinton**. Since President Clinton took office, the economy has added 19.4 million new jobs -- that's 3.4 million more new jobs in six years than were created during the entire eight years of the Reagan Administration (19.4 million under Clinton vs. 16.0 million under Reagan).

- **Unemployment At 4.2 Percent in August – The Lowest in 29 years.** In 1992, the unemployment rate was 7.5 percent. In August, the unemployment rate was 4.2 percent. The unemployment rate has been below 5% for 26 months in a row -- that is the lowest unemployment rate in 29 years.

- **Highest Share of New Jobs in Private Sector in 50 Years.** Since President Clinton and Vice President Gore took office, the private sector of the economy has added 17.9 million new jobs -- with 2.4 million jobs added in the past year. Under President Clinton and Vice President Gore, 92 percent of the 19.4 million new jobs have been in the private sector -- that's the highest percentage in 50 years.

- **Fastest and Longest Real Wage Growth in Two Decades.** Last month, average hourly earnings increased 0.5 percent. Under President Clinton and Vice President Gore, real wages have risen 6.6 percent compared to *declining* 4.3 percent during the Reagan and Bush years. After adjusting for inflation, wages have increased almost 2.7 percent in 1998 -- that's the fastest real wage growth in more than two decades and the third year in a row and the longest sustained growth since the early 1970s.

- **Construction Jobs Are Coming Back.** Under President Clinton and Vice President Gore, construction jobs are coming back: after losing 662,000 jobs in construction during the previous four years, 1.7 million new construction jobs have been added since January 1993 -- that's a faster annual rate than any other Administration since Harry S. Truman was President.

- **Manufacturing Jobs Are Rising Under President Clinton, But Are Being Hurt by Slow International Growth.** After losing 2.1 million manufacturing jobs between 1981 and 1992, the economy has created 286,000 new manufacturing jobs since January 1993. In the auto industry, after losing 46,000 jobs in the auto industry during the Bush Administration, we have 171,000 new auto jobs during the Clinton-Gore Administration. And for the first time since the 1970s, America has led the world in auto production for four years in a row.

- **Unemployment Remains Historically Low for African Americans and Hispanics.** Under President Clinton and Vice President Gore, the African-American unemployment rate has fallen from 14.1 percent in January 1993 to 7.8 percent in August 1999. Hispanic unemployment rate has dropped from 11.3 percent in January 1993 to 6.5 percent in August 1999.

- **Inflation -- Lowest Since 1950s.** Inflation remains non-existent at 1.5 percent for the second quarter of 1999. In 1998, the GDP price index rose 1.0 percent at an annual rate -- its lowest level since the 1950s.

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C- I'm kind of crashing, but my big suggestion is we write 3 Ps:
① Accomplishments
② Need to do more: JKRM only — we're trying to get this back in the limelight
③ ACTION.

I can help later.
Thanks, Jeanne

October 5, 1999 DRAFT

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

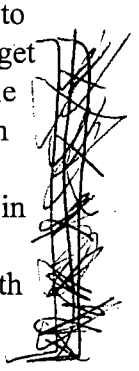
America is enjoying great prosperity, with the prospect of an even brighter future as we head into the next century. Our economy is the strongest it has been in a generation. Since I have been President, there have been more than XX million new jobs and unemployment is as low as it has been in XX years. Still, we cannot consider ourselves truly successful until all Americans, including the 50 million working-age adults with disabilities, have access to the tools and opportunities they need to achieve economic independence.

Today, the Americans with Disabilities Act is making it possible for millions of Americans to participate more fully in our society. However, nine years after the ADA's passage, the unemployment rate among working-age Americans with disabilities is still far too high. Almost 75 percent of working-age Americans with severe disabilities remain unemployed. If America is to live up to its promise of equal opportunity, and if our economy is to continue to strengthen and expand, we must be able to draw on the untapped energy and creativity of this large and capable segment of our population.

~~Furthermore~~ I have taken a number of steps ~~with~~ to reduce barriers to work.

(1) On March 13, 1998, I took action to address the issue of unemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities. This Task Force was charged with creating a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented me with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations. My FY 2000 budget includes a historic new $2 billion initiative that removes significant barriers to work for people with disabilities. It includes the Work Incentives Improvement Act that invests $1.2 billion in health care and employment services for people with disabilities so they can work. I urge (2) Congress to take swift action in passing this legislation, which will make a critical difference in empowering people with disabilities to become employed and maintain health care coverage. My budget also contains a new $700 million investment in a $1,000 tax credit for workers with disabilities and an increase of $35 million in assistive technologies that make it possible for individuals with disabilities to work.

? [should have stand-alone



At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the Federal government be a

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model employer for people with disabilities. That is why in On June 4, 1999 I signed an executive order eliminating the federal government's stricter standards for psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. That is also why in December, the Vice President directed the Office of Personnel Management to develop a plan to increase the representation of adults with disabilities in the Federal work force.

Today I am pleased to release The Plan for Employment of People with Disabilities in the Federal Government and the companion employment guide, which provide direction and information for agencies on recruitment and hiring, reasonable accommodation, career development and promotion, and monitoring and evaluating progress in hiring people with disabilities. I direct each and every agency and department to implement this plan immediately and do everything you can to bring qualified people with disabilities into the federal workforce. It is critically important that the federal government benefit from this enormous talent pool of people with disabilities and that the federal government play a leading role in promoting the ability of individuals with disabilities to be a part of our nation's workforce.

(3)

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10/7

Jeanne Lambrew

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- Ways+Means still fishing around
- Tuesday - groups "pro et cons"
- Want pressure for WM to pass it whole

Jeanne has spoken
D+Rs on Senate
Ds on House side
(heard Rs not going to do whole bill)
initial rumblings
were working only next
week → no/ogr hearing
this

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This guide is intended to help Federal employers and human resource personnel understand issues and programs aimed at improving the employment of people with disabilities. It is not intended to provide legal assistance, directives, nor interpretation of laws and regulations regarding the employment of people with disabilities in the Federal government, and cannot substitute for the independent judgment of legal counsel. Readers interested in getting legal help with a particular question or problem should consult their agency legal counsel.

(DRAFT 10/1/99)

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INTRODUCTION

The Federal Government must strive to create and maintain a sound, diverse, and cooperative work environment. Equal opportunity in employment for all people, regardless of race, color, sex, age, religion, national origin, or disability should be the common goal across government. However, persons with disabilities are often overlooked as a source of employable talent.

On March 13, 1998, President Clinton addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force was charged with creating a coordinated and aggressive national policy to bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general adult population.

This guide and its companion piece, *AAccessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government,@* were developed in support of the Task Force=s efforts and recommendations. The purpose of this guide is to provide guidance, information, and references to aid Federal employers in their efforts to hire and advance employees with disabilities.

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LEGAL FRAMEWORK

There are several laws which support and encourage the employment, retention, and advancement of people with disabilities.

1) **Section 501 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in Federal employment and requires the Federal government to engage in affirmative action for people with disabilities.[1] The law:

X Requires Federal employers not to discriminate against qualified job applicants or employees with disabilities. Persons with disabilities should be employed in all grade levels and occupational series commensurate with their qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of a job's structure or because of architectural, transportation, communication, procedural, or attitudinal barriers.

X Requires employers to make Areasonable accommodations@ to applicants and employees with disabilities. Such accommodations may involve, for example, restructuring the job, reassignment, modifying work schedules, adjusting or modifying examinations, providing readers or interpreters, and acquiring or modifying equipment and/or facilities (including the use of adaptive technology such as voice recognition software).

X Prohibits selection criteria and standards which tend to screen out people with disabilities, unless such procedures have been determined through a job analysis to be job-related and consistent with business necessity, and an appropriate individualized assessment indicates that the job applicant cannot perform the essential functions of the job, with or without reasonable accommodation.

X Requires Federal agencies to develop affirmative action programs for hiring, placement, and advancement of persons with disabilities. Affirmative action must be an integral part of ongoing agency personnel management programs.

---

[1] Section 501 was amended by the Rehabilitation Act Amendments of 1992 to apply the ADA=s employment standards to all non-affirmative action employment discrimination claims filed by Federal applicants or employees. 29 U.S.C. ' 791(g).

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2) **Section 508 of the Rehabilitation Act of 1973, as amended** requires Federal agencies to procure, use, maintain, and develop only accessible electronic and information technology, unless doing so imposes an undue burden. National security systems are exempt. Federal agencies will be required to comply with standards promulgated by the Architectural and Transportation Barriers Compliance Board (the Access Board) that take effect on August 7, 2000, when they will become part of the Federal Acquisition Regulation (FAR). Agencies must biannually evaluate their compliance with Section 508 and must report the results of these self-evaluations to the Attorney General.

3) **The Vietnam Era Veterans= Readjustment Assistance Act of 1974.** In furtherance of the policy of promoting "the maximum of employment and job advancement opportunities within the Federal Government for disabled veterans and certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement," this act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans' Readjustment Appointment (VRA). The act also ensures that all veterans are considered for employment under merit system rules and requires a separate affirmative action plan for the hiring, placement, and advancement of disabled veterans. Please note, however, that this law does not provide any preferences to disabled veterans or to veterans of the Vietnam era.

4) **The Civil Service Reform Act of 1978** requires Afair and equitable@ treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for privacy and constitutional rights.

5) **The Americans with Disabilities Act (ADA) of 1990** covers employers in the private sector and State and local governments. The substantive employment standards of the ADA which are applicable to the Federal government through the Rehabilitation Act can be found at 42 U.S.C. '' 12111 *et. seq.* and 42 U.S.C. '' 12201-204 and 12210.

6) **The Veterans Education and Employment Program Amendments of 1991** require expanded job opportunities for veterans and disabled veterans through the Veterans Readjustment Appointment (VRA) Authority.

7) **The Architectural Barriers Act**, enforced by the Access Board, requires that

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buildings and facilities be accessible to people with disabilities if they were constructed or altered by or on behalf of the Federal government or with certain Federal funds, or leased for occupancy by Federal agencies, after 1968. When individuals with disabilities are unable to use a building because there are no accessible parking spaces, no curb ramps, no ramps at the entrance, no accessible rest rooms, no accessible drinking fountains, no raised lettering on signs, or other barriers exist, they may file a complaint with the Access Board.

8) **The Pregnancy Discrimination Act** amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. This amendment requires that employers treat pregnancy and related conditions as any other short-term disability.

9) **Title 5, United States Code, Sections 3312 and 3318** require that any disqualification, non-selection, or passover of a veterans= preference eligible applicant for medical reasons must be approved by the Office of Personnel Management before the position can be filled. This includes an agency medical disqualification of a 30 percent or more disabled veteran for assignment to another position in a reduction in force. A non-preference eligible disqualified for medical reasons also has a right to a higher level of review pursuant to OPM regulations set forth in 5 CFR, Section 339.306.

10) **The Family and Medical Leave Act of 1993**(5 U.S.C. ' 6382) requires Federal agencies and departments to allow employees to take up to twelve weeks of leave without pay, provided that the employee or a member of his or her immediate family (spouse, son, daughter, or parent) has a serious health condition and the employee meets several other statutory criteria. The leave may be taken intermittently or on a reduced leave schedule when medically necessary. Agencies may require the employee to transfer temporarily to another position under certain circumstances.

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ROLES AND RESPONSIBILITIES

The following Federal and State entities have responsibilities concerning the employment of people with disabilities:

Equal Employment Opportunity Commission (EEOC)

The EEOC is responsible for regulating and enforcing the Federal program for equal employment opportunity, developing the regulations and policies governing non-discrimination requirements, overseeing of the development and implementation of Federal agencies= affirmative action programs, and adjudicating claims of disability discrimination in the Federal government. Instructions on affirmative action plans for job applicants and employees with disabilities may be found in EEOC=s Management Directives 712 and 713.

EEOC=s Management Directive 713 requires that Federal agencies submit Annual Affirmative Action Program Plans and accomplishment reports. This directive is issued to the EEOC=s obligation and authority under Section 501 of the Rehabilitation Act of 1973.

EEOC is also responsible for approving or disapproving each agency wide affirmative action program plan; evaluating the accomplishments of each agency; and communicating results of evaluations to each agency with instructions for submission of a revised agency wide plan if required. EEOC will work closely with Federal Government personnel to assist in creating and implementing effective affirmative action programs.

Guidelines on reasonable accommodation for people with disabilities and nondiscrimination requirements applicable to all employers have been published by the EEOC. Most of these documents can be downloaded from EEOC=s Internet website at: http://www.eeoc.gov.

In addition, EEOC issues an annual report on employment of individuals with disabilities in the Federal Government to the President and Congress of the United States.

U.S. Office of Personnel Management (OPM)

OPM provides nationwide program leadership, development, and coordination for the employment of people with disabilities, including veterans with service-

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connected disabilities. This includes providing direction, guidance, and technical support to agency heads, directors of personnel, agency personnel offices and officials; developing recruitment policy and appointing authorities; providing information on employment methods and program development to departments and agencies; developing publications for use in promoting employment; developing, monitoring, and modifying examining procedures to facilitate the employment consideration of qualified applicants with disabilities; and developing medical policy and realistic medical and suitability standards.

OPM takes the lead role in promoting reemployment of employees with or recovered from compensable injuries or illnesses, and fostering research and demonstration projects on disability related issues. Further, OPM maintains consistent liaison with the national offices of Federal, private, community, and other organizations concerned with the employment of people with disabilities.

President=s Committee on Employment of People with Disabilities

The President=s Committee on Employment of People with Disabilities (PCEPD) is a small Federal agency whose mission is to communicate, coordinate, and promote public and private efforts to enhance the employment of people with disabilities. The PCEPD provides information, training, and technical assistance related to the employment of people with disabilities. Some of the projects and resources developed by the PCEPD include:

X The Job Accommodation Network (JAN), a toll-free information service on workplace accommodations and the employment provisions of the Americans with Disabilities Act. Anyone may call JAN at (800) 232-9675 or (800) 526-7234. One can also obtain information from the JAN Website: http://www.jan.wvu.edu/english/homeus.htm.

X The Workforce Recruitment Program (WRP) for college students with disabilities, a joint venture with the Department of Defense which identifies college and university students with disabilities seeking summer and permanent jobs. Federal employers may access the candidate database by contacting their agency=s WRP representative.

X Education Kits containing timely fact sheets on disability employment issues. These and a list of publications are available by calling (202) 376-6200.

X The PCEPD=s Website on the Internet is http://www.pcepd.gov. It provides visitors direct access to their publications, speeches, press releases,

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statistical data, workplace laws, and other related topics affecting the employment of persons with disabilities.

Federal Employers

Federal agency managers and supervisors are responsible for the employment and advancement of people with disabilities. This includes recruitment, hiring, training, career development, mentoring support and considering reasonable accommodations when requested.

Career development and promotion opportunities, training, awards, and other similar programs must be an integral part of an agency=s responsibilities towards employees with disabilities.

Further, Federal employers are required to make reasonable accommodations, when requested, to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the agency can demonstrate that the accommodation(s) would impose an undue hardship on the agency. Absent undue hardship, agencies must remove physical barriers as a matter of reasonable accommodation to particular employees for whom necessary facilities are inaccessible.

Federal employers are to establish procedures to ensure that the employment and advancement of people with disabilities meet affirmative action program objectives, diversity planning, emphasis, and accountability. Federal employers should also ensure that there are no personnel or management policies, practices or procedures which unnecessarily restrict hiring, placement and advancement of people with disabilities.

It is illegal for a Federal agency to discriminate in employment against qualified individuals with disabilities. Anyone who believes he or she has been subjected to discrimination on the basis of disability may file a complaint with the employing agency=s equal employment opportunity (EEO) office. Departments and agencies should refer to EEOC=s MD-110 and 29 CFR, Part 1614, for additional guidance on the EEO complaint process.

Other Services and Resources

Many valuable resources exist within the Federal government to help agencies meet

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their legal obligations:

X Equal Employment Opportunity Commission
X U.S. Department of Education:
X Rehabilitation Services Administration;
X Assistive Technology Program;
X U.S. Architectural and Transportation Barriers Compliance Board ("Access Board");
X U.S. Department of Transportation;
X U.S. Department of Veterans Affairs, Vocational Rehabilitation Program;
X President=s Committee on Employment of People with Disabilities and its Job Accommodation Network (JAN); and
X General Services Administration;

Employees with disabilities within the agency are another vital resource. Many of them are active in advocacy groups, serve on agency advisory committees, and are experts on various aspects of disability and rehabilitation. Other resources include:

X Local and State Committees on Employment of People With Disabilities;
X University medical centers and counseling programs;
X Advocacy organizations for persons with disabilities.

State vocational rehabilitation agencies can also be helpful. Vocational rehabilitation counselors are available at State Vocational Rehabilitation Agencies (SVRAs) and their local offices. They can be easily reached by phone. The extent and types of services offered may vary from State to State.

Through these various resources, agencies can find help to:

X Explain disabilities;

X Prepare certification documents;

X Refer qualified applicants and provide follow-up assistance for placements made;

X Provide assistance when individuals with disabilities employed under excepted appointing authorities are upgraded or downgraded or when problems arise with regard to these employees;

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X Evaluate the rehabilitation needs of Federal employees who develop disabilities and advise managers and supervisors about services available;

X Purchase special equipment that individuals with disabilities need to perform their jobs;

X Locate trained readers for persons who have vision impairments, qualified sign language interpreters for persons who have hearing impairments, and personal assistants for individuals with disabilities;

X Advise about modification(s) needed to overcome architectural, transportation, and communication barriers;

X Participate in training programs for Federal employees, managers and supervisors relating to subjects such as reasonable accommodations, modification of jobs or worksites, affirmative action programs, and other related subjects;

X Arrange for Federal employees, managers, and supervisors to tour rehabilitation centers, workshops, campus facilities for students with disabilities, and independent living centers.

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DEFINITIONS AND TERMS

Person with a disability: The Rehabilitation Act of 1973, as amended, defines a person with a disability as an individual who:

X Has a physical or mental impairment which substantially limits one or more of such person=s major life activities (such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). A Aphysical or mental impairment@ means:

1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more systems such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genito-urinary, hemic and lymphatic, skin, and endocrine; or

2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

X Has a record of such an impairment (this means that the person has a history of, or has been classified -or misclassified- as having a mental or physical impairment that substantially limits one or more major life activities); or

X Is regarded as having such an impairment; this includes individuals who are perceived to have disabilities.

Qualified person with a disability: A qualified person with a disability is a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question.

Invisible (hidden) disabilities: These are disabilities that are not readily apparent, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, learning disabilities, and mild mental retardation.

Targeted disabilities: Targeted disabilities, as defined by the Equal Employment Opportunity Commission (EEOC), are disabilities "targeted" for emphasis in affirmative action planning. These are: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine.

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Although the list of targeted disabilities is meant to include those who are most likely to suffer job discrimination, the EEOC recognizes that some disabilities that are not targeted are nevertheless just as severe or more severe than some of the targeted disabilities.

Substance abuse: The Americans with Disabilities Act of 1990 amended the Rehabilitation Act (1973) definition of an individual with a disability to **exclude** Aindividuals currently engaging in the illegal use of drugs@ regardless of whether it can be shown to adversely affect job performance or safety. Federal employers are no longer required to offer a firm choice or last chance agreement[s] unless mandated by agency policy or a collective bargaining agreement. Managers should consult with their agency Human Resources, EEO, and legal counsel.

Persons with Human Immunodeficiency Virus (HIV): Protection under the Rehabilitation Act begins the moment a person becomes infected with HIV.

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HIRING: ISSUES AND OPTIONS

Qualified Job Applicant

Federal employers must not discriminate against qualified job applicants with disabilities.[2] An applicant with a disability is "qualified" if he or she:

X satisfies the agency's job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related and consistent with business necessity; and

X is able to perform those tasks that are essential to the job, with or without reasonable accommodation.[3]

Essential Job Functions

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. Agencies should carefully examine each job to determine which functions or tasks are essential to performance. This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting, or firing.

Agencies should ask the following questions to determine if a job's functions are "essential:"

X Are employees in that position actually required to perform the function?

Ex: If an announcement for a receptionist's position lists "typing" as a requirement, but other receptionists do not actually type as part of their job, the function is not "essential" to the job.

X How many other employees are available to perform the function or among whom the performance of the function can be distributed?

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[2] See section ADefinitions and Terms@ for the definition of "disability."

[3] The term "reasonable accommodation" is discussed in the next section.

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X Would removing the function fundamentally change the job?
X What degree of expertise or skill is required to perform the function?

When asking these questions, the employer should focus on the purpose of the job, not on how the purpose is to be accomplished.

Ex: If a job requires mastery of information contained in technical manuals, this essential function would be "ability to learn technical material," rather than "ability to read technical manuals." People with vision and other reading impairments could perform this function using other means, such as audiotapes.

The same analysis applies to current employees with disabilities who are eligible for promotion consideration. That is, an employee with a disability is "qualified" for all promotions for which a similarly-situated non-disabled person would be eligible, provided that he or she can perform the "essential functions" of the job to which he or she would be promoted, with or without reasonable accommodation.

Individualized Assessment

When determining whether a particular job applicant with a disability can perform the essential functions of a job with or without reasonable accommodation, Federal employers must conduct what is called an "individualized assessment." If this assessment indicates that due to the person's disability, even when given appropriate reasonable accommodations he or she could not perform the essential job functions, or could not perform them without posing a significant risk of substantial harm to the applicant or others, the agency does not have to give further consideration to him or her. The agency must look objectively at the particular person's current ability to perform the essential job functions, with or without reasonable accommodation. Generalized "blanket" exclusions of an entire group of people with a certain disability prevent such individualized assessments. Agencies generally should not make such broad-based exclusions that do not reflect up-to-date medical knowledge and technology or that are based on fears about future medical or worker's compensation costs.

Medical Examinations and Inquiries

An employer must wait until after making a conditional offer of employment before conducting a medical examination of a job applicant. OPM regulations generally prohibit an agency from ordering a medical examination for either an applicant or an employee unless the individual is applying for or occupies a position that is subject

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to specific medical standards, physical requirements, or a medical evaluation program. Medical standards and physical requirements must be job related and be based on the minimum abilities necessary for safe and efficient performance of the duties of the position in question. For additional guidance, see 5 CFR Part 339 and 29 CFR 1614.203(e).

Confidentiality of Disability-Related Personal Information

All information obtained from permissible affirmative action inquiries and post-offer medical examinations and inquiries must be collected and maintained on separate forms, in files that are separate from the standard personnel files, and must be treated as confidential medical records.

Hiring Options

Agency personnel offices work with State vocational rehabilitation agencies (SVRAs), the Department of Veterans Affairs, colleges and universities (e.g., Gallaudet University) and other various organizations to locate and identify qualified people with disabilities. In addition, many Federal employers participate in focused job fairs and campus recruitment visits to identify qualified people with disabilities. Hiring may be accomplished through the competitive hiring process or, if the qualifications are met, through the use of excepted service appointment authorities.

Federal employers may use a variety of hiring options to bring people with disabilities into their workforce. Descriptions of key options are listed below.

Competitive Appointments

Most Federal employees obtain jobs competitively. Applicants apply directly to the hiring departments and agencies for most positions. Federal employers use a variety of assessment tools in evaluating applicants and conducting hiring. If passing a written test is required, special testing arrangements are available, if requested. Once this process is completed, an agency may select from a list of qualified applicants.

OPM has developed the **USAJOBS** Federal employment information system to assist job applicants seeking Federal employment. Job applicants can pursue Federal job opportunities by using any of the automated components of the **USAJOBS**. **USAJOBS** provides worldwide job vacancy information, employment information fact sheets, job applications and forms, and has on-line resume

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development and electronic transmission capabilities. In many instances, job seekers can apply for positions on-line. **USAJOBS** is updated every business day from a database of more than 10,000 worldwide job opportunities. **USAJOBS** is available to job seekers in a variety of formats, ensuring access for customers with differing physical and technological capabilities. It is convenient, user friendly, accessible through the computer or telephone and available 24 hours-a-day, seven days-a-week. The official web site for Federal jobs and employment information may be accessed at **http://*www.usajobs.opm.gov***. An interactive voice response telephone system can be reached at (912) 757-3000 or TDD (912) 744-2299 or at 17 OPM Service Centers located throughout the country (local numbers listed in the blue pages).

Time-limited Appointments

An agency may fill a position using a temporary or term appointment when the need for an employee=s services is not permanent. Temporary appointments are made not to exceed one year, with one 1-year extension. The work must not be permanent in nature. In contrast, term appointments are made for a period of more than one year but not to exceed four years.

Term appointments are appropriate when there is project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

Student Employment Programs

The Student Educational Employment Program helps Federal employers find the right people to fill current and future hiring needs. The program also gives students the opportunity to get hands-on experience in their chosen career field. The program has two major components; Student Temporary Employment and Student Career Experience.

X **Student Temporary Employment** opportunities range from summer jobs to positions that can last as long as the student is enrolled. The Federal job does not have to be related to the student=s academic field of study.

X **Student Career Experience** opportunities include formal periods of work and study while the student attends school. This requires a commitment by the

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student, the school, and the Federal employer. Work experience is directly related to the student=s academic field of study. After successfully completing the educational and work requirements, the student is eligible for permanent job opportunities.

Presidential Management Intern (PMI) Program

The PMI Program is designed to attract to the Federal service outstanding graduate students from a wide variety of academic disciplines who have an interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals eligible to be nominated for the PMI Program are graduate students completing a master's or doctoral-level degree from an accredited college or university during the current academic year.

Students are nominated for the PMI Program by the appropriate dean, director or chairperson of their graduate academic program. All nominees are evaluated by an OPM-developed structured assessment process. Selection as a PMI finalist is based on review of the PMI application and the structured assessment process.

PMIs receive an initial two-year appointment. During the two-year internship, PMIs experience structured orientation and graduation training programs facilitated by OPM, as well as seminars, briefings, conferences, on-the-job training, rotational assignments, and other developmental opportunities arranged by participating Federal employers. After successfully completing the two-year program, PMIs may be eligible for conversion to a permanent position and further promotional opportunities.

Appointment Under Special Authorities

The Federal Government=s hiring options include excepted service special appointing authorities for people with disabilities. Federal employers are authorized to use these authorities when considering certain people with disabilities (those who have severe physical, cognitive, or psychiatric disabilities or who have a history of or who are regarded as having such disabilities). The authorities provide a unique opportunity to demonstrate the potential to successfully perform the essential duties of a position with or without reasonable accommodation in the workplace.

X **Schedule A, 5 CFR 213.3102(t) for Hiring People with Mental Retardation.** This authority is used to appoint persons with cognitive disabilities (mental retardation) who meet the eligibility requirements. Upon completion of 2

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years of satisfactory performance the employee may qualify for conversion to the competitive service.

X **Schedule A, 5 CFR 213.3102(u) for Hiring People With Severe Physical Disabilities.** This authority is used to appoint persons with severe physical disabilities who (1) under a temporary appointment have demonstrated their ability to perform duties satisfactorily; or (2) have been certified by a counselor from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affair=s Vocational Rehabilitation Office as likely to succeed in performance of duties. Upon completion of two years of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

X **Schedule B, 5 CFR 213.3202(k) for Hiring People Who Have Recovered from Mental Illness.** This authority permits appointments at Grades GS-15 and below when filled by individuals who: (I) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Department of Veterans Affairs counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the position to which they will be appointed, and that any residual disability is not job related. Employment under this authority may not exceed two years following each significant period of mental illness.[4]

[4] OPM will issue regulations implementing Executive Order, No. 13124, dated June 4, 1999, providing persons with psychiatric disabilities the same employment opportunities as persons with mental retardation or severe physical disabilities. Until the regulations are final, agencies may continue to use 5 CFR 213.3202(k) and any other appropriate excepted service appointing authorities to appoint persons with psychiatric disabilities

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In addition, Federal employers can use the following authority to provide assistance to employees with disabilities:

X **Schedule A, 5 CFR 213.3102(ll) for Hiring Readers Interpreters, and Other Personal Assistants.** This authority permits appointments of readers, interpreters, and personal assistants for employees with severe disabilities when filled on a full-time, part-time, or intermittent basis. Upon completion of at least one year of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

Disabled Veterans

X **30 Percent or More Disabled Veterans.** Federal employers may give a noncompetitive temporary appointment of more than 60 days (see 5 CFR 316.302(b)(4)) or a term appointment (see 5 CFR 316.402(b)(4)) to a veteran:

X retired from active military service with a disability rating of 30 percent or more; or

X rated by the Department of Veterans Affairs (VA) within the preceding year as having a compensable service-connected disability of 30 percent or more.

There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement. Reasonable accommodations must be provided for any written test.

The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee=s temporary or term appointment.

X **Disabled Veterans Enrolled in VA Training Programs, 5 CFR 315.604.** Disabled veterans who are eligible for training under the Department of Veterans Affairs= (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a Federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA. The training is tailored to individual needs and goals so there is no set length.

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If the training is intended to prepare the individual for eventual appointment in the agency rather than just work experience, the agency must insure that the training will enable the veteran to meet qualification requirements for the position.

Upon successful completion, the VA and the host agency give the veteran a Certificate of Training showing the occupational series and grade level of the position for which he or she has been trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

Certification

An individual who has a physical disability is considered to have met OPM qualification standards for either a temporary competitive service appointment or an excepted service Schedule A appointment when an appropriate certification is received from a State Vocational Rehabilitation Agency (SVRA) or the Department of Veterans Affairs. The certification is prepared by a counselor on the basis of job-site inspection, analysis of job tasks, and evaluation of the proposed appointee=s abilities and disabilities. The certification must state that in the counselor=s judgement the proposed appointee is able to perform the duties of the position and is physically qualified to do the work safely. The certification must be supported by a medical report and a narrative statement documenting the counselor=s conclusions. Factors to be discussed include training, education, work history, modification of job or worksite if needed, and limitations of the proposed appointee.

The certification required for an excepted service Schedule A appointment of an individual who is mentally retarded need only state that the individual has the ability to perform the duties of the position; is physically able to do the job safely; and can maintain himself or herself in the work environment. No medical report is required.

The certification required for appointment of individuals with psychiatric disabilities under an excepted Schedule B appointment must include documentation of a history of mental illness which includes periods of hospitalization or outpatient treatment within the previous two years; a statement by a psychologist or psychiatrist as to the individual=s capability to function in the work setting; and a statement indicating that the individual is currently unemployed or has had a significant period of substantially disrupted employment within the previous two

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years.

Any of these certificates must be maintained in a separate, confidential folder, rather than in the person's official personnel folder (OPF). This material is not to be included or placed into the individual=s OPF or Employee Medical Folder.

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REASONABLE ACCOMMODATION

Federal departments and agencies are required to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency. An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer=s size, financial resources, and the nature and structure of the operation.[5]

A reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment. There are many types of accommodations such as worksite modifications; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, readers; and reassigning employees.

Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, his/her specific disability and the existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. Generally, an individual with a disability must request reasonable accommodation to trigger an agency=s obligation to provide one. In all cases, the applicant or employee should be consulted before an accommodation is made. Accommodations are highly individualized and what may be successful for one individual with a disability may not be appropriate for another. The value and nature of a particular accommodation may be clarified by considering questions such as:

X Does the disability require the reasonable accommodation?

X Does the reasonable accommodation remove the workplace barrier that is preventing the individual from effectively applying for a job, performing a job, or gaining access to the benefits and privileges of employment?

X Will the accommodation give the person the opportunity to function,

[5] Departments and Agencies should consult the Enforcement Guidance on Reasonable Accommodation issued by the EEOC on March 1, 1999. This guidance offers additional information not covered in this document, including discussion between the employer and individual with a disability and modifications that employers are not required to provides as reasonable accommodations.

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participate, or compete on an equal basis with others?

X Are there alternatives that would accomplish the same purpose?

In determining undue hardship, consider the following factors:

X Overall size of the agency, with respect to the number of employees, number and type of facilities, and size of budget;

X Type of agency operation; and

X Nature and cost of the accommodation.

Reasonable accommodations are as varied as the needs of the individuals involved, the type of position in question, and ingenuity of the agency. Some examples are provided below:

Testing with Appropriate Accommodations

Federal employers may not use any test or other selection criterion that screens out or tends to screen out, people with disabilities unless the test is job-related for the position in question and consistent with business necessity. Agencies must select and administer tests to ensure that the scores of applicants or employees who have disabilities that impair sensory, manual, or speaking skills accurately reflect the ability of the applicant to do the job in question rather than disabilities of the employee or applicant.

Modifying Written Examinations: The objective is to eliminate any artificial barriers which would prevent persons with disabilities from demonstrating their capabilities in the examination process. Modification of examination procedures can include modifying test administration methods or modifying exam content.

Consideration should be given to scheduling individual or small group testing, allowing extra time, and using examiners who are aware of the test-taker's disability and have received appropriate training in test administration. Accommodations may include providing auxiliary aids and services leading to effective communication, such as providing Braille, large-print, or tape-recorded tests for persons with vision impairments, tape-recorded tests to people with reading disabilities; scribes or recording devices for persons who have difficulties using their hands to record answers; qualified sign language interpreters or computer-assisted real-time transcription (CART) services to convey spoken portions of tests -- including instructions -- to persons who are deaf; and assistive listening systems and devices for those who are hard of hearing.

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Exam content: If an applicant=s disability causes some part of a test to be unusable or inappropriate, it may be necessary to modify exam content or to develop alternate materials which measure the same knowledge, skills, and abilities that do not screen out people with disabilities. OPM has modified certain examinations for persons with hearing or vision impairments and learning disabilities and may be able to offer advice about types of modifications.

Examination Facilities: Examinations must be offered in accessible facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible parking, etc.), steps should be taken to remove those barriers or, when this is not feasible, to arrange for use of an alternate, accessible location.

Many people with disabilities, even those with significant disabilities, may not need testing accommodations. Testing accommodations are often made for persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons who have limited mobility or motor control of their arms or hands, persons with brain injuries, and persons with learning disabilities such as dyslexia. In many of these instances, extended time for testing may be appropiate, in addition to other types of accommodations.

Restructuring Jobs

Job restructuring is one way of integrating qualified people with disabilities into the workforce. Job restructuring, however, does not alter the essential function of the job. Federal employers should identify which factors make a job incompatible with an individual=s disability and, if possible, eliminate incompatible factors so that the capabilities of the person may be used to the best advantage. This may involve changing job content by isolating and eliminating non-essential duties through reassignment, or altering the way objectives are accomplished.

The following must occur before job restructuring:

X Federal employers must understand the capabilities of individuals and identify limitations prior to job restructuring. The person with a disability should be consulted throughout the process. Supplemental information can be obtained through consultation with disability specialists.

X Careful job analysis to determine the exact demands of positions must also precede job restructuring. Inputs by those with intimate knowledge of the tasks involved, such as supervisors and persons who currently perform the

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job functions or those who have performed them in the past, should be included in the analysis. This enables the most accurate differentiation to be made between essential functions and those which are non-essential and can be reassigned. For a discussion of the steps agencies should take to determine a job=s essential functions, see the discussion at pp. 12-13.

The restructuring and job analysis processes should also be used in creating positions, modifying existing position descriptions, developing recruitment strategies, determining selection criteria, designing performance plans, determining training needs, and other human resource initiatives.

Modifying Worksites

Changes in the work environment and technology will enable some people with disabilities to more effectively perform their duties. Alterations may consist of: rearranging files or shelves to improve accessibility for people who use wheelchairs; using Braille labels for persons with vision impairments; raising or lowering equipment to provide comfortable working heights for people with back injuries; installing special holding devices on desks, machines, or benches for people with mobility impairments; using adaptive technology such as screen readers for people who are blind; or providing special heating or air conditioning units for persons who are sensitive to environmental temperature.

Work locations should be reviewed by supervisors, Disability Employment Program Managers, SVRA and VA -counselors, building managers, and persons with disabilities to identify needed worksite and workstation modifications.

Accessible Facilities

Under section 504 of the Rehabilitation Act, all Federal agencies must ensure that their programs and activities are accessible to persons with disabilities. This does not mean that every element of every Federal facility has to be fully accessible. Rather, it means that agencies must take necessary steps to make all of their programs accessible to persons with disabilities.

Additionally, agencies may have to eliminate architectural barriers as a matter of reasonable accommodation to an individual employee or applicant under section 501 of the Rehabilitation Act. Physical and/or structural changes should be made in order to create as barrier-free an environment as possible, unless doing so would impose an undue hardship. Eliminating architectural barriers through such means as

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ramps, wider doorways, elevators, work platforms, and handrails often make the work facility more usable by all employees, not just those with disabilities.

Adjusting Work Schedules

Some people with disabilities possess great productive potential which is not utilized because they cannot meet the requirements of a standard 40-hour work week. By taking advantage of the flexibility of alternative work schedules, accommodations can be made for various disabilities. For example, people with mobility impairments may find it difficult to maneuver during peak periods on public transportation systems and may require an earlier or later work day. In another instance, employees requiring medical treatments may need a flexible schedule on certain days of a week. Employees requiring shorter hours may be accommodated by use of a part-time schedule or a job sharing arrangement.

Assistive Devices

Many assistive devices are available to people with disabilities. Such devices can ensure successful job performance, enabling people with disabilities to perform tasks they would not otherwise be able to do or to increase the quantity, quality, or efficiency of their work. Before purchasing any assistive equipment, the agency should engage in a meaningful dialogue with the individual requesting the accommodation as to what is needed and/or desired.

Agencies should look to their own resources to fund reasonable accommodations such as obtaining and supporting assistive technology. Federal employers are authorized to purchase equipment if it is determined that the use of the equipment is a reasonable accommodation that will enable an employee with a disability to better perform his or her job. In certain cases, however, the Department of Veterans Affairs or State vocational rehabilitation office may provide the assistive device to the individual requesting a reasonable accommodation if the employee is already a client of that agency or office.

Readers, Interpreters, and other Effective Communication Tools

One key component of reasonable accommodation is to ensure effective communication with employees who have communication-related disabilities, such as those with vision, hearing, or speech impairments. Agencies must provide appropriate "auxiliary aids and services" such as qualified sign language

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interpreters, trained readers, computer-assisted real time transcription services, and alternate format documents (Braille, large print, audio cassette, or computer disk), unless doing so would fundamentally alter the program or impose an undue hardship on the agency.

Readers: Persons who are blind or who have low vision may need trained readers to be able to access information contained in otherwise inaccessible material. For instance, a lawyer who is blind may need a trained reader to read aloud deposition transcripts and correspondence from opposing counsel. Appropriate assistive technology, such as screen readers or Braille displays, can make much computer-based information accessible to someone who is blind or who has low vision, thus reducing (though not eliminating) the employee's reliance on a trained reader.

Interpreters: Persons who are deaf or hard of hearing and who use sign language may need qualified sign language interpreters. Someone is a "qualified sign language interpreter" if he or she can interpret competently, accurately, and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication in the employment setting.

Someone who is deaf and who does not know sign language may benefit from a qualified oral interpreter in certain circumstances. Many people who are deaf learned to communicate using American Sign Language (ASL), rather than English, as their primary means of communication. ASL has a different vocabulary and syntax than English.

While an employee who is deaf or hard of hearing and who uses sign language may not need a qualified sign language interpreter dedicated to his or her full-time use, qualified interpreters should be used in at least the following circumstances:

X employee orientations;
X staff meetings;
X training;
X whenever job duties change or when there is a new major assignment;
X any meetings at which more than two people are involved (it is extremely difficult to follow group discussions by lipreading);
X annual or semi-annual performance evaluation meetings;
X any time when promotion eligibility or disciplinary action is being discussed; and, if needed,
X any other time when efficient and effective communication is important, or when verbal communication will be lengthy: or if a deaf or hard of hearing

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person can show why other forms of communication would be ineffective.

When qualified sign language interpreters are not necessary, such as for relatively short, routine matters, communication with an employee who is deaf may be accomplished by exchanging handwritten notes or typing back and forth on a computer keyboard or TTY.

TTY's: A "TTY" C also known as a "text typewriter" or "TDD" C is a device which allows someone who is deaf or hard of hearing or someone with a speech impairment to communicate by telephone by sending and receiving typed communications. The TTY user can communicate directly with someone else who also uses a TTY, or with those who do not use TTY's by calling a relay operator who will voice the person's typed communication and then type the non-disabled person's spoken communications.

Agencies are encouraged to provide training to all co-workers of persons who use TTY's in how to make and receive calls using the relay system. The Federal Relay Service will provide appropriate training materials upon request. Check your local phone book for the Federal Relay Service number in your area.

Use of Untrained Co-workers as Readers or Interpreters: It is generally inappropriate for an agency to rely on the untrained co-workers of a person who is blind to act as a reader, and nearly always inappropriate for an agency to rely on a co-worker to act as a sign language interpreter for a person who is deaf, unless the co-workers are qualified to do this work and it falls within their job description. Inappropriate reliance on untrained co-workers as readers or sign language interpreters for persons with disabilities is likely to create resentment among all parties: co-workers have their own work to do and people with disabilities have the legal right to effective communication -- which can often only be provided through the use of appropriately trained individuals. Even if co-workers have learned rudimentary signs through daily communication with the person who is deaf, they are unlikely to be able to provide effective communication in an employment setting.

CART C Computer Assisted Real-Time Transcription: CART is a way of making verbal communication accessible to persons who are deaf or hard or hearing and who do not use sign language. It requires a trained person, like a stenographer, to use special equipment to transcribe verbal communication as it is taking place. The transcription may appear on a computer monitor or be projected onto a screen. The

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service is similar to closed captioning of a live television program.

Alternate Format Materials: Agencies must provide alternate format materials or other auxiliary aids and services that will allow persons who have vision impairments full access to written materials used in the course of their employment, including such things as employee manuals and leave and earning statements. Alternate formats include Braille, large print, audio cassette recordings, and electronic copies on computer disks.

Flexible Leave Policies

Federal employers have the authority to adopt flexible leave policies that will accommodate people with disabilities. While the administration of the leave system is subject to certain laws and regulations, departments and agencies can adopt flexible leave policies that will accommodate people with disabilities. Instances may include the following circumstances:

- X When extreme weather conditions make it difficult for employees with mobility impairments to get to or from work. For example, employees are generally expected to report for work after snow removal has been accomplished. However, in many cases, snow removal equipment makes travel by mobility-impaired individuals even more difficult by creating snow drifts at the curb cuts. Federal employers can adopt separate leave policies for such situations, but should identify in advance employees who would be covered by the extended policy.

- X When temporary building conditions adversely affect performance or health, such as extremes of heat or cold which could affect persons with neurological disorders or respiratory ailments.

Leave policies may also include granting extended leave without pay for illness or disability. Whatever flexibility is used, the policies should be carefully detailed to avoid misunderstanding and **the method for determining the length of the leave should** be consistently applied for all appropriate employees.

Reassignment

In cases of current Federal employees who develop disabilities during their employment, or whose disabilities are aggravated during their careers, Federal employers have a responsibility to make a concerted effort for their continued employment. An employee who, because of a disability, is unable to continue to

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perform the essential functions of his or her current position may have options available other than applying for disability retirement. The first step should be to explore the possibility of accommodating the employee in his or her current position. Minor job modifications or changes in the physical environment are often all that is needed to allow an employee with a disability to continue working productively.

Agencies must consider reassignment as a reasonable accommodation when an employee, due to a disability, can no longer continue performing the essential functions of his/her current position, even with reasonable accommodation. A Federal employer should always first attempt to provide reasonable accommodation in an employee=s current position. If that is not possible, then a Federal employer must look for a vacant position that is equivalent to the employee=s current position in terms of a number of factors, including grade, level of work assignments, pay, benefits, and geographic location. If no equivalent vacancy exists, then the employer must look for a lower position that is as close as possible to the employee=s current position. Although this is a non-competitive process, the employee must be qualified for the vacant position. In order to determine the employee=s qualifications for a vacant position, the employer should consult with the employee about his/her work experience, skills, and education.

Eliminating Transportation Barriers

One of the most difficult problems people with disabilities face is transportation to and within the work site. Federal employers can do a great deal to help people with disabilities solve their personal transportation problems. Such assistance can consist of helping employees form car pools, helping people with disabilities locate co-workers with whom they may car pool; or allocate parking spaces to employees with disabilities.

Drivers who provide transportation to Federal employees with disabilities may make use of parking privileges for people with disabilities who ride with them. The General Services Administration has ruled that Federal employers are to give these persons the same priority in assignment of parking spaces that they give persons with disabilities.

Agencies that provide transportation for workers, such as shuttle buses between work sites, must ensure that equivalent accessible transportation is provided to employees with disabilities. Shuttle bus drivers should announce the location of stops to enable persons with vision impairments to use the service effectively.

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Shuttle buses should have lifts for persons who use wheelchairs or alternate equivalent means of transportation should be provided to such individuals.

Services Provided Through Contractors

Agencies must ensure that when support services are provided through contractors, reasonable accommodations are provided to persons with disabilities who use those services. For instance, if an agency contracts with a computer firm to provide software training, the agency must ensure that training for an employee who is deaf is communicated effectively to that employee, usually by a qualified sign language interpreter. Training materials provided by the contractor must be made accessible to persons who have vision impairments, such as by putting them in Braille, large print, audio tape, or on computer disk, depending on what would be effective for the person with a disability.

Minimal Cost Accommodations

In many cases, the cost of a job or work environment accommodation can be minimal. A few examples are as follows:

X To accommodate a person who uses a wheelchair, reasonable accommodations may include the ability to access the building, the office, and files. The desk must be the right height to accommodate the wheelchair. This may be accomplished by raising the desk using wooden blocks to prop it up, and then moving furniture so that the employee may move around the office. Files can be placed to make them easily accessible.

X An individual with arthritis experiencing difficulty with maintaining stamina during the workday may be accommodated by providing flexibility in work hours, and a recliner to allow change in body positions to cut down on fatigue.

X Visual aids, screen readers, and enlargers; voice activated software; and refreshable Braille displays may assist people who are blind or have vision impairments. Initial contact should start with the person with a disability and the office responsible for information technology (IT) management.

Federal employers wishing to learn more about reasonable accommodation policies and guidelines may wish to contact EEOC. Free copies of the EEOC's published guidance on reasonable accommodation and other issues pertaining to non-

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discrimination against people with disabilities can be obtained by calling (800) 669-3362 (v), and TTY (800) 800-3302. They can also be reviewed at EEOC=s website: http://www.eeoc.gov.

Other resources for technology-related technical assistance and accommodation assessment are the Assistive Technology Program at the Department of Education, the Computer/Electronic Accommodations Program (CAP) at the Department of Defense, and the Center for Information Technology Accommodation at the Office of Government Wide Policy at General Services Administration.

Other Types of Modifications

There are various modifications or assistance that are not legally required as reasonable accommodations, but that can provide enormous benefits to both the individual with a disability and the employer. Federal employers should consider training employees with disabilities for positions for which they have the basic qualifications and capabilities. Although there are initial expenses involved, the result will often justify the expenditure if the employee and the position are matched carefully beforehand.

Ex: Federal employers should consider training individuals with disabilities for positions for which the do not have the basic qualifications and capabilities, where such employees can be expected to obtain them through retraining.

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WORKING WITH PEOPLE WITH DIFFERENT DISABILITIES

People with Mobility Impairments

Countless injuries, diseases, and conditions can cause mobility impairments that affect an individual=s ability to find and keep a job. Some disabilities are acquired at birth. Others stem from accidents or illnesses later in life. Basic mobility, coordination and balance, strength and endurance, and other aspects of body function may be affected.

Many people who have mobility impairments use adaptive equipment of one kind or another. Mobility aids such as canes, crutches, walkers, and wheelchairs are especially common. Prosthetic devices (such as artificial arms or legs), and body braces may also be used. Some people with mobility impairments use service animals to assist them with carrying or retrieving items, opening doors, and achieving greater independence.

One may wish to consider the following suggestions when interacting with individuals who have mobility impairments:

X When scheduling a job interview or meeting, make sure the location does not have any barriers such as a step at the threshold or inadequate accessible parking.

X Do not hold the person=s wheelchair or assume the individual wants to be pushed; always ask first.

X A wheelchair is considered part of the person=s personal space. Offer assistance but do not insist. If the person needs help, he or she will accept the offer and explain exactly what will be helpful.

X For prolonged conversations with someone who uses a wheelchair, sit down so as to be at the eye level of the wheelchair user.

X Do not be surprised if the person transfers from a wheelchair to a piece of furniture or gets out of the wheelchair to move about. Not all wheelchair users have paralysis; many can walk with or without the aid of canes, braces, or crutches.

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$ If a person uses crutches, a walker, or some other assistive equipment, offer assistance with coats, bags, or other belongings.

X Ensure extra maneuvering space and non-slip floor coverings for the safety of a person who uses crutches or a walker.

X Do not be sensitive about using words like Awalking@ or Arunning.@ People who use wheelchairs often use the same words.

People Who Are Blind or Who Have Vision Impairments

The terms "blindness" and "vision impairment" may mean either a complete or partial loss of vision. With many, only the edges or a part of the visual field may be obscured, or there may be no central vision although side or peripheral vision still exists. A person=s visual acuity may also change under different light conditions.

Many people who are blind get around on their own by using a guide dog or cane. People with vision impairments may or may not use these or other mobility aids. For many jobs, even those requiring lots of reading vision simply is not necessary. Successful employment of people who are blind or who have vision impairments depends upon thorough job analysis, enlightened employer acceptance, and proper management support. One may wish to consider the following suggestions when interacting with individuals who are blind or who have vision impairments:

X If the person seems to need assistance, offer one=s services. If a person who is blind needs guidance through a door or to a chair, let the person take one=s arm and follow the motion of one=s body. Tell him or her where the chair is in relation to his or her body. If one approaches steps, mention how many and the direction.

X Speak directly to the individual who is blind or who has a vision impairment. Speak in a normal tone of voice.

X Introduce other people in the room or have them introduce themselves. This will assist the individual in orienting himself or herself to the room and its occupants.

X Never touch or distract a service guide dog without first asking the owner. Service animals are not pets and generally should not be disturbed while in a working mode.

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X When giving directions, do not use references a person cannot see. AOver there@ is not a good way of describing a location. When using directional words, use them with the orientation of the person who is blind or who has a vision impairment.

X Tell the individual when one is leaving the room.

X When guiding a person into a new or strange surrounding, one may want to describe special features or decorations.

X One should be prepared to read aloud information that is written, or ask the person if he or she could use the services of a trained reader.

X When interviewing or meeting with people with vision impairments, ask whether they would prefer a well-lit area. Avoid sharp contrasts of light and dark areas.

People Who Are Deaf or Hard of Hearing

Individuals may be deaf or hard of hearing and be able to speak clearly. They may be placed in almost any type of position, except those for which acute hearing is a legitimate safety requirement. Even in those circumstances, an individualized assessment should be performed. Extra time may be required in settings where there is a lot of verbal communication, such as interviews and meetings.

Communication difficulties should not be regarded as indicative of more extensive impairments and should not be allowed to obscure an applicant=s knowledge, skills and abilities. In many situations, it is necessary to obtain the services of a qualified sign language interpreter to provide effective communication, if the person who is deaf or hard of hearing uses sign language as his or her primary means of communication. Other accommodations that may be required include the use of assistive listening systems and devices for persons who are hard of hearing, or computer-assisted real-time transcription (CART).

One may wish to consider the following suggestions when interacting with individuals who are deaf or hard of hearing:

X When speaking with someone who is deaf or hard of hearing, face the person directly. Gain his or her visual attention before starting a conversation. For instance, if you are entering his or her office and the

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person's back is to you, flicker the room lights.

X When speaking to persons who are deaf or hard of hearing, use meaningful facial expressions and gestures to emphasize one=s intent and attitude. This helps to substitute for one's tone of voice. Try to find a quiet place away from computers, telephones, and other sources of noise, and one which has adequate lighting.

X Not all people who are deaf or hard of hearing know or use sign language. Do not assume they need interpreters.

X If using a sign language or oral interpreter, speak directly to the person with the hearing impairment, not the interpreter. Face the light, speak clearly, in a normal tone of voice, and keep one=s hands away from one=s face.

X If one cannot understand the person with a hearing impairment, do not be afraid to ask him or her to repeat. If this approach does not work, one can say if it would be helpful to communicate by writing or using a computer terminal.

People with Invisible (Hidden) Disabilities

There are many invisible disabilities such as asthma, arthritis, heart disease, environmental illness, AIDS, chronic fatigue, psychiatric or mental illnesses, attention deficit hyperactivity disorder, learning disabilities, and mild mental retardation. If an applicant brings the condition to the prospective employer=s attention, one may ask whether the condition might have an impact on his or her work and if there are any necessary accommodations. For additional information regarding a description of invisible disabilities, please see the resources section of this handbook.

People with Mental Retardation

Many people with mental retardation have average or superior abilities in some respects. While it is true that some people with mental retardation may not be able to think, reason or remember as well as others, it is important to remember that, like others, they have their own strengths and weaknesses. Mental retardation should not be confused with mental illness or behavioral and emotional problems. The effect of the disability can be lessened, and skills and abilities increased, through rehabilitation, education, and experience on the job.

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People with mental retardation, like others, may want to be independent and responsible for their own support. The object should be to reduce the need for learning details, exercising judgment, and finding new solutions to problems.

Success on the job often depends upon the willingness of others to devote reasonable time and interest to helping the individual adjust initially and meet new challenges as they arise. One of the greatest obstacles to equal employment opportunity for these individuals is persistent lack of employer confidence in, and lowered expectations of their capabilities.

One may wish to consider the following suggestions when interacting with individuals with mental retardation:

X For the most part, one should talk to the individual in the same manner as anyone else, but be more specific.

X In an interview setting, ask questions and occasionally repeat responses to ensure effective communication.

X Provide information as to where things are located, such as time clock, lockers, restroom, cafeteria, drinking fountain, supply room, etc.

X Take care to explain about working hours, proper dress for the job, work station location, rate of pay, reporting official, and transportation options.

People with Psychiatric Disabilities

Psychiatric disabilities are diverse and include anxiety disorders, depression, mania, schizophrenia, and other conditions. One may wish to consider the following suggestions when interacting with individuals who have a psychiatric disability:

X Talk to the individual as one would to anyone else. Integrate the person as fully into office activities as other employees. Do not ostracize him or her due to his psychiatric condition.

X As many psychiatric medications cause extreme thirst, upon request allow the person to have access to beverages even where food and drink are normally prohibited.

X Consider offering a flexible schedule to allow the person to attend medical

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appointments and therapy sessions and to deal with medication issues, insomnia, fatigue, or other conditions that often accompany psychiatric disabilities.

People with Muscular or Neurological Limitations

Muscular or neurological disabilities may affect motor ability and/or speech. Intelligence is not affected. Some involuntary or halting movement or limitation of movement in one or more than one appendage may be observed, as well as some lisping, indistinct speech or flatness of tone due to lack of fine motor control of the tongue and lips. The severity and functional effects of the disability vary from person to person. Unless the person has a significant disability, or has the involvement of other disabilities, no accommodation may be needed during an interview setting or meeting.

If the person=s speech is difficult to understand, ask him or her to repeat what was said. Some people who have significant cerebral palsy or other muscular or neurological disabilities may communicate by writing, typing, or using a communication board or other electronic device.

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INTEGRATING PEOPLE WITH DISABILITIES INTO THE WORKFORCE

The President=s Committee on Employment of People with Disabilities has a six-step process for integration. It consists of:

1) **Commitment** - Let the people in the agency know of the commitment to employ, advance and retain people with disabilities. Workforce diversity includes people with disabilities.

2) **Recruitment** - Let the Personnel/Human Resource office and Disability Employment Program Managers know that one is aggressively seeking job candidates with disabilities. Send agency vacancy announcements to disability-related organizations and Federal employers. State the agency=s interest in receiving applications from people with disabilities on the job announcement.

3) **Interviewing** - Look at the essential functions and competency requirements of the job, the qualifications of the individual, and the availability of reasonable accommodations. Do not let the disability distract from evaluating the candidate=s qualifications.

4) **Placement** - Test accommodations and adaptations once the person is on the job. Ask the employee with a disability to help in the process.

5) **Training** - Any employee=s success hinges on proper orientation and training. Insure that all such agency programs are available and accessible to employees with disabilities. This includes training programs that may lead to upward mobility and career advancement.

6) **Awareness/Sensitivity** - Train managers, supervisors, and employees about disability myths and misconceptions. An educated workforce will be betterable to ensure the success of employees with disabilities.

Interviewing

Interviewing people with disabilities is the same as interviewing people who do not have disabilities. In general, the selecting official should ask all applicants about their qualifications, experience, and skills for doing the job. However, there are

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some guidelines that are specific to people with disabilities. Unless an individual is seeking appointment under one of the special excepted appointment authorities, a selecting official should only ask questions about the person=s ability to do the job. The office should make sure that all questions are job-related. The focus of the interview should be on the individual=s ability to successfully perform the essential functions of the job and demonstrating the competencies or knowledge, skills, and abilities needed to perform the job. Understanding what are the job's essential functions and the competencies required to perform those functions is particularly important to prepare for applicant interviews.

If the person volunteers that he or she has a disability which makes it difficult to perform particular functions of a job, or if the selecting official believes that a person=s readily-apparent disability may make it difficult to perform certain job functions, the selecting official may ask job-related follow-up questions, such as, ADescribe how you can perform the job.@ The answer to such questions will indicate whether a reasonable accommodation is needed to enable the individual to perform the essential functions of the job. In addition to asking a job applicant with a visible disability how he or she can perform the job, and employer may also ask, ADo you need a reasonable accommodation?@

It is the responsibility of the job applicant to inform the employer of any accommodation needs, but once the issue has been raised, the employer and prospective employee should engage in a meaningful dialogue about the job functions and how they can be accomplished. Employers should not make general assumptions that an individual with a disability will be unable to do a certain part of the job or that a reasonable accommodation will be needed. Hiring decisions should never take into account the additional costs associated with providing a reasonable accommodation to an applicant with a disability, unless the applicant could not perform the essential job functions without a specific reasonable accommodation that was so expensive that it would impose an undue hardship on the agency.

Career Development

One of the major problems facing many people with disabilities is underutilization of their knowledge, skills, and abilities. Developmental details and reassignments can be used as a means of providing on-the-job training which will enhance promotion opportunities. In addition, it is easy to fall into the trap of isolating employees with disabilities from others. Employees with disabilities should have opportunities to not only work with others on group projects, but, when appropriate, to take on leadership roles.

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Federal employers should ensure that employees with disabilities are given full consideration for inclusion in upward mobility programs and that they are aware of career counseling. Recognize that people with disabilities have career goals. Agency managers should sit down with employees and talk about goals. Identify role models and mentors for employees with disabilities or encourage them to do so. Every effort should be made to ensure that employees with disabilities, like others, are given the opportunity to reach their maximum potential.

Performance Evaluations

Employees with disabilities will be held accountable for their work performance. Supervisors are responsible for communicating performance expectations to their employees and monitoring and appraising their work. When the individual with a disability begins a job, he or she should be given a clear description of all job functions, including those that are essential. All employees should be provided with encouragement and feedback regarding their work performance. It is important to ensure that when evaluating people with disabilities, aspects of their physical or mental disabilities are not held against them. They should be evaluated for their ability to do the job with any appropriate reasonable accommodations. For example, it would be inappropriate to negatively evaluate an individual who uses a wheelchair for not attending a meeting held in a physically inaccessible building.

If an employee with a disability cannot satisfactorily perform the essential functions of his or her job after a full and fair trial period and with appropriate reasonable accommodations, then his or her employment should be terminated. The same job-related performance criteria should be applied to employees with disabilities that is applied to others. If it becomes necessary to terminate the appointment of an employee with a disability, the agency=s Human Resources or Personnel Office will help in making this decision and taking appropriate action.

Awards

People with disabilities should have equal opportunity to receive incentive awards (special achievement/act or performance), quality step increases, and all other agency-sponsored or non-agency sponsored awards. Efforts should not be limited to special awards programs geared specifically to employees with disabilities.

Training

Give employees with disabilities an equal chance to benefit from training and

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development opportunities. Ensure that classes are held in accessible facilities, and, as necessary to provide effective communication, that materials are available in electronic format, large print, Braille, or audio cassette for persons with vision impairments, trained note-takers and qualified sign language interpreters or computer-assisted real-time transcription services are provided for persons who are deaf or hard of hearing, assistive listening systems and devices are provided for persons who are hard of hearing, and other appropriate reasonable accommodations are made. Any training that would provide growth opportunities to allow employees with disabilities to advance in their careers should be encouraged. Such training could include developmental detail assignments, lateral reassignments, and leadership training.

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PROMOTING THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

Communication is the key to increasing organizational understanding and support for the employment of people with disabilities. The positive portrayal of employees with disabilities can greatly affect the public=s and co-workers' perception of, and enhance the self-esteem of, such employees. There are a number of target groups to be reached: people with disabilities, advocacy and rehabilitation organizations, the agency workforce, students, and community groups.

Communicating messages or events such as planned initiatives, programs or exhibits, employee success stories, activities and accomplishments, and training and career development opportunities will enhance the employment and advancement of people with disabilities. One of the most effective media for some messages are internal memorandums or personal contact with the organization head, managers, supervisors and employees. Messages may also be integrated into existing media (e.g., an agency newsletter). Other communications media include:

- X Agency publications and flyers
- X Bulletin boards
- X Press releases
- X Film or slide-tape presentations
- X Local newspapers
- X Local radio and television stations
- X Chambers of Commerce
- X Trade and technical magazines
- X Community organizations newsletters
- X Accessible Internet or Intranet sites

An agency=s public affairs office may be able to assist in preparing professional copy or in maximizing one=s communication tools. Outside organizations such as the PCEPD, Veterans= Service Organizations (VSOs), State and VA Vocational Rehabilitation Centers, and local news media may be able to help in the preparation of materials.

Experience has shown that programs and initiatives require dedicated and sustained support from departmental and agency leadership to achieve success. Thus, a clearly articulated commitment of agency leadership to achieving the goal of greater inclusion for adults with disabilities in the Federal workforce is critical to

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transforming such an aim into reality.

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APPENDIX 1: FEDERAL RESOURCES

1) **President=s Committee on Employment of People with Disabilities (PCEPD)**
1331 F Street, NW
Washington, DC 20004-1107
Phone: (V) (202) 376-6200
(TDD) (202) 376-6205

Website: http://www.pcepd.gov
EMAIL: info@pcepd.gov

2) **President=s Committee Job Accommodation Network (JAN)**
918 Chestnut Ridge Road, Suite 1
West Virginia University - PO Box 6080
Morgantown, WV 26506-6080
Phone: (V) (800) 526-7234
(TDD) (800) 232-9675

Website: http://www.pcepd.gov and click on JAN or go directly to JAN at http://janweb.icdi.wvu.edu/english/homeus.htm

3) **Equal Employment Opportunity Commission**
1801 L Street NW (Federal Sector Programs)
Washington, DC 20507
Phone: (V) (800) 669-3362
(TDD) (800) 800-3302

Website: http://www.eeoc.gov

For specific Federal employment questions, call the AATTORNEY OF THE DAY@ at (202) 663-4599.

4) **Department of Labor: Office of Federal Contractor Compliance Programs (OFCCP)**
Department of Labor
Frances Perkins Building,
200 Constitution Avenue NW
Washington, DC 20210
Phone: (V) (888) 376-3227
(V) (202) 219-9475
(TDD) (202) 208-0452

Website: http://www.dol.gov/dol/esa

5) **U.S. Office of Personnel Management**[for Federal employment information]
1900 E Street, NW
Washington, DC 20415
Phone: (V) (202) 606-2700
(TDD) (912) 744-2299

Website: http://www.opm.gov

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APPENDIX 2: STATE AND VA VOCATIONAL REHABILITATION AGENCIES

State Vocational and Rehabilitation Agencies provide a number of services for persons with disabilities. Services include counseling, evaluation, training, and job placement. For more information, call or write the office nearest you. Internet addresses for each agency can be accessed at:

www.nchrtm.okstate.edu/ncrtm_links/state_VR.html

ALABAMA
Dept. of Rehabilitation Services
PO Box 11586
Montgomery, AL 36111-0586
(334) 281-8780
Toll free: (800) 441-7607

ALASKA
Division of Vocational Rehabilitation
801 W. 10th Street, Suite 200
Juneau, AK 99801-1894
Voice/TDD: (907) 465-2814
Toll Free: (800) 478-2815

ARIZONA
Rehabilitation Services Admin. (930A)
1789 West Jefferson, NW (2nd Floor)
Phoenix, AZ 85007
(602) 542-3332
Voice/TDD: (602) 542-6049

ARKANSAS
Department of Education
Arkansas Rehabilitation Services
Div. of Vocational & Technical Education
PO Box 3781
Little Rock, AR 72203
(501) 296-1616
Toll Free: (800) 330-0632

CALIFORNIA
Department of Rehabilitation
830 K Street Mall
Sacramento, CA 95814
Voice/TDD: (916) 445-3971

COLORADO
Division of Vocational Rehabilitation
110 16th Street, 2nd Floor
Denver, CO 80202
Voice/TDD: (303) 620-4153

CONNECTICUT
State Department of Social Services
Bureau of Rehabilitation Services
Division of Client Services
10 Griffin Road North
Windsor, CT 06095
(860) 298-2000
Toll Free: (800) 537-2549
TDD: (860) 298-2231

DELAWARE
Department of Labor
Division of Vocational Rehabilitation
4425 North Market Street
PO Box 9969
Wilmington, DE 19809-0969
(302) 761-8300
Voice/TDD: (302) 761-8349

DISTRICT OF COLUMBIA
Department of Human Services

DC Rehabilitation Services Administration
800 9th Street, SW, Fourth Floor

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Washington, DC 20024
(202) 645-5703

FLORIDA
Dept. of Labor and Employment Security
Division of Vocational Rehabilitation
2002 Old Augustine Road, Building A
Tallahassee, FL 32399-0696
(850) 488-6210
Voice/TDD: (850) 488-2867

GEORGIA
Department of Human Resources
Division of Rehabilitation Services
2 Peachtree Street, NW, 23rd Floor
Atlanta, GA 30330-3166
Voice/TDD: (404) 657-3000

GUAM
Department of Vocational Rehabilitation
122 Harmon Plaza, Room B-201
Harmon Industrial Park, GU 96911
011-671-475-4645
001-671-475-4635 (Consumer Information)

HAWAII
Department of Human Services
Division of Vocational Rehabilitation
and Services for the Blind
PO Box 339
Honolulu, HI 96809
(808) 586-5355
(808) 586-5366

IDAHO
Division of Vocational Rehabilitation
650 West State-L. B. Jordan Bldg, Rm 150
Boise, ID 83720-0096
Voice/TDD: (208) 334-3390
Toll Free: (800) 856-2720

LOUISIANA
Department of Social Services
Louisiana Rehabilitation Services
8225 Florida Blvd.
Baton Rouge, LA 70806-4834
(504) 925-4168
Toll free: (800) 737-2958
Voice/TDD: (504) 925-4179

ILLINOIS
Department of Rehabilitation Services
623 East Adams Street
Springfield, IL 62794
(217) 785-0218
Toll Free: (800)ASK-DORIS
TDD: (217) 782-5734

INDIANA
Division of Disability, Aging and
Rehabilitation Services
402 West Washington Street, Rm W-451
PO Box 7083
Indianapolis, IN 46207-7083
(317) 232-1147
Toll free: (800) 545-7763
TDD Toll free: (800) 962-8408

IOWA
Department of Education
Div. of Vocational Rehabilitation Services
510 East 12th Street
Des Moines, IA 50319
Voice/TDD: (515) 281-4311
Toll free: (800) 532-1486

KANSAS
Dept. of Social and Rehabilitation Services
300 SW Oakley-Biddle Building, 1st Floor
Topeka, KS 66606
(913) 296-3911
TDD: (913) 296-7029

KENTUCKY
Department of Vocational Rehabilitation
209 Street Clair
Frankfort, KY 40601
Voice/TDD: (502) 564-4440
Toll free: (800) 372-7172
TDD: (502) 564-6742

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MAINE
Department of Labor,
Division of Vocational Rehabilitation
35 Anthony Avenue
Augusta,, ME 04333-0150
(207) 624-5300
Toll free: (800) 332-1003
Voice/TDD: (207) 624-5322

MARIANA ISLANDS
Vocational Rehabilitation Division
Comm. of Northern Mariana Islands
PO Box 1521
Saipan, Mariana Islands 96950
011-670-234-6538

MARYLAND
State Department of Education
Division of Rehabilitation Services
2301 Argonne Drive
Baltimore, MD 21218
(410) 554-9385
TDD: (410) 554-9412

MASSACHUSETTS
Massachusetts Rehabilitation Commission
4 Point Place, 27-43 Wormwood Street
Boston, MA 02210
(617) 727-2172
TDD: (617) 727-9063

MICHIGAN
Michigan Rehabilitation Services
Michigan Jobs Commission
PO Box 30010
Lansing, MI 48909
(517) 373-3390
Toll free: (800) 605-6722
TDD: (517) 373-4035

Family Independence Agency
Disability Determination Service
PO Box 30011
Lansing, MI 48909
(517) 373-7830
(517) 373-4533
Toll free: (800) 366-3404

MINNESOTA
Department of Economics and Security
Rehabilitation Services Branch
390 North Robert Street, 5th Floor
Street Paul, MN 55101
(612) 296-1822
TDD: (612) 296-3900

MISSISSIPPI
Department of Rehabilitation Services
Vocational Rehabilitation Division
1281 Highway 51
PO Box 22806
Madison, MS 39110
(601) 853-5100
Toll free: (800) 443-1000

MISSOURI
State Department of Education
Division of Vocational Rehabilitation
3024 W. Truman Blvd.
Jefferson City, MO 65109
Voice/TDD: (573) 751-3251

MONTANA
Dept. of Public Health & Human Services
Disability Services Division
PO Box 4210
Helena, MT 59604-4210
Voice/TDD: (406) 444-2590

NEBRASKA
State Department of Education
Div. of Vocational Rehabilitation Services
PO Box 94987
Lincoln, NE 68509

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(402) 471-3649
Voice/TDD: (402) 471-3659

NEVADA
Nevada Rehabilitation Division
505 East King Street, Room 502
Carson City, NV 89710
Voice/TDD: (702) 687-4440

NEW HAMPSHIRE
State Department of Education
Division of Adult Learning & Rehabilitation
78 Regional Drive, Bldg 2
Concord, NH 03301
Voice/TDD: (603) 271-3471

NEW JERSEY
Div. of Vocational Rehabilitation Services
135 East State Street, CN 398
Trenton, NJ 08625-0398
(609) 292-5987
Voice/TDD: (609) 292-2919

NEW MEXICO
Department of Education
Division of Vocational Rehabilitation
435 Street Michaels Drive, Bldg D
Santa Fe, NM 87505
Toll free: (800) 235-5387
Voice/TDD: (505) 827-3500

NEW YORK
New York State Education Department
Office of Vocational and Educational
Services for Individuals with Disabilities
One Commerce Plaza, Room 1606
Albany, NY 12234
Division of Vocational Rehabilitation
Human Resources Bldg,
500 Summer Street, N.E.
Salem, OR 97310-1018
(503) 945-5880
TDD: (503) 378-3933

PENNSYLVANIA
(518) 474-2714
Toll free: (800) 222-JOBS
TDD: (518) 486-3773

NORTH CAROLINA
Department of Human Resources
Div. of Vocational Rehabilitation Services
PO Box 26053
Raleigh, NC 27611
(919) 733-3364
Voice/TDD: (919) 733-5924

NORTH DAKOTA
Department of Human Services
Division of Vocational Rehabilitation
Dacotah Foundation Bldg
600 S. Second Street, Suite IB
Bismarck, ND 58504-5729
(701) 328-8950
Toll free: (800) 755-2745
TDD: (701) 328-8968

OHIO
Rehabilitation Services Commission
400 East Campus View Blvd.
Columbus, OH 43235-4604
Voice/TDD: (614) 438-1210
Toll free: (800) 282-4536, ext. 1210

OKLAHOMA
Department of Rehabilitation Services
3535 NW 58, Suite 500
Oklahoma City, OK 73112
(405) 951-3400

OREGON
Department of Human Resources
Office of Vocational Rehabilitation
Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17120
(717) 787-5244
Voice/TDD: (717) 783-8917
Toll free: (800) 442-6351

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PUERTO RICO
Administration for Vocational Rehabilitation
PO Box 191118
San Juan, PR 00919-1118
(809) 725-1792

RHODE ISLAND
Department of Human Services
Office of Rehabilitation Services
40 Fountain Street
Providence, RI 02903-1898
(401) 421-7005
TDD: (401) 421-7016

SOUTH CAROLINA
Vocational Rehabilitation Department
1410 Boston Avenue
PO Box 15
West Columbia, SC 29171
(803) 896-6504
Voice/TDD: (803) 896-6635

SOUTH DAKOTA
Department of Human Services
Division of Rehabilitation Services
East Highway 34, Hillsview Plaza
c/o 500 E. Capitol
Pierre, SD 57501-5070
Voice/TDD: (605) 773-3195
Toll free: (800) 265-9684

TENNESSEE
Rehabilitation Services
Department of Human Services
Citizens Plaza State Office Bldg
400 Deaderick Street, 15th Floor
Nashville, TN 37248-0060
Voice/TDD: (615) 313-4714

TEXAS
Texas Rehabilitation Commission
4900 North Lamar
Austin, TX 78751
(512) 483-4001
Toll free: (800) 628-5115

UTAH
Utah State Office of Rehabilitation
250 East Fifth South
Salt Lake City, UT 84111
Voice/TDD: (801) 538-7530
Toll free: (800) 473-7530

VERMONT
Vocational Rehabilitation Division
103 South Main Street
Waterbury, VT 05671-2303
Voice/TDD: (802) 241-2186

VIRGIN ISLANDS
Virgin Islands Dept. of Human Services
Div. for Disabilities and Rehabilitation Services
1303 Hospital Ground, Hansen Complex
Saint Thomas, VI 00802
(809) 774-0930

VIRGINIA
Department of Rehabilitation Services
4901 Fitzhugh Avenue
PO Box 11045
Richmond, VA 23230
(804) 367-0316
Voice/TDD: (804) 367-0315
Toll free: (800) 552-5019

WASHINGTON
Department of Social and Health Services
Division of Vocational Rehabilitation
PO Box 45340
Olympia, WA 98504-5340
Voice/TDD: (360) 427-2135
Toll free: (800) 637-5627

WEST VIRGINIA
Division of Rehabilitation Services
State Capitol Complex

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Charleston, WV 25305-0890
(304) 766-4600
Voice/TDD: (304) 766-4970
Toll free: (800) 642-3021

WISCONSIN
Department of Workforce Development
Division of Vocational Rehabilitation
2917 International Lane, 3rd Floor
PO Box 7852
Madison, WI 53707-7852
(608) 243-5600
TDD: (608) 243-5601

WYOMING
Department of Employment
Division of Vocational Rehabilitation
1 East Herschler Building
Cheyenne, WY 82002
(307) 777-7385
Voice/TDD: (307) 777-7389

APPENDIX 3: REFERENCES AND REGULATIONS

I. General Medical Personnel Guidance

Law:

A. The Americans with Disabilities Act of 1990 - 42 U.S.C. '' 12101 et seq.

B. The Rehabilitation Act of 1973, as amended, 29 U.S.C. ' 701, et seq.; See also, 29 U.S.C. '' 791(g), 794(d) (Incorporating standards of Americans with Disabilities Act into the Rehabilitation Act)

C. The Family and Medical Leave Act of 1993, Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, et seq. Title I of the Act applies to non-Federal employees and certain Federal employees and is administered by the Department of Labor. Title II of the Act applies to most Federal employees and is administered by the Office of Personnel Management.

Regulation:

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A. 5 CFR 339, Medical Qualification Determinations, March 8, 1989

B. 29 CFR 1614, Equal Employment Opportunity Commission

NOTE: Part 1614 of the Federal sector Equal Employment Opportunity (EEO) complaint processing regulations replace part 1613, with the objective of promoting greater administrative fairness in the investigation and consideration of Federal sector EEO complaint by creating a process that is quicker and more efficient. Every Federal employee and applicant for Federal employment has the right to use the administrative EEO discrimination complaints process.

C. For most Federal employees, 5 CFR Part 630, Subpart L, Family and Medical Leave.

D. For certain Federal employees, including Postal Service employees, 29 CFR Part 825, The Family and Medical Leave Act of 1993.

Information:

A. Equal Employment Opportunity Commission (EEOC)

1. EEOC - *ADA Enforcement Guidance: Preemployment Disability Related Questions and Medical Examinations*, October 10, 1995

   NOTE: This document provides the EEOC=s position under the Americans with Disabilities Act of 1990, on preemployment disability-related questions and medical examinations.

2. EEOC - *EEOC Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities*, March 25, 1997

   NOTE: This guidance is designed to facilitate the full enforcement of the ADA with respect to individuals alleging employment discrimination based on psychiatric disabilities; respond to questions and concerns expressed by individuals with psychiatric disabilities regarding ADA; and answer questions posed by employers about how principles of ADA analysis apply in the context of psychiatric disabilities.

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3. EEOC - *The Family and Medical Leave Act, The Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964*

   NOTE: This fact sheet was prepared by the Equal Opportunity Commission=s (EEOC) Office of Legal Counsel. It is intended to provide technical assistance on some common questions that have arisen about the Americans with Disabilities Act of 1990 (ADA) and Title VII of the Civil Rights Act of 1964 when the Family and Medical Leave Act of 1993 (FMLA) also applies.

4. EEOC - *Compliance Manual Section on the Definition of the Term ADisability@*

5. EEOC - *Interim Enforcement Guidance on the Application of the ADA to the Disability-based Distinctions in Employer Provided Health Insurance*

6. EEOC - *Questions and Answers About Disability and Service Retirement Plans Under the ADA*

7. EEOC - *Enforcement Guidance on Workers= Compensation and the ADA*

8. EEOC - *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA*

9. EEOC - *Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person is a AQualified Individual with a Disability@*

B. U.S. Office of Personnel Management (OPM)

1. OPM - *Operating Manual - Qualification Standards for General Schedule Positions*, August 1994

2. OPM - *The Role of the Agency Medical Review Officer (MRO)*, March 1996[6]

[6] See Section IV, Information (E, F) for HHS Drug Testing Medical Review Officer Source List and Manual for Federal Workplace Drug Testing Programs

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3. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, December 1994

4. OPM - *Developing and Conducting the Structured Situational Interview: A Practical Guide,* January 1994

5. OPM - *Family-Friendly Leave Policies for Federal Employees: Employee Brochure*, November 1997

6. OPM - *Federal Employee Entitlement Under the Family and Medical Leave Act of 1993*, December 1996

C. Social Security Administration (SSA)

1. U.S. Department of Health and Human Services, Social Security Administration - *Disability Evaluation Under Social Security*, January 1995

II. Special Appointing Authorities for Persons with Disabilities

A. 5 CFR 213.3102(ll) - This hiring authority applies to readers, interpreters and other personal assistants for other employees with a severe disability(ies).

B. 5 CFR 213.3102(t) - This hiring authority applies to persons with mental retardation.

C. 5 CFR 213.3102(u) - This hiring authority applies to persons with severe physical disabilities.

D. 5 CFR 213.3202(k) - This hiring authority applies to persons who have recovered from a serious mental illness that resulted in a significant period of substantially disrupted employment within the previous two years.

E. 5 CFR 316.402(b)(5) - This hiring authority applies to 30 percent or more Disabled Veterans.

6. 5 CFR 315.604 - This hiring authority applies to disabled veterans enrolled in VA Training Programs.

Information:

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A. OPM - *People with Disabilities in the Federal Government - A Statistical Profile*, 1998

B. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, (PRDC-94-11), December 1994

III. Disability Retirement (OPM)

Regulations:

A. Civil Service Retirement System (CSRS) - 5 CFR Part 831,Subpart L, CSRS - Disability Retirement, generally September 22, 1993

B. Federal Employees Retirement System (FERS) - 5 CFR Part 844, FERS - Disability Retirement, generally February 1990

Information:

A. CSRS/FERS - Documentation in Support of Disability Retirement Application, December, 1995 (consolidated form for CSRS and FERS)

B. CSRS - OPM Pamphlet *Information for Disability Annuitants*, March, 1995

C. CSRS - Application for Immediate Retirement, January, 1990

D. FERS - OPM Pamphlet *Information for FERS Disability Annuitants*, March, 1996

E. FERS - Application for Immediate Retirement, January, 1997

Other Resources:

7. OPM *Life Events and Your Retirement and Insurance Benefits* (for employees), October 1997

8. OPM *Work Related Injuries and Fatalities - - What You and Your Family Need to Know About Your Benefits*, October 1999

Note: briefly summarizes benefits (retirement, insurance, Thrift Savings Plan, Social Security, worker=s compensation,

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etc, that may be applicable in a work related injury or fatality)

OPM=s Retirement and Insurance Service also publishes *The CSRS and FERS Handbook for Personnel and Payroll Offices*, a comprehensive guide to help agencies administer Federal retirement benefits. The handbook is available for purchase through the Government Printing Office; a CD-ROM version is available for purchase from OPM. In addition, the Handbook and many other useful resources are available for download on the Internet (Website: http://www.opm.gov/asd.).

IV. Drug and Alcohol Testing[7]

Executive Order:

A. Drug-Free Federal Workplace, Executive Order 12564, 51 Federal Register 32,889 (1986)
NOTE: Executive Order 12564 requires that the Head of each Executive Agency establish a program to test for the use of illegal drugs by employees in safety or security-sensitive positions.

Mandatory Guidelines:

A. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Register Vol. 59, No. 110, June 9, 1994

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[7] See Section VII, Information (A) for information regarding the role of OPM in the adjudication of medical objections to preference eligibles who test positive on a preemployment drug screen.

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NOTE: This establishes mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to Executive Order 12564.

Law:

A. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 468, codified at 5 U.S.C. ' 7301 note (1987)

B. Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 42 U.S.C. ' 290ee-1 et seq., as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. ' 290dd et seq., Pub. L. 102-321, 106 Stat. 367 (1992) (codified at 42 U.S.C. ' 201 note)

C. Federal Employee Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570, Title VI, 100 Stat. 3207-157 (1986)

NOTE: This Act requires agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.

Regulation:

A. 5 CFR Part 792, Federal Employees' Health and Counseling Programs

B. 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing
NOTE: This regulation is issued by the Federal Highway Administration (FHWA) and contains the requirements applicable to positions requiring Commercial Drivers' License (CDL).

C. 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

NOTE: This regulation is issued by the U.S. Department of Transportation (DOT) and contains the technical procedures designed for use when testing is required pursuant to 49 CFR Part 382.

Information:

A. National Institute on Drug Abuse - *Model Plan for a Comprehensive Drug-Free Workplace Program*, 1990

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B. U.S. Department of Transportation - *Alcohol & Drug Rules - An Overview*, February 1994

C. U.S. Department of Health and Human Services - Substance Abuse and Mental Health Services Administration - *Basic Information on Breath Alcohol Testing for Implementation of the DOT Rules*, February 1995

D. U.S. Department of Health and Human Services - An Overview of HHS Division of Workplace Programs (Federal Drug and Alcohol Program Oversight Responsibility)

E. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer Manual for Federal Workplace Drug Testing Programs*, 1997

NOTE: This manual applies to Federal agency drug testing programs that come under Executive Order 12564 and the Department of Health and Human Services (HHS) Mandatory Guidelines. The Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) programs have drug testing program requirements that may differ from those required by HHS. Therefore, Medical Review Officers (MROs) must be aware of those differences in reviewing results for other Federally regulated programs.

F. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer (MRO) Source List*, March 3, 1996

V. Hearing Conservation

Regulation:

A. 29 CFR 1910.95, Occupational Noise Exposure Standard, U.S. Department of Labor, Occupational Safety and Health Administration

Information:

A. U.S. Department of Labor, OSHA Guideline *Occupational Noise Exposure Compliance Assistance Guideline*, 1991

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B. U.S. Department of Labor, Occupational Safety and Health Administration, *Hearing Conservation*, (OSHA Publication 3074), 1995

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are exposed to excessive/high noise levels that could cause hearing loss.

VI. Infectious Diseases (HIV/AIDS, Hepatitis, Tuberculosis, etc.) Involving Employee Relations

Regulation:

A. 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogens, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: A bloodborne pathogen=s protection program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are potentially exposed to infectious blood or body fluids as part of their employment.

Information:

A. OPM - *HIV/AIDS Policy Guidelines,* August 30, 1995

B. Social Security Administration - *A Guide to Social Security and SSI Disability Benefits for People with HIV Infection*, May 1997

C. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, September 8, 1995/Vol. 44/No. RR-11, *Essential Components of a Tuberculosis Prevention and Control Program, Screening for Tuberculosis and Tuberculosis Infection in High-Risk Populations*

D. U.S. Department of Labor, Occupational Disease - *Claims for Pulmonary Tuberculosis*, FECA Bulletin No. 95-20, June 21, 1995

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E. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, October 28, 1994/Vol. 43/No. RR-13 1994, *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities*

VII. Medical Disqualifications

Policy: By law, OPM must approve the medical disqualification of preference eligibles. By regulation, OPM requires agencies to give nonpreference eligibles who are disqualified for medical reasons a higher level of review within the agency.

Law:

A. 5 U.S.C., Sections 3312 and 3318, Preference Eligibles

Regulation:

A. 5 CFR 339.306 Medical Qualification Determinations

B. 5 CFR 351.702(d) Reduction in Force

Information:

A. Interagency Advisory Group, Memorandum for Directors of Personnel, dated March 14, 1997, "OPM Adjudication of Medical Disqualifications to Preference Eligibles"

NOTE: Reminds competitive service agencies that OPM must approve medical disqualifications of preference eligibles

B. OPM - *Procedures Guide in Processing Medical Objections to Preference Eligibles*, March 1996

C. OPM - *Typical Reasons for Not Sustaining Agency Medical Passover Requests*, March 1996

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VIII. Medical Records

Law:

A. Privacy Act of 1974, 5 U.S.C. 552a

Regulation:

A. 5 CFR Part 293, Subpart E, Employee Medical File System Records

B. 5 CFR Part 297, Privacy Procedures for Personnel Records

C. 29 CFR 1910.1020(d)(l) (1990) Access to Employee Exposure and Medical Records, U.S. Department of Labor, Occupational Safety and Health Administration

D. 29 CFR 1904 (June 1986), A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics

E. 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient's Records (This regulation applies only to Employee Assistance Program (EAP) records)

Information:

A. OPM/GOVT-10 "Employee Medical File System Records,@ 57 Federal Register, 35,722, (August 10, 1992)

B. OPM Medical Record Procedures, (covered in OPM's Operating Manual) *The Guide to Personnel Recordkeeping*

C. U.S. Department of Labor, Occupational Safety and Health Administration, *Access to Medical and Exposure Records*, (OSHA Publication 3110), 1993

IX. Workers Compensation

Law:

A. 5 U.S.C. 8101 et seq. The Federal Employees Compensation Act, as amended

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Regulation:

A. 20 CFR Parts 1 to 25, Federal Employees Compensation Act

B. 5 CFR Parts 353, Restoration to Duty from Uniform Service or Compensable Injury

Information:

A. OPM - Pamphlet *Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses*, January 1992

B. U.S. Department of Labor - *Injury Compensation for Federal Employees* (A Handbook for Employing Agency Personnel), (Publication CA-810), February 1994

C. U.S. Department of Labor, *Questions and Answers About the Federal Employees' Compensation Act*, (Publication CA-550), September 1988

D. U.S. Department of Labor, *Resource Book - Training for Federal Employing Agency Compensation Specialists*, 1994

X. Pregnancy Related Issues

Law:

A. Pregnancy Discrimination Act, P.L. 95-555, October 31, 1978, 92 Stat. 2076, 42 U.S.C. ' 2000e(k)

Regulation:

A. 29 CFR ' 1604.10(b), See also, 29 CFR Pt. 1604 App. (Questions and Answers on the Pregnancy Discrimination Act)

XI. Respiratory Protection Program

Regulation:

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A. 29 CFR 1910.134, Respiratory Protection, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers must wear respirators to protect themselves from actual or potential airborne hazards.

B. 29 CFR Part 1910.1001, Occupational Exposure to Asbestos, June 29, 1995, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

C. 29 CFR Part 1910.1200, Hazard Communication, March 11, 1994, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

XII. Safety and Occupational Health Programs

Law:

A. Occupational Safety and Health Act of 1970, 84 Stat. 1590, Public Law 91-596, Section 19, Federal Agency Safety Programs and Responsibilities, December 29, 1970

NOTE: This act is to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; and by providing for research, information, education and training in the field of occupational safety and health.

Federal Regulation:

A. 29 CFR 1910.151, Medical Services, U.S. Department of Labor, Occupational Safety and Health Administration

B. 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, U.S. Department of Labor, Occupational Safety and Health Administration

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C. 29 CFR 1910.1200, Hazardous Communication, U.S. Department of Labor, Occupational Safety and Health Administration

D. 5 CFR Part 339.205, Medical Evaluation Programs, Medical Surveillance Program

XIII. Veterans and the Civil Service

Information:

A. OPM - *VetGuide, Federal Employment Policy Handbook: Veterans and the Civil Service,* December 1998

NOTE: VetGuide explains the special rights and privileges that veterans enjoy in Federal civil service employment. The guide conveniently summarizes in one place material from many laws and regulations that affect the employment of veterans. The guide will help Federal personnel specialist ensure that veterans receive the advantages they have earned.

XIV. Violence in the Workplace

Information:

A. OPM - *Dealing with Workplace Violence: A Guide for Agency Planners*, February 1998

B. U.S. Department of Labor, Occupational Safety and Health Administration - *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, (OSHA Publication 3148), 1996

C. U.S. Department of Justice, United States Marshals Service - *Security in the Workplace: Improving the Safety of Federal Employees,* (USMS Pub. No.61) September 1995

D. U.S. Department of Justice - *Combating Workplace Violence: Guidelines for Employers and Law Enforcement*, International Association of Chiefs of Police (publication funded by Office of Justice Programs, Bureau of Justice Assistance)

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E. U.S. Department of Justice, National Institute of Justice - *Understanding and Preventing Violence*, February 1994

F. U.S. Department of Justice, National Institute of Justice - *Psychoactive Substances and Violence*, February 1994

G. U.S. Department of Justice, National Institute of Justice - *The Cycle of Violence*, September 1992

H. ADA Information Brief, Volume 1, Number 4, *Violence and Workers with Psychiatric Disabilities: Myths and Facts*[8]

I. Worldwide Web Information: *Partnership Against Violence Network (PAVNET)*. The Departments of Justice, Agriculture, Education, Housing and Urban Development, and Labor. A database of programs dealing with violence. Access through the Web at: www.pavnet.org.

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Suzanne Seiden

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Q+A

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(3) Long-term plan - rollout
a) real event w/ people
b) federal agency briefing

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October 5, 1999 DRAFT

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

America is enjoying great prosperity, with the prospect of an even brighter future as we head into the next century. Our economy is the strongest it has been in a generation. Since I have been President, there have been more than XX million new jobs and unemployment is as low as it has been in XX years. Still, we cannot consider ourselves truly successful until all Americans, including the 30 million working-age adults with disabilities, have access to the tools and opportunities they need to achieve economic independence.

Today, the Americans with Disabilities Act is making it possible for millions of Americans to participate more fully in our society. However, nine years after the ADA's passage, the unemployment rate among working-age Americans with disabilities is still far too high. Almost 75 percent of working-age Americans with severe disabilities remain unemployed. If America is to live up to its promise of equal opportunity, and if our economy is to continue to strengthen and expand, we must be able to draw on the untapped energy and creativity of this large and capable segment of our population.

On March 13, 1998, I took action to address the issue of unemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities. This Task Force was charged with creating a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented me with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations. My FY 2000 budget includes a historic new $2 billion initiative that removes significant barriers to work for people with disabilities. It includes the Work Incentives Improvement Act that invests $1.2 billion in health care and employment services for people with disabilities so they can work. I urge Congress to take swift action in passing this legislation, which will make a critical difference in empowering people with disabilities to become employed and maintain health care coverage. My budget also contains a new $700 million investment in a $1,000 tax credit for workers with disabilities and an increase of $35 million in assistive technologies that make it possible for individuals with disabilities to work.

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the Federal government be a

model employer for people with disabilities. That is why in On June 4, 1999 I signed an executive order eliminating the federal government's stricter standards for psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. That is also why in December, the Vice President directed the Office of Personnel Management to develop a plan to increase the representation of adults with disabilities in the Federal work force.

Today I am pleased to release The Plan for Employment of People with Disabilities in the Federal Government and the companion employment guide, which provide direction and information for agencies on recruitment and hiring, reasonable accommodation, career development and promotion, and monitoring and evaluating progress in hiring people with disabilities. I direct each and every agency and department to implement this plan immediately and do everything you can to bring qualified people with disabilities into the federal workforce. It is critically important that the federal government benefit from this enormous talent pool of people with disabilities and that the federal government play a leading role in promoting the ability of individuals with disabilities to be a part of our nation's workforce.

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Cynthia A. Rice 10/05/99 03:41:29 PM

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To: SBSEIDEN@opm.gov
cc: Lisa M. Brown/OVP@OVP, J. Eric Gould/OPD/EOP@EOP, Edward W. Correia/WHO/EOP@EOP
bcc: Records Management@EOP
Subject: Re: Last version of OPM Employment Guide

I read the previous version. Besides some typos (mainly spacing, which I'm sure you've caught by now), I was fine with it but have two questions:

1) Is the warning that "the guide .... is not intended to provide legal assistance, directives, or interpretations of laws and regulations" really necessary? To me it implies that we do not think the guide is a legally accurate summary of the law.

2) If federal agencies hire readers and interpreters as part of reasonable accomodation, does that individual count toward the agency's FTE? If so why and what would it take to change that?

In terms of process next steps:

I think I'll pull together a meeting to discuss rollout. As I mentioned, we will get a WH scheduling proposal in the process. At the meeting we should discuss:

a) paper we'll need (one pager, Q&A)
b) the letter from the President to the Cabinet
c) process steps for getting buy in from the agencies -- OPM please give us some suggestions of things that have been helpful in other related contexts

Anything else?

"Suzanne B. Seiden" <SBSEIDEN@opm.gov>

"Suzanne B. Seiden" <SBSEIDEN@opm.gov>
10/05/99 02:37:03 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Last version of OPM Employment Guide

Folks:

Here is the last...and final version of the employment guide. We appreciated all the feedback we received and have incorporated as amny changes as possible. I am planning to get The Plan and Guide into the printer so it can be released during disability awareness month. If you have any questions, please feel free to call me at 606-1700. thanks, suzanne

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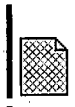
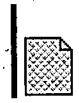
 - opmdoj20.doc

 - opmdoj20.wpd

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Cynthia A. Rice 10/05/99 04:04:04 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP

cc: sbseiden@opm.gov, lisa m. brown/ovp@ovp, j. eric gould/opd/eop@eop, edward w. correia/who/eop@eop

Subject: Re: Last version of OPM Employment Guide

Also, on "the Plan" is there any way of changing the first sentence of the introduction which now reads"As the 21st century approaches, change is a daily occurrence."? I swear we submitted this change several times and it never made it in. Please just combine the first and second sentences by getting rid of the "change is a daily occurrence" phrase. Thanks

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Edward W. Correia

10/05/99 02:51:01 PM

Record Type: Record

To: sbseiden@opm.gov @ inet

cc: Cynthia A. Rice/OPD/EOP@EOP, J. Eric Gould/OPD/EOP@EOP, Lisa M. Brown/OVP@OVP, Jonathan M. Young/WHO/EOP@EOP

Subject: OPM Guide

I think the guide looks very good though I, like Cynthia, would be interested knowing if there is a later draft. As for this version, I have two questions: 1) On page 13, what does it mean to say that federal employers must perform an "individualized assessment"? Can an agency set some basic physical requirements -- e.g., 20-20 eyesight, weight or blood pressure maximum, etc. -- which it applies across the board? Or must each individual be evaluated individually? And, if the answer is that there must be individualized assessment, how does that square with the discussion in the next paragraph, which refers to "specific medical standards, physical requirements...."? 2) On pp. 25-26, Is it possible to provide some guidance as to when auxilliary aids and services would "fundamentally alter the program or impose an undue hardship on the agency"? Or, must that be left to the facts of each case? My concern is that, in the absence of guidance, agencies will take widely varying approaches. Some will be very generous; some will not.

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. entire folder	Disability-OPM-Model Plan IV [2] (96 pages)	ca. September, 1999	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15430

FOLDER TITLE:
Disability-OPM-Model Plan IV [2]

Richard Stalcup

rx49

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
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b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

"Suzanne B. Seiden" <SBSEIDEN@opm.gov>
09/14/99 06:41:22 PM

Record Type: Record

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To: See the distribution list at the bottom of this message

cc:

Subject: latest copy of employment guide for people with disabilities -Forwarded

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Folks:

Attached for your quick review is our revised employment guide for people with disabilities. We have incorporated much of DOJ's comments. Please keep in mind that this guide is meant to be a USEFUL TOOL for HR folks.

I would appreciate any comments by Friday at noon. I apologize for the very short turn around, but if there are any issues that need to be resolved, we need to move quickly. I am trying to get both of these documents published by the beginning of October for disability awareness month.

I hope you are able to print this, please call me at 606-1700 if you have a problem or want to discuss the guide.

thanks in advance for your help! suzanne

-- E-Mail scanned for viruses. --

Date: Tue, 14 Sep 1999 18:22:38 -0400
From: John Riedel <JPRIEDEL@gwise.opm.gov>
Subject: latest copy of employment guide for people with disabilities
To: SBSEIDEN@gwise.opm.gov
Cc: CMVAY@gwise.opm.gov, PSROBINS@gwise.opm.gov
MIME-version: 1.0
Content-type: MULTIPART/MIXED; BOUNDARY="Boundary_(ID_cpDb07Fn4TWhFXY3gXBfeA)"

Per your request, attached is an electronic copy of the Employment Guide. It is formatted for printing in WP6.1 off a HP LaserJet 4 SiMX LAN printer. Printing off different printer/fonts/program may alter appearance.

- OPMDOJ20

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"Suzanne B. Seiden" <SBSEIDEN@opm.gov>
09/14/99 06:57:23 PM

CLINTON LIBRARY PHOTOCOPY

Record Type: Record

To: Brown_lm@a1.eop.gov, ogle-becky@dol.gov, Cynthia A. Rice/OPD/EOP

cc:

Subject: Roll out of plan and guide

Lisa, Cynthia and Becky:

I am trying to get final comments on the plan and guide so we can go to print and be ready with publications (and alternative formats) by October 1st for a possible announcement by a principal during disability awareness month. I may need a little help to get the guide done, but I am hopeful that DOJ will appreciate all the changes we made.

A few questions:

-does the plan or guide need to go into any other clearance or vetting?

-we were planning to make the final decisions on the printing package (color and graphics) because the documents are OPM documents; let me know if you want to be consulted or if you have something else in mind.

-If you think an announcement is likely, we can start focusing on other deliverables, such as fact sheet and Q & As. I don't want to waste folks' time drafting unnecessary products, but I also want to get folks working on products that are needed, so any feedback would be helpful.

thanks, looking forward to working with you on this and...getting the documents out!! suzanne

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-- E-Mail scanned for viruses. --

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This guide is intended to help Federal employers and human resource personnel understand issues and programs aimed at improving the employment of people with disabilities. It is not intended to provide legal assistance, directives, nor interpretation of laws and regulations regarding the employment of people with disabilities in the Federal government, and cannot substitute for the independent judgment of legal counsel. Readers interested in getting legal help with a particular question or problem should consult their agency legal counsel.

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INTRODUCTION

The Federal Government must strive to create and maintain a sound, diverse, and cooperative work environment. Equal opportunity in employment for all people, regardless of race, color, sex, age, religion, national origin, or disability should be the common goal across government. However, persons with disabilities are often overlooked as a source of employable talent.

On March 13, 1998, President Clinton addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force was charged with creating a coordinated and aggressive national policy to bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general adult population.

This guide and its companion piece, *"Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government,"* was developed in support of the Task Force's efforts and recommendations. The purpose of this guide is to provide guidance, information, and references to aid Federal employers in their efforts to hire and advance employees with disabilities.

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LEGAL FRAMEWORK

There are several laws which support and encourage the employment, retention, and advancement of people with disabilities.

1) **Section 501 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in Federal employment and requires the Federal government to engage in affirmative action for people with disabilities.[1] The law:

- Requires Federal employers not to discriminate against qualified job applicants or employees with disabilities. Persons with disabilities should be employed in all grade levels and occupational series commensurate with their qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of a job's structure or because of architectural, transportation, communication, procedural, or attitudinal barriers.

- Requires employers to make "reasonable accommodations" to applicants and employees with disabilities. Such accommodations may involve, for example, restructuring the job, modifying work schedules, adjusting or modifying examinations, providing readers or interpreters, and acquiring or modifying equipment and/or facilities (including the use of adaptive technology such as voice recognition software).

- Prohibits selection criteria and standards which tend to screen out people with disabilities, unless such procedures have been determined through a job analysis to be job-related and consistent with business necessity, and an appropriate individualized assessment indicates that the job applicant cannot perform the essential functions of the job, with or without reasonable accommodation.

- Requires Federal agencies to develop affirmative action programs for hiring, placement, and advancement of persons with disabilities. Affirmative action should be an integral part of ongoing agency personnel management

[1] Section 501 was amended by the Rehabilitation Act Amendment of 1992 to apply the ADA's employment standards to all non-affirmative action employment discrimination claims filed by Federal applicants or employees. 29 U.S.C. § 791(g).

programs.

2) **Section 508 of the Rehabilitation Act of 1973** requires Federal agencies to procure, use, maintain, and develop only accessible electronic and information technology, unless doing so imposes an undue burden. National security systems are exempt. Federal agencies will be required to comply with standards promulgated by the Architectural and Transportation Barriers Compliance Board (the Access Board) that take effect on August 7, 2000, when they will become part of the Federal Acquisition Regulation (FAR). Agencies must biannually evaluate their compliance with Section 508 and must report the results of these self-evaluations to the Attorney General.

3) **The Vietnam Era Veterans' Readjustment Assistance Act of 1974.** In furtherance of the policy of promoting "the maximum of employment and job advancement opportunities within the Federal Government for disabled veterans and certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement," this act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans' Readjustment Appointment (VRA). The act also ensures that all veterans are considered for employment under merit system rules and requires a separate affirmative action plan for the hiring, placement, and advancement of disabled veterans. Please note, however, that this law does not provide any preferences to disabled veterans or to veterans of the Vietnam era.

4) **The Civil Service Reform Act of 1978** requires "fair and equitable" treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for privacy and constitutional rights.

5) **The Americans with Disabilities Act (ADA) of 1990** covers employers in the private sector and State and local governments. The substantive employment standards of the ADA which are applicable to the Federal government through the Rehabilitation Act can be found at 42 U.S.C. §§ 12111 *et. seq.* and 42 U.S.C. §§ 12201-204 and 12210.

6) **The Veterans Education and Employment Program Amendments of 1991** require expanded job opportunities for veterans and disabled veterans through the Veterans Readjustment Appointment (VRA) Authority.

7) **The Architectural Barriers Act**, enforced by the Access Board, requires that

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buildings and facilities be accessible to people with disabilities if they were constructed or altered by or on behalf of the Federal government or with certain Federal funds, or leased for occupancy by Federal agencies, after 1968. When individuals with disabilities are unable to use a building because there are no accessible parking spaces, no curb ramps, no ramps at the entrance, no accessible rest rooms, no accessible drinking fountains, no raised lettering on signs, or other barriers exist, they may file a complaint with the Access Board.

8) **The Pregnancy Discrimination Act** amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. This amendment requires that employers treat pregnancy and related conditions as any other short-term disability.

9) **Title 5, United States Code, Sections 3312 and 3318** require that any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management before the position can be filled. This includes an agency medical disqualification of a 30 percent or more disabled veteran for assignment to another position in a reduction in force. A non-preference eligible disqualified for medical reasons also has a right to a higher level of review pursuant to OPM regulations set forth in 5 CFR, Section 339.306.

10) **The Family and Medical Leave Act of 1993**(5 U.S.C. § 6382) requires Federal agencies and departments to allow employees to take up to twelve weeks of leave without pay, provided that the employee or a member of his or her immediate family (spouse, son, daughter, or parent) has a serious health condition and the employee meets several other statutory criteria. The leave may be taken intermittently or on a reduced leave schedule when medically necessary. Agencies may require the employee to transfer temporarily to another position under certain circumstances.

ROLES AND RESPONSIBILITIES

The following Federal and State entities have responsibilities concerning the employment of people with disabilities:

Equal Employment Opportunity Commission (EEOC)

The EEOC is responsible for regulating and enforcing the Federal program for equal employment opportunity, developing the regulations and policies governing non-discrimination requirements, oversight of the development and implementation of Federal agencies' affirmation employment action programs, and adjudicating claims of disability discrimination in the Federal government. Instructions on affirmative action plans for job applicants and employees with disabilities may be found in EEOC's Management Directives 712 and 713.

EEOC's Management Directive 713 requires that Federal agencies submit Annual Affirmative Action Program Plans and accomplishment reports. This directive is pursuant to the EEOC's obligation and authority under Section 501 of the Rehabilitation Act of 1973.

EEOC is also responsible for approving or disapproving each agency wide affirmative action program plan; rating the accomplishments of each agency; and communicating results of evaluations to each agency with instructions for submission of a revised agency wide plan if required. EEOC will work closely with Federal Government personnel to assist in creating and implementing effective affirmative action programs.

Guidelines on reasonable accommodation and non-discrimination of people with disabilities are published by the EEOC. Most of these documents can be downloaded from EEOC's Internet website at: http://www.eeoc.gov.

In addition, EEOC issues an annual report on employment of individuals with disabilities in the Federal Government to the Congress of the United States.

U.S. Office of Personnel Management (OPM)

OPM provides nationwide program leadership, development, and coordination for the employment of people with disabilities, including veterans with service-connected disabilities. This includes providing direction, guidance, and technical support to agency heads, directors of personnel, agency personnel offices and

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officials; developing recruitment policy and appointing authorities; providing information on employment methods and program development to departments and agencies; developing publications for use in promoting employment; developing, monitoring, and modifying examining procedures to facilitate the employment consideration of qualified applicants with disabilities; and developing medical policy and realistic medical and suitability standards.

OPM takes the lead role in promoting reemployment of employees with or recovered from compensable injuries or illnesses, and fostering research and demonstration projects on disability related issues. Further, OPM maintains consistent liaison with the national offices of Federal, private, community, and other organizations concerned with the employment of people with disabilities.

President's Committee on Employment of People with Disabilities

The President's Committee on Employment of People with Disabilities (PCEPD) is a small Federal agency whose mission is to communicate, coordinate, and promote public and private efforts to enhance the employment of people with disabilities. The PCEPD provides information, training, and technical assistance related to the employment of people with disabilities. Some of the projects and resources developed by the PCEPD include:

- The Job Accommodation Network (JAN), a toll-free information service on workplace accommodations and the employment provisions of the Americans with Disabilities Act. Anyone may call JAN at (800) 232-9675 or (800) 526-7234. One can also obtain information from the JAN Website: http://www.jan.wvu.edu/english/homeus.htm.

- The Workforce Recruitment Program (WRP) for college students with disabilities, a joint venture with the Department of Defense which identifies college and university students with disabilities seeking summer and permanent jobs. Federal employers may access the candidate database by calling the PCEPD's Job Accommodation Network (JAN) at (800) 526-7234.

- Education Kits containing timely fact sheets on disability employment issues. These and a list of publications are available by calling (202) 376-6200.

- The PCEPD's Website on the Internet is http://www.pcepd.gov. It provides visitors direct access to their publications, speeches, press releases, statistical data, workplace laws, and other related topics affecting the

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employment of persons with disabilities.

Federal Employers

Federal agency managers and supervisors are responsible for the employment and advancement of people with disabilities. This includes recruitment, hiring, training, career development, mentoring support and providing reasonable accommodations when requested.

Career development and promotion opportunities, training, awards, and other similar programs must be an integral part of an agency's responsibilities towards employees with disabilities.

Further, Federal employers are required to make reasonable accommodations, when requested, to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the agency can demonstrate that the accommodation(s) would impose an undue hardship on the agency. Agencies should remove physical barriers as a matter of reasonable accommodation to particular employees for whom necessary facilities are inaccessible.

Federal employers should establish procedures to ensure that the employment and advancement of people with disabilities meet affirmative action program objectives, diversity planning, emphasis, and accountability. Federal employers should also ensure that there are no personnel or management policies, practices or procedures which unnecessarily restrict hiring, placement and advancement of people with disabilities.

It is illegal for a Federal agency to discriminate in employment against qualified individuals with disabilities. Anyone who believes he or she has been subjected to discrimination on the basis of disability may file a complaint with the employing agency's equal employment opportunity (EEO) office. Departments and agencies should refer to EEOC's MD-110 and 29 CFR, Part 1614, for additional guidance on the EEO complaint process.

Other Services and Resources

Many valuable resources exist within the Federal government to help agencies meet their legal obligations:

- ~~Equal Employment Opportunity Commission~~

They are described above

What about DOJ role?

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- U.S. Department of Education:
  - Rehabilitation Services Administration;
  - Assistive Technology Program;
- U.S. Architectural and Transportation Barriers Compliance Board ("Access Board");
- U.S. Department of Transportation;
- U.S. Department of Veterans Affairs; Vocational Rehabilitation Program;
- President's Committee on Employment of People with Disabilities and its Job Accommodation Network (JAN); and
- General Services Administration;

Employees with disabilities within the agency are another vital resource. Many of them are active in advocacy groups, serve on agency advisory committees, and are experts on various aspects of disability and rehabilitation. Other resources include:

- Local and State Committees on Employment of People With Disabilities;
- University medical centers and counseling programs;
- Advocacy organizations for persons with disabilities.

State vocational rehabilitation agencies can also be helpful. Vocational rehabilitation counselors are available at State Vocational Rehabilitation Agencies (SVRAs) and their local offices. They can be easily reached by phone. The extent and types of services offered may vary from State to State.

Through these various resources, agencies can find help to:

- Explain disabilities;

- Prepare certification documents;

- Refer qualified applicants and provide follow-up assistance for placements made;

- Provide assistance when individuals with disabilities employed under excepted appointing authorities are upgraded or downgraded or when problems arise in regard to these employees;

- Evaluate the rehabilitation needs of Federal employees who develop disabilities and advise managers and supervisors about services available;

- Purchase special equipment that individuals with disabilities need to perform their jobs;

- Locate trained readers for persons who have vision impairments, qualified sign language interpreters for persons who have hearing impairments, and personal assistants for individuals with disabilities;

- Advise about modification(s) needed to overcome architectural, transportation, and communication barriers;

- Participate in training programs for Federal employees, managers and supervisors relating to subjects such as reasonable accommodations, modification of jobs or worksites, affirmative action programs, and other related subjects;

- Arrange for Federal employees, managers, and supervisors to tour rehabilitation centers, workshops, campus facilities for students with disabilities, and independent living centers.

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DEFINITIONS AND TERMS

Person with a disability: The Rehabilitation Act of 1973, as amended, defines a "person with a disability" as an individual who:

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities (such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). A "physical or mental impairment" means:

  1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more systems such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genito-urinary, hemic and lymphatic, skin, and endocrine; or

  2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

- Has a record of such an impairment (this means that the person has a history of, or has been classified -or misclassified- as having a mental or physical impairment that substantially limits one or more major life activities; or

- Is regarded as having such an impairment; this includes individuals who are perceived to have disabilities.

Qualified person with a disability: A qualified person with a disability is a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question.

Invisible (hidden) disabilities: These are disabilities that are not readily apparent, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, learning disabilities, and mild mental retardation.

Targeted disabilities: Targeted disabilities, as defined by the Equal Employment Opportunity Commission (EEOC), are disabilities "targeted" for emphasis in affirmative action planning. These are: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine.

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Although the list of targeted disabilities is meant to include those who are most likely to suffer job discrimination, the EEOC recognizes that some disabilities that are not targeted are nevertheless just as severe or more severe than some of the targeted disabilities.

Substance abuse: The Americans with Disabilities Act of 1990 amended the Rehabilitation Act (1973) definition of an individual with a disability to **exclude** "individuals currently engaging in the illegal use of drugs" regardless of whether it can be shown to adversely affect job performance or safety. Federal employers are no longer required to offer a firm choice or last chance agreement[s] unless mandated by agency policy or a collective bargaining agreement. Managers should consult with their agency Human Resources, EEO, and legal counsel.

Persons with Human Immunodeficiency Virus (HIV): Protection under the Rehabilitation Act begins the moment a person becomes infected with HIV.

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HIRING: ISSUES AND OPTIONS

Qualified Job Applicant

Federal employers must not discriminate against qualified job applicants with disabilities.[2] An applicant with a disability is "qualified" if he or she:

- satisfies the agency's job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related and consistent with business necessity; and

- is able to perform those tasks that are essential to the job, with or without reasonable accommodation.[3]

Essential Job Functions

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. Agencies should carefully examine each job to determine which functions or tasks are essential to performance. This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting, or firing.

Agencies should ask the following questions to determine if a job's functions are "essential:"

- Are employees in that position actually required to perform the function?

  Ex: If an announcement for a receptionist's position lists "typing" as a requirement, but other receptionists do not actually type as part of their job, the function is not "essential" to the job.

- How many other employees are available to perform the function or among whom the performance of the function can be distributed?

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[2] See section "Definitions and Terms" for the definition of "disability."

[3] The term "reasonable accommodation" is discussed in the next section.

- Would removing the function fundamentally change the job?
- What degree of expertise or skill is required to perform the function?

When asking these questions, the employer should focus on the purpose of the job, not on how the purpose is to be accomplished.

> Ex: If a job requires mastery of information contained in technical manuals, this essential function would be "ability to learn technical material," rather than "ability to read technical manuals." People with vision and other reading impairments could perform this function using other means, such as audiotapes.

The same analysis applies to current employees with disabilities who are eligible for promotion consideration. That is, an employee with a disability is "qualified" for all promotions for which a similarly-situated non-disabled person would be eligible, provided that he or she can perform the "essential functions" of the job to which he or she would be promoted, with or without reasonable accommodation.

Individualized Assessment

When determining whether a particular job applicant with a disability can perform the essential functions of a job with or without reasonable accommodation, Federal employers must conduct what is called an "individualized assessment." If this assessment indicates that due to the person's disability, even when given appropriate reasonable accommodations he or she could not perform the essential job functions, or could not perform them without posing a substantial risk of significant harm to the applicant or others, the agency does not have to give further consideration to him or her. The agency must look objectively at the particular person's current ability to perform the essential job functions, with or without reasonable accommodation. Generalized "blanket" exclusions of an entire group of people with a certain disability prevent such individualized assessments. Agencies generally should not make such broad-based exclusions that do not reflect up-to-date medical knowledge and technology or that are based on fears about future medical or worker's compensation costs.

Medical Examinations and Inquiries

OPM regulations generally prohibit an agency from ordering a medical examination for either an applicant or an employee unless the individual is applying for or occupies a position that is subject to specific medical standards, physical

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requirements, or a medical evaluation program. Medical standards and physical requirements must be job related and be based on the minimum abilities necessary for safe and efficient performance of the duties of the position in question. For additional guidance, see 5 CFR Part 339 and 29 CFR 1614.203(e).

Confidentiality of Disability-Related Personal Information

All information obtained from permissible affirmative action inquiries and post-offer medical examinations and inquiries must be collected and maintained on separate forms, in files that are separate from the standard personnel files, and must be treated as confidential medical records.

Hiring Options

Agency personnel offices work with State vocational rehabilitation agencies (SVRAs), the Department of Veterans Affairs, colleges and universities (e.g., Gallaudet University) and other various organizations to locate and identify qualified people with disabilities. In addition, many Federal employers participate in focused job fairs and campus recruitment visits to identify qualified people with disabilities. Hiring may be accomplished through the competitive hiring process or, if the qualifications are met, through the use of excepted service appointment authorities.

Federal employers may use a variety of hiring options to bring people with disabilities into their workforce. Descriptions of key options are listed below.

Competitive Appointments

Most Federal employees obtain jobs competitively. Applicants apply directly to the hiring departments and agencies for most positions. Federal employers use a variety of assessment tools in evaluating applicants and conducting hiring. If passing a written test is required, special testing arrangements are available, if requested. Once this process is completed, an agency may select from a list of qualified applicants.

OPM has developed the **USAJOBS** Federal employment information system to assist job applicants seeking Federal employment. Job applicants can pursue Federal job opportunities by using any of the automated components of the **USAJOBS**. **USAJOBS** provides worldwide job vacancy information, employment information fact sheets, job applications and forms, and has on-line resume development and electronic transmission capabilities. In many instances, job

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seekers can apply for positions on-line. **USAJOBS** is updated every business day from a database of more than 10,000 worldwide job opportunities. **USAJOBS** is available to job seekers in a variety of formats, ensuring access for customers with differing physical and technological capabilities. It is convenient, user friendly, accessible through the computer or telephone and available 24 hours-a-day, seven days-a-week. The official web site for Federal jobs and employment information may be accessed at **http://www.usajobs.opm.gov**. An interactive voice response telephone system can be reached at (912) 757-3000 or TDD (912) 744-2299 or at 17 OPM Service Centers located throughout the country (local numbers listed in the blue pages).

Time-limited Appointments

An agency may fill a position using a temporary or term appointment when the need for an employee's services is not permanent. Temporary appointments are made not to exceed one year, with one 1-year extension. The work must not be permanent in nature. In contrast, term appointments are made for a period of more than one year but not to exceed four years.

Term appointments are appropriate when there is project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

Student Employment Programs

The Student Educational Employment Program helps Federal employers find the right people to fill current and future hiring needs. The program also gives students the opportunity to get hands-on experience in their chosen career field. The program has two major components; Student Temporary Employment and Student Career Experience.

- **Student Temporary Employment** opportunities range from summer jobs to positions that can last as long as the student is enrolled. The Federal job does not have to be related to the student's academic field of study.

- **Student Career Experience** opportunities include formal periods of work and study while the student attends school. This requires a commitment by the student, the school, and the Federal employer. Work experience is directly

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related to the student's academic field of study. After successfully completing the educational and work requirements, the student is eligible for permanent job opportunities.

Presidential Management Intern (PMI) Program

The PMI Program is designed to attract to the Federal service outstanding graduate students from a wide variety of academic disciplines who have an interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals eligible to be nominated for the PMI Program are graduate students completing a master's or doctoral-level degree from an accredited college or university during the current academic year.

Students are nominated for the PMI Program by the appropriate dean, director or chairperson of their graduate academic program. All nominees are evaluated by an OPM-developed structured assessment process. Selection as a PMI finalist is based on review of the PMI application and the structured assessment process.

PMIs receive an initial two-year appointment. During the two-year internship, PMIs experience structured orientation and graduation training programs facilitated by OPM, as well as seminars, briefings, conferences, on-the-job training, rotational assignments, and other developmental opportunities arranged by participating Federal employers. After successfully completing the two-year program, PMIs may be eligible for conversion to a permanent position and further promotional opportunities.

Appointment Under Special Authorities

The Federal Government's hiring options include excepted service special appointing authorities for people with disabilities. Federal employers are authorized to use these authorities when considering certain people with disabilities (those who have severe physical, cognitive, or psychiatric disabilities or who have a history of or who are regarded as having such disabilities). The authorities provide a unique opportunity to demonstrate the potential to successfully perform the essential duties of a position with or without reasonable accommodation in the workplace.

- **Schedule A, 5 CFR 213.3102(t) for Hiring People with Mental Retardation.** This authority is used to appoint persons with cognitive disabilities (mental retardation) who meet the eligibility requirements. Upon completion of 2

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years of satisfactory performance the employee may qualify for conversion to the competitive service.

- **Schedule A, 5 CFR 213.3102(u) for Hiring People With Severe Physical Disabilities.** This authority is used to appoint persons with severe physical disabilities who (1) under a temporary appointment have demonstrated their ability to perform duties satisfactorily; or (2) have been certified by a counselor from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affair's Vocational Rehabilitation Office as likely to succeed in performance of duties. Upon completion of two years of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

- **Schedule B, 5 CFR 213.3202(k) for Hiring People Who Have Recovered from Mental Illness.** This authority permits appointments at Grades GS-15 and below when filled by individuals who: (I) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Department of Veterans Affairs counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the position to which they will be appointed, and that any residual disability is not job related. Employment under this authority may not exceed two years following each significant period of mental illness.[4]

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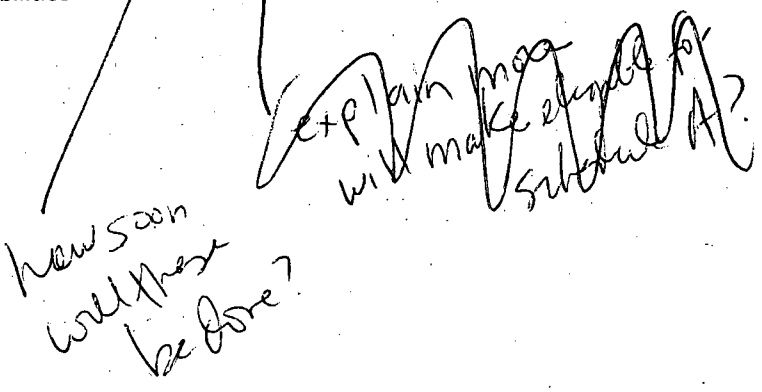
[4] OPM will issue regulations implementing Executive Order, No. 13124, dated June 4, 1999, providing persons with psychiatric disabilities the same employment opportunities as persons with mental retardation or severe physical disabilities. Until the regulations are final, agencies may continue to use 5 CFR 213.3202(k) and any other appropriate excepted service appointing authorities to appoint persons with psychiatric disabilities



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In addition, Federal employers can use the following authority to provide assistance to employees with disabilities:

- **Schedule A, 5 CFR 213.3102(ll) for Hiring Readers Interpreters, and Other Personal Assistants.** This authority permits appointments of readers, interpreters, and personal assistants for employees with severe disabilities when filled on a full-time, part-time, or intermittent basis. Upon completion of at least one year of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

Disabled Veterans

- **30 Percent or More Disabled Veterans.** Federal employers may give a noncompetitive temporary appointment of more than 60 days (see 5 CFR 316.302(b)(4)) or a term appointment (see 5 CFR 316.402(b)(4)) to a veteran:

  - retired from active military service with a disability rating of 30 percent or more; or

  - rated by the Department of Veterans Affairs (VA) within the preceding year as having a compensable service-connected disability of 30 percent or more.

  There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement. Reasonable accommodations must be provided for any written test.

  The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment.

- **Disabled Veterans Enrolled in VA Training Programs, 5 CFR 315.604.** Disabled veterans who are eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a Federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA. The training is tailored to individual needs and goals so there is no set length.

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- If the training is intended to prepare the individual for eventual appointment in the agency rather than just work experience, the agency must ~~insure~~ ensure that the training will enable the veteran to meet qualification requirements for the position.

  Upon successful completion, the VA and the host agency give the veteran a Certificate of Training showing the occupational series and grade level of the position for which he or she has been trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

Certification

An individual who has a physical disability is considered to have met OPM qualification standards for either a temporary competitive service appointment or an excepted service Schedule A appointment when an appropriate certification is received from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affairs. The certification is prepared by a counselor on the basis of job-site inspection, analysis of job tasks, and evaluation of the proposed appointee's abilities and disabilities. The certification must state that in the counselor's judgement the proposed appointee is able to perform the duties of the position and is physically qualified to do the work safely. The certification must be supported by a medical report and a narrative statement documenting the counselor's conclusions. Factors to be discussed include training, education, work history, modification of job or worksite if needed, and limitations of the proposed appointee.

The certification required for an excepted service Schedule A appointment of an individual who is mentally retarded need only state that the individual has the ability to perform the duties of the position; is physically able to do the job safely; and can maintain himself or herself in the work environment. No medical report is required.

The certification required for appointment of individuals with psychiatric disabilities under an excepted Schedule B appointment must include documentation of a history of mental illness which includes periods of hospitalization or outpatient treatment within the previous two years; a statement by a psychologist or psychiatrist as to the individual's capability to function in the work setting; and a statement indicating that the individual is currently unemployed or has had a significant period of substantially disrupted employment within the previous two years.

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Any of these certificates must be maintained in a separate, confidential folder, rather than in the person's official personnel folder (OPF). This material is not to be included or placed into the individual's OPF or Employee Medical Folder.

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REASONABLE ACCOMMODATION

Federal departments and agencies are required, **when requested**, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency. An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation.[5]

A reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment. There are many types of accommodations such as worksite modifications; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; providing interpreters, assistive devices, readers; and reassigning employees.

Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, his/her specific disability and the existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. In all cases, the applicant or employee should be consulted before an accommodation is made. Accommodations are highly individualized and what may be successful for one individual with a disability may not be appropriate for another. The value and nature of a particular accommodation may be clarified by considering questions such as:

- Does the disability require the reasonable accommodation?
- Does the reasonable accommodation remove the workplace barrier that is preventing the individual from effectively applying for a job, performing a job, or gaining access to the benefits and privileges of employment?

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[5] Departments and Agencies should consult the Enforcement Guidance on Reasonable Accommodation issued by the EEOC on March 1, 1999.

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- Will the accommodation give the person the opportunity to function, participate, or compete on an equal basis with others?
- Are there alternatives that would accomplish the same purpose?

In determining undue hardship, consider the following factors:

- Overall size of the agency, with respect to the number of employees, number and type of facilities, and size of budget;
- Type of agency operation; and
- Nature and cost of the accommodation.

Reasonable accommodations are as varied as the needs of the individuals involved, the type of position in question, and ingenuity of the agency. Some examples are provided below:

Testing with Appropriate Accommodations

Federal employers may not use any test or other selection criterion that screens out or tends to screen out, people with disabilities unless the test is job-related for the position in question and consistent with business necessity. Agencies must select and administer tests to ensure that the scores of applicants or employees who have disabilities that impair sensory, manual, or speaking skills accurately reflect the ability of the applicant to do the job in question rather than disabilities of the employee or applicant.

Modifying Written Examinations: The objective is to eliminate any artificial barriers which would prevent persons with disabilities from demonstrating their capabilities in the examination process. Modification of examination procedures can include modifying test administration methods or modifying exam content.

Consideration should be given to scheduling individual or small group testing, allowing extra time, and using examiners who are aware of the test-taker's disability and have received appropriate training in test administration. Accommodations may include providing auxiliary aids and services leading to effective communication, such as providing Braille, large-print, or tape-recorded tests for persons with vision impairments, tape-recorded tests to people with reading disabilities; scribes or recording devices for persons who have difficulties using their hands to record answers; qualified sign language interpreters or computer-assisted real-time transcription (CART) services to convey spoken portions of tests -- including instructions -- to persons who are deaf; and assistive

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listening systems and devices for those who are hard of hearing.

Exam content: If an applicant's disability causes some part of a test to be unusable or inappropriate, it may be necessary to modify exam content or to develop alternate materials which measure the same knowledge, skills, and abilities that do not screen out people with disabilities. OPM has modified certain examinations for persons with hearing or vision impairments and learning disabilities and may be able to offer advice about types of modifications.

Examination Facilities: Examinations must be offered in accessible facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible parking, etc.), steps should be taken to remove those barriers or, when this is not feasible, to arrange for use of an alternate, accessible location.

Many people with disabilities, even those with significant disabilities, may not need testing accommodations. Testing accommodations are often made for persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons who have limited mobility or motor control of their arms or hands, persons with brain injuries, and persons with learning disabilities such as dyslexia. In many of these instances, extended time for testing may be appropiate, in addition to other types of accommodations.

Restructuring Jobs

Job restructuring is one way of integrating qualified people with disabilities into the workforce. Job restructuring, however, does not alter the essential function of the job. Federal employers should identify which factors make a job incompatible with an individual's disability and, if possible, eliminate incompatible factors so that the capabilities of the person may be used to the best advantage. This may involve changing job content by isolating and eliminating non-essential duties through reassignment, or altering the way objectives are accomplished.

The following must occur before job restructuring:

- Federal employers must understand the capabilities of individuals and identify limitations prior to job restructuring. The person with a disability should be consulted throughout the process. Supplemental information can be obtained through consultation with disability specialists.

- Careful job analysis to determine the exact demands of positions must also

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precede job restructuring. Inputs by those with intimate knowledge of the tasks involved, such as supervisors and persons who currently perform the job functions or those who have performed them in the past, should be included in the analysis. This enables the most accurate differentiation to be made between essential functions and those which are non-essential and can be reassigned.

The restructuring and job analysis processes should also be used in creating positions, modifying existing position descriptions, developing recruitment strategies, determining selection criteria, designing performance plans, determining training needs, and other human resource initiatives.

Modifying Worksites

Changes in the work environment and technology will enable some people with disabilities to more effectively perform their duties. Alterations may consist of: rearranging files or shelves to improve accessibility for people who use wheelchairs; using Braille labels for persons with vision impairments; raising or lowering equipment to provide comfortable working heights for people with back injuries; installing special holding devices on desks, machines, or benches for people with mobility impairments; using adaptive technology such as screen readers for people who are blind; or providing special heating or air conditioning units for persons who are sensitive to environmental temperature.

Work locations should be reviewed by supervisors, Disability Employment Program Managers, SVRA counselors, building managers, and persons with disabilities to identify needed worksite and workstation modifications.

Accessible Facilities

Under section 504 of the Rehabilitation Act, all Federal agencies must ensure that their programs and activities are accessible to persons with disabilities. This does not mean that every element of every Federal facility has to be fully accessible. Rather, it means that agencies must take necessary steps to make all of their programs accessible to persons with disabilities.

Additionally, agencies may have to eliminate architectural barriers as a matter of reasonable accommodation to an individual employee or applicant under section 501 of the Rehabilitation Act. Physical and/or structural changes should be made in order to create as barrier-free an environment as possible, unless doing so would

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impose an undue hardship. Eliminating architectural barriers through such means as ramps, wider doorways, elevators, work platforms, and handrails often make the work facility more usable by all employees, not just those with disabilities.

Adjusting Work Schedules

Some people with disabilities possess great productive potential which is not utilized because they cannot meet the requirements of a standard 40-hour work week. By taking advantage of the flexibility of alternative work schedules, accommodations can be made for various disabilities. For example, people with mobility impairments may find it difficult to maneuver during peak periods on public transportation systems and may require an earlier or later work day. In another instance, employees requiring medical treatments may need a flexible schedule on certain days of a week. Employees requiring shorter hours may be accommodated by use of a part-time schedule or a job sharing arrangement.

Assistive Devices

Many assistive devices are available to people with disabilities. Such devices can ensure successful job performance, enabling people with disabilities to perform tasks they would not otherwise be able to do or to increase the quantity, quality, or efficiency of their work. Before purchasing any assistive equipment, the agency should engage in a meaningful dialogue with the individual requesting the accommodation as to what is needed and/or desired.

Agencies should look to their own resources to fund reasonable accommodations such as obtaining and supporting assistive technology. Federal employers are authorized to purchase equipment if it is determined that the use of the equipment is a reasonable accommodation that will enable an employee with a disability to better perform his or her job. In certain cases, however, the Department of Veterans Affairs or State vocational rehabilitation office may provide the assistive device to the individual requesting a reasonable accommodation if the employee is already a client of that agency or office.

Readers, Interpreters, and other Effective Communication Tools

One key component of reasonable accommodation is to ensure effective communication with employees who have communication-related disabilities, such as those with vision, hearing, or speech impairments. Agencies must provide appropriate "auxiliary aids and services" such as qualified sign language

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Q: Do these individuals count as an FTE and if so should that be changed? Card could that —

interpreters, trained readers, computer-assisted real time transcription services, and alternate format documents (Braille, large print, audio cassette, or computer disk), unless doing so would fundamentally alter the program or impose an undue hardship on the agency.

Readers: Persons who are blind or who have low vision may need trained readers to be able to access information contained in otherwise inaccessible material. For instance, a lawyer who is blind may need a trained reader to read aloud deposition transcripts and correspondence from opposing counsel. Appropriate assistive technology, such as screen readers or Braille displays, can make much computer-based information accessible to someone who is blind or who has low vision, thus reducing (though not eliminating) the employee's reliance on a trained reader.

Interpreters: Persons who are deaf or hard of hearing and who use sign language may need qualified sign language interpreters. Someone is a "qualified sign language interpreter" if he or she can interpret competently, accurately, and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication in the employment setting.

Someone who is deaf and who does not know sign language may benefit from a qualified oral interpreter in certain circumstances. Many people who have been deaf since before they learned to communicate using American Sign Language (ASL), rather than English, as their primary means of communication. ASL has a different vocabulary and syntax than English.

While an employee who is deaf or hard of hearing and who uses sign language may not need a qualified sign language interpreter dedicated to his or her full-time use, qualified interpreters should be used in at least the following circumstances:

- employee orientations;
- staff meetings;
- training;
- whenever job duties change or when there is a new major assignment;
- any meetings at which more than two people are involved (it is extremely difficult to follow group discussions by lipreading);
- annual or semi-annual performance evaluation meetings;
- any time when promotion eligibility or disciplinary action is being discussed; and, if needed,
- any other time when efficient and effective communication is important, or when verbal communication will be lengthy.

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When qualified sign language interpreters are not necessary, such as for relatively short, routine matters, communication with an employee who is deaf may be accomplished by exchanging handwritten notes or typing back and forth on a computer keyboard or TTY.

TTY's: A "TTY" — also known as a "text typewriter" or "TDD" — is a device which allows someone who is deaf or hard of hearing or someone with a speech impairment to communicate by telephone by sending and receiving typed communications. The TTY user can communicate directly with someone else who also uses a TTY, or with those who do not use TTY's by calling a relay operator who will voice the person's typed communication and then type the non-disabled person's spoken communications.

Agencies are encouraged to provide training to all co-workers of persons who use TTY's in how to make and receive calls using the relay system. The Federal Relay Service will provide appropriate training materials upon request. Check your local phone book for the Federal Relay Service number in your area.

Use of Untrained Co-workers as Readers or Interpreters: It is generally inappropriate for an agency to rely on the untrained co-workers of a person who is blind to act as a reader, and nearly always inappropriate for an agency to rely on a co-worker to act as a sign language interpreter for a person who is deaf, unless the co-workers are qualified to do this work and it falls within their job description. Inappropriate reliance on untrained co-workers as readers or sign language interpreters for persons with disabilities is likely to create resentment among all parties: co-workers have their own work to do and people with disabilities have the legal right to effective communication -- which can often only be provided through the use of appropriately trained individuals. Even if co-workers have learned rudimentary signs through daily communication with the person who is deaf, they are unlikely to be able to provide effective communication in an employment setting.

CART — Computer Assisted Real-Time Transcription: CART is a way of making verbal communication accessible to persons who are deaf or hard or hearing and who do not use sign language. It requires a trained person, like a stenographer, to use special equipment to transcribe verbal communication as it is taking place. The transcription may appear on a computer monitor or be projected onto a screen. The service is similar to closed captioning of a live television program.

Alternate Format Materials: Agencies must provide alternate format materials or other auxiliary aids and services that will allow persons who have vision

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impairments full access to written materials used in the course of their employment, including such things as employee manuals and leave and earning statements. Alternate formats include Braille, large print, audio cassette recordings, and electronic copies on computer disks.

Flexible Leave Policies

Federal employers have the authority to adopt flexible leave policies that will accommodate people with disabilities. While the administration of the leave system is subject to certain laws and regulations, departments and agencies can adopt flexible leave policies that will accommodate people with disabilities. Instances may include the following circumstances:

- When extreme weather conditions make it difficult for employees with mobility impairments to get to or from work. For example, employees are generally expected to report for work after snow removal has been accomplished. However, in many cases, snow removal equipment makes travel by mobility-impaired individuals even more difficult by creating snow drifts at the curb cuts. Federal employers can adopt separate leave policies for such situations, but should identify in advance employees who would be covered by the extended policy.

- When temporary building conditions adversely affect performance or health, such as extremes of heat or cold which could affect persons with neurological disorders or respiratory ailments.

Leave policies may also include granting extended leave without pay for illness or disability. Whatever flexibility is used, the policies should be carefully detailed to avoid misunderstanding and be consistently applied for all appropriate employees.

Reassignment

In cases of current Federal employees who develop disabilities during their employment, or whose disabilities are aggravated during their careers, Federal employers have a responsibility to make a concerted effort for their continued employment. An employee who, because of a disability, is unable to continue to perform the essential functions of his or her current position may have options available other than applying for disability retirement. The first step should be to explore the possibility of accommodating the employee in his or her current position. Minor job modifications or changes in the physical environment are often all that is needed to allow an employee with a disability to continue working

productively.

Agencies must consider reassignment as a reasonable accommodation when an employee, due to a disability, can no longer continue performing the essential functions of his/her current position, even with reasonable accommodation. A Federal employer should always first attempt to provide reasonable accommodation in an employee's current position. If that is not possible, then a Federal employer must look for a vacant position that is equivalent to the employee's current position in terms of a number of factors, including grade, level of work assignments, pay, benefits, and geographic location. If no equivalent vacancy exists, then the employer must look for a lower position that is as close as possible to the employee's current position. Although this is a non-competitive process, the employee must be qualified for the vacant position. In order to determine the employee's qualifications for a vacant position, the employer should consult with the employee about his/her work experience, skills, and education.

Retraining

Federal employers should consider training employees with disabilities for positions for which they have the basic qualifications and capabilities. Although there are initial expenses involved, the result will often justify the expenditure if the employee and the position are matched carefully beforehand.

Eliminating Transportation Barriers

One of the most difficult problems people with disabilities face is transportation to and within the work site. Federal employers can do a great deal to help people with disabilities solve their personal transportation problems. Such assistance can consist of helping employees form car pools, helping people with disabilities locate co-workers with whom they may car pool; or allocate parking spaces to employees with disabilities.

Drivers who provide transportation to Federal employees with disabilities may make use of parking privileges for people with disabilities who ride with them. The General Services Administration has ruled that Federal employers are to give these persons the same priority in assignment of parking spaces that they give persons with disabilities.

Agencies that provide transportation for workers, such as shuttle buses between work sites, must ensure that equivalent accessible transportation is provided to

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employees with disabilities. Shuttle bus drivers should announce the location of stops to enable persons with vision impairments to use the service effectively. Shuttle buses should have lifts for persons who use wheelchairs or alternate equivalent means of transportation should be provided to such individuals.

Services Provided Through Contractors

Agencies must ensure that when support services are provided through contractors, reasonable accommodations are provided to persons with disabilities who use those services. For instance, if an agency contracts with a computer firm to provide software training, the agency must ensure that training for an employee who is deaf is communicated effectively to that employee, usually by a qualified sign language interpreter. Training materials provided by the contractor must be made accessible to persons who have vision impairments, such as by putting them in Braille, large print, audio tape, or on computer disk, depending on what would be effective for the person with a disability.

Minimal Cost Accommodations

In many cases, the cost of a job or work environment accommodation can be minimal. A few examples are as follows:

- To accommodate a person who uses a wheelchair, reasonable accommodations may include the ability to access the building, the office, and files. The desk must be the right height to accommodate the wheelchair. This may be accomplished by raising the desk using wooden blocks to prop it up, and then moving furniture so that the employee may move around the office. Files can be placed to make them easily accessible.

- An individual with arthritis experiencing difficulty with maintaining stamina during the workday may be accommodated by providing flexibility in work hours, and a recliner to allow change in body positions to cut down on fatigue.

- Visual aids, screen readers, and enlargers; voice activated software; and refreshable Braille displays may assist people who are blind or have vision impairments. Initial contact should start with the person with a disability and the office responsible for information technology (IT) management.

Federal employers wishing to learn more about reasonable accommodation policies and guidelines may wish to contact EEOC. Free copies of the EEOC's published

guidance on reasonable accommodation and other issues pertaining to non-discrimination against people with disabilities can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website: http://www.eeoc.gov.

Other resources for technology-related technical assistance and accommodation assessment are the Assistive Technology Program at the Department of Education, the Computer/Electronic Accommodations Program (CAP) at the Department of Defense, and the Center for Information Technology Accommodation at the Office of Government Wide Policy at General Services Administration.

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WORKING WITH PEOPLE WITH DIFFERENT DISABILITIES

People with Mobility Impairments

Countless injuries, diseases, and conditions can cause mobility impairments that affect an individual's ability to find and keep a job. Some disabilities are acquired at birth. Others stem from accidents or illnesses later in life. Basic mobility, coordination and balance, strength and endurance, and other aspects of body function may be affected.

Many people who have mobility impairments use adaptive equipment of one kind or another. Mobility aids such as canes, crutches, walkers, and wheelchairs are especially common. Prosthetic devices (such as artificial arms or legs), and body braces may also be used. Some people with mobility impairments use service animals to assist them with carrying or retrieving items, opening doors, and achieving greater independence.

One may wish to consider the following suggestions when interacting with individuals who have mobility impairments:

- When scheduling a job interview or meeting, make sure the location does not have any barriers such as a step at the threshold or inadequate accessible parking.

- Do not hold the person's wheelchair or assume the individual wants to be pushed; always ask first.

- A wheelchair is considered part of the person's personal space. Offer assistance but do not insist. If the person needs help, he or she will accept the offer and tell exactly what will be helpful.

- For prolonged conversations with someone who uses a wheelchair, sit down so as to be at the eye level of the wheelchair user.

- Do not be surprised if the person transfers from a wheelchair to a piece of furniture or gets out of the wheelchair to move about. Not all wheelchair users have paralysis; many can walk with or without the aid of canes, braces, or crutches.

- If a person uses crutches, a walker, or some other assistive equipment, offer assistance with coats, bags, or other belongings.

- Ensure extra maneuvering space and non-slip floor coverings for the safety of a person who uses crutches or a walker.

- Do not be sensitive about using words like "walking" or "running." People who use wheelchairs often use the same words.

People Who Are Blind or Who Have Vision Impairments

The terms "blindness" and "vision impairment" may mean either a complete or partial loss of vision. With many, only the edges or a part of the visual field may be obscured, or there may be no central vision although side or peripheral vision still exists. A person's visual acuity may also change under different light conditions.

Many people who are blind get around on their own by using a guide dog or cane. People with vision impairments may or may not use these or other mobility aids. For many jobs, vision simply is not necessary. Successful employment of people who are blind or who have vision impairments depends upon thorough job analysis, enlightened employer acceptance, and proper management support. One may wish to consider the following suggestions when interacting with individuals who are blind or who have vision impairments:

- If the person seems to need assistance, offer one's services. If a person who is blind needs guidance through a door or to a chair, let the person take one's arm and follow the motion of one's body. Tell him or her where the chair is in relation to his or her body. If one approaches steps, mention how many and the direction.

- Speak directly to the individual who is blind or who has a vision impairment. Speak in a normal tone of voice.

- Introduce other people in the room or have them introduce themselves. This will assist the individual in orienting himself or herself to the room and its occupants.

- Never touch or distract a service guide dog without first asking the owner. Service animals are not pets and generally should not be disturbed while in a working mode.

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- When giving directions, do not use references a person cannot see. "Over there" is not a good way of describing a location. When using directional words, use them with the orientation of the person who is blind or who has a vision impairment.

- Tell the individual when one is leaving the room.

- When guiding a person into a new or strange surrounding, one may want to describe special features or decorations.

- One should be prepared to read aloud information that is written, or ask the person if he or she could use the services of a trained reader.

- When interviewing or meeting with people with vision impairments, ask whether they would prefer a well-lit area. Avoid sharp contrasts of light and dark areas.

People Who Are Deaf or Hard of Hearing

Individuals may be deaf or hard of hearing and be able to speak clearly. They may be placed in almost any type of position, except those for which acute hearing is a legitimate safety requirement. Even in those circumstances, an individualized assessment should be performed. Extra time may be required in settings where there is a lot of verbal communication, such as interviews and meetings.

Communication difficulties should not be regarded as indicative of more extensive impairments and should not be allowed to obscure an applicant's knowledge, skills and abilities. In many situations, it is necessary to obtain the services of a qualified sign language interpreter to provide effective communication, if the person who is deaf or hard of hearing uses sign language as his or her primary means of communication. Other accommodations that may be required include the use of assistive listening systems and devices for persons who are hard of hearing, or computer-assisted real-time transcription (CART).

One may wish to consider the following suggestions when interacting with individuals who are deaf or hard of hearing:

- When speaking with someone who is deaf or hard of hearing, face the person directly. Gain his or her visual attention before starting a conversation. For instance, if you are entering his or her office and the

person's back is to you, flicker the room lights.

- When speaking to persons who are deaf or hard of hearing, use meaningful facial expressions and gestures to emphasize one's intent and attitude. This helps to substitute for one's tone of voice. Try to find a quiet place away from computers, telephones, and other sources of noise, and one which has adequate lighting.

- Not all people who are deaf or hard of hearing know or use sign language. Do not assume they need interpreters.

- If using a sign language or oral interpreter, speak directly to the person with the hearing impairment, not the interpreter. Face the light, speak clearly, in a normal tone of voice, and keep one's hands away from one's face.

- If one cannot understand the person with a hearing impairment, do not be afraid to ask him or her to repeat. If this approach does not work, one can ask if it would be helpful to communicate by writing or using a computer terminal.

People with Invisible (Hidden) Disabilities

There are many invisible disabilities such as asthma, arthritis, heart disease, environmental illness, AIDS, chronic fatigue, psychiatric or mental illnesses, attention deficit hyperactivity disorder, learning disabilities, and mild mental retardation. If an applicant brings the condition to the prospective employer's attention, one may ask whether the condition might have an impact on his or her work and if there are any necessary accommodations. For additional information regarding a description of invisible disabilities, please see the resources section of this handbook.

People with Mental Retardation

Many people with mental retardation have average or superior abilities in some respects. While it is true that some people with mental retardation may not be able to think, reason or remember as well as others, it is important to remember that, like others, they have their own strengths and weaknesses. Mental retardation should not be confused with mental illness or behavioral and emotional problems. The effect of the disability can be lessened, and skills and abilities increased, through rehabilitation, education, and experience on the job.

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People with mental retardation, like others, may want to be independent and responsible for their own support. The object should be to reduce the need for learning details, exercising judgment, and finding new solutions to problems.

Success on the job often depends upon the willingness of others to devote reasonable time and interest to helping the individual adjust initially and meet new challenges as they arise. One of the greatest obstacles to equal employment opportunity for these individuals is persistent lack of employer confidence in, and lowered expectations of their capabilities.

One may wish to consider the following suggestions when interacting with individuals with mental retardation:

- For the most part, one should talk to the individual in the same manner as anyone else, but be more specific.

- In an interview setting, ask questions and occasionally repeat responses to ensure effective communication.

- Provide information as to where things are located, such as time clock, lockers, restroom, cafeteria, drinking fountain, supply room, etc.

- Take care to explain about working hours, proper dress for the job, work station location, rate of pay, reporting official, and transportation options.

People with Psychiatric Disabilities

Psychiatric disabilities are diverse and include anxiety disorders, depression, mania, schizophrenia, and other conditions. One may wish to consider the following suggestions when interacting with individuals who have a psychiatric disability:

- Talk to the individual as one would to anyone else. Integrate the person as fully into office activities as other employees. Do not ostracize him or her due to his psychiatric condition.

- As many psychiatric medications cause extreme thirst, upon request allow the person to have access to beverages even where food and drink are normally prohibited.

- Consider offering a flexible schedule to allow the person to attend medical

appointments and therapy sessions and to deal with medication issues, insomnia, fatigue, or other conditions that often accompany psychiatric disabilities.

People with Muscular or Neurological Limitations

Muscular or neurological disabilities may affect motor ability and/or speech. Intelligence is not affected. Some involuntary or halting movement or limitation of movement in one or more than one appendage may be observed, as well as some lisping, indistinct speech or flatness of tone due to lack of fine motor control of the tongue and lips. The severity and functional effects of the disability vary from person to person. Unless the person has a significant disability, or has the involvement of other disabilities, no accommodation may be needed during an interview setting or meeting.

If the person's speech is difficult to understand, ask him or her to repeat what was said. Some people who have significant cerebral palsy or other muscular or neurological disabilities may communicate by writing, typing, or using a communication board or other electronic device.

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INTEGRATING PEOPLE WITH DISABILITIES INTO THE WORKFORCE

The President's Committee on Employment of People with Disabilities ~~has~~ a six-step process for integration. It consists of:

1) **Commitment** - Let the people in the agency know of the commitment to employ, advance and retain people with disabilities. Workforce diversity includes people with disabilities.

2) **Recruitment** - Let the Personnel/Human Resource office and Disability Employment Program Managers know that one is aggressively seeking job candidates with disabilities. Send agency vacancy announcements to disability-related organizations and Federal employers. State the agency's interest in receiving applications from people with disabilities on the job announcement.

3) **Interviewing** - Look at the essential functions and competency requirements of the job, the qualifications of the individual, and the availability of reasonable accommodations. Do not let the disability distract from evaluating the candidate's qualifications.

4) **Placement** - Test accommodations and adaptations once the person is on the job. Ask the employee with a disability to help in the process.

5) **Training** - Any employee's success hinges on proper orientation and training. ~~Insure~~ that all such agency programs are available and accessible to employees with disabilities. This includes training programs that may lead to upward mobility and career advancement.

6) **Awareness/Sensitivity** - Train managers, supervisors, and employees about disability myths and misconceptions. An educated workforce will be ~~better~~able to ensure the success of employees with disabilities.

Interviewing

Interviewing people with disabilities is the same as interviewing people who do not have disabilities. In general, the selecting official should ask all applicants about their qualifications, experience, and skills for doing the job. However, there are

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some guidelines that are specific to people with disabilities. Unless an individual is seeking appointment under one of the special excepted appointment authorities, a selecting official should **only** ask questions about the person's ability to do the job. The office should make sure that all questions are job-related. The focus of the interview should be on the individual's ability to successfully perform the essential functions of the job and demonstrating the competencies or knowledge, skills, and abilities needed to perform the job. Understanding what are the job's essential functions and the competencies required to perform those functions is particularly important to prepare for applicant interviews.

If the person volunteers that he or she has a disability which makes it difficult to perform particular functions of a job, or if the selecting official believes that a person's readily-apparent disability may make it difficult to perform certain job functions, the selecting official may ask job-related follow-up questions, such as, "Describe how you can perform the job." The answer to such questions will indicate whether a reasonable accommodation is needed to enable the individual to perform the essential functions of the job.

It is the responsibility of the job applicant to inform the employer of any accommodation needs, but once the issue has been raised, the employer and prospective employee should engage in a meaningful dialogue about the job functions and how they can be accomplished. Employers should not make general assumptions that an individual with a disability will be unable to do a certain part of the job or that a reasonable accommodation will be needed. Hiring decisions should never take into account the additional costs associated with providing a reasonable accommodation to an applicant with a disability, unless the applicant could not perform the essential job functions without a specific reasonable accommodation that was so expensive that it would impose an undue hardship on the agency.

Career Development

One of the major problems facing many people with disabilities is underutilization of their knowledge, skills, and abilities. Developmental details and reassignments can be used as a means of providing on-the-job training which will enhance promotion opportunities. In addition, it is easy to fall into the trap of isolating employees with disabilities from others. Employees with disabilities should have opportunities to not only work with others on group projects, but, when appropriate, to take on leadership roles.

Federal employers should ensure that employees with disabilities are given full

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consideration for inclusion in upward mobility programs and that they are aware of career counseling. Recognize that people with disabilities have career goals. Agency managers should sit down with employees and talk about goals. Identify role models and mentors for employees with disabilities or encourage them to do so. Every effort should be made to ensure that employees with disabilities, like others, are given the opportunity to reach their maximum potential.

Performance Evaluations

Employees with disabilities will be held accountable for their work performance. Supervisors are responsible for communicating performance expectations to their employees and monitoring and appraising their work. When the individual with a disability begins a job, he or she should be given a clear description of all job functions, including those that are essential. All employees should be provided with encouragement and feedback regarding their work performance. It is important to ensure that when evaluating people with disabilities, aspects of their physical or mental disabilities are not held against them. They should be evaluated for their ability to do the job with any appropriate reasonable accommodations. For example, it would be inappropriate to negatively evaluate an individual who uses a wheelchair for not attending a meeting held in a physically inaccessible building.

If an employee with a disability cannot satisfactorily perform the essential functions of his or her job after a full and fair trial period and with appropriate reasonable accommodations, then his or her employment should be terminated. The same job-related performance criteria should be applied to employees with disabilities that is applied to others. If it becomes necessary to terminate the appointment of an employee with a disability, the agency's Human Resources or Personnel Office will help in making this decision and taking appropriate action.

Awards

People with disabilities should have equal opportunity to receive incentive awards (special achievement/act or performance), quality step increases, and all other agency-sponsored or non-agency sponsored awards. Efforts should not be limited to special awards programs geared specifically to employees with disabilities.

Training

Give employees with disabilities an equal chance to benefit from training and development opportunities. Ensure that classes are held in accessible facilities,

and, as necessary to provide effective communication, that materials are available in electronic format, large print, Braille, or audio cassette for persons with vision impairments, trained note-takers and qualified sign language interpreters or computer-assisted real-time transcription services are provided for persons who are deaf or hard of hearing, assistive listening systems and devices are provided for persons who are hard of hearing, and other appropriate reasonable accommodations are made. Any training that would provide growth opportunities to allow employees with disabilities to advance in their careers should be encouraged. Such training could include developmental detail assignments, lateral reassignments, and leadership training.

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PROMOTING THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

Communication is the key to increasing organizational understanding and support for the employment of people with disabilities. The positive portrayal of employees with disabilities can greatly affect the public's and co-workers' perception of, and enhance the self-esteem of, such employees. There are a number of target groups to be reached: people with disabilities, advocacy and rehabilitation organizations, the agency workforce, students, and community groups.

Communicating messages or events such as planned initiatives, programs or exhibits, employee success stories, activities and accomplishments, and training and career development opportunities will enhance the employment and advancement of people with disabilities. One of the most effective media for some messages are internal memorandums or personal contact with the organization head, managers, supervisors and employees. Messages may also be integrated into existing media (e.g., an agency newsletter). Other communications media include:

- Agency publications and flyers
- Bulletin boards
- Press releases
- Film or slide-tape presentations
- Local newspapers
- Local radio and television stations
- Chambers of Commerce
- Trade and technical magazines
- Community organizations newsletters
- Accessible Internet or Intranet sites

An agency's public affairs office may be able to assist in preparing professional copy or in maximizing one's communication tools. Outside organizations such as the PCEPD, Veterans' service organizations (VSOs), State Vocational Rehabilitation Centers, and local news media may be able to help in the preparation of materials.

Experience has shown that programs and initiatives require dedicated and sustained support from departmental and agency leadership to achieve success. Thus, a clearly articulated commitment of agency leadership to achieving the goal of greater inclusion for adults with disabilities in the Federal workforce is critical to transforming such an aim into reality.

APPENDIX 1: FEDERAL RESOURCES

1) **President's Committee on Employment of People with Disabilities (PCEPD)**
1331 F Street, NW
Washington, DC 20004-1107
Phone: (V) (202) 376-6200
(TDD) (202) 376-6205

Website: http://www.pcepd.gov
EMAIL: info@pcepd.gov

2) **President's Committee Job Accommodation Network (JAN)**
918 Chestnut Ridge Road, Suite 1
West Virginia University - PO Box 6080
Morgantown, WV 26506-6080
Phone: (V) (800) 526-7234
(TDD) (800) 232-9675

Website: http://www.pcepd.gov and click on JAN or go directly to JAN at http://janweb.icdi.wvu.edu/english/homeus.htm

3) **Equal Employment Opportunity Commission**
1801 L Street NW (Federal Sector Programs)
Washington, DC 20507
Phone: (V) (800) 669-3362
(TDD) (800) 800-3302

Website: http://www.eeoc.gov

For specific Federal employment questions, call the "ATTORNEY OF THE DAY" at (202) 663-4599.

4) **Department of Labor: Office of Federal Contractor Compliance Programs (OFCCP)**
Department of Labor
Frances Perkins Building,
200 Constitution Avenue NW
Washington, DC 20210
Phone: (V) (888) 376-3227
(V) (202) 219-9475
(TDD) (202) 208-0452

Website: http://www.dol.gov/dol/esa

5) **U.S. Office of Personnel Management**[for Federal employment information]
1900 E Street, NW
Washington, DC 20415
Phone: (V) (202) 606-2700
(TDD) (912) 744-2299

Website: http://www.opm.gov

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APPENDIX 2: STATE VOCATIONAL AND REHABILITATION AGENCIES

State Vocational and Rehabilitation Agencies provide a number of services for persons with disabilities. Services include counseling, evaluation, training, and job placement. For more information, call or write the office nearest you. Internet addresses for each agency can be accessed at:

www.nchrtm.okstate.edu/ncrtm_links/state_VR.html

ALABAMA
Dept. of Rehabilitation Services
PO Box 11586
Montgomery, AL 36111-0586
(334) 281-8780
Toll free: (800) 441-7607

ALASKA
Division of Vocational Rehabilitation
801 W. 10th Street, Suite 200
Juneau, AK 99801-1894
Voice/TDD: (907) 465-2814
Toll Free: (800) 478-2815

ARIZONA
Rehabilitation Services Admin. (930A)
1789 West Jefferson, NW (2nd Floor)
Phoenix, AZ 85007
(602) 542-3332
Voice/TDD: (602) 542-6049

ARKANSAS
Department of Education
Arkansas Rehabilitation Services
Div. of Vocational & Technical Education
PO Box 3781
Little Rock, AR 72203
(501) 296-1616
Toll Free: (800) 330-0632

CALIFORNIA
Department of Rehabilitation
830 K Street Mall
Sacramento, CA 95814
Voice/TDD: (916) 445-3971

COLORADO
Division of Vocational Rehabilitation
110 16th Street, 2nd Floor
Denver, CO 80202
Voice/TDD: (303) 620-4153

CONNECTICUT
State Department of Social Services
Bureau of Rehabilitation Services
Division of Client Services
10 Griffin Road North
Windsor, CT 06095
(860) 298-2000
Toll Free: (800) 537-2549
TDD: (860) 298-2231

DELAWARE
Department of Labor
Division of Vocational Rehabilitation
4425 North Market Street
PO Box 9969
Wilmington, DE 19809-0969
(302) 761-8300
Voice/TDD: (302) 761-8349

DISTRICT OF COLUMBIA
Department of Human Services
DC Rehabilitation Services Administration
800 9th Street, SW, Fourth Floor
Washington, DC 20024
(202) 645-5703

FLORIDA
Dept. of Labor and Employment Security
Division of Vocational Rehabilitation
2002 Old Augustine Road, Building A
Tallahassee, FL 32399-0696
(850) 488-6210
Voice/TDD: (850) 488-2867

GEORGIA
Department of Human Resources
Division of Rehabilitation Services
2 Peachtree Street, NW, 23rd Floor
Atlanta, GA 30330-3166
Voice/TDD: (404) 657-3000

GUAM
Department of Vocational Rehabilitation
122 Harmon Plaza, Room B-201
Harmon Industrial Park, GU 96911
011-671-475-4645
001-671-475-4635 (Consumer Information)

HAWAII
Department of Human Services
Division of Vocational Rehabilitation
and Services for the Blind
PO Box 339
Honolulu, HI 96809
(808) 586-5355
(808) 586-5366

IDAHO
Division of Vocational Rehabilitation
650 West State-L. B. Jordan Bldg, Rm 150
Boise, ID 83720-0096
Voice/TDD: (208) 334-3390
Toll Free: (800) 856-2720

ILLINOIS
Department of Rehabilitation Services
623 East Adams Street
Springfield, IL 62794
(217) 785-0218
Toll Free: (800)ASK-DORIS
TDD: (217) 782-5734

INDIANA
Division of Disability, Aging and
Rehabilitation Services
402 West Washington Street, Rm W-451
PO Box 7083
Indianapolis, IN 46207-7083
(317) 232-1147
Toll free: (800) 545-7763
TDD Toll free: (800) 962-8408

IOWA
Department of Education
Div. of Vocational Rehabilitation Services
510 East 12th Street
Des Moines, IA 50319
Voice/TDD: (515) 281-4311
Toll free: (800) 532-1486

KANSAS
Dept. of Social and Rehabilitation Services
300 SW Oakley-Biddle Building, 1st Floor
Topeka, KS 66606
(913) 296-3911
TDD: (913) 296-7029

KENTUCKY
Department of Vocational Rehabilitation
209 Street Clair
Frankfort, KY 40601
Voice/TDD: (502) 564-4440
Toll free: (800) 372-7172
TDD: (502) 564-6742

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LOUISIANA
Department of Social Services
Louisiana Rehabilitation Services
8225 Florida Blvd.
Baton Rouge, LA 70806-4834
(504) 925-4168
Toll free: (800) 737-2958
Voice/TDD: (504) 925-4179

MAINE
Department of Labor,
Division of Vocational Rehabilitation
35 Anthony Avenue
Augusta,, ME 04333-0150
(207) 624-5300
Toll free: (800) 332-1003
Voice/TDD: (207) 624-5322

MARIANA ISLANDS
Vocational Rehabilitation Division
Comm. of Northern Mariana Islands
PO Box 1521
Saipan, Mariana Islands 96950
011-670-234-6538

MARYLAND
State Department of Education
Division of Rehabilitation Services
2301 Argonne Drive
Baltimore, MD 21218
(410) 554-9385
TDD: (410) 554-9412

MASSACHUSETTS
Massachusetts Rehabilitation Commission
4 Point Place, 27-43 Wormwood Street
Boston, MA 02210
(617) 727-2172
TDD: (617) 727-9063

MICHIGAN
Michigan Rehabilitation Services
Michigan Jobs Commission
PO Box 30010
Lansing, MI 48909
(517) 373-3390
Toll free: (800) 605-6722
TDD: (517) 373-4035

Family Independence Agency
Disability Determination Service
PO Box 30011
Lansing, MI 48909
(517) 373-7830
(517) 373-4533
Toll free: (800) 366-3404

MINNESOTA
Michael Coleman, Assistant Commissioner
Department of Economics and Security
Rehabilitation Services Branch
390 North Robert Street, 5th Floor
Street Paul, MN 55101
(612) 296-1822
TDD: (612) 296-3900

MISSISSIPPI
Nell C. Carney, Executive Director
Department of Rehabilitation Services
Vocational Rehabilitation Division
1281 Highway 51
PO Box 22806
Madison, MS 39110
(601) 853-5100
Toll free: (800) 443-1000

MISSOURI
Don Gann, Assistant Commissioner
State Department of Education
Division of Vocational Rehabilitation
3024 W. Truman Blvd.
Jefferson City, MO 65109
Voice/TDD: (573) 751-3251

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MONTANA
Dept. of Public Health & Human Services
Disability Services Division
PO Box 4210
Helena, MT 59604-4210
Voice/TDD: (406) 444-2590

NEBRASKA
State Department of Education
Div. of Vocational Rehabilitation Services
PO Box 94987
Lincoln, NE 68509
(402) 471-3649
Voice/TDD: (402) 471-3659

NEVADA
Nevada Rehabilitation Division
505 East King Street, Room 502
Carson City, NV 89710
Voice/TDD: (702) 687-4440

NEW HAMPSHIRE
State Department of Education
Division of Adult Learning & Rehabilitation
78 Regional Drive, Bldg 2
Concord, NH 03301
Voice/TDD: (603) 271-3471

NEW JERSEY
Div. of Vocational Rehabilitation Services
135 East State Street, CN 398
Trenton, NJ 08625-0398
(609) 292-5987
Voice/TDD: (609) 292-2919

NEW MEXICO
Department of Education
Division of Vocational Rehabilitation
435 Street Michaels Drive, Bldg D
Santa Fe, NM 87505
Toll free: (800) 235-5387
Voice/TDD: (505) 827-3500

NEW YORK
New York State Education Department
Office of Vocational and Educational
Services for Individuals with Disabilities
One Commerce Plaza, Room 1606
Albany, NY 12234
(518) 474-2714
Toll free: (800) 222-JOBS
TDD: (518) 486-3773

NORTH CAROLINA
Department of Human Resources
Div. of Vocational Rehabilitation Services
PO Box 26053
Raleigh, NC 27611
(919) 733-3364
Voice/TDD: (919) 733-5924

NORTH DAKOTA
Department of Human Services
Division of Vocational Rehabilitation
Dacotah Foundation Bldg
600 S. Second Street, Suite IB
Bismarck, ND 58504-5729
(701) 328-8950
Toll free: (800) 755-2745
TDD: (701) 328-8968

OHIO
Rehabilitation Services Commission
400 East Campus View Blvd.
Columbus, OH 43235-4604
Voice/TDD: (614) 438-1210
Toll free: (800) 282-4536, ext. 1210

OKLAHOMA
Department of Rehabilitation Services
3535 NW 58, Suite 500
Oklahoma City, OK 73112
(405) 951-3400

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OREGON
Department of Human Resources
Division of Vocational Rehabilitation
Human Resources Bldg,
500 Summer Street, N.E.
Salem, OR 97310-1018
(503) 945-5880
TDD: (503) 378-3933

PENNSYLVANIA
Office of Vocational Rehabilitation
Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17120
(717) 787-5244
Voice/TDD: (717) 783-8917
Toll free: (800) 442-6351

PUERTO RICO
Administration for Vocational Rehabilitation
PO Box 191118
San Juan, PR 00919-1118
(809) 725-1792

RHODE ISLAND
Department of Human Services
Office of Rehabilitation Services
40 Fountain Street
Providence, RI 02903-1898
(401) 421-7005
TDD: (401) 421-7016

SOUTH CAROLINA
Vocational Rehabilitation Department
1410 Boston Avenue
PO Box 15
West Columbia, SC 29171
(803) 896-6504
Voice/TDD: (803) 896-6635

SOUTH DAKOTA
Department of Human Services
Division of Rehabilitation Services
East Highway 34, Hillsview Plaza
c/o 500 E. Capitol
Pierre, SD 57501-5070
Voice/TDD: (605) 773-3195
Toll free: (800) 265-9684

TENNESSEE
Rehabilitation Services
Department of Human Services
Citizens Plaza State Office Bldg
400 Deaderick Street, 15th Floor
Nashville, TN 37248-0060
Voice/TDD: (615) 313-4714

TEXAS
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Division of Vocational Rehabilitation
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Cheyenne, WY 82002
(307) 777-7385
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APPENDIX 3: REFERENCES AND REGULATIONS

I. General Medical Personnel Guidance

Law:

A. The Americans with Disabilities Act of 1990 - 42 U.S.C. §§ 12101 et seq.

B. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq.; See also, 29 U.S.C. §§ 791(g), 794(d) (Incorporating standards of Americans with Disabilities Act into the Rehabilitation Act)

C. The Family and Medical Leave Act of 1993, Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, et seq. Title I of the Act applies to non-Federal employees and certain Federal employees and is administered by the Department of Labor. Title II of the Act applies to most Federal employees and is administered by the Office of Personnel Management.

Regulation:

A. 5 CFR 339, Medical Qualification Determinations, March 8, 1989

B. 29 CFR 1614, Equal Employment Opportunity Commission

NOTE: Part 1614 of the Federal sector Equal Employment Opportunity (EEO) complaint processing regulations replace part 1613, with the objective of promoting greater administrative fairness in the investigation and consideration of Federal sector EEO complaint by creating a process that is quicker and more efficient. Every Federal employee and applicant for Federal employment has the right to use the administrative EEO discrimination complaints process.

C. For most Federal employees, 5 CFR Part 630, Subpart L, Family and Medical Leave.

D. For certain Federal employees, including Postal Service employees, 29 CFR Part 825, The Family and Medical Leave Act of 1993.

Information:

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A. Equal Employment Opportunity Commission (EEOC)

1. EEOC - *ADA Enforcement Guidance: Preemployment Disability Related Questions and Medical Examinations*, October 10, 1995

   NOTE: This document provides the EEOC's position under the Americans with Disabilities Act of 1990, on preemployment disability-related questions and medical examinations.

2. EEOC - *EEOC Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities*, March 25, 1997

   NOTE: This guidance is designed to facilitate the full enforcement of the ADA with respect to individuals alleging employment discrimination based on psychiatric disabilities; respond to questions and concerns expressed by individuals with psychiatric disabilities regarding ADA; and answer questions posed by employers about how principles of ADA analysis apply in the context of psychiatric disabilities.

3. EEOC - *The Family and Medical Leave Act, The Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964*

   NOTE: This fact sheet was prepared by the Equal Opportunity Commission's (EEOC) Office of Legal Counsel. It is intended to provide technical assistance on some common questions that have arisen about the Americans with Disabilities Act of 1990 (ADA) and Title VII of the Civil Rights Act of 1964 (Title VII) when the Family and Medical Leave Act of 1993 (FMLA) also applies.

4. EEOC - *Compliance Manual Section on the Definition of the Term "Disability"*

5. EEOC - *Interim Enforcement Guidance on the Application of the ADA to the Disability-based Distinctions in Employer Provided Health Insurance*

6. EEOC - *Questions and Answers About Disability and Service Retirement Plans Under the ADA*

7. EEOC - *Enforcement Guidance on Workers' Compensation and the ADA*

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8. EEOC - *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA*

9. EEOC - *Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person is a "Qualified Individual with a Disability"*

B. U.S. Office of Personnel Management (OPM)

1. OPM - *Operating Manual - Qualification Standards for General Schedule Positions*, August 1994

2. OPM - *The Role of the Agency Medical Review Officer (MRO)*, March 1996[6]

3. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, December 1994

4. OPM - *Developing and Conducting the Structured Situational Interview: A Practical Guide,* January 1994

5. OPM - *Family-Friendly Leave Policies for Federal Employees: Employee Brochure*, November 1997

6. OPM - *Federal Employee Entitlement Under the Family and Medical Leave Act of 1993*, December 1996

C. Social Security Administration (SSA)

1. U.S. Department of Health and Human Services, Social Security Administration - *Disability Evaluation Under Social Security*, January 1995

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[6] See Section IV, Information (E, F) for HHS Drug Testing Medical Review Officer Source List and Manual for Federal Workplace Drug Testing Programs

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II. Special Appointing Authorities for Persons with Disabilities

A. 5 CFR 213.3102(ll) - This hiring authority applies to readers, interpreters and other personal assistants for other employees with a severe disability(ies).

B. 5 CFR 213.3102(t) - This hiring authority applies to persons with mental retardation.

C. 5 CFR 213.3102(u) - This hiring authority applies to persons with severe physical disabilities.

D. 5 CFR 213.3202(k) - This hiring authority applies to persons who have recovered from a serious mental illness that resulted in a significant period of substantially disrupted employment within the previous two years.

E. 5 CFR 316.402(b)(5) - This hiring authority applies to 30 percent or more Disabled Veterans.

Information:

A. OPM - *People with Disabilities in the Federal Government - A Statistical Profile*, 1998

B. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, (PRDC-94-11), December 1994

III. Disability Retirement (OPM)

Regulations:

A. Civil Service Retirement System (CSRS) - 5 CFR Part 831,Subpart L, CSRS - Disability Retirement, generally September 22, 1993

B. Federal Employees Retirement System (FERS) - 5 CFR Part 844, FERS - Disability Retirement, generally February 1990

Information:

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A. CSRS/FERS - Documentation in Support of Disability Retirement Application, December, 1995 (consolidated form for CSRS and FERS)

B. CSRS - OPM Pamphlet *Information for Disability Annuitants*, March, 1995

C. CSRS - Application for Immediate Retirement, January, 1990

D. FERS - OPM Pamphlet *Information for FERS Disability Annuitants*, March, 1996

E. FERS - Application for Immediate Retirement, January, 1997

Other Resources:

1. OPM *Life Events and Your Retirement and Insurance Benefits* (for employees), October 1997

2. OPM *Work Related Injuries and Fatalities - - What You and Your Family Need to Know About Your Benefits*, October 1999

   Note: briefly summarizes benefits (retirement, insurance, Thrift Savings Plan, Social Security, worker's compensation, etc, that may be applicable in a work related injury or fatality)

OPM's Retirement and Insurance Service also publishes *The CSRS and FERS Handbook for Personnel and Payroll Offices*, a comprehensive guide to help agencies administer Federal retirement benefits. The handbook is available for purchase through the Government Printing Office; a CD-ROM version is available for purchase from OPM. In addition, the Handbook and many other useful resources are available for download on the Internet (Website: http://www.opm.gov/asd.).

IV. Drug and Alcohol Testing[7]

Executive Order:

[7] See Section VII, Information (A) for information regarding the role of OPM in the adjudication of medical objections to preference eligibles who test positive on a preemployment drug screen.

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A. Drug-Free Federal Workplace, Executive Order 12564, 51 Federal Register 32,889 (1986)
NOTE: Executive Order 12564 requires that the Head of each Executive Agency establish a program to test for the use of illegal drugs by employees in safety or security-sensitive positions.

Mandatory Guidelines:

A. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Register Vol. 59, No. 110, June 9, 1994

NOTE: This establishes mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to Executive Order 12564.

Law:

A. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 468, codified at 5 U.S.C. § 7301 note (1987)

B. Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 42 U.S.C. § 290ee-1 et seq., as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. § 290dd et seq., Pub. L. 102-321, 106 Stat. 367 (1992) (codified at 42 U.S.C. § 201 note)

C. Federal Employee Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570, Title VI, 100 Stat. 3207-157 (1986)

NOTE: This Act requires agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.

Regulation:

A. 5 CFR Part 792, Federal Employees' Health and Counseling Programs

B. 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing

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NOTE: This regulation is issued by the Federal Highway Administration (FHWA) and contains the requirements applicable to positions requiring Commercial Drivers' License (CDL).

C. 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

NOTE: This regulation is issued by the U.S. Department of Transportation (DOT) and contains the technical procedures designed for use when testing is required pursuant to 49 CFR Part 382.

Information:

A. National Institute on Drug Abuse - *Model Plan for a Comprehensive Drug-Free Workplace Program*, 1990

B. U.S. Department of Transportation - *Alcohol & Drug Rules - An Overview*, February 1994

C. U.S. Department of Health and Human Services - Substance Abuse and Mental Health Services Administration - *Basic Information on Breath Alcohol Testing for Implementation of the DOT Rules*, February 1995

D. U.S. Department of Health and Human Services - An Overview of HHS Division of Workplace Programs (Federal Drug and Alcohol Program Oversight Responsibility)

E. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer Manual for Federal Workplace Drug Testing Programs*, 1997

NOTE: This manual applies to Federal agency drug testing programs that come under Executive Order 12564 and the Department of Health and Human Services (HHS) Mandatory Guidelines. The Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) programs have drug testing program requirements that may differ from those required by HHS. Therefore, Medical Review Officers (MROs) must be aware of those differences in reviewing results for other Federally regulated programs.

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F. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer (MRO) Source List*, March 3, 1996

V. Hearing Conservation

Regulation:

A. 29 CFR 1910.95, Occupational Noise Exposure Standard, U.S. Department of Labor, Occupational Safety and Health Administration

Information:

A. U.S. Department of Labor, OSHA Guideline *Occupational Noise Exposure Compliance Assistance Guideline*, 1991

B. U.S. Department of Labor, Occupational Safety and Health Administration, *Hearing Conservation*, (OSHA Publication 3074), 1995

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are exposed to excessive/high noise levels that could cause hearing loss.

VI. Infectious Diseases (HIV/AIDS, Hepatitis, Tuberculosis, etc.) Involving Employee Relations

Regulation:

A. 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogens, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: A bloodborne pathogen's protection program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are potentially exposed to infectious blood or body fluids as part of their employment.

Information:

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A. OPM - *HIV/AIDS Policy Guidelines,* August 30, 1995

B. Social Security Administration - *A Guide to Social Security and SSI Disability Benefits for People with HIV Infection*, May 1997

C. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, September 8, 1995/Vol. 44/No. RR-11, *Essential Components of a Tuberculosis Prevention and Control Program, Screening for Tuberculosis and Tuberculosis Infection in High-Risk Populations*

D. U.S. Department of Labor, Occupational Disease - *Claims for Pulmonary Tuberculosis*, FECA Bulletin No. 95-20, June 21, 1995

E. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, October 28, 1994/Vol. 43/No. RR-13 1994, *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities*

VII. Medical Disqualifications

Policy: By law, OPM must approve the medical disqualification of preference eligibles. By regulation, OPM requires agencies to give nonpreference eligibles who are disqualified for medical reasons a higher level of review within the agency.

Law:

A. 5 U.S.C., Sections 3312 and 3318, Preference Eligibles

Regulation:

A. 5 CFR 339.306 Medical Qualification Determinations

B. 5 CFR 351.702(d) Reduction in Force

Information:

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A. Interagency Advisory Group, Memorandum for Directors of Personnel, dated March 14, 1997, "OPM Adjudication of Medical Disqualifications to Preference Eligibles"

NOTE: Reminds competitive service agencies that OPM must approve medical disqualifications of preference eligibles

B. OPM - *Procedures Guide in Processing Medical Objections to Preference Eligibles*, March 1996

C. OPM - *Typical Reasons for Not Sustaining Agency Medical Passover Requests*, March 1996

VIII. Medical Records

Law:

A. Privacy Act of 1974, 5 U.S.C. 552a

Regulation:

A. 5 CFR Part 293, Subpart E, Employee Medical File System Records

B. 5 CFR Part 297, Privacy Procedures for Personnel Records

C. 29 CFR 1910.1020(d)(I) (1990) Access to Employee Exposure and Medical Records, U.S. Department of Labor, Occupational Safety and Health Administration

D. 29 CFR 1904 (June 1986), A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics

E. 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient's Records (This regulation applies only to Employee Assistance Program (EAP) records)

Information:

A. OPM/GOVT-10 "Employee Medical File System Records," 57 Federal Register, 35,722, (August 10, 1992)

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B. OPM Medical Record Procedures, (covered in OPM's Operating Manual) *The Guide to Personnel Recordkeeping*

C. U.S. Department of Labor, Occupational Safety and Health Administration, *Access to Medical and Exposure Records*, (OSHA Publication 3110), 1993

IX. Workers Compensation

Law:

A. 5 U.S.C. 8101 et seq. The Federal Employees Compensation Act, as amended

Regulation:

A. 20 CFR Parts 1 to 25, Federal Employees Compensation Act

B. 5 CFR Parts 353, Restoration to Duty from Uniform Service or Compensable Injury

Information:

A. OPM - Pamphlet *Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses*, January 1992

B. U.S. Department of Labor - *Injury Compensation for Federal Employees* (A Handbook for Employing Agency Personnel), (Publication CA-810), February 1994

C. U.S. Department of Labor, *Questions and Answers About the Federal Employees' Compensation Act*, (Publication CA-550), September 1988

D. U.S. Department of Labor, *Resource Book - Training for Federal Employing Agency Compensation Specialists*, 1994

X. Pregnancy Related Issues

Law:

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A. Pregnancy Discrimination Act, P.L. 95-555, October 31, 1978, 92 Stat. 2076, 42 U.S.C. § 2000e(k)

Regulation:

A. 29 CFR § 1604.10(b), See also, 29 CFR Pt. 1604 App. (Questions and Answers on the Pregnancy Discrimination Act)

XI. Respiratory Protection Program

Regulation:

A. 29 CFR 1910.134, Respiratory Protection, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers must wear respirators to protect themselves from actual or potential airborne hazards.

B. 29 CFR Part 1910.1001, Occupational Exposure to Asbestos, June 29, 1995, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

C. 29 CFR Part 1910.1200, Hazard Communication, March 11, 1994, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

XII. Safety and Occupational Health Programs

Law:

A. Occupational Safety and Health Act of 1970, 84 Stat. 1590, Public Law 91-596, Section 19, Federal Agency Safety Programs and Responsibilities, December 29, 1970

NOTE: This act is to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; and by providing for research, information, education and training in the field of occupational safety and health.

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Federal Regulation:

A. 29 CFR 1910.151, Medical Services, U.S. Department of Labor, Occupational Safety and Health Administration

B. 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, U.S. Department of Labor, Occupational Safety and Health Administration

C. 29 CFR 1910.1200, Hazardous Communication, U.S. Department of Labor, Occupational Safety and Health Administration

D. 5 CFR Part 339.205, Medical Evaluation Programs, Medical Surveillance Program

XIII. Veterans and the Civil Service

Information:

A. OPM - *VetGuide, Federal Employment Policy Handbook: Veterans and the Civil Service,* December 1998

NOTE: VetGuide explains the special rights and privileges that veterans enjoy in Federal civil service employment. The guide conveniently summarizes in one place material from many laws and regulations that affect the employment of veterans. The guide will help Federal personnel specialist ensure that veterans receive the advantages they have earned.

XIV. Violence in the Workplace

Information:

A. OPM - *Dealing with Workplace Violence: A Guide for Agency Planners*, February 1998

B. U.S. Department of Labor, Occupational Safety and Health Administration - *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, (OSHA Publication 3148), 1996

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C. U.S. Department of Justice, United States Marshals Service - *Security in the Workplace: Improving the Safety of Federal Employees,* (USMS Pub. No.61) September 1995

D. U.S. Department of Justice - *Combating Workplace Violence: Guidelines for Employers and Law Enforcement*, International Association of Chiefs of Police (publication funded by Office of Justice Programs, Bureau of Justice Assistance)

E. U.S. Department of Justice, National Institute of Justice - *Understanding and Preventing Violence*, February 1994

F. U.S. Department of Justice, National Institute of Justice - *Psychoactive Substances and Violence*, February 1994

G. U.S. Department of Justice, National Institute of Justice - *The Cycle of Violence*, September 1992

H. ADA Information Brief, Volume 1, Number 4, *Violence and Workers with Psychiatric Disabilities: Myths and Facts*[8]

I. Worldwide Web Information: *Partnership Against Violence Network (PAVNET)*. The Departments of Justice, Agriculture, Education, Housing and Urban Development, and Labor. A database of programs dealing with violence. Access through the Web at: www.pavnet.org.

[8] Listed with permission of the Washington Business Group on Health

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Folks:

I hope everyone is well rested at the end of the summer and ready to finish "the PLAN"!

Attached is what I hope will be the "final draft" PLAN. We have incorporated your various comments. The Plan is a much better product now as a resultl of your input.

We are currently revising the Guide based upon DOJ's comments and will be recirculating the Guide next week. Upon your review of the Guide, we would be happy to meet to discuss any concerns.

Next steps- we would like the PLAN and Guide to be released together hopefully no later than October during Disability Awareness month. We will come up with a few roll-out options, but I would certainly appreciate any early suggestions. thanks, Suzanne 606-1700

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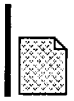 - OPMPLAN.9-2

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with severe disabilities have not shared in this employment prosperity.

The Federal government has a statutory obligation to engage in affirmative action with respect to the hiring, placement and advancement of individuals with disabilities. In undertaking this statutory obligation, departments and agencies must consult Management Directives issued by the Equal Employment Opportunity Commission (EEOC). Copies of the Management Directives can be obtained by calling (202) 663-4599. ~~As a result, departments and agencies are~~ The Federal government is committed to taking the lead in charting a public policy that provides clear direction to both the public and private sectors.

To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued its first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. ~~The~~ This Plan will help ensure that departments and agencies:

- Recruit widely for positions at all levels;
- Provide opportunities for students with disabilities;
- Give full consideration to employees with disabilities for inclusion in developmental opportunities;
- Collect and maintain data to monitor success; and
- Provide reasonable accommodations for qualified applicants and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission.

OPM provides ~~the~~ this Plan for government-wide use as part of its ongoing support of and commitment to the President and Vice-President's goal of making the Federal Government a model employer of people with disabilities. Experience has shown that government-wide programs and initiatives require the dedicated and sustained

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commitment of department and agency leadership. ~~The~~ This Plan will assist Federal employers ~~to~~ in fulfilling their commitment ~~of~~ to become~~ing~~ model employers of people with disabilities.

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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

Recruit widely for positions at all levels of the Federal workforce,

Recruitment Strategies

- In developing targeted recruitment strategies for people with disabilities, Federal employers will recruit widely and develop collaborative efforts with community outreach groups. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will develop a collection of "best practices" in the public and private sectors of successful recruitment efforts of people with disabilities. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons between the Plan and the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Plan efforts and best practices.

- Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules and job sharing. They will also disseminate employment and other information in alternate formats such as large print, audio cassette, Braille, computer disk, or accessible Internet sites.

- Federal employers should review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at ~~the~~ grades GS-13 to 15, in order to attract candidates with disabilities from inside and outside the Federal Government.

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- Departments and agencies should use a variety of resources and networks available to them to ~~in~~ removeing barriers to employment and assisting them in actively recruiting people with disabilities. ~~Some of~~ These resources include but are not limited to the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, ~~or~~ and after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

  - Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security or Supplemental Security Income disability benefits and ~~have been~~ are prepared to work. Employers may request resumes--

    - By telephone: (757) 441-3362;
    - By fax: (757) 441-3374; or
    - By Email: projable@opm.gov.

    Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling (912) 744-2085.

    For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at:

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www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide.* Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memoranda ~~are helpful in publicizing efforts~~ to increase the number of people with disabilities in the Federal workforce will be distributed within their respective agencies. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own departments or agencies. To support department and agency efforts, **OPM** is available to provide government-wide or agency-specific data.

- **OPM** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this plan. Copies of the guide may be obtained from OPM's website, www.opm.gov. Persons with disabilities may request copies in alternate formats by calling (202) 606-1059 (voice) or (202) 606-0023 (TTY).

- Federal employers will educate and train managers and supervisors on various hiring programs and resources available to them in recruiting, promoting, and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

Vacancy Announcements

- Federal employers will include language ~~for~~ in vacancy announcements that states that reasonable accommodations will be made for qualified applicants or employees with disabilities, except when doing so would pose an undue hardship on the employing agency.[1] **OPM** will assist departments and agencies with developing

[1] An undue hardship is defined as an action requiring significant difficulty or expense when considered in light

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appropriate language.

Special Appointing Authorities

- **OPM** will continue to work with departments and agencies on the use of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

  Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

  Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from

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of factors such as the agency's size, financial resources, and the nature and structure of the operation. *See* EEOC's Enforcement Guidance on Reasonable Accommodation, dated March 1, 1999. The Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (PCEPD) is an excellent technical assistance resource in the area of reasonable accommodation.

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mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

Note: OPM will issue regulations implementing Executive Order, No. 13124, dated June 4, 1999, providing persons with psychiatric disabilities the same employment opportunities as persons with mental retardation or severe physical disabilities. Until the regulations are final, agencies may continue to use 5 CFR 213.3202(k) and any other appropriate excepted service appointing authorities to appoint persons with psychiatric disabilities.

5 CFR 315.604 for hiring disabled veterans enrolled in a VA training program. This authority is used to hire ~~disabled~~ veterans with disabilities who are eligible for training under the Department of Veterans Affairs (VA) vocational rehabilitation program (38 U.S.C. chapter 31). The veterans may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program the veterans are not Federal employees for most purposes, but are beneficiaries of the VA. Upon successful completion, the host agency and VA give the veterans Certificates of Training showing the occupational series and grade levels of the positions for which trained. The Certificates of Training allows any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements similar to those available for disabled veterans under 5 CFR 315.604.)

5 CFR 316.201(b) for hiring worker-trainees for programs such as the Welfare to Work program. In his memorandum, dated March 8, 1997, the President directed Federal agencies to expand the use of the worker-trainee authority, under TAPER (temporary appointment pending establishment of a register) and other excepted service hiring authorities to appoint welfare recipients to entry-level positions. Accordingly, Federal agencies may utilize the worker-trainee authority as a vehicle to further its Welfare to Work programs.

5 CFR 316.302(b)(5) and 5 CFR 316.402(b)(5) for hiring 30 percent or more disabled veterans. These authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs

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within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

Provide opportunities for students with disabilities to participate in

- In addition to the other appointing authorities listed on pages 5-6 of this plan, Federal employers are encouraged to develop agency-specific programs to employ students with disabilities (such as programs developed by the Department of Labor and the General Services Administration).

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the Federal workforce.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service masters and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful

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completion of the two-year internship, PMI's are eligible for permanent status. In its information letters to colleges and universities concerning the PMI Program, **OPM** will reinforce its commitment to diversity, including the recruitment of persons with disabilities.

OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

Give full consideration to employees with disabilities for

inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers.

- Federal employers will ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Departments and agencies ~~are expected to~~ will review career development and related programs to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Departments and agencies will develop ~~Development of~~ training and other courses related to disability employment issues ~~are advocated~~. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- **OPM**, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

Collects and maintains data to monitor the success in achieving

a higher percentage of adults with disabilities in the federal workforce.

- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition, as set out in EEOC Management Directives. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions of how to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- **OPM**, in its oversight role, and the EEOC, as the agency responsible for enforcing the Federal government's affirmative action and non-discrimination programs related to disability, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

Provide reasonable accommodations for qualified applicants

and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission.

- A reasonable accommodation is an adjustment or alteration that enables a qualified person with a disability to apply for a job, ~~to~~ perform job duties, or ~~to~~ enjoy equal benefits and privileges of employment. Federal departments and agencies will make reasonable accommodations ~~to~~ for qualified persons with disabilities unless doing so would impose an undue hardship on the agency.

- The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies are expected to ensure that their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new enforcement guidance on reasonable accommodation issued by the Equal Employment Opportunity Commission (EEOC) on March 1, 1999. Copies can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made. Please consult the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*, for additional information on types of reasonable accommodation.

- Departments and agencies should widely disseminate their reasonable accommodation policies and should integrate the topic of reasonable accommodation into existing training for management and supervisory employees,

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as well as for those connected with agency hiring processes.

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Cynthia A. Rice 09/16/99 09:20:24 PM

Record Type: Non-Record

To: SBSEIDEN@opm.gov
cc: Lisa M. Brown/OVP@OVP, J. Eric Gould/OPD/EOP
bcc: Records Management
Subject: Re: Roll out of plan and guide

I'm afraid I'm not going to make your deadline, but will try to read by Monday.

I don't think this will need any other clearance, but I should talk to OMB>

I do think an event is likely. It would be one, like the one in early June, where this announcement is part of a speech that pushes for Jeffords-Kennedy bill. Scheduling the President and/or the Vice President
is complicated as you know, so Lisa and I will have to work on that. So we will need paper, though I can't say when. I will also dig out and circulate the letter we drafted earlier in the summer, in which the President and/or VP would direct the agencies to follow the plan.

"Suzanne B. Seiden" <SBSEIDEN@opm.gov>

"Suzanne B. Seiden" <SBSEIDEN@opm.gov>
09/14/99 06:57:23 PM

Record Type: Record

To: Brown_lm@a1.eop.gov, ogle-becky@dol.gov, Cynthia A. Rice/OPD/EOP
cc:
Subject: Roll out of plan and guide

Lisa, Cynthia and Becky:

I am trying to get final comments on the plan and guide so we can go to print and be ready with publications (and alternative formats) by October 1st for a possible announcement by a principal during disability awareness month. I may need a little help to get the guide done, but I am hopeful that DOJ will appreciate all the changes we made.

A few questions:

-does the plan or guide need to go into any other clearance or vetting?

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-we were planning to make the final decisions on the printing package (color and graphics) because the documents are OPM documents; let me know if you want to be consulted or if you have something else in mind.

-If you think an announcement is likely, we can start focusing on other deliverables, such as fact sheet and Q & As. I don't want to waste folks' time drafting unnecessary products, but I also want to get folks working on products that are needed, so any feedback would be helpful.

thanks, looking forward to working with you on this and...getting the documents out!! suzanne

---
-- E-Mail scanned for viruses. --

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July 21, 1999 DRAFT

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: HIRING PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

America is enjoying great prosperity, with the prospect of an even brighter future as we head into the next century. Our economy is the strongest it has been in a generation. Since I have been President, there have been more than 18 million new jobs and unemployment is as low as it has been in 29 years. Still, we cannot consider ourselves truly successful until all Americans, including the 30 million working-age adults with disabilities, have access to the tools and opportunities they need to achieve economic independence.

Today, the Americans with Disabilities Act is making it possible for millions of Americans to participate more fully in our society. However, nine years after the ADA's passage, the unemployment rate among working-age Americans with disabilities is still far too high. Almost 75 percent of working-age Americans with severe disabilities remain unemployed. If America is to live up to its promise of equal opportunity, and if our economy is to continue to strengthen and expand, we must be able to draw on the untapped energy and creativity of this large and capable segment of our population.

On March 13, 1998, I took action to address the issue of unemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities. This Task Force was charged with creating a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented me with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations. My FY 2000 budget includes a historic new $2 billion initiative that removes significant barriers to work for people with disabilities. It includes the Work Incentives Improvement Act that invests $1.2 billion in health care and employment services for people with disabilities so they can work. I urge Congress to take swift action in passing this legislation, which will make a critical difference in empowering people with disabilities to become employed and maintain health care coverage. My budget also contains a new $700 million investment in a $1,000 tax credit for workers with disabilities and an increase of $35 million in assistive technologies that make it possible for individuals with disabilities to work.

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the Federal government be a

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model employer for people with disabilities. That is why in On June 4, 1999 I signed an executive order eliminating the federal government's stricter standards for psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. That is also why in November, the Vice President directed the Office of Personnel Management to develop a plan to increase the representation of adults with disabilities in the Federal work force.

Today I am pleased to release The Plan for Employment of People with Disabilities in the Federal Government and the companion employment guide, which provide direction and information for agencies on recruitment and hiring, reasonable accommodation, career development and promotion, and monitoring and evaluating progress in hiring people with disabilities. I direct each and every agency and department to implement this plan immediately and do everything you can to bring qualified people with disabilities into the federal workforce. It is critically important that the federal government benefit from this enormous talent pool of people with disabilities and that the federal government play a leading role in promoting the ability of individuals with disabilities to be a part of our nation's workforce.

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7/19 Employment Plan

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Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. entire folder	Disability-OPM-Model Plan III [1] (118 pages)	ca. July, 1999	P5

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Cynthia Rice (Subject Files)
OA/Box Number: 15430

FOLDER TITLE:
Disability-OPM-Model Plan III [1]

Richard Stalcup

rx46

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Cynthia A. Rice 08/31/99 07:54:26 PM

Record Type: Record

To: sbseiden@opm.gov @ inet

cc: Lisa M. Brown/OVP@OVP, J. Eric Gould/OPD/EOP@EOP
Subject: OPM model plan

Here are comments from Lisa which she sent me just after I left for vacation. We agree with them too.

---------- Forwarded by Cynthia A. Rice/OPD/EOP on 08/31/99 07:47 PM ----------

Lisa M. Brown@OVP

08/17/99 07:55:25 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP@EOP, J. Eric Gould/OPD/EOP@EOP

cc:
Subject: OPM model plan

0726opm.plan.draft.comm My comments are reflected with double strike outs for what I would delete and bold for what I would add. I'm sending this in case you need to move on it before I get back on the 31st.

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Copies of this document may be obtained from OPM's website, www.opm.gov. Persons with disabilities may request copies in alternate formats, including large print, Braille, audio cassette, and computer disk by calling (202) 606-1059 (voice) or (202) 606-0023 (TTY).

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with severe disabilities have not shared in this employment prosperity.

I suggest moving the affirmative action discussion to the end of the introduction—either the final paragraph or the penultimate one. As currently written, it reads as though the entire plan is part of affirmative action. We should also add a sentence emphasizing that the affirmative action obligation applies to each area covered by the plan. This paragraph would then begin with "The federal government is committed to taking the lead . . . . and move into the next paragraph.

The Federal government has a statutory obligation to engage in affirmative action to become a model employer of persons with disabilities. In undertaking this statutory obligation, departments and agencies must consult Management Directives issued by the Equal Employment Opportunity Commission (EEOC). Copies of the Management Directives can be obtained by calling [..... *The EEOC will also provide additional language involving AA in such areas as* .....] ~~As a result, departments and agencies are is~~ **The federal government is** committed to taking the lead in charting a public policy ~~and engaging in affirmative action for employing people with disabilities~~ that provides clear direction to both the public and private sectors.

[no new paragraph]To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued its first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. The**is** Plan ~~addresses the following specific goals:~~ will help ensure that departments and agencies:

- ~~Urge departments and agencies to~~ Recruit widely for positions at all levels;
- ~~Help departments and agencies~~ Provide opportunities for students with disabilities;
- ~~Encourage departments and agencies to~~ Give full consideration to employees with disabilities for inclusion in developmental opportunities;
- Collect and maintain data to monitor success; and
- ~~Urge departments and agencies to~~ ~~Establish agency-wide~~ **Provide** reasonable accommodations ~~policies and procedures~~ for qualified applicants and employees with

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disabilities, consistent with guidance from the Equal Employment Opportunity Commission.

OPM provides th~~e~~**is** Plan for **government-wide** use as part of its ongoing support **of** and commitment to the President **and Vice President**'s goal of making the Federal Government a model employer ~~for~~ **of** people with disabilities. Experience has shown that **government-wide** programs and initiatives require the dedicated and sustained commitment of department and agency leadership. **Theis** Plan will assist Federal employers ~~to~~ **in** fulfill**ing** th**eir** commitment ~~of~~ **to** becom~~inge~~ model employers of people with disabilities.

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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

GOAL: ~~To litigate all disputes of the Federal agencies~~ Recruit widely for including GS-13 to 15 and senior executive service levels.

Recruitment Strategies

- In developing targeted recruitment strategies for people with disabilities, Federal employers ~~should~~ **will** recruit widely and develop collaborative efforts **among themselves** ~~among themselves, with OPM, and~~ with community outreach groups [**what are community outreach groups?**]. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

OPM will develop a collection of "best practices" in **the** public and private sectors of successful recruitment efforts of people with disabilities. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

OPM will also share information **about the Plan and its implementation** through OPM Service Center "messengers." These messengers will serve as liaisons between ~~the Plan and~~ the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Plan efforts and best practices.

- Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules and job sharing. They will also ~~and~~ disseminate ~~ion of~~ employment and other information in alternate formats such as large print, audio cassette, Braille, computer disk, or accessible Internet sites.

- Federal employers should review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at ~~the~~ grades GS-13 to 15, in order to attract candidates **with disabilities** from inside and outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them **to**

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~~in~~ **removeing** barriers to employment and assist~~ing~~ them in actively recruiting people with disabilities. ~~Some of~~ These resources include **but are not limited to** the following:

- The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, ~~or~~ **and** after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

- The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

- Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security or Supplemental Security Income disability benefits and **[[**have been**]] [are?]** prepared to work. Employers may request resumes--

  - By telephone: (757) 441-3362;
  - By fax: (757) 441-3374; or
  - By Email: projable@opm.gov.

  Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling (912) 744-2085.

  For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at: www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also

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potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix **[can't we cite the actual appendix number/title?]** in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memoranda are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own departments or agencies. To support department and agency efforts, **OPM** is available to provide **government-wide** or agency-specific data.

- **OPM** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. ~~The first step is issuing~~ **Options are set forth in detail in** *People with Disabilities in the Federal Government: An Employment Guide*, **which Agencies should/will issue** as a companion piece to this plan. Copies of the guide may be obtained from OPM's website, www.opm.gov. Persons with disabilities may request copies in alternate formats by calling (202) 606-1059 (voice) or (202) 606-0023 (TTY).

- Federal employers ~~should~~ will educate and train managers and supervisors on various hiring programs and resources available to them in recruiting, promoting, and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

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- Federal employers ~~should~~ will include language ~~for~~ **in** vacancy announcements that states that reasonable accommodations will be made for qualified applicants or employees with disabilities, except when doing so would pose an undue hardship on the employing agency.[1] **OPM** will assist departments and agencies with developing appropriate language.

[1] An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the agency's size, financial resources, and the nature and structure of the operation. *See* EEOC's Enforcement Guidance on Reasonable Accommodation dated March 1, 1999. The Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (PCEPD) is an excellent technical assistance resource in the area of reasonable accommodation.

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Special Appointing Authorities

- **OPM** will continue to work with departments and agencies on the use of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL: Help people with disabilities participate in internship and student employment programs.

- In addition to the other appointing authorities listed on pages 5-6 of this plan, Federal employers are encouraged to develop agency-specific programs to employ students with disabilities (such as those in the Department of Labor and the General Services Administration). **Are there other agency programs, or are DOL and GSA the only onew with such programs?**

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the Federal workforce.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they **[who is they?]** take an active role in finding a position in the Federal Government. Upon

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successful

completion of the two-year internship, PMI's are eligible for permanent status. In its information letters to colleges and universities concerning the PMI Program, **OPM** will reinforce its commitment to diversity, including the recruitment of persons with disabilities.

OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

~~GOAL III: "Encourages all departments and agencies to~~ Give

full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and ~~to~~ advance their careers.

- Federal employers ~~should~~ will ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Departments and agencies are expected to review career development and related programs to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, **Agencies will** include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- **OPM**, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

~~GOAL IV:~~ *"Collects and maintains data to monitor the success*

in achieving a higher percentage of adults with disabilities in the federal workforce.

- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition, as set out in EEOC Management Directives. ~~712 and 713.~~ Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions **of how** to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- **OPM**, in its oversight role, and the EEOC, as the agency responsible for ~~articulating~~ enforcing the Federal government's affirmative action and non-discrimination programs related to disability, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

~~GOAL V: Urges departments and agencies to establish agency-wide~~ Provide reasonable accommodations ~~policies and procedures~~ for qualified applicants and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission.

- A reasonable accommodation is an adjustment or alteration that enables a qualified person with a disability to apply for a job, ~~to~~ perform job duties, or ~~to~~ enjoy equal benefits and privileges of employment. Federal departments and agencies ~~are required, when requested, to~~ will make reasonable accommodations ~~to~~ **for** qualified persons with disabilities unless doing so would impose an undue hardship on the agency.

- The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies are expected to ensure that their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new enforcement guidance on reasonable accommodation issued by the Equal Employment Opportunity Commission (EEOC) on March 1, 1999. ~~Free~~ Copies ~~of this and other EEOC guidance~~ can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made. Please consult the appropriate section **[can't we identify the actual section?]** in OPM's *People with Disabilities in the Federal Government: An Employment Guide*, for additional information on types of reasonable accommodations.

- Departments and agencies should widely disseminate their reasonable accommodation policies and should integrate the topic of reasonable accommodation into existing training for management and supervisory employees, as well as for those connected with agency hiring processes.

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Cynthia A. Rice 08/31/99 05:55:50 PM

Record Type: Record

To: Suzanne Seiden

cc: Lisa M. Brown/OVP, J. Eric Gould/OPD/EOP
Subject: Re: So how are things going with the Employment Plan? -Reply

Your opm0728.wpd last draft incorporated nearly all our comments. We had one more addition to the introduction (see in green attached).

So what's the next step on the guide -- are you working directly with DOJ and EEOC on that?

"Suzanne B. Seiden" <SBSEIDEN@opm.gov>

"Suzanne B. Seiden" <SBSEIDEN@opm.gov>
08/16/99 01:19:04 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, sbseiden@opm.gov

cc: Lisa M. Brown@OVP, J. Eric Gould/OPD/EOP
Subject: So how are things going with the Employment Plan? -Reply

---

I have received very few comments. Do you all have any? We are now going to gear up on the guide.

-- E-Mail scanned for viruses. --

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- INTRODUCTION -

As the 21st century approaches, ~~change is a daily occurrence.~~ ~~S~~scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with severe disabilities have not shared in this employment prosperity.

Since President Clinton took office, the American economy has added nearly 18 million new jobs, and unemployment is the lowest in three decades. Still, the unemployment rate among all working age adults with disabilities is nearly 75 percent. This Administration is committed to changing this course. To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued its first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. The Plan ~~addresses the following specific goals:~~ will help ensure that departments and agencies:

- ~~Urge departments and agencies to~~ Recruit widely for positions at all levels;
- ~~Help departments and agencies~~ Provide opportunities for students with disabilities;
- ~~Encourage departments and agencies to~~ Give full consideration to employees with disabilities for inclusion in developmental opportunities;
- Collect and maintain data to monitor success; and
- ~~Urge departments and agencies to~~ Establish agency-wide reasonable accommodations ~~policies and procedures~~ for qualified applicants and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission.

The Federal government has a statutory obligation to engage in affirmative action to become a model employer of persons with disabilities. In undertaking this statutory obligation, departments and agencies must consult Management Directives issued by the Equal Employment Opportunity Commission (EEOC). Copies of the Management Directives can be obtained by calling [..... *The EEOC will also provide additional language involving AA in such areas as .....*] As a result, departments and agencies are ~~is~~ committed to taking the lead in charting a public policy ~~and engaging in affirmative action for employing people with disabilities~~ that provides clear direction to both the public and private sectors.

OPM provides the Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Plan will assist Federal employers to fulfill the commitment of becoming model employers of people with disabilities.

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"Suzanne B. Seiden" <SBSEIDEN@opm.gov>
07/26/99 02:30:22 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: July 26th version of "the plan"

Folks:

Attached for your review is the latest (and hopefully final) draft of the plan. Thanks for all your help. The highlighted text reflects the changes we agreed upon last week. Please review this draft and provide to me any comments by COB Wednesday. suzanne seiden 606-1700.

-- E-Mail scanned for viruses. --

Message Sent To:

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[or some other appropriate transition]

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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

GOAL: ~~To litigate all disputes of the Federal work force,~~ Recruit widely for including GS-13 to 15 and senior executive service levels.

Recruitment Strategies

- In developing targeted recruitment strategies for people with disabilities, Federal employers should recruit widely and develop collaborative efforts ~~among themselves, with OPM, and~~ with community outreach groups. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will develop a collection of "best practices" in public and private sectors of successful recruitment efforts of people with disabilities. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons between the Plan and the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Plan efforts and best practices.

- Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules and job sharing. They will also ~~and~~ disseminate ~~ion of~~ employment and other information in alternate formats such as large print, audio cassette, Braille, computer disk, or accessible Internet sites.

- Federal employers should review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13 to 15, in order to attract candidates from inside and outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with

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disabilities. Some of these resources include the following:

- The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

- The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

- Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security or Supplemental Security Income disability benefits and have been prepared to work. Employers may request resumes--

  - By telephone: (757) 441-3362;
  - By fax: (757) 441-3374; or
  - By Email: projable@opm.gov.

  Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling (912) 744-2085.

  For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at: www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal*

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL: Help people with disabilities participate in internship opportunities for and student employment programs.

- In addition to the other appointing authorities listed on pages 5-6 of this plan, Federal employers are encouraged to develop agency-specific programs to employ students with disabilities (such as those in the Department of Labor and the General Services Administration).

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the Federal workforce.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful

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completion of the two-year internship, PMI's are eligible for permanent status. In its information letters to colleges and universities concerning the PMI Program, **OPM** will reinforce its commitment to diversity, including the recruitment of persons with disabilities.

OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

~~GOAL III: "Encourages all departments and agencies to~~ *Give*

full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers.

- Federal employers ~~should~~ will ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Departments and agencies are expected to review career development and related programs to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- **OPM**, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

~~GOAL IV: "~~Collects and maintains data to monitor the success

in achieving a higher percentage of adults with disabilities in the federal workforce.

- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition, as set out in EEOC Management Directives. ~~712 and 713.~~ Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- **OPM**, in its oversight role, and the EEOC, as the agency responsible for ~~articulating~~ enforcing the Federal government's affirmative action and non-discrimination programs related to disability, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

~~GOAL V: Urges departments and agencies to establish agency-wide~~ Provide reasonable accommodations ~~policies and procedures~~ for qualified applicants and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission.

- A reasonable accommodation is an adjustment or alteration that enables a qualified person with a disability to apply for a job, to perform job duties, or to enjoy equal benefits and privileges of employment. Federal departments and agencies ~~are required, when requested, to~~ will make reasonable accommodations to qualified persons with disabilities unless doing so would impose an undue hardship on the agency.

- The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies are expected to ensure that their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new enforcement guidance on reasonable accommodation issued by the Equal Employment Opportunity Commission (EEOC) on March 1, 1999. ~~Free~~ Copies ~~of this and other EEOC guidance~~ can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made. Please consult the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*, for additional information on types of reasonable accommodation.

- Departments and agencies should widely disseminate their reasonable accommodation policies and should integrate the topic of reasonable accommodation into existing training for management and supervisory employees, as well as for those connected with agency hiring processes.

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"Suzanne B. Seiden" <SBSEIDEN@opm.gov>
07/15/99 05:53:42 PM

Record Type: Record

To: Brown_LM@A1.eop.gov, peggy.mastroianni@eeoc.gov, Cynthia A. Rice/OPD/EOP, liz.savage@usdoj.gov

cc:

Subject: OPM's 7/15 draft of "model" plan

Folks:

Here is our latest draft which incorporates some of DOJ's requests. We hope this will be useful for monday's meeting. Please feel to call me at 606-1700 if you have any questions or comments. suzanne seiden

****
E-Mail scanned for viruses.
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- MODEL16.WPD

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with severe disabilities have not shared in this employment prosperity.

Add info. on job creation since '92

The Federal Government is committed to taking the lead in charting a public policy and engaging in affirmative action for employing people with disabilities that provides clear direction to both the public and private sectors. To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued its first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. The Plan ~~addresses the following specific goals:~~ will help ensure that federal agencies and departments

- ~~Urge departments and agencies to~~ recruit widely for positions at all levels;
- ~~Help departments and agencies~~ provide opportunities for students with disabilities;
- ~~Encourage departments and agencies to~~ give full consideration to employees with disabilities for inclusion in developmental opportunities;
- Collect and maintain data to monitor success; and
- ~~Urge departments and agencies to~~ establish agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission.

combine

[EEOC wanted deleted]

OPM provides the Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Plan will assist Federal employers to fulfill the commitment of becoming model employers of people with disabilities.

DOJ had added goal: "Require departments and agencies to engage in affirmative actions to become model employers of people with disabilities."

affirmative action

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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

GOAL: Increase the hiring, placement, and advancement of persons with disabilities in the Federal workforce, including for GS-13 to 15 and senior executive service levels.

Vacancy Announcements

- Federal employers should include language for vacancy announcements that states that reasonable accommodations will be made for qualified applicants or employees with disabilities, except when doing so would pose an undue hardship on the employing agency.[1] **OPM** will assist departments and agencies with developing appropriate language.

Recruitment Strategies

- Federal employers should develop collaborative efforts among themselves, with OPM, and with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will develop a collection of "best practices" in public and private sectors of successful recruitment efforts of people with disabilities. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons between the Plan and the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Plan efforts and best practices.

[1] An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the agency's size, financial resources, and the nature and structure of the operation. The Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (PCEPD) is an excellent technical assistance resource in the area of reasonable accommodation.

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- ~~Before recruiting,~~ Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules, job sharing, and dissemination of employment and other information in alternate formats such as large print, audio cassette, Braille, computer disk, or accessible Internet sites.

- Federal employers should review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13 to 15, in order to attract candidates from inside and outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

  - Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security or Supplemental Security Income disability benefits and have been prepared to work. Employers may request resumes--

    - By telephone: (757) 441-3362;

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- By fax: (757) 441-3374; or
- By Email: projable@opm.gov.

Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling (912) 744-2085.

For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at: www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memoranda are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own departments or agencies. To support department and agency efforts, **OPM** is available to provide governmentwide or agency-specific data.

- **OPM** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this plan. Copies of the guide may be obtained from OPM's website, www.opm.gov. Persons with disabilities may request copies in alternate formats by calling (202) 606-1059 (voice) or (202) 606-0023 (TTY).

- Federal employers ~~should~~ will educate and train managers and supervisors on various hiring programs and resources available to them in recruiting, promoting, and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

Special Appointing Authorities

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- **OPM** will continue to work with departments and agencies on the use of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

  Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

  Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

  will apply to people already hired

  Note: OPM will issue regulations implementing the new executive order (E.O. 13124) permitting non-competitive conversion of persons with psychiatric disabilities. Until the regulations are final, agencies may continue to use 5 CFR 213.3202(k) and any other appropriate excepted service appointing authorities to appoint persons with psychiatric disabilities.

  ??

  5 CFR 316.302(b)(5) and 5 CFR 316.402(b)(5) for hiring 30 percent or more disabled veterans. These authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

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5 CFR 315.604 for hiring disabled veterans enrolled in a VA training program. This authority is used to hire disabled veterans eligible for training under the Department of Veterans Affairs (VA) vocational rehabilitation program (38 U.S.C. chapter 31). The veterans may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program the veterans are not Federal employees for most purposes, but are beneficiaries of the VA. Upon successful completion, the host agency and VA give the veterans Certificates of Training showing the occupational series and grade levels of the positions for which trained. The Certificates of Training allows any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements similar to those available for disabled veterans under 5 CFR 315.604).

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This should not be a separate section

- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL: *Help people with disabilities to participate in internship opportunities for and student employment programs.*

?

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

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Add School to work

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- MONITORING AND EVALUATING PROGRESS -

Federal departments and agencies shall

GOAL IV: *"Collects and maintains data to monitor the success*

in achieving a higher percentage of adults with disabilities in the federal workforce."

- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

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DOJ additions: explain what 712 + 713 require

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

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ACCESSING OPPORTUNITY

The Plan *for* Employment of People With Disabilities in the Federal Government

OPM United States Office of Personnel Management

Employment Service

Theodore Roosevelt Building
1900 E Street, NW
Washington, DC 20415-9800

202-606-1059
www.opm.gov

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July 1999

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- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities;
- Collect and maintain data to monitor success; and
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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

GOAL I: ***"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."***

Vacancy Announcements

- Federal employers should include language for vacancy announcements that states that reasonable accommodations will be made for qualified applicants or employees with disabilities, except when doing so would pose an undue hardship on the employing agency.[1] **OPM** will assist departments and agencies with developing appropriate language.

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- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

  - Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security or Supplemental Security Income disability benefits and have been prepared to work. Employers may request resumes--

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- By telephone: (757) 441-3362;
- By fax: (757) 441-3374; or
- By Email: projable@opm.gov.

Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling (912) 744-2085.

For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at: www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memoranda are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own departments or agencies. To support department and agency efforts, **OPM** is available to provide governmentwide or agency-specific data.

- **OPM** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this plan. Copies of the guide may be obtained from OPM's website, www.opm.gov. Persons with disabilities may request copies in alternate formats by calling (202) 606-1059 (voice) or (202) 606-0023 (TTY).

- Federal employers should educate and train managers and supervisors on various hiring programs and resources available to them in recruiting, promoting, and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

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Special Appointing Authorities

- **OPM** will continue to work with departments and agencies on the use of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

  Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

  Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

  Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.

  Note: OPM will issue regulations implementing the new executive order (E.O. 13124) permitting non-competitive conversion of persons with psychiatric disabilities. Until the regulations are final, agencies may continue to use 5 CFR 213.3202(k) and any other appropriate excepted service appointing authorities to appoint persons with psychiatric disabilities.

  5 CFR 316.302(b)(5) and 5 CFR 316.402(b)(5) for hiring 30 percent or more disabled veterans. These authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

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5 CFR 315.604 for hiring disabled veterans enrolled in a VA training program. This authority is used to hire disabled veterans eligible for training under the Department of Veterans Affairs (VA) vocational rehabilitation program (38 U.S.C. chapter 31). The veterans may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program the veterans are not Federal employees for most purposes, but are beneficiaries of the VA. Upon successful completion, the host agency and VA give the veterans Certificates of Training showing the occupational series and grade levels of the positions for which trained. The Certificates of Training allows any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements similar to those available for disabled veterans under 5 CFR 315.604).

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL II: ***"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."***

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the Federal workforce.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status. In its information letters to colleges and universities concerning the PMI Program, **OPM** will reinforce its commitment to diversity, including the recruitment of persons with disabilities.

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OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

GOAL III: ***"Encourages all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."***

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Departments and agencies are expected to review career development and related programs to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- **OPM**, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

GOAL IV: ***"Collects and maintains data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce."***

- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition, as set out in EEOC Management Directives 712 and 713. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

- **OPM**, in its oversight role, and the EEOC, as the agency responsible for articulating the Federal government's affirmative action and non-discrimination programs related to disability, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

GOAL V: ***Urges departments and agencies to establish agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission.***

- A reasonable accommodation is an adjustment or alteration that enables a qualified person with a disability to apply for a job, to perform job duties, or to enjoy equal benefits and privileges of employment. Federal departments and agencies are required, when requested, to make reasonable accommodations to qualified persons with disabilities unless doing so would impose an undue hardship on the agency.

- The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies are expected to ensure that their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new enforcement guidance on reasonable accommodation issued by the Equal Employment Opportunity Commission (EEOC) on March 1, 1999. Free copies of this and other EEOC guidance can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made. Please consult the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*, for additional information on types of reasonable accommodation.

- Departments and agencies should widely disseminate their reasonable accommodation policies and should integrate the topic of reasonable accommodation into existing training for management and supervisory employees, as well as for those connected with agency hiring processes.

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Draft Cover Letter for "A Plan for Employment of People with Disabilities in the Federal Government"
7/19/99

America is enjoying great prosperity, with the prospect of an even brighter future as we head into the next century. Our economy is the strongest it has been in a generation. Since I have been President, there have been more than 18 million new jobs; and unemployment is as low as it has been in 29 years. Still, we cannot consider ourselves truly successful until all Americans, including the 30 million working-age adults with disabilities, have access to the tools and opportunities they need to achieve economic independence.

Today, the Americans with Disabilities Act is making it possible for millions of Americans to participate more fully in our society. However, 9 years after the ADA's passage, the unemployment rate among working-age Americans with disabilities is still far too high. Almost 75 percent of working-age Americans with disabilities remain unemployed. If America is to live up to its promise of equal opportunity, and if our economy is to continue to strengthen and expand, we must be able to draw on the untapped energy and creativity of this large and capable segment of our population.

On March 13, 1998, I highlighted the issue of unemployment of people with disabilities by signing Executive Order 13078 establishing a National Task Force on Employment of Adults with Disabilities, whose purpose is to address the unemployment of people with disabilities. This Task Force was charged with creating a coordinated national policy to bring working-age individuals with disabilities into gainful employment. In December, the Task Force presented me with its first report, and I am proud to say we have taken action on all the Task Force's formal recommendations. My FY 2000 budget includes a historic new $2 billion initiative that removes significant barriers to work for people with disabilities. It includes the Work Incentives Improvement Act, which invests $1.2 billion in providing health care and employment services for people with disabilities so they can work. I urge Congress to take swift action in passing this legislation, which will make a critical difference in empowering people with disabilities to become employed and maintain health care coverage. My budget also contains a new $700 million investment in a $1,000 tax credit for workers with disabilities; and an increase of $35 million, in assistive technologies that make it possible for individuals with disabilities to work.

On June 4, 1999 I signed an executive order eliminating the federal government's stricter standards for psychiatric disabilities, an issue highlighted by Mrs. Gore earlier in the year. The executive order will ensure that individuals with psychiatric disabilities are given the same hiring opportunities as persons with severe physical disabilities or mental retardation. It also permits people with psychiatric disabilities the same opportunity to acquire competitive civil service status after two years of successful service.

At the same time as we fight to ensure that all people with disabilities have the health care and other assistance they need to go to work, we must do more to help the Federal government be a model employer for people with disabilities. That is why in November, the Vice President directed the office of Personnel Management to develop a model plan to increase the

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representation of adults with disabilities in the Federal work force. Today I am pleased to release that plan and companion guide book, which provides resources and advice for agencies on recruitment and hiring, reasonable accommodation, career development and promotion, and monitoring and evaluating progress in hiring people with disabilities. I direct every agency to implement this plan immediately.

With the strength of our economy and the enormous talent pool of people with disabilities, it is important that the Federal government be a leader in creating an environment that promotes the ability of individuals with disabilities to be a part of our nation's workforce.

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with severe disabilities have not shared in this employment prosperity.

The Federal Government is committed to ~~should~~ take the lead in ~~rechartingcharting~~ a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. ~~The objective is eliminating widespread barriers to gainful employment for people with disabilities.~~ To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued ~~theirits~~ first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. The Plan addresses the following specific goals:

- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities;
- Collect and maintain data to monitor success; ~~and~~
- Urge departments and agencies to establish and widely disseminate agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities, consistent with ~~guidancesguidance~~ from the Equal Employment Opportunity Commission; and

~~In addition, the Plan reminds agencies of their responsibilities to provide, when requested, a reasonable accommodation to an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.~~

~~OPM is pleased to provides the Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities.~~ • Require departments and agencies to engage in affirmative action to become model employers of people with disabilities.

OPM provides the Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Plan ~~is the first~~

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~~step to help~~ will assist Federal employers to fulfill the commitment ~~to~~of becoming ~~a~~ model ~~employer~~employers of people with disabilities.

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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

Vacancy Announcements

~~*MOVED FROM MIDDLE OF SECTION:*~~

- Federal employers ~~should~~must include language for vacancy announcements that states that reasonable accommodations will be ~~considered~~made for qualified applicants or employees ~~with a disability when such~~disabilities, except where doing so would pose an ~~accommodation is requested~~undue hardship on the employing agency.

Recruitment Strategies

- Federal employers should develop collaborative efforts among themselves, with OPM, ~~or~~and with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will ~~benchmark~~develop a collection of "best practices" in public and private sectors of ~~when~~successful recruitment efforts of people with disabilities. ~~is evident~~ Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons between ~~of~~ the Plan and ~~to~~ the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Plan efforts and best practices.

~~*MOVED FROM END OF SECTION:*~~

- Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules, and job sharing ; ~~and dissemination of~~and that employment ~~and other~~information -- including job announcements and application forms -- is provided in~~alternative~~ alternate formats such as large print, audio cassette, Braille, and computer disk, and on accessible Internet sites.

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- Federal employers ~~are also urged to~~ should review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13 to 15, in order to attract candidates from inside and outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

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- Department- or agency-wide ~~memorandums~~memoranda are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own ~~department or agency~~departments and agencies. To support department and agency efforts, **OPM** is available to provide governmentwide or agency-specific data.

- **OPM** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Plan.

Additional copies, including alternate formats for people with disabilities, are available by calling _____ (voice) or _____ (TTY) or on-line at _____.

- Federal employers should educate and train managers and supervisors on various hiring programs and resources available to them in recruiting, promoting, and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

Special Appointing Authorities

- **OPM** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities and will provide specific guidance regarding their application. These special appointing authorities include:

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Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify for conversion to permanent status.

Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

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5 CFR 316.302(b)(5) and 5 CFR 316.402(b)(5) for hiring 30 percent or more disabled veterans. These authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

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any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements similar to those available for disabled veterans under 5 CFR 315.604).

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the Federal workforce.

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OPM will continue to expand the diversity of ~~academic disciplines~~participants involved in the PMI Program and will actively encourage universities to nominate students with disabilities.

OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- **OPM**, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition, as set out in EEOC Management Directives 712 and 713. ~~Periodic surveying of the workforce~~These Directives require agencies to, ~~and evaluating the resulting data, will determine progress and successes~~ among other things.

  - set goals for employment of persons with disabilities;
  - track applications of persons with disabilities;
  - maintain data on agency-wide hiring, placement, advancement, and retention of persons with disabilities; and
  - establish agency-wide advisory committees comprised of persons with disabilities.

  Large agencies (1,001 or more employees) must submit annual affirmative action program plans to the EEOC, while smaller agencies must submit a five year assurance of nondiscrimination and affirmative action for persons with disabilities.

  This kind of periodic surveying of the workforce, and evaluating the resulting data, will help an agency determine its progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

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- **OPM**, in its oversight role, and the EEOC, as the agency responsible for articulating the Federal government's affirmative action and non-discrimination programs related to disability, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

- A reasonable accommodation is an adjustment or alteration that enables ~~people~~a qualified person with ~~disabilities~~a disability to apply for a job, to perform job duties, or to enjoy equal benefits and privileges of employment. Federal departments and agencies ~~are required, when requested, to make~~must provide reasonable ~~accommodation~~accommodations to ~~the physical or mental limitations of an applicant or employee who is a~~ qualified ~~person~~persons with ~~a disability~~disabilities unless ~~the accommodation~~doing so would impose an undue hardship on the agency.[1]

- The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies ~~should explore ways to insure~~must ensure that their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new enforcement guidance on ~~Reasonable Accommodation~~reasonable accommodation issued by the Equal Employment Opportunity Commission (EEOC) on March 1, 1999. Free copies of this and other EEOC ~~guidances~~guidance can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made. Please consult the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*, for additional information on types of reasonable accommodation.

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[1] An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the ~~employer's~~agency's size, financial resources, ~~and the~~ nature, and structure ~~of the operation~~. As mentioned previously, the Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (PCEPD) is an excellent technical assistance resource in the area of reasonable accommodation.

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- ~~Types of accommodations include worksite modifications, part-time employment, adjusting work schedules, restructuring jobs, acquisition or modification of equipment or devices, obtaining accessible technology or other workplace adaptive equipment, providing interpreters, assistive devices, or readers.~~Agencies and departments should adopt policies that will enable them to respond efficiently and effectively to requests for reasonable accommodation, including such policies as requiring all agency decisions regarding reasonable accommodation to be in writing and ~~reassigning employees. For more information, please refer to the appropriate section in OPM's *People*~~setting up a meaningful, flexible process for persons with ~~Disabilities in the Federal Government: An Employment Guide~~disabilities to challenge denials of requests for reasonable accommodation.

- Agencies and departments should widely disseminate their reasonable accommodation policies and should integrate the topic of reasonable accommodation into existing training for management and supervisory employees, as well as those connected with agency hiring processes.

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- AFFIRMATIVE ACTION -

- The Federal government has a statutory obligation to engage in affirmative action to become a model employer of persons with disabilities. Those regime

- As model employers, agencies and department should consider providing adjustments or alterations that go beyond what is legally required as a matter of reasonable accommodation.

- Agencies and departments, may consider, consistent with Federal law, giving preference to qualified persons with disabilities in the hiring process, especially those whose disabilities are most likely to otherwise result in job discrimination. In its Management Directives 712 and 713, the EEOC has established a list of "targeted disabilities" to help agencies with this analysis.

- Agencies and departments should incorporate the existence of affirmative action policies into their job announcements and employee training, as well as ongoing training for management and supervisory-level employees.

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with severe disabilities have not shared in this employment prosperity.

The Federal Government is committed to take the lead in charting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued its first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. The Plan addresses the following specific goals:

- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Encourage departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities;
- Collect and maintain data to monitor success;
- Urge departments and agencies to establish and widely disseminate agency-wide reasonable accommodation policies and procedures for applicants and employees with disabilities, consistent with guidance from the Equal Employment Opportunity Commission; and
- Require departments and agencies to engage in affirmative action to become model employers of people with disabilities.

OPM provides the Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership. The Plan will assist Federal employers to fulfill the commitment of becoming model employers of people with disabilities.

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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

Vacancy Announcements

- Federal employers must include language for vacancy announcements that states that reasonable accommodations will be made for qualified applicants or employees disabilities, except where doing so would pose an undue hardship on the employing agency.

Recruitment Strategies

- Federal employers should develop collaborative efforts among themselves, with OPM, and with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will develop a collection of "best practices" in public and private sectors of successful recruitment efforts of people with disabilities. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons between the Plan and the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Plan efforts and best practices.

- Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules and job sharing and that employment information -- including job announcements and application forms -- is provided in alternate formats such as large print, audio cassette, Braille, and computer disk, and on accessible Internet sites.

- Federal employers should review their programs to determine if part-time employment

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opportunities could be created to accommodate employees with disabilities.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13 to 15, in order to attract candidates from inside and outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

  - Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security or Supplemental Security Income disability benefits and have been prepared to work. Employers may request resumes--

    - By telephone: (757) 441-3362;
    - By fax: (757) 441-3374; or
    - By Email: projable@opm.gov.

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Federal employers may also access Project ABLE by dialing OPM's Automated Applicant Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling (912) 744-2085.

For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at: www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memoranda are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own departments and agencies. To support department and agency efforts, **OPM** is available to provide governmentwide or agency-specific data.

- **OPM** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Plan. Additional copies, including alternate formats for people with disabilities, are available by calling _____ (voice) or _____ (TTY) or on-line at _____.

- Federal employers should educate and train managers and supervisors on various hiring programs and resources available to them in recruiting, promoting, and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

Special Appointing Authorities

- **OPM** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities and will provide specific guidance regarding their application. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants.

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any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements similar to those available for disabled veterans under 5 CFR 315.604).

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the Federal workforce.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status.

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OPM will continue to expand the diversity of participants involved in the PMI Program and will actively encourage universities to nominate students with disabilities.

OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

- Federal employers should ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Agencies are expected to review career development and related programs to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, transforming organizations to accommodate cultural differences, and agency-wide affirmative action programs, and reasonable accommodations.

- **OPM**, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data, especially elements concerning workforce composition, as set out in EEOC Management Directives 712 and 713. These Directives require agencies to, among other things:

  - set goals for employment of persons with disabilities;
  - track applications of persons with disabilities;
  - maintain data on agency-wide hiring, placement, advancement, and retention of persons with disabilities; and
  - establish agency-wide advisory committees comprised of persons with disabilities.

  Large agencies (1,001 or more employees) must submit annual affirmative action program plans to the EEOC, while smaller agencies must submit a five year assurance of nondiscrimination and affirmative action for persons with disabilities.

  This kind of periodic surveying of the workforce, and evaluating the resulting data, will help an agency determine its progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.

- In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.

- Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.

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Federal government's affirmative action and non-discrimination programs related to disability, will monitor Federal employer efforts in recruiting and employing people with disabilities.

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- REASONABLE ACCOMMODATION -

- A reasonable accommodation is an adjustment or alteration that enables a qualified person with a disability to apply for a job, to perform job duties, or to enjoy equal benefits and privileges of employment. Federal departments and agencies must provide reasonable accommodations to qualified persons with disabilities unless doing so would impose an undue hardship on the agency.[1]

- The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies must ensure that their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new enforcement guidance on reasonable accommodation issued by the Equal Employment Opportunity Commission (EEOC) on March 1, 1999. Free copies of this and other EEOC guidance can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made. Please consult the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*, for additional information on types of reasonable accommodation.

- Agencies and departments should adopt policies that will enable them to respond efficiently and effectively to requests for reasonable accommodation, including such policies as requiring

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all agency decisions regarding reasonable accommodation to be in writing and setting up a meaningful, flexible process for persons with disabilities to challenge denials of requests for reasonable accommodation.

- Agencies and departments should widely disseminate their reasonable accommodation policies and should integrate the topic of reasonable accommodation into existing training for management and supervisory employees, as well as those connected with agency hiring processes.

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- AFFIRMATIVE ACTION -

- The Federal government has a statutory obligation to engage in affirmative action to become a model employer of persons with disabilities.

- As model employers, agencies and department should consider providing adjustments or alterations that go beyond what is legally required as a matter of reasonable accommodation.

- Agencies and departments, may consider, consistent with Federal law, giving preference to qualified persons with disabilities in the hiring process, especially those whose disabilities are most likely to otherwise result in job discrimination. In its Management Directives 712 and 713, the EEOC has established a list of "targeted disabilities" to help agencies with this analysis.

- Agencies and departments should incorporate the existence of affirmative action policies into their job announcements and employee training, as well as ongoing training for management and supervisory-level employees.

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

JUN 24 1999

MEMORANDUM

TO: Suzanne Seiden
General Counsel
Office of Personnel Management

FROM: Ellen J. Vargyas
Legal Counsel
Equal Employment Opportunity Commission

RE: OPM Draft Plan on Employment of People with Disabilities

We have reviewed the version of the OPM Draft Plan that was circulated on June 3, 1999, and appreciate the opportunity to provide you with our comments on this latest draft. To the extent that they have not been incorporated into this document, we renew our prior comments, dated May 18, and May 27, 1999. We would be happy to discuss those further with you and to answer any questions on them that you may have.

Our comments at this time focus exclusively on those aspects of the Draft Plan that address what we regard as affirmative action activities. As you know, Section 501 of the Rehabilitation Act of 1973 requires federal agencies to engage in affirmative action to improve employment opportunities for people with disabilities. These requirements are enforced by the EEOC and are currently explained in detail in EEOC Management Directives 712 and 713. In addition, we are, as you are aware, close to finalizing – and submitting to the Commission for approval – a draft of a new Management Directive that would supersede the existing Directives and that contains a comprehensive guide to agency affirmative action obligations. We have appreciated your prior comments on this draft document, and will welcome your input on the newest draft of it, which we expect to circulate shortly. The new draft will reflect the consensus judgments of each of the offices that have reviewed the Directive, including your office, the Office of the White House Counsel, and the Department of Justice.

Because there are two Management Directives currently in effect, and because we anticipate that the Commission is likely to issue the new Management Directive in the relatively near future, we are concerned that significant confusion will result if OPM publishes a Plan that purports to address agency affirmative action obligations. In our view, substantial modifications to the OPM Draft Plan would be required to make the Plan consistent with EEOC guidance and to ensure that the Plan fully reflected the substantial obligations that are imposed in both old and

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new Management Directives. As currently drafted, the OPM Draft Plan differs from the Management Directives in its treatment, for example, of:

- the extent to which affirmative action is required by law as opposed to merely aspirational;
- the scope of activities that agencies are expected to undertake; and
- the appropriate sources of technical assistance for particular types of disability-related issues.

Even were the OPM Plan redrafted to be substantively consistent with EEOC guidance, moreover, we think it likely that agencies would be confused when dealing with two different documents that purport to describe the same set of obligations. If, for example, the language of the Plan differed in any respect from the language of the EEOC's Management Directive -- or if the Plan included a shorter, longer, or even slightly different list of federal agency responsibilities -- agency managers might be uncertain about which document should govern and whether either described a legally enforceable obligation.

As an example, the OPM Draft Plan currently states the "goal" that agencies "collect and maintain data to monitor the[ir] success in achieving a higher percentage of adults with disabilities in the federal workforce." (Draft Plan at p. 9; redlined Plan at p. 10.) The text of this section then states that agencies "are expected to" monitor the composition of their workforces, and to do "periodic surveys" of the workforce to determine progress and develop recruitment strategies. The section further recommends recognition of managers and supervisors whose recruiting and hiring efforts result in a diverse workforce, and sets forth OPM's oversight role.

As drafted, this section of the OPM Draft Plan would likely cause substantial confusion among federal managers responsible for implementing the affirmative action requirements of the Rehabilitation Act. Potential problems include the following:

- Because the Draft Plan treats data collection as a "goal," it suggests that it is simply an advisable -- not a required -- activity. Both the existing and the new draft Management Directives, however, *require* agencies to engage in substantial statistical analyses of the representation of people with disabilities in their workforces.
- The Draft Plan emphasizes "periodic surveys," particularly of "elements concerning workforce composition." We do not know precisely what types of workforce analyses you intend to include in this language. We note, however, that the draft Management Directive requires agencies to submit statistical information to the EEOC on an annual basis (with multi-year plans to be done every three years), and directs them to evaluate not only the demographics of their

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existing workforces, but the impact of their hiring, promotion, and termination decisions as well. We do not believe that the language of the Draft Plan in any way alerts agencies to the scope of these obligations.

- The Draft Plan does not distinguish between targeted and reported disabilities. As you know, however, the existing and draft Management Directives all instruct agencies to focus their recruitment and other efforts on people with targeted disabilities, and require that agencies separately track and report representation of individuals with those disabilities.

- The Draft Plan urges agencies to evaluate managers based on whether they have achieved diversity in hiring. While we agree that such a strategy is one means by which agencies might improve employment opportunities for people with disabilities, this recommendation ignores the host of other proactive steps that are either required or encouraged in the EEOC's Management Directives. In both existing and new Management Directives, for example, agencies are required to set goals for the employment of people with targeted disabilities. The new Management Directive further sets forth a comprehensive sequential approach that relies on workforce analyses; reviews of policies and practices; outreach, recruitment, and training activities; actions to facilitate accommodations in the workplace; and hiring decisions that take disability into account, through excepted appointing authorities or otherwise. We are concerned that by emphasizing one avenue for improving employment opportunities, the Draft Plan may inadvertently lead agencies to overlook others.

- The Draft Plan states that OPM, "in its oversight role, will monitor" agency recruitment and employment efforts. Because the EEOC is the agency charged with enforcement of the Rehabilitation Act, we are unclear what role OPM intends to play. While we welcome OPM efforts to increase employment of people with disabilities throughout the federal government, we believe that OPM responsibilities need to be clearly defined so that agencies will understand to which agency they can come for advice on specific disability-related issues.

To avoid these problems – and to avoid creating new ones that might arise were OPM to attempt to include the host of EEOC requirements in its Draft Plan -- we recommend that the OPM Plan delete any substantial discussion of affirmative action or use of affirmative action language. Here, that would mean deleting the section of the Plan that addresses data collection altogether. At a minimum, we would revise the "goal" to state that agencies should "*improve*" their collection and maintenance of data on employees with disabilities. We would also delete the last three bullets of the discussion and modify the second to state simply that "[d]epartments and agencies must regularly monitor their workforce data, as set forth in EEOC Management Directives 712 and 713."

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I know that our agencies are jointly committed to taking steps that will maximize federal employment opportunities for people with disabilities -- as well as to avoiding initiatives that will undermine those efforts. In line with that goal, we would propose that the Management Directive be the government vehicle for addressing agency affirmative action obligations, and that the OPM Plan focus on providing a plain-language explanation of (a) non-discrimination requirements and (b) the scope and procedures for use of excepted appointing authorities. In our view, this approach would eliminate the potential for inconsistency, duplication, and confusion, while at the same time providing much needed guidance to facilitate agency use of excepted appointing authorities.

Implementation of this approach would not require substantial revisions to the OPM Draft Plan. We have attached two appendices to this memorandum. Appendix A summarizes the language changes that we believe are necessary to avoid conflicts between the Plan and the EEOC's treatment of affirmative action obligations; we have also attached a redlined version of the draft that contains our specific language proposals. Appendix B contains a list of questions we think it would be useful for the Draft Plan to address on excepted appointing authorities. We have also added a sentence at the end of the Introduction to the Plan that emphasizes that agencies should refer to EEOC Management Directives for guidance on their affirmative action obligations.

Please do not hesitate to call Peggy Mastroianni, Associate Legal Counsel with questions about any of these comments. We will look forward to seeing the next draft of the OPM Plan.

cc.: Becky Ogle
Executive Director
President's Task Force on Employment of People with Disabilities

Liz Savage
Special Assistant to the Assistant Attorney General
Department of Justice

Lisa Brown
Deputy Counsel
Office of the Vice President

Attachments

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APPENDIX A

PROPOSED CHANGES TO OPM DRAFT PLAN AND EMPLOYMENT GUIDE

Draft Plan

[All page references are to the attached redlined version of the draft Plan.]

- We suggest deleting the reference to the federal government as a "model employer" at the bottom of p. 1. This language connotes affirmative action responsibilities and could suggest that the Plan sets forth all of the responsibilities necessary to become a model employer.

- In the draft Management Directive, we have carefully identified affirmative action responsibilities that agencies *are required to* assume. We are concerned that the draft Plan in some cases suggests that actions the Directive requires are in fact merely recommended practices for agencies. Among those provisions are:

  - Draft Plan, p. 2, which states that agencies "should" include language in vacancy announcements on reasonable accommodations, and indicates that the agency's only responsibility is to "consider" – not to grant – such accommodations.

  - Draft Plan, p. 4, which states that federal employers "should" educate and train personnel on hiring and other authorities for individuals with disabilities.

  - Draft Plan, p. 9, which states that federal employers "should" ensure that people with disabilities have an equal opportunity to compete for training and career development opportunities.

  - Draft Plan, p. 9, which states that career development and related program review "is encouraged" to ensure that there are no barriers for people with disabilities. The Directive would require such review in some cases.

  - Draft Plan, p. 1, which "urges" agencies to establish agency-wide reasonable accommodation policies and procedures. (*See also* second bullet on that page, which states that agencies "should explore ways to" ensure that personnel are familiar with such procedures.)

  If these statements remain in the document, we request that you substitute the word "must" for "should" in each of these examples. Additional comments on the Reasonable Accommodation section are set forth below.

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- The goals on recruitment and career development (Goals I and III) are phrased as aspirations. (Goal I, for example, "urges" agencies to recruit widely for all positions; Goal III "encourages" agencies to give full consideration to people with disabilities for inclusion in developmental opportunities.) To the extent that Goal III states a non-discrimination requirement, it should be phrased to make clear that agencies *must* give full consideration to employees with disabilities. While Goal I is not inconsistent with the EEOC Management Directives, it does not reflect that agencies will sometimes be required to recruit widely as a matter of affirmative action. We have added a statement to this effect in the body of the text discussing this goal.

- Wherever it is addressed (*e.g.*, in the Draft Plan at p. 5 and in the Employment Guide at p. 23), the discussion of the special appointing authority for people who have recovered from a mental illness should be modified to reflect the recent Executive Order on revisions to this authority.

- As noted in our cover memorandum, we would delete, or substantially modify, the section on collecting and maintaining data on work force representation of people with disabilities (Draft Plan, p. 10).

- It is a central affirmative action requirement under the draft Management Directive that agencies establish formal procedures for responding to requests for reasonable accommodation. To avoid confusion on this issue, we recommend that the Draft Plan section on reasonable accommodation be restricted to a statement of an agency's non-discrimination obligations in this regard. The first and third paragraphs of this section already set forth non-discrimination responsibilities and need not be modified. We suggest that the goal be rephrased to be "requires departments and agencies to provide reasonable accommodation to qualified individuals with disabilities." We would further modify the second bullet to state that agencies "must ensure" that personnel are familiar with reasonable accommodation policies and procedures.

Employment Guide

- We propose two sets of changes at p. 7. First, we suggest that the language on what we regard as non-discrimination requirements (*e.g.*, with regard to providing equal opportunity to people with disabilities in career development, promotion, and other employment opportunities; providing reasonable accommodation; and eliminating discrimination due to barriers) be strengthened to make clear that agencies "must" ensure that these opportunities are available on a non-discriminatory basis. Second, we propose that you delete the first and third sentences of the third paragraph -- "encouraging" adoption of reasonable accommodation procedures and review of personnel policies -- since these address affirmative action responsibilities that are required under the Management Directive.

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- In various places, the Employment Guide advises that federal agencies "should" undertake what we regard as mandatory non-discrimination responsibilities. At p. 32, for example, the Guide states that agencies "should ensure that employees with disabilities are given full consideration for inclusion in upward mobility programs." At p. 33, the draft states that "people with disabilities should have equal opportunity to receive" awards. In both of these cases, we recommend that you change the language to "must."

- At page 36, the Employment Guide contains various statistical measures of the participation of people with disabilities in various federal occupations. These statistics, which are based on OPM and not EEOC data, differ from those used in the Federal Personnel Working Group's Report to the Presidential Task Force. To create consistency in the federal government's use of data, you may wish to consider substituting the information in that Report for the statistics used here. At a minimum, we believe that this Appendix should make clear that these statistics are derived from data maintained by OPM, and that the first bullet – on representation of people with disabilities government-wide – reflects employment of people with all disabilities, not those with the targeted disabilities identified in EEOC Management Directives 712 and 713.

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APPENDIX B

QUESTIONS ON EXCEPTED APPOINTING AUTHORITIES

- **Which individuals with disabilities are eligible for excepted appointment?** In the 1982 version of its Federal Personnel Manual, OPM described the types of disabilities that would make an individual eligible for excepted appointment. The Manual was rescinded several years ago, however, and OPM has not replaced it. As a result, agencies lack guidance on how to evaluate whether a particular applicant has the type of disability which would make him/her eligible.

- **Which agency jobs are covered?**

  - Under Schedule A, excepted appointments may be used for those positions "for which it is not practicable to examine." 5 C.F.R. § 213.3101(a). Under Schedule B, excepted appointments are available where "it is impracticable to hold open competition or to apply usual competitive examining procedures." 5 C.F.R. § 213.3201(a). We assume that the Schedule B provisions will be modified, pursuant to the President's recent Executive Order, to reflect the language of Schedule A. How, however, are agencies to identify the positions "for which it is not practicable to examine"? Or may excepted appointments be made to any competitive service position if an individual has an eligible disability?

  - Are excepted appointments available only for applicants outside the agency – i.e., for new hires? Or can they be used to promote internal candidates for upper level jobs?

- **What benefits and exemptions are provided by excepted appointment?**

  - Under Schedule A, appointments are "excepted from application of the qualification standards and requirements established for the competitive service." 5 C.F.R. § 213.3101(a). Under Schedule B, on the other hand, appointments "are subject to the basic qualification standards established by [OPM] for the occupation and grade level." 5 C.F.R. § 213.3201(a). Again, we assume that the Schedule B language is subject to change. It would be helpful, however, if OPM could provide a fuller discussion of what it means to be excepted from competitive qualifications standards.

  - Are agencies required to establish their own qualification standards for Schedule A appointments? If so, are there requirements for those standards? How is an agency to assess whether an applicant eligible for excepted appointment is qualified to perform the job? Is certification from a vocational rehabilitation agency the exclusive means?

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- What requirements of the competitive selection process are waived when an individual is eligible for excepted appointment? What does it mean to say that "competitive status is not required"? Are there criteria from which agencies *must* exempt individuals who are eligible for excepted appointment?

- If an individual is eligible for an excepted appointment, does (s)he then automatically get the job? Alternatively, is (s)he automatically included on a "best qualified" list? Is such an individual simply included in the applicant pool?

- Do agencies have discretion to structure the benefits that accrue from eligibility for excepted appointment? Pursuant to excepted appointing authorities, for example, could an agency exempt eligible applicants from restrictions as to the closing date for applications; restrictions on the area of consideration specified in the vacancy announcement; or criteria such as prior federal service?

- How does eligibility for excepted appointment relate to priorities now given for reinstatement of former federal employees when vacancies are available? To priorities for veterans?

- **What procedures agencies should follow in making excepted appointments?** Among the topics that OPM might address are any forms that agencies must complete; the agency officials who are authorized to determine eligibility for, and to make, excepted appointments; and whether any excepted appointments need to be reported to, or approved by, OPM. On the latter point, we would recommend that each agency be authorized to decide upon its own excepted appointments without further clearance from OPM.

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advancement of people with disabilities. This includes recruitment, hiring, training, career development, mentoring support and providing reasonable accommodations when requested.

Career development and promotion opportunities, training, awards, and other similar programs must ~~should~~ be an integral part of an agency's responsibilities towards employees with disabilities. Further, Federal employers must ~~should~~ make reasonable accommodations, when requested, to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the agency can demonstrate that the accommodation(s) would impose an undue hardship on the operation of its program. Action must ~~should~~ be taken to eliminate discrimination against applicants or employees with disabilities due to barriers in agency facilities. [Note: the last sentence was moved from what was the next paragraph in OPM's document]:

~~Federal employers are encouraged to establish procedures to ensure that the employment and advancement of people with disabilities meet affirmative action program objectives, diversity planning, emphasis, and accountability. Federal employers should also ensure that there are no personnel or management policies, practices or procedures which restrict hiring, placement and advancement of people with disabilities.~~

~~It is illegal for a Federal agency to discriminate in employment against qualified individuals with disabilities.~~ Anyone who believes he or she has been subjected to discrimination on the basis of disability may file a complaint with the employing agency's equal employment opportunity (EEO) office. Departments and agencies should refer to EEOC's MD-110 and 29 CFR, Part 1614, for additional guidance on the EEO complaint process.

State and Other Rehabilitation Service Resources

Vocational rehabilitation counselors are available at State Vocational Rehabilitation Agencies (SVRAs) and their local offices. They can be easily reached by phone. The extent and types of services offered may vary from State to State, but most SVRA counselors are able to do some or all of the following:

- Explain disabilities;
- Prepare certification documents;
- Refer qualified applicants and provide follow-up assistance for placements made;
- Provide assistance when individuals with disabilities employed under excepted appointing authorities are upgraded or downgraded or when problems arise in regard to these employees;

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authorities for people with disabilities. Federal employers are authorized to use these authorities when considering certain people with disabilities (those who have a severe physical, cognitive or emotional disability or a history of having such disabilities or are perceived as having such disabilities). The authorities provide a unique opportunity to demonstrate the potential to successfully perform the essential duties of a position with or without reasonable accommodation in the workplace.

- **Schedule A, 5 CFR 213.3102(t) for Hiring People with Mental Retardation.** This authority is used to appoint persons with cognitive disabilities (mental retardation) who meet the eligibility requirements. Upon completion of 2 years of satisfactory performance the employee may qualify for conversion to the competitive service.

- **Schedule A, 5 CFR 213.3102(u) for Hiring People With Severe Physical Disabilities.** This authority is used to appoint persons with severe physical disabilities who (1) under a temporary appointment have demonstrated their ability to perform duties satisfactorily; or (2) have been certified by a counselor from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affair's Vocational Rehabilitation Office as likely to succeed in performance of duties. Upon completion of two years of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

- **Schedule B, 5 CFR 213.3202(k) for Hiring People Who Have Recovered from Mental Illness.** [We would change this paragraph to reflect the recent Executive Order] ~~This authority permits appointments at Grades GS-15 and below when filled by individuals who: (l) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; (2) are certified to a specific position by a State vocational rehabilitation counselor or a Department of Veterans Affairs counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the position to which they will be appointed, and that any residual disability is not job related. Employment under this authority may not exceed 2 years following each significant period of mental illness.~~

In addition, Federal employers can use the following authority to provide assistance to employees with disabilities:

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appointment authorities, a selecting official should **only** ask questions about the person's ability to do the job. The office should make sure that all questions are job-related. The focus of the interview should be on the individual's ability to successfully perform the essential functions of the job and demonstrating the competencies or knowledge, skills, and abilities needed to perform the job. "Essential functions" are the tasks that are fundamental and intrinsic to the job. Understanding essential functions and the competencies required to perform those functions is particularly important to prepare for applicant interviews.

If the person indicates that he or she has a disability which makes it difficult to perform particular functions of a job, or if the selecting official believes that a person's disability may make it difficult to perform certain job functions, the selecting official may ask job-related follow-up questions, such as: describe how you can perform the job. The answer to such questions will indicate whether a reasonable accommodation is needed to enable the individual to perform the essential functions of the job. Allow the applicant to request reasonable accommodation. **It is the responsibility of the job applicant to inform the employer of any accommodation needs.** However, employers should not make a general assumption that an individual with a disability will be unable to do a certain part of the job, or that a reasonable accommodation will be needed.

Career Development

One of the major problems facing people with disabilities is underutilization of their knowledge, skills, and abilities. Developmental details and reassignments can be used as a means of providing on-the-job training which will enhance opportunities for promotion. In addition, it is easy to fall into the trap of isolating employees with disabilities from others. Make sure employees with disabilities have opportunities not only to work with others on group projects, but, when appropriate, to take on leadership roles.

Federal employers must ~~should~~ ensure that employees with disabilities are given full consideration for inclusion in upward mobility programs, and that they are aware of career counseling. Recognize that people with disabilities have career goals. Agency managers should sit down with employees and talk about goals. Identify role models and mentors for disabled employees or encourage them to do so. Every effort should be made to ensure that disabled employees reach their maximum potential.

Performance Evaluation

People with disabilities should be held accountable for their work performance.

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Supervisors are responsible for communicating performance expectations to their employees and monitoring and appraising their work. When the individual with a disability begins a job, he or she should be given a clear description of the job, and the specific duties. Employees should be provided with encouragement and feedback regarding their work performance. It is important to ensure that when evaluating a person with a disability, aspects of their physical or mental disability are not held against them. They should be evaluated for their ability to do a job with the appropriate accommodations. For example, it would be inappropriate to negatively evaluate an individual who uses a wheelchair for not attending a meeting, when the meeting was held in a physically inaccessible building.

If an employee with a disability cannot perform satisfactorily after a full and fair trial period, then his or her employment should be terminated. No supervisor or manager owes a job to any person with a disability. The goal and the only obligation is equal employment opportunity. The same job-related performance criteria should be applied to disabled employees that is applied to all other employees. If it becomes necessary to terminate the appointment of a disabled employee, the Human Resources or Personnel Office will help in making this decision and taking appropriate action.

Awards

People with disabilities must should have equal opportunity to receive incentive awards (special achievement/act or performance), quality step increases and all other agency-sponsored or non-agency sponsored awards. Efforts should not be limited to special awards programs geared specifically to those who are disabled.

Training

Give employees with disabilities an equal chance to benefit from training and development opportunities. Ensure that classes are held in accessible facilities, and as necessary, that materials are available in large print for persons who are visually impaired, interpreters are provided for participants who are hearing-impaired, or other accommodations are made. Any training which would provide growth opportunities that will allow disabled employees to advance in their careers should be encouraged. Such training could include developmental detail assignments, lateral reassignments, and leadership training.

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[EEOC is concerned about this section for the following reasons:

1. OPM's and EEOC's statistics measure different groups of people and are based on different underlying assumptions;
2. Including OPM's 7%number will likely cause confusion and lead people to think that EEOC's 1.18%number (of people with targeted disabilities employed by the Federal government, as published in the EEOC Annual Report) is artificially low.]

APPENDIX 1: STATISTICAL INFORMATION

The Office of Personnel Management (OPM) published a *Statistical Profile of People with Disabilities in the Federal Workforce* in 1998. Copies of the report can be obtained by calling OPM's Office of Diversity at (202) 606-1059. Some of the findings are listed below:

- Despite downsizing and employment changes, the representation of persons with disabilities in the Federal Government since 1992 has remained fairly stable near 7% of the workforce. In 1997, the approximately 127,076 employees with disabilities represented 7.2% of the Federal Executive Branch workforce.

- The average pay of Federal employees with disabilities lags below the overall average Federal employee pay. A higher proportion of Federal employees with disabilities are in lower grade occupations.

- Nearly two thirds of our Federal employees with disabilities are in professional, administrative and technical occupations. This is a positive factor given that, in 1992, 40% of Federal employees with disabilities were in blue-collar and clerical occupations; jobs with more limited pay and advancement opportunities. However, other employment indicators merit further scrutiny.

- Of the 195,903 new hires in FY 1997, only 11,847, or 5.7% were people with disabilities.

- Over half (55%) of all new FY 1997 hires with disabilities were hired into blue-collar and clerical occupations. While these occupational groups have constituted traditional employment vehicles for persons with disabilities, these employment pipelines offer limited career advancement opportunities and will continue shrinking due to changes in Federal agency operations.

- From FY 1992 thru FY 1997, there has been some decline in the use of special

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- INTRODUCTION -

As the 21st century approaches, change is a daily occurrence. Scientific and technological advances are giving rise to new industries and occupations unheard of only a decade ago. As these advances occur, new employment opportunities are becoming plentiful. However, the majority of working-age individuals with severe disabilities have not shared in this employment prosperity.

The Federal Government is committed to take the lead in charting a public policy for employing people with disabilities that provides clear direction to both the public and private sectors. To this end, the President signed Executive Order 13078 on March 13, 1998, establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population. The Task Force issued their first report, "Recharting the Course," on November 15, 1998. Vice President Gore accepted the report on behalf of the Administration at a December 14, 1998 meeting, and directed the U.S. Office of Personnel Management (OPM) to develop a plan to increase the representation of adults with disabilities in the Federal workforce. The Plan addresses the following specific goals:

- Urge departments and agencies to recruit widely for positions at all levels;
- Help departments and agencies provide opportunities for students with disabilities;
- Require ~~Encourage~~ departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities;
- ~~Collect and maintain data to monitor success;~~ and
- Require ~~Urge~~ departments and agencies to provide ~~establish agency-wide~~ reasonable accommodation ~~policies and procedures~~ for qualified applicants and employees with disabilities~~, consistent with guidances from the Equal Employment Opportunity Commission~~.

OPM provides the Plan for governmentwide use as part of its ongoing support and commitment to the President's goal of making the Federal Government a model employer for people with disabilities. Experience has shown that governmentwide programs and initiatives require the dedicated and sustained commitment of department and agency leadership~~ and this Plan~~ highlights some of the ways that agencies can act to ensure non-discrimination and promote employment opportunities for people with disabilities. Agencies are strongly advised also to consult Management Directives issued by the Equal Employment Opportunity Commission (EEOC), which describe in detail the federal government's legal obligation to undertake affirmative action for people with disabilities. ~~The Plan will assist Federal employers to fulfill the commitment to becoming a model employer.~~

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THE PLAN FOR EMPLOYMENT OF PEOPLE WITH DISABILITIES IN THE FEDERAL GOVERNMENT

- RECRUITMENT AND PLACEMENT -

GOAL I: ***"Urges all departments and managers to recruit widely for positions at all levels of the federal workforce, including GS-13 to 15 and senior executive service levels."***

Vacancy Announcements

MOVED FROM MIDDLE OF SECTION:

- Federal employers must ~~should~~ include language for vacancy announcements that states that reasonable accommodations will be provided ~~considered~~ for qualified applicants or employees with a disability when such an accommodation is requested.

Recruitment Strategies

- Federal agencies will be required to engage in outreach and targeted recruitment where necessary to open employment opportunities for people with disabilities. Toward that end, federal employers should develop collaborative efforts among themselves, with OPM, or with community outreach groups in developing targeted recruitment strategies for people with disabilities. By working together, the use of resources would be maximized while attracting highly-qualified persons with disabilities at all levels.

  OPM will benchmark best practices in public and private sectors of successful recruitment efforts of people with disabilities. Information will be shared with Federal departments and agencies, other public entities, and interested parties.

  OPM will also share information through OPM Service Center "messengers." These messengers will serve as liaisons between the Plan and the community and Federal departments and agencies. They will also work closely with Federal Executive Boards, Federal Executive Associations, and Personnel (or Human Resources) Councils to disseminate information about Plan efforts and best practices.

MOVED FROM END OF SECTION:

- Before recruiting, Federal employers will review internal human resource policies to ensure that every flexibility is considered in areas such as alternative work schedules, job sharing, and dissemination of employment and other information in alternative formats.

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- Federal employers should review their programs to determine if part-time employment opportunities could be created to accommodate employees with disabilities.

- Departments and agencies should explore ways to recruit from all sources when filling positions, including those in the Senior Executive Service and managerial and supervisory positions at the grades GS-13 to 15, in order to attract candidates from inside and outside the Federal Government.

- Departments and agencies should use a variety of resources and networks available to them in removing barriers to employment and assisting them in actively recruiting people with disabilities. Some of these resources include the following:

  - The Job Accommodation Network (JAN) will help Federal employers receive expert accommodation information easily before, during, or after the recruitment process. JAN is a confidential service which allows any manager or employee to receive individualized information on his or her accommodation issue. It is run by the President's Committee on Employment of People with Disabilities (PCEPD), and may be reached at (800) 526-7234.

  - The Workforce Recruitment Program for College Students with Disabilities (WRP) is one source Federal employers may tap for potential employees. The WRP is managed by the President's Committee on Employment of People with Disabilities (PCEPD) and the Department of Defense. It is a resource used to connect public or private sector employers nationwide with highly-motivated post-secondary students and recent graduates with disabilities. The WRP has two long-term goals: (1) to provide college students with disabilities the opportunity to obtain summer employment which may lead to permanent employment in the Federal or private sector; and (2) to break down attitudinal barriers held by employers and co-workers by demonstrating that people with disabilities can work successfully in a variety of jobs. Employers may access the candidate database by contacting their agency's WRP representative.

  - Project ABLE (Able Beneficiaries' Link to Employers) is a national resume bank which provides any employer an easily-accessible applicant pool of qualified job-ready individuals. These individuals receive Social Security or Supplemental Security Income disability benefits and have been prepared to work. Employers may request resumes--

    - By telephone: (757) 441-3362;
    - By fax: (757) 441-3374; or
    - By Email: projable@opm.gov.

    Federal employers may also access Project ABLE by dialing OPM's Automated Applicant

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Referral System at (912) 757-3150. A valid agency identification code is needed to access the system; it may be obtained by calling (912) 744-2085.

For more information on Project ABLE, please contact the Social Security Administration at (410) 965-9040, TTY (410) 966-6210, or through Internet at: www.ssa.gov/odhome/odderp/P_Able.htm

- U.S. Department of Veterans Affairs and State vocational rehabilitation offices are also potential recruitment sources. They provide training and other services to individuals with disabilities. For more information and to locate the nearest Veterans Affairs or State office, please refer to the appropriate appendix in *People with Disabilities in the Federal Government: An Employment Guide*. Also, telephone numbers may be found in the government blue pages section of the local telephone directory.

- Department- or agency-wide memorandums are helpful in publicizing efforts to increase the number of people with disabilities in the Federal workforce. Employees will also appreciate knowing what efforts are currently underway to increase the number of people with disabilities in their own department or agency. To support department and agency efforts, **OPM** is available to provide governmentwide or agency-specific data.

- **OPM** will help educate Federal employers on various recruiting and hiring options available to employ people with disabilities. The first step is issuing *People with Disabilities in the Federal Government: An Employment Guide* as a companion piece to this Plan.

- Federal employers must ~~should~~ educate ~~and train~~ managers and supervisors on various hiring programs and resources available to them in recruiting, promoting, and retaining employees with disabilities. An initial survey regarding familiarity with these programs may help identify specific training needs.

Special Appointing Authorities

[Add discussion of questions raised in Appendix B to memorandum]

- **OPM** will continually remind departments and agencies of the special appointing authorities available to them when employing people with disabilities. These special appointing authorities include:

  Schedule A, 5 CFR 213.3102(ll) for hiring readers, interpreters, and personal assistants. This excepted authority is used to appoint readers, interpreters, and personal assistants for employees with severe disabilities. After one year of satisfactory service, they may qualify

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for conversion to permanent status.

Schedule A, 5 CFR 213.3102(t) for hiring people with mental retardation. This excepted authority is used to appoint persons with cognitive disabilities (mental retardation). They may qualify for conversion to permanent status after two years of satisfactory service.

Schedule A, 5 CFR 213.3102(u) for hiring people with severe physical disabilities. This excepted authority is used to appoint persons with severe physical disabilities who have demonstrated satisfactory performance through a temporary appointment, or have been certified as likely to succeed in performing the duties of the job. After two years of satisfactory service, they may qualify for conversion to permanent status.

Schedule B, 5 CFR 213.3202(k) for hiring people who have recovered from mental illness. ~~This excepted authority is used to appoint persons who are certified that they are at a severe disadvantage in obtaining employment because of disrupted employment due to hospitalization or outpatient treatment for psychiatric disabilities. Certification also ensures that they are capable of functioning in the positions for which they will be appointed, and that any residual disabilities are not job-related.~~ [Make this paragraph consistent with the new Executive Order re: Schedule B appointments].

5 CFR 316.302(b)(5) and 5 CFR 316.402(b)(5) for hiring 30 percent or more disabled veterans. These authorities are used to hire veterans who are 30 percent or more disabled under temporary appointments of more than 60 days, or term appointments. The veterans must have retired from active military service with a 30 percent or more disability rating, or be rated by the Department of Veterans Affairs within the preceding year as having a comprehensive service-connected disability of 30 percent or more. The department or agency may convert these individuals to permanent status at any time during the appointment.

5 CFR 315.604 for hiring disabled veterans enrolled in a VA training program. This authority is used to hire disabled veterans eligible for training under the Department of Veterans Affairs (VA) vocational rehabilitation program (38 U.S.C. chapter 31). The veterans may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program the veterans are not Federal employees for most purposes, but are beneficiaries of the VA. Upon successful completion, the host agency and VA give the veterans Certificates of Training showing the occupational series and grade levels of the positions for which trained. The Certificates of Training allows any agency to appoint the veterans noncompetitively under a status quo appointment which may be converted to permanent status at any time (The Rehabilitation Act of 1973, as amended, provides that Federal departments and agencies should initiate efforts with State vocational rehabilitation agencies to develop and enter into work experience agreements

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similar to those available for disabled veterans under 5 CFR 315.604).

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- EMPLOYMENT OPPORTUNITIES FOR STUDENTS -

GOAL II: ***"Helps departments and agencies provide opportunities for students with disabilities to participate in internship and student employment programs."***

- An outstanding program that is currently in place in the Federal Government is the Student Educational Employment Program. The program has two components: Student Temporary Employment and Student Career Experience (5 CFR 213.3202(a) and (b)). Both programs offer valuable, paid work experience to all students--high school, vocational and technical, associate degree, undergraduate, and graduate. Students may be employed year-round and receive a flexible schedule of work assignments. Federal employers should tailor the Student Educational Employment Program to attract students with disabilities to Federal employment.

  OPM will continue promoting the Student Educational Employment Program to students, colleges and universities, and Federal managers and supervisors to attract students with disabilities to the Federal workforce.

  OPM will serve as a clearinghouse for all students interested in Student Educational Employment Program opportunities.

  OPM will work with appropriate organizations to identify information on accredited schools and programs with a high concentration of students with disabilities, and provide the information to departments and agencies.

  OPM will establish master cooperative education agreements with schools in order for Federal employers to tailor them for specific uses.

- Another source of potential employees with disabilities is the Presidential Management Intern (PMI) Program. The PMI Program is a two-year, entry-level career development and training program designed to attract to Federal service master's and doctoral students in a variety of academic disciplines. Students are nominated by their schools, and are invited to participate in an OPM-developed structured assessment process. Finalists are not guaranteed placement; they take an active role in finding a position in the Federal Government. Upon successful completion of the two-year internship, PMI's are eligible for permanent status.

  OPM will continue to expand the diversity of academic disciplines in the PMI Program.

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OPM will also continue outreach efforts through campus visits and targeting of professional organizations and publications serving the interests of people with disabilities.

- Colleges and universities will be encouraged to identify students with disabilities who meet the criteria of the programs listed above.

- Federal employers are encouraged to use the Workforce Recruitment Program for College Students with Disabilities (WRP) described previously (see Recruitment and Placement) as an excellent source for potential employees. Employers can access the candidate database by contacting the President's Committee at (202) 376-6868.

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- CAREER DEVELOPMENT -

GOAL III: ***"Requires ~~Encourages~~ all departments and agencies to give full consideration to employees with disabilities for inclusion in developmental opportunities designed to enhance their leadership skills and to advance their careers."***

- Federal employers must ~~should~~ ensure that persons with disabilities are made aware of, and have an equal opportunity to compete for, managerial and executive training or other career development opportunities. Self-nominations should be invited and encouraged, as well as nominations made by managers and supervisors.

- Agencies are expected to review career development and related programs ~~review is encouraged~~ to make sure that no barriers exist for people with disabilities. If targeted recruitment is used to broaden the pool of candidates for these programs, include as part of that effort employees with disabilities and organizations that represent their interests.

- Federal employers should establish formal mentoring programs, especially for participants of career development programs. Mentors serve as role models and act as personal advisors and confidants. They help build self-confidence; expand individual awareness, insight, and perspective about the organization; talk about performance expectations; and discuss developmental needs and how to obtain them.

- Development of training and other courses related to disability employment issues are advocated. These courses are helpful to all levels of agency management--from first-line supervisors to the Senior Executive Service. Issues that may be covered include disability culture awareness, eliminating attitudinal barriers, communication between disability and non-disability communities, and transforming organizations to accommodate cultural differences.

- **OPM**, through the Federal Executive Institute and Management Development Centers, will conduct diversity training initiatives for senior management. This will improve understanding of the issues related to the employment of people with disabilities.

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- MONITORING AND EVALUATING PROGRESS -

GOAL IV: ***"Improve collection and maintenance of*** ~~***Collects and maintains***~~ ***data to monitor the success in achieving a higher percentage of adults with disabilities in the federal workforce."***

[We recommend deleting this section in its entirety or making the changes listed below.]

- **OPM** will widely disseminate information on the Federal employment of people with disabilities, such as its *People with Disabilities in the Federal Government--A Statistical Profile* report, to all departments and agencies.

- Departments and agencies are expected to regularly monitor their own workforce data as set forth in EEOC Management Directives ##712, 713 ~~especially elements concerning workforce composition. Periodic surveying of the workforce, and evaluating the resulting data, will determine progress and successes. In turn, the data may be used to develop internal recruiting strategies and workforce planning initiatives.~~

- ~~In their performance management programs, Federal employers should review efforts and successes of their managers in diversity hiring. During performance reviews, efforts by the manager or supervisor to achieve diversity in his or her organization are evaluated--including efforts to hire people with disabilities. Open discussions to eliminate employment barriers are encouraged.~~

- ~~Federal employers are encouraged to recognize managers and supervisors whose recruiting, hiring, and promoting efforts of those with disabilities are commendable.~~

- ~~**OPM,** in its oversight role, will monitor Federal employer efforts in recruiting and employing people with disabilities.~~

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- REASONABLE ACCOMMODATION -

GOAL V: ***Requires departments and agencies to provide establish agency-wide reasonable accomodation policies and procedures for qualified applicants and employees with disabilities, consistent with guidances from the Equal Empoyment Opportunity Commission.***

- A reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for a job, to perform job duties, or to enjoy equal benefits and privileges of employment. Federal departments and agencies are required, when requested, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a qualified person with a disability unless the accommodation would impose an undue hardship on the agency.[1]

- The concept of reasonable accommodation applies to all aspects of employment, including recruitment, training, promotion, reassignment, and developmental assignments. Departments and agencies must ensure that ~~should explore ways to insure~~ their personnel are familiar with Federal and agency-specific policies and procedures related to the availability of reasonable accommodations for persons with disabilities. Departments and agencies should also consult the new enforcement guidance on Reasonable Accommodation issued by the Equal Employment Opportunity Commission (EEOC) on March 1, 1999. Free copies of this and other EEOC guidances can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

- Reasonable accommodations vary with the needs of the individuals involved, the type of position in question, and the ingenuity of the agency. Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, the specific disability and existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. The cost of a job or work environment accommodation can often be minimal. The applicant or employee should always be consulted before an accommodation is made. Please consult the appropriate section in OPM's *People with Disabilities in the Federal Government: An Employment Guide*, for additional information on types of reasonable accommodation.

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[1] An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation. As mentioned previously, the Job Accommodation Network (JAN) operated by the President's Committee on Employment of People with Disabilities (PCEPD) is an excellent technical assistance resource in the area of reasonable accommodation.

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Domestic Policy Council
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FOLDER TITLE:
Disability-OPM-Model Plan III [2]

Richard Stalcup

rx47

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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INTRODUCTION

The Federal Government must strive to create and maintain a sound, diverse, and cooperative work environment. Equal opportunity in employment for all people, regardless of race, color, sex, age, religion, national origin, sexual orientation, or disability should be the common goal across government. However, persons with disabilities are often overlooked as a source of employable talent.

On March 13, 1998, President Clinton addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing ~~a National~~the Presidential Task Force on Employment of Adults with Disabilities. The Task Force was charged with creating a coordinated and aggressive national policy to bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general adult population.

This guide and its companion piece, *"Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government,"* was developed in support of the Task Force's efforts and recommendations. The purpose of this guide is to provide guidance, information, and references to aid Federal employers in their efforts to hire and advance employees with disabilities.

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LEGAL FRAMEWORK

There are several laws which support and encourage the employment, retention, and advancement of people with disabilities.

1) **Section 501 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in Federal employment and requires the Federal government to engage in affirmative action for people with disabilities.[1] The law:

- Requires Federal employers not to discriminate against qualified job applicants or employees with disabilities. Persons with disabilities should be employed in all grade levels and occupational series commensurate with their qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of a job's structure or because of architectural, transportation, communication, procedural, or attitudinal barriers.

- Requires employers to make "reasonable accommodations" to applicants and employees with disabilities. Such accommodations may involve, for example, restructuring the job, modifying work schedules, adjusting or modifying examinations, providing readers or interpreters, and acquiring or modifying equipment and/or facilities (including the use of adaptive technology such as voice recognition software).

- Prohibits selection criteria and standards which tend to screen out ~~disabled persons~~people with disabilities, unless such procedures have been determined through a job analysis to be job-related and consistent with business necessity, and an appropriate individualized assessment indicates that the job applicant cannot perform the essential functions of the job, with or without reasonable accommodation.

- Requires Federal agencies ~~in the Executive branch~~ to develop affirmative ~~employment~~ action programs for hiring, placement, and advancement of persons with disabilities. Affirmative action should be an integral part of ongoing agency personnel management programs. ~~Persons with disabilities should be employed in all grade levels and occupational series commensurate with their~~

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[1] Section 501 was amended by the Rehabilitation Act Amendment of 1992 to apply the ADA's employment standards to all non-affirmative action employment discrimination claims filed by Federal applicants or employees. 29 U.S.C. § 791(g).

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~~qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of job structure or design, or because of architectural, transportation, communication, procedural, or attitudinal barriers.~~

~~2) **Section 508 of the Rehabilitation Act of 1973** requires Federal agencies to procure and use only accessible electronic and information technology, unless it poses an undue burden to do so. Federal agencies will be required to comply with standards promulgated by the Architectural and Transportation Barriers Compliance Board (the Access Board) that take effect on August 7, 2000.~~
2) **Section 508 of the Rehabilitation Act of 1973** requires Federal agencies to procure, use, maintain, and develop only accessible electronic and information technology, unless doing so imposes an undue burden. National security systems are exempt. Federal agencies will be required to comply with standards promulgated by the Architectural and Transportation Barriers Compliance Board (the Access Board) that take effect on August 7, 2000, when they will become part of the Federal Acquisition Regulation (FAR). Agencies must biannually evaluate their compliance with Section 508 and must report the results of these self-evaluations to the Attorney General.

3) **The Vietnam Era Veterans' Readjustment Assistance Act of 1974.** In furtherance of the policy of promoting "the maximum of employment and job advancement opportunities within the Federal Government for ~~disabled~~ veterans with disabilities and certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement," this act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans' Readjustment Appointment (VRA). The act also ensures that all veterans are considered for employment under merit system rules and requires a separate affirmative action plan for the hiring, placement, and advancement of ~~disabled~~veterans with disabilities. (Please note, however, that this law does not provide any preferences to ~~disabled~~ veterans with disabilities or to veterans of the Vietnam era.)

4) **The Civil Service Reform Act of 1978** requires "fair and equitable" treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for privacy and constitutional rights.

5) **The Americans with Disabilities Act (ADA) of 1990** covers employers in the private sector and ~~state~~State and local governments. The substantive employment

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standards of the ADA which are applicable to the Federal government through the Rehabilitation Act can be found at 42 U.S.C. §§ 12111 *et. seq.* and 42 U.S.C. §§ 12201-204 and 12210.

6) **The Veterans Education and Employment Program Amendments of 1991** require expanded job opportunities for veterans with and ~~disabled veterans~~without disabilities through the Veterans Readjustment Appointment (VRA) Authority.

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7) **The Architectural Barriers Act,** enforced by the Access Board, requires that buildings and facilities be accessible to people with disabilities if they were ~~designed, built,~~constructed or altered by or on behalf of the Federal government or with certain Federal funds, or leased for occupancy by Federal agencies, after 1968. When individuals with disabilities are unable to use a building because there are no accessible parking spaces, no curb ramps, no ramps at the entrance, no accessible rest rooms, no accessible drinking fountains, no raised lettering on signs, or other barriers exist, they may file a complaint with the Access Board.

8) **The Pregnancy Discrimination Act** amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. This amendment requires that employers treat pregnancy and related conditions as any other short-term disability.

9) **Title 5, United States Code, Sections 3312 and 3318** require that any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management before the position can be filled. This includes an agency medical disqualification of a 30 percent or more disabled veteran for assignment to another position in a reduction in force.

10) **The Family and Medical Leave Act of 1993** requires Federal agencies and departments to allow employees to take up to twelve weeks of leave without pay, provided that the employee or a member of his or her immediate family (spouse, son, daughter, or parent) has a serious health condition and the employee meets several other statutory criteria. The leave may be taken intermittently or on a reduced leave schedule when medically necessary. Agencies may require the employee to transfer temporarily to another position under certain circumstances. 5 U.S.C. § 6382.

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ROLES AND RESPONSIBILITIES

The following Federal and State entities have responsibilities concerning the employment of people with disabilities:

Equal Employment Opportunity Commission (EEOC)

The EEOC is responsible for regulating and enforcing the Federal program for equal employment opportunity, developing the regulations and policies governing non-discrimination requirements, oversight of the development and implementation of Federal agencies' affirmation employment action programs, and adjudicating claims of disability discrimination in the Federal government. Instructions on affirmative action plans for ~~the disabled~~job applicants and employees with disabilities may be found in EEOC's Management Directives 712 and 713.

EEOC's Management Directive 713 requires that Federal agencies submit Annual Affirmative Action Program Plans and accomplishment reports. This directive is pursuant to the EEOC's obligation and authority under Section 501 of the Rehabilitation Act of 1973.

EEOC is also responsible for approving or disapproving each agency wide affirmative action program plan; rating the accomplishments of each agency; and communicating results of evaluations to each agency with instructions for submission of a revised agency wide plan if required. EEOC will work closely with Federal Government personnel to assist in creating and implementing effective affirmative ~~employment~~action programs.

Guidelines on reasonable accommodation and non-discrimination of people with disabilities are published by the EEOC. Most of these documents can be downloaded from EEOC's Internet website at: http://www.eeoc.gov.

In addition, EEOC issues an annual report on employment of individuals with disabilities in the Federal Government to the Congress of the United States.

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U.S. Office of Personnel Management (OPM)

OPM provides nationwide program leadership, development, and coordination for the employment of people with disabilities, including veterans with service-connected disabilities. This includes providing direction, guidance, and technical support to agency heads, directors of personnel, agency personnel offices and officials; developing recruitment policy and appointing authorities; providing information on employment methods and program development to departments and agencies; developing publications for use in promoting employment; developing, monitoring, and modifying examining procedures to facilitate the employment consideration of qualified applicants with disabilities; and developing medical policy and realistic medical and suitability standards.

OPM takes the lead role in promoting reemployment of employees with or recovered from compensable injuries or illnesses, and fostering research and demonstration projects on disability related issues. Further, OPM maintains consistent liaison with the national offices of Federal, private, community, and other organizations concerned with the employment of people with disabilities.

President's Committee on Employment of People with Disabilities

The President's Committee on Employment of People with Disabilities (PCEPD) is a small Federal agency whose mission is to communicate, coordinate, and promote public and private efforts to enhance the employment of people with disabilities. The PCEPD provides information, training, and technical assistance related to the employment of people with disabilities. Some of the projects and resources developed by the PCEPD include:

- The Job Accommodation Network (JAN), a toll-free information service on workplace accommodations and the employment provisions of the Americans with Disabilities Act. Anyone may call JAN at (800) 232-9675 or (800) 526-7234. One can also obtain information from the JAN Website: http://www.jan.wvu.edu/english/homeus.htm.

- The Workforce Recruitment Program (WRP) for college students with disabilities, a joint venture with the Department of Defense which identifies college and university students with disabilities seeking summer and permanent jobs. Federal employers may access the candidate database by calling the PCEPD's Job Accommodation Network (JAN) at (800) 526-7234.

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- Education Kits containing ~~fact sheets on~~timely fact sheets on disability employment issues. These and a list of publications are available by calling (202) 376-6200.

- The PCEPD's Website on the Internet is http://www.pcepd.gov. It provides visitors direct access to their publications, speeches, press releases, statistical data, workplace laws, and other related topics affecting the employment of persons with disabilities.

Federal Employers

Federal agency managers and supervisors are responsible for the employment and advancement of people with disabilities. This includes recruitment, hiring, training, career development, mentoring support ~~and,~~ providing reasonable accommodations, and engaging in ~~when requested~~affirmative action.

Career development and promotion opportunities, training, awards, and other similar programs ~~should~~must be an integral part of an agency's responsibilities towards employees with disabilities.

Further, Federal employers ~~should~~must make reasonable accommodations, ~~when requested,~~ to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the agency can demonstrate that the accommodation(s) would impose an undue hardship on the ~~operation of its program~~agency.

Federal employers ~~are encouraged to~~should establish procedures to ensure that the employment and advancement of people with disabilities meet affirmative action program objectives, diversity planning, emphasis, and accountability.

~~Action~~Agencies should ~~be taken to eliminate discrimination against applicants or employees with disabilities due to~~remove physical barriers ~~in agency~~as a matter of reasonable accommodation to particular employees for whom necessary elements of facilities are inaccessible.

Federal employers should also ensure that there are no personnel or management policies, practices or procedures which unnecessarily restrict hiring, placement and advancement of people with disabilities.

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It is illegal for a Federal agency to discriminate in employment against qualified individuals with disabilities. Anyone who believes he or she has been subjected to discrimination on the basis of disability may file a complaint with the employing agency's equal employment opportunity (EEO) office. Departments and agencies should refer to EEOC's MD-110 and 29 CFR, Part 1614, for additional guidance on the EEO complaint process.

~~State and~~ Other ~~Rehabilitation Service~~Services and Resources

~~Vocational rehabilitation counselors are available at State Vocational Rehabilitation Agencies (SVRAs) and~~Many invaluable resources exist within the Federal government to help agencies meet their ~~local offices.~~legal obligations:

- Equal Employment Opportunity Commission
- U.S. Department of Education:
  - Rehabilitation Services Administration;
  - Assistive Technology Program;
- U.S. Architectural and Transportation Barriers Compliance Board ("Access Board");
- U.S. Department of Transportation;
- U.S. Department of Veterans Affairs, Vocational Rehabilitation Program;
- President's Committee on Employment of People with Disabilities and its Job Accommodation Network (JAN); and
- General Services Administration;

Employees with disabilities within the agency are another vital resource. Many of them are active in advocacy groups, serve on agency advisory committees, and are experts on various aspects of disability and rehabilitation.

Other resources include:

- Local and State Committees on Employment of People With Disabilities;
- University medical centers and counseling programs;
- Gallaudet University (Washington, DC); and
- Advocacy organizations for persons with disabilities.

~~Also, employees with disabilities within the agency are another vital resource.~~

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State vocational rehabilitation agencies can also be helpful. Vocational rehabilitation counselors are available at State Vocational Rehabilitation Agencies (SVRAs) and their local offices. They can be easily reached by phone. The extent and types of services offered may vary from State to State, ~~but most SVRA counselors are able to do some or all of the following:~~

. Agencies generally should not require employees or job applicants to become clients of a State vocational rehabilitation program.

Through these various resources, agencies can find help to:

- Explain disabilities;
- Prepare certification documents;
- Refer qualified applicants and provide follow-up assistance for placements made;
- Provide assistance when individuals with disabilities employed under excepted appointing authorities are upgraded or downgraded or when problems arise in regard to these employees;
- Evaluate the rehabilitation needs of Federal employees who ~~become disabled~~develop disabilities and advise managers and supervisors about services available;
- Purchase special equipment that individuals with disabilities need to perform their jobs;
- Locate trained readers for persons who ~~are visually impaired~~have vision impairments, qualified sign language interpreters for persons who ~~are~~have hearing ~~impaired~~impairments, and personal assistants for individuals with disabilities;
- Advise about modification(s) needed to overcome architectural, transportation, and communication barriers;
- Participate in training programs for Federal employees, managers and supervisors relating to subjects such as reasonable accommodations, modification of jobs or worksites, affirmative action programs, and other related subjects;
- Arrange for Federal employees, managers, and supervisors to tour rehabilitation centers, workshops, campus facilities for students with disabilities, and independent living centers.

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~~General Services Administration; President's Committee on Employment of People with Disabilities and their Job Accommodation Network (JAN);U.S. Department of Veterans Affairs, Vocational Rehabilitation Program;U.S. Department of Transportation;U.S. Architectural and Transportation Barriers Compliance Board;U.S. Department of Education, Rehabilitation Services Administration;While State vocational rehabilitation agencies are a primary source of rehabilitation services, a number of other organizations can also be helpful. For example:~~

DEFINITIONS AND TERMS

Person with a disability: The Rehabilitation Act of 1973, as amended, defines a "person with a disability" as an individual who:

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities (such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). A "physical or mental impairment" means:

  1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more ~~of the following~~ body systems such as: neurological, ~~musculosketal~~musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genito-urinary, hemic and lymphatic, skin, and endocrine systems; or

  2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Whether a person has a substantial impairment of a major life activity is determined with consideration of mitigating measures, such as the effectiveness of medication to alleviate hypertension or glasses or contact lenses to correct vision impairments.

- Has a record of such an impairment (this means that the person has a history of, or has been classified -or misclassified- as having a mental or physical impairment that substantially limits one or more major life activities, such as a person who has survived cancer); or

- Is regarded as having such an impairment; this includes individuals who are perceived to have disabilities, such as a person who is perceived to have a substantially limiting facial disfigurement.

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Qualified person with a disability: A qualified person with a disability ~~refers to~~is a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question.

~~**Invisible (hidden) disabilities:** These are disabilities that are not readily apparent, such as chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, and learning disabilities.~~

Discrimination by Association: People are also protected from discrimination on the basis of their association with someone who has a disability. For instance, it is illegal for an employer to refuse to hire a job applicant because his or her spouse is a person with HIV.

Invisible (hidden) disabilities: These are disabilities that are not readily apparent, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, learning disabilities, and mild mental retardation.

Targeted disabilities: Targeted disabilities, as defined by the Equal Employment Opportunity Commission (EEOC), are disabilities "targeted" for emphasis in affirmative action planning. These are: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine. Although the list of targeted disabilities is meant to include those who are most likely to suffer job discrimination, the EEOC recognizes that some disabilities that are not targeted are nevertheless just as severe or more severe than some ~~disabilities that are targeted~~of the targeted disabilities.

Drug addicts and alcoholics: The Americans with Disabilities Act of 1990 amended the Rehabilitation Act (1973) definition of an individual with a disability to **exclude** "individuals currently engaging in the illegal use of drugs" regardless of whether it can be shown to adversely affect job performance or safety. Federal employers are no longer required to offer a firm choice or last chance agreement[s] unless mandated by agency policy or a collective bargaining agreement. Managers should consult with their agency Human Resources, EEO, and legal counsel.

Persons with Human Immunodeficiency Virus (HIV): Protection under the Rehabilitation Act begins the moment a person becomes infected with HIV.

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~~REASONABLE ACCOMMODATION~~NON-DISCRIMINATION IN HIRING AND PROMOTION

Qualified Job Applicant

Federal ~~departments and~~ agencies ~~are required, when requested, to make reasonable accommodation to the physical or mental limitations of an applicant or employee who is a~~must not discriminate against qualified ~~person~~job applicants with ~~a disability unless the accommodation would impose an undue hardship on the agency~~disabilities. ~~An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the employer's size, financial resources, and the nature and structure of the operation.[2]~~

~~A reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment.~~ See page 10 for the definition of "disability." An applicant with a disability is "qualified" if he or she:

- satisfies the agency's job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related and consistent with business necessity; and
- is able to perform those tasks that are essential to the job, with or without reasonable accommodation.[2]

Essential Job Functions

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. Agencies should carefully examine each job to determine which functions or tasks are essential to performance. This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting, or firing.

Agencies should ask the following questions to determine if a job's functions are "essential:"

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[2] The term "reasonable accommodation" is discussed in the next section.

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- Are employees in that position actually required to perform the function?

  Ex: If an announcement for a receptionist's position lists "typing" as a requirement, but other receptionists do not actually type as part of their job, the function is not "essential" to the job.

- How many other employees are available to perform the function or among whom the performance of the function can be distributed?

- Would removing the function fundamentally change the job?

- What degree of expertise or skill is required to perform the function?

When asking these questions, the employer should focus on the purpose of the job, not on how the purpose is to be accomplished.

Ex: If a job requires mastery of information contained in technical manuals, this essential function would be "ability to learn technical material," rather than "ability to read technical manuals." People with vision and other reading impairments could perform this function using other means, such as audiotapes.

The same analysis applies to current employees with disabilities who are eligible for promotion consideration. That is, an employee with a disability is "qualified" for all promotions for which a similarly-situated non-disabled person would be eligible, provided that he or she can perform the "essential functions" of the job to which he or she would be promoted, with or without reasonable accommodation.

Individualized Assessment

When determining whether a particular job applicant with a disability can perform the essential functions of a job with or without reasonable accommodation, Federal employers must conduct what is called an "individualized assessment." If this assessment indicates that due to the person's disability, even when given appropriate reasonable accommodations he or she could not perform the essential job functions, or could not perform them without posing a substantial risk of significant harm to the applicant or others, the agency does not have to give further consideration to him or her. The agency must look objectively at the particular person's current ability to perform the essential job functions, with or without reasonable accommodation. Generalized "blanket" exclusions of an entire

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group of people with a certain disability prevent such individualized assessments. Agencies generally should not make such broad-based exclusions that do not reflect up-to-date medical knowledge and technology or that are based on fears about future medical or worker's compensation costs.

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Medical Examinations and Inquiries

Agencies must be careful about when and how they make disability-related inquiries of job applicants or ask them to take medical examinations.

- Pre-offer: Before it makes a job offer, an agency cannot require a job applicant to take a medical examination, respond to disability-related inquiries, or provide information about prior worker's compensation claims.

- Post-offer: After an agency has made a job offer to a particular applicant, the agency may ask disability-related inquiries or require the person to submit to a medical examination. These questions or examinations do not have to be job-related and consistent with business necessity. If, however, the person is NOT hired because the medical examination or questions reveal a disability, the reasons for not hiring the person must be job-related and consistent with business necessity. The agency must show that no reasonable accommodation was available that would enable that person to perform the essential functions of the job, or that a necessary accommodation would impose an undue hardship.

- Inquiries made of existing employees: After a person starts work, a medical examination or disability-related inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, where examinations are required by Federal law, where they are to determine current "fitness" to perform a particular job, and where voluntary examinations are part of an employee health program.

- Affirmative action: Agencies may, as part of their affirmative action programs, invite persons to disclose their status as persons with disabilities — especially those with targeted disabilities. However, certain restrictions apply. Agencies are encouraged to seek additional guidance from the EEOC before making such invitations.

Confidentiality of Disability-Related Personal Information

All information obtained from permissible affirmative action inquiries and post-offer medical examinations and inquiries must be collected and maintained on separate forms, in files that are separate from the standard personnel files, and must be treated as confidential medical records.

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REASONABLE ACCOMMODATION

Federal departments and agencies are required to provide reasonable accommodations to qualified applicants or employees with disabilities upon request[3] unless the accommodation would impose an undue hardship on the agency. An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the agency's size, financial resources, nature, and structure.[4]

The concept of reasonable accommodation also applies to recruitment, training, promotion, reassignment, and developmental assignments.

A reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment. There are many types of accommodations such as worksite modifications; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; ensuring effective communication by providing interpreters, assistive devices, readers, and other auxiliary aids and services; and reassigning employees.

Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, his/her specific disability and the existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. In all cases, ~~the applicant or employee should be consulted before an~~ accommodation ~~is made~~ decisions should be the result of an interactive process with the employee or applicant. Accommodations are highly individualized and what may be successful for one individual with a disability may not be appropriate for another. An accommodation that has worked for an individual in the past may need to be re-evaluated as the person's disability changes in nature or severity.

The value and nature of a particular accommodation may be clarified by

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[3] For affirmative action purposes, there are some limited circumstances in which an agency should initiate the reasonable accommodation process even absent a request from the individual with a disability. Please contact the EEOC for further guidance.

[4] Departments and Agencies should consult the Enforcement Guidance on Reasonable Accommodation issued by the EEOC on March 1, 1999.

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considering questions such as:

- ~~Does the disability require the reasonable accommodation?~~Does the reasonable accommodation remove the workplace barrier that is preventing the individual from effectively applying for a job, performing a job, or gaining access to the benefits and privileges of employment?
- Will the accommodation give the person the opportunity to function, participate, or compete on an equal basis with others?
- Are there alternatives that would accomplish the same purpose?

In determining undue hardship, consider the following factors:

- Overall size of the agency, with respect to the number of employees, number and type of facilities, and size of budget;
- Type of agency operation; and
- Nature and cost of the accommodation.

Reasonable accommodations are as varied as the needs of the individuals involved, the type of position in question, and ingenuity of the agency. Some examples are provided below:

~~Special~~Testing with Appropriate Accommodations

Federal employers may not use any test or other selection criterion that screens out or tends to screen out people with disabilities, unless the test is job-related for the position in question and consistent with business necessity, ~~and there is no reasonable accommodation. They are required to~~Agencies must select and administer tests to ~~insure~~ensure that the scores of applicants or employees who have disabilities that impair sensory, manual, or speaking skills accurately reflect the ability of the applicant to do the job in question rather than disabilities of the employee or applicant. ~~The following factors merit additional attention:~~

Modifying Written Examinations: The objective is to eliminate any artificial barriers which would prevent persons with disabilities from demonstrating their capabilities in the examination process. Modification of examination procedures can include modifying test administration methods. ~~Consideration should be given to scheduling individual or small group testing, allowing extra time, and using examiners specifically trained for this task. Accommodations may include: braille, large-print, or tape-recorded tests for persons who are visually impaired; reading to individuals who are blind or persons with reading disabilities; writing for persons~~

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~~who have difficulties using their hands; providing sign language interpreters to explain test procedures and directions for taking tests; and waiving verbal portions of some tests for individuals who are hearing impaired.~~

Consideration should be given to scheduling individual or small group testing, allowing extra time, and using examiners who are aware of the test-taker's disability and have received appropriate training in test administration. Accommodations may include providing auxiliary aids and services leading to effective communication, such as providing Braille, large-print, or tape-recorded tests for persons with vision impairments, tape-recorded tests to people with reading disabilities; scribes or recording devices for persons who have difficulties using their hands to record answers; qualified sign language interpreters or computer-assisted real-time transcription services to convey spoken portions of tests -- including instructions -- to persons who are deaf; and assistive listening systems and devices for those who are hard of hearing.

Modifying exam content: If an applicant's disability causes some part of a test to be unusable or inappropriate, it may be necessary to modify exam content or to develop alternate materials which measure the same knowledge, skills, and abilities that do not screen out people with disabilities. OPM has modified certain examinations for persons ~~who are~~with hearing ~~and visually impaired~~or vision impairments and may be able to offer advice about types of modifications.

Accessible Examination Facilities: Examinations must be offered in accessible facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible parking, etc.), steps should be taken to remove those barriers or, when this is not feasible, to arrange for use of an alternate, accessible location.

Many people with disabilities, even those with ~~severe~~significant disabilities, ~~do~~ may not need ~~special~~ testing accommodations. ~~As a rule, persons who are visually or hearing impaired will require special~~Others for whom testing accommodations are often made include persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons who have limited mobility or motor control of their arms or hands, persons with brain injuries, and persons with learning disabilities such as dyslexia. ~~Others~~In many of these instances, extended time for ~~whom special arrangements often are made include persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons whose arms or hands are paralyzed or spastic, persons with brain damage, and persons with learning disabilities such as dyslexia.~~

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~~**Restructuring Jobs**~~

~~Job restructuring is one of the principal means by which qualified people with disabilities can~~testing will be ~~accommodated~~appropriate, in addition to other types of accommodations.

Restructuring Jobs

Job restructuring is one way of integrating qualified people with disabilities into the workforce. Job restructuring, however, does not alter the essential function of the job. Federal employers should identify which factors make a job incompatible with an individual's disability and, if possible, eliminate ~~them~~incompatible factors so that the capabilities of the person may be used to the best advantage. This may involve changing job content by isolating and eliminating non-essential duties through reassignment, or altering the ~~method of task accomplishment~~way objectives are accomplished.

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The following things must occur before job restructuring:

- Federal employers must understand the capabilities of individuals and identify limitations prior to job restructuring. The person with a disability should be consulted ~~first~~throughout the process. Supplemental information can be obtained through consultation with disability specialists ~~in the field of vocational rehabilitation~~.

- Careful job analysis to determine the exact demands of positions must also precede job ~~structuring~~restructuring. ~~To identify the essential functions of a position, focus on the purpose in performing the function and the result to be accomplished and not on a description of how the function is usually performed. Although it may be essential to perform certain functions, it often is irrelevant how the function is performed. A person, due to a disability, may need to perform an essential function in a different way from other employees. The different manner of performing an essential function may involve a reasonable accommodation.~~

~~Inputs by those with intimate knowledge of the tasks involved, such as supervisors and persons who currently perform the tasks or have performed them in the past, should be included in the analysis process. This enables the most accurate differentiation to be made between basic functions and those which are non-essential and can be reassigned. A person, due to a disability~~Inputs by those with intimate knowledge of the tasks involved, ~~may need to~~such as supervisors and persons who currently perform ~~an essential function in a different way from other employees~~the job functions or those who have performed them in the past, should be included in the analysis. ~~The different manner of performing an~~This enables the most accurate differentiation to be made between essential ~~function may involve a reasonable accommodation~~functions and those which are non-essential and can be reassigned.

The restructuring and job analysis processes should also be used in creating positions, modifying existing position descriptions, developing recruitment strategies, determining selection criteria, designing performance plans, determining training needs, and other human resource initiatives.

Modifying Worksites

Changes in the work environment and technology will enable some people with disabilities to more effectively perform ~~job~~their duties. Alterations may consist of: rearranging files or shelves ~~for~~to improve accessibility ~~to wheelchair users; braille~~

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~~labeling~~for people who use wheelchairs; using Braille labels for persons~~visual~~ with vision impairments; raising or lowering equipment to provide comfortable working heights for people with back injuries; installing special holding devices on desks, machines, or benches for people with mobility impairments; using adaptive technology such ~~voice recognition systems~~as screen readers for people who are blind; or providing special heating or air conditioning units for persons who are sensitive to environmental temperature.

Work locations should be reviewed by supervisors;~~,~~ Disability Employment Program Managers, SVRA counselors;~~,~~ building managers;~~,~~ and persons with disabilities to identify needed worksite and workstation modifications.

~~Accessible Facilities~~

~~Reasonable accommodation is different from architectural accessibility~~

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Physical Barriers

Under section 504 of the Rehabilitation Act, all Federal agencies must ensure that their programs and ~~program accessibility~~activities are accessible to persons with disabilities. ~~For buildings~~This does not ~~covered by existing accessibility statutes, provisions~~mean that every element of ~~accessibility may~~every Federal facility has to be ~~an aspect of reasonable accommodation~~fully accessible. ~~In such cases~~Rather, ~~reasonable accommodation might include physical modification of facilities or relocation~~it means that agencies must take necessary steps to make all of ~~particular offices or jobs so that they are in facilities or parts of facilities that are accessible to and usable by people~~their programs accessible to persons with disabilities. The Architectural Barriers Act requires buildings and facilities to be accessible if, after 1968, they were constructed or altered by or on behalf of the Federal government, leased by the Federal government, or financed by certain sources of Federal money.

~~Accommodations that may need to be made involve eliminating barriers in the physical design~~A facility is "accessible" for the purposes of the ~~environment~~Architectural Barriers Act if it complies with the Uniform Federal Accessibility Standard (UFAS). ~~This is a broader concern than modification of the worksite environment. It consists of eliminating major obstacles in the way of people~~Older Federal facilities, which have not been altered since 1968, do not have to comply with ~~disabilities getting to and from~~UFAS, but the programs contained in those buildings must still meet the ~~worksite~~"program access" standard discussed above.

Additionally, agencies may have to eliminate architectural barriers as a matter of reasonable accommodation to an individual employee or applicant under section 501 of the Rehabilitation Act. Physical and/or structural changes should be made in order to create as barrier-free an environment as ~~practicable~~possible, unless doing so would impose an undue hardship. ~~-~~ Eliminating architectural barriers through such means as ramps, wider doorways, elevators, work platforms, and handrails often make the work facility more usable by all employees, not just those with disabilities.

Adjusting Work Schedules

Some people with disabilities possess great productive potential which is not utilized because they cannot meet the requirements of a standard 40-hour work week. By taking advantage of the flexibility of alternative work schedules,

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accommodations can be made for various disabilities. For example, people with mobility impairments may find it difficult to maneuver during peak periods on public transportation systems and may require an earlier or later work day. In another instance, employees requiring medical treatments may need a flexible schedule on certain days of a week. Employees requiring shorter hours may be accommodated by use of a part-time schedule or a job sharing arrangement.

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Assistive Devices

Many assistive devices are available to people with disabilities. Such devices can ensure successful job performance, enabling people with disabilities to perform tasks they would not otherwise be able to do or to increase the quantity, quality, or efficiency of their work. Before purchasing any ~~special~~assistive equipment, the ~~individual requesting a reasonable accommodation~~agency should ~~be consulted~~engage in a meaningful dialogue with the individual requesting the accommodation as to what is needed and/or ~~wanted~~desired.

~~In certain cases, the Department of Veterans Affairs or State vocational rehabilitation office may provide the assistive device to the individual requesting a~~Agencies should look to their own resources to fund reasonable ~~accommodation~~accommodations such as obtaining and supporting assistive technology.

~~Federal employers are authorized~~In certain cases, however, the Department of Veterans Affairs or State vocational rehabilitation office may provide the assistive device to ~~purchase equipment~~the individual requesting a reasonable accommodation if ~~it is determined~~the employee is already a client of that ~~the use of the equipment is necessary in transaction of the official business of the~~ agency or office.

~~In determining whether the purchase of a device should be~~Federal employers are authorized, ~~consideration should be given to how well~~ to purchase equipment if it is determined that the use of the ~~employee could perform the job without the equipment and whether the principal benefit would be~~equipment is a reasonable accommodation that will enable an employee with a disability to better perform ~~his performance by the employee~~or her job. [3]

~~Readers and Interpreters~~

~~Readers: Many Federal employers have found that the best way of providing reading assistance to employees who are blind or have visual impairments is to have other employees provide this service as needed~~Even if the equipment is not required as a matter of reasonable accommodation, its purchase is authorized if it is in furtherance of the agency's affirmative action goals as a model employer.

~~In most cases, this amounts to a relatively small fraction~~**Effective Communication**

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One key component of ~~an employee's workday~~reasonable accommodation is to ensure effective communication with employees who have communication-related disabilities, such as those with vision, hearing, or speech impairments. ~~Federal employers have the administrative authority to assign employees to~~Agencies must provide ~~reading services~~appropriate "auxiliary aids and services" such as qualified sign language interpreters, trained readers, computer-assisted real time transcription services, and alternate format documents (Braille, large print, audio cassette, or computer disk), unless doing so would fundamentally alter the program or impose an undue hardship on ~~a part-time or "as required" basis~~the agency. ~~—~~

~~This service can be classified under "other duties as assigned."~~

~~An agency that chooses to assign an agency employee as a reader must ensure that the person is properly~~**Readers:** Persons who are blind or who have low vision may need trained ~~and~~readers to be able to ~~fulfill this function~~access information contained in otherwise-inaccessible material. For ~~assistance in identifying necessary training for readers~~instance, ~~agencies should consult with the Federal~~a lawyer who is blind may need a trained reader to read aloud deposition transcripts and ~~State resources indentified in Appendices 2 and 3~~correspondence from opposing counsel.

~~Federal employers may also hire~~Appropriate assistive technology, such as screen readers ~~for~~or Braille displays, can make much computer-based information accessible to someone who is blind ~~employees~~or who has low vision, thus reducing (though not eliminating) the employee's reliance on a trained reader. ~~-~~

~~Generally, a reader will be assigned to provide reading assistance to a specific employee~~**Interpreters:** Persons who are deaf or hard of hearing and who use sign language may need qualified sign language interpreters. ~~For this reason, the blind or visually-impaired employee should be involved~~Someone who is deaf and who does not know sign language may benefit from a qualified oral interpreter in ~~the selection process~~certain circumstances.

~~Providing reading assistance to a blind or visually-impaired employee in no way relieves the agency~~Many people who have been deaf since before they learned to communicate use American Sign Language (ASL), rather than English, as their primary means of ~~the responsibility to provide clerical, secretarial, and/or administrative support to that employee in those instances where the employee's position entitles or requires such assistance~~communication. ~~In most cases, the person providing clerical, secretarial, or administrative support will also provide~~

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~~language interpretation that enables a person who is deaf to have access to the same information being communicated by hearing employees.~~

- employee orientations;
- staff meetings;
- training;
- whenever job duties change or when there is a new major assignment;
- any meetings at which more than two people are involved (it is extremely difficult to follow group discussions by lipreading);
- annual or semi-annual performance evaluation meetings;
- any time when promotion eligibility or disciplinary action is being discussed; and, if needed,
- any other time when efficient and effective communication is important, or when verbal communication will be lengthy.

When qualified sign language interpreters are not necessary, such as for relatively short, routine matters, communication with an employee who is deaf may be accomplished by exchanging handwritten notes or typing back and forth on a computer keyboard or TTY.

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TTY's: A "TTY" — also known as a "text typewriter" or "TDD" — is a device which allows someone who is deaf or hard of hearing or someone with a speech impairment to communicate by telephone by sending and receiving typed communications. The TTY user can communicate directly with someone else who also uses a TTY, or with those who do not use TTY's by calling a relay operator who will voice the person's typed communication and then type the non-disabled person's spoken communications.

Agencies are strongly encouraged to provide training to all co-workers of persons who use TTY's in how to make and receive calls using the relay system. The Federal Relay Service will provide appropriate training materials upon request.

Use of Untrained Co-workers as Readers or Interpreters: It is generally inappropriate for an agency to rely on the untrained co-workers of a person who is blind to act as a reader, and nearly always inappropriate for an agency to rely on a co-worker to act as a sign language interpreter for a person who is deaf, unless the co-workers are qualified to do this work and it falls within their job description. Inappropriate reliance on untrained co-workers as readers or sign language interpreters for persons with disabilities is likely to create resentment among all parties: co-workers have their own work to do and people with disabilities have the legal right to effective communication -- which can often only be provided through the use of appropriately trained individuals. Even if co-workers of someone who uses sign language have learned rudimentary signs through daily communication with the person who is deaf, they are unlikely to be able to provide effective communication in an employment setting.

CART — Computer Assisted Real-Time Transcription: CART is a way of making verbal communication accessible to persons who are deaf or hard or hearing and who do not use sign language. It requires a trained person, like a stenographer, to use special equipment to transcribe verbal communication as it is taking place. ~~Thus, service contracts~~The transcription may ~~be used to obtain interpreting services from outside sources in situations such as conferences, training courses, meetings,~~appear on a computer monitor or ~~court appearances~~be projected onto a screen.

~~Federal employers may make excepted appointments~~The service is similar to closed captioning of ~~readers, interpreters, and other personal assistants 5 CFR 213.3102(ii)~~a live television program. ~~—~~

~~This and other special hiring authorities applicable to persons with disabilities are~~

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his or her immediate family (spouse, son, daughter, or parent) has a serious health condition, whether or not the condition legally ~~for illness or~~qualifies as a disability. ~~Whatever flexibility is used, they should~~The leave may be ~~carefully detailed to prevent misunderstanding and should be consistently applied for all appropriate employees~~taken intermittently or on a reduced leave schedule when medically necessary.

Under their reasonable accommodation and affirmative action obligations, agencies must consider whether to go beyond FLMA's provisions and grant additional amounts of leave without pay, or provide extended paid administrative, sick or annual leave to people with disabilities under appropriate circumstances.

Reassignment~~-~~

In cases of current Federal employees who ~~become disabled after~~develop disabilities during their employment, or whose disabilities are aggravated during their careers, Federal employers have a responsibility to make ~~every~~a concerted effort for their continued employment. An employee who, because of a disability, is unable to continue to perform the ~~duties~~essential functions of his or her current position may have ~~other~~ options available other than applying for disability retirement. The first step should be to explore the possibility of accommodating the ~~disabled~~ employee in his or her current position. Minor job modifications or changes in the physical environment are often all that is needed to allow ~~a disabled~~an employee with a disability to continue working productively.

Agencies must consider reassignment as a reasonable accommodation when an employee, due to a disability, can no longer continue performing the essential functions of his/her current position, even with ~~or without~~ reasonable accommodation. A Federal employer should always first attempt to provide reasonable accommodation in an employee's current position. If that is not possible, then a Federal employer must look for a vacant position that is equivalent to the employee's current position in terms of a number of factors, including grade, level of work assignments, pay, benefits, and geographic location. If no equivalent vacancy exists, then the employer must look for a lower position that is as close as possible to the employee's current position. Although this is a non-competitive process, the employee must be qualified for the vacant position. In order to determine the employee's qualifications for a vacant position, the employer should consult with the employee about his/her work experience, skills, and education.

~~**Eliminating Transportation Barriers**~~

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~~One of the most difficult problems people with disabilities face is transportation to the worksite.~~

Retraining

Federal employers should consider retraining employees with disabilities for positions for which they have the basic qualifications and capabilities. Although there are initial expenses involved, the result will often justify the expenditure if the employee and the position are matched carefully beforehand.

Eliminating Transportation Barriers

One of the most difficult problems people with disabilities face is transportation to and within the work site. Federal employers can do a great deal to help people with disabilities solve their personal transportation problems. Such assistance can consist of helping employees form car pools, helping people with disabilities locate co-workers with whom they may car pool; or allocate parking spaces to employees with disabilities.

Drivers who provide transportation to Federal employees with disabilities may make use of parking privileges for people with disabilities who ride with them. The General Services Administration has ruled that Federal employers are to give these persons the same priority in assignment of parking spaces that they give persons with disabilities.

Agencies that provide transportation for workers, such as shuttle buses between work sites, must ensure that equivalent accessible transportation is provided to employees with disabilities. Shuttle bus drivers should announce the location of stops to enable persons with vision impairments to use the service effectively. Shuttle buses should have lifts for persons who use wheelchairs or alternate equivalent means of transportation should be provided to such individuals.

Services Provided Through Contractors

Agencies must ensure that when support services are provided through contractors, reasonable accommodations are provided to persons with disabilities who use those services. For instance, if an agency contracts with a computer firm to provide software training, the agency must ensure that training for an employee who is deaf is communicated effectively to that employee, usually by a qualified sign language interpreter. Training materials provided by the contractor must be

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made accessible to persons who have vision impairments, such as by putting them in Braille, large print, audio tape, or on computer disk, depending on what would be effective for the person with a disability.

Minimal Cost Accommodations

In many cases, the cost of a job or work environment accommodation can be minimal. A few examples are as follows:

- To accommodate a person who uses a wheelchair, reasonable accommodations may include the ability to access the building, the office, and files. The desk must be the right height to accommodate the wheelchair. This may be accomplished by raising the desk using wooden blocks to prop it up, and then moving furniture so that the employee may freely move around the office. Files can be placed to make them easily accessible.

- An individual with arthritis experiencing difficulty with maintaining stamina during the workday may be accommodated by providing flexibility in work hours, and a recliner to allow change in body positions to cut down on fatigue.

- Visual aids, screen readers, and enlargers; voice activated software; and ~~braille computers~~refreshable Braille displays may assist people who are blind or ~~visually impaired~~have vision impairments. Initial contact should start with the person with a disability and the office responsible for information technology (IT) management. Other resources for technology-related technical assistance and accommodation assessment are the Assistive Technology Program at the Department of Education, the Computer/Electronic Accommodations Program (CAP) at the Department of Defense, and the Center for Information Technology Accommodation at the Office of Government Wide Policy at General Services Administration.

Although most reasonable accommodations are low- or no-cost, Federal agencies may also need to provide accommodations such as readers or sign language interpreters, since the costs of these accommodations will generally not rise to the level of an undue hardship to most agencies. ~~The concept of reasonable accommodation also applies to recruitment, training, promotion, reassignment, and developmental assignments. For example, merit promotion vacancy announcements could be brailled or taped to provide equal access to employees or applicants who are blind or visually impaired. In order to give people with~~

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~~disabilities opportunities to attend formal training programs, Federal employers are authorized to use training funds to provide special services, such as interpreters, readers, and brailling or taping of course materials.~~

Federal employers wishing to learn more about reasonable accommodation policies and guidelines may wish to contact the Equal Employment Opportunity Commission (EEOC). Free copies of ~~their~~the EEOC's published guidance on reasonable accommodation and other issues pertaining to non-discrimination against people with disabilities can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

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~~Additional Efforts: Retraining, Details, and Disability Retirement~~

~~Retraining:~~

AFFIRMATIVE ACTION PROGRAMS

As part of the Federal ~~employers should consider retraining disabled employees~~government's obligation to be a model employer of people with disabilities, agencies must do more than simply respond to requests for ~~positions for which they have~~reasonable accommodation and comply with the basic ~~qualifications and capabilities~~non-discrimination obligations. ~~Although there are initial expenses involved~~Agencies should, ~~the result will justify the expenditure if the employee~~for example, consider providing accommodations even in circumstances in which an undue hardship defense might, as a legal matter, be available, or provide an accommodation that courts have found is not "reasonable" and ~~the position are matched carefully beforehand;~~ therefore, would not be required of private employers. ~~-~~

~~Details: In instances where the employee's ability~~For instance, agencies should consider whether to ~~perform~~take the ~~duties of an available position are in question, or to encourage an employee to accept a~~following voluntary ~~reassignment, the use of a temporary detail assignment may help.~~actions to meet the needs of employees with disabilities:

~~If performance in the position is acceptable, consideration can then be given to making the reassignment permanent.~~

~~Disability Retirement: Before an employee can qualify for disability retirement, the employee's agency must attempt to reasonably accommodate the employee. The specific type of accommodation can vary depending on the position and the medical condition. If the employee cannot be accommodated in his or her current position, the agency must consider reassignment. If an employee refuses to accept a reasonable accommodation in the current or reassigned position, the employee loses eligibility for disability retirement.~~

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~~HIRING OPTIONS~~

~~Agency personnel offices work with State vocational rehabilitation agencies (SVRAs), the Department of Veterans Affairs, Gallaudet University and other various organizations to locate and identify qualified people with disabilities.~~

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;

- providing transportation-related services, including free parking or accessible vans to transport persons with disabilities to and from work, even where transportation services are not available to employees generally;

- creating a new job for an individual with a disability where the agency cannot reallocate the functions of an existing job that the individual cannot perform because of her or his disability or where reassignment to a vacant position is not possible or required;

- reallocating essential job functions;

- providing an individual with a disability with the accommodation of his or her choice, or with the accommodation that is most effective, even though the agency could meet its non-discrimination obligations by providing another effective, but less expensive, accommodation; and

- authorizing agency-wide Flexiplace or other work-at-home arrangements, and expanding agency part-time work opportunities, to promote maximum flexibility for individuals with disabilities.

Additionally, agencies should adopt practices that will facilitate the agency's ability to consider and grant requests for reasonable accommodation or affirmative action, including:

- Creating central offices that can, among other services, demonstrate and

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evaluate equipment and assistive devices; expeditiously purchase equipment needed for reasonable accommodation or affirmative action; provide technical assistance and referrals for information on reasonable accommodations; coordinate training on reasonable accommodations and other non-discriminatory obligations; and expeditiously prepare agency printed and audiovisual materials in alternate formats upon request (or routinely for documents in high demand);

- Establishing a central pool of staff assistant slots, that would not be included in any particular office's personnel ceiling, to provide trained readers, qualified sign language interpreters, and other assistants throughout the agency or agency component;

- Implementing funding mechanisms that will avoid charging individual offices for the cost of accommodations;

Managerial Policies and Procedures to Ensure Reasonable Accommodation

All agencies should adopt the policies and procedures listed below to enable them to respond effectively and efficiently to requests for reasonable accommodation. The goal is to provide for a meaningful dialogue between the employee with a disability and his or her supervisor. Agencies should:

- Define the agency's legal obligations, including key legal terms (e.g., reasonable accommodation, disability, qualified individual with a disability, and undue hardship) in plain language.

- Explain how an employee or applicant should initiate a request for reasonable accommodation.

- Specify to whom a request should be submitted, from whom an individual will receive a final decision, and the time period in which decisions will be made.

- Explain restrictions on obtaining and handling medical and disability-related information.

- Compile a list of resources, including sources for technical assistance, available to provide information about, and fund, accommodations.

- Set forth the requirement that the agency consider reassignment in

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appropriate cases.

- Require that decisions on reasonable accommodation, including on requests for particular accommodations, be in writing and specify the reasons for denial, if applicable.

- Create a flexible and informal process for reconsidering denials of reasonable accommodation.

These policies and procedures should be implemented in a way that permits flexibility in processing each request for reasonable accommodation. ~~If an employee refuses~~They should be easy to ~~accept a reasonable accommodation in the current~~understand, impose as few burdens as possible on employees or ~~reassigned position~~applicants with disabilities, ~~the employee loses eligibility~~and allow for ~~disability retirement~~expedited consideration and streamlined procedures.

HIRING OPTIONS

Agency personnel offices work with State vocational rehabilitation agencies (SVRAs), the Department of Veterans Affairs, Gallaudet University and other various organizations to locate and identify qualified people with disabilities. In addition, many Federal employers participate in focused job fairs and campus recruitment visits to identify qualified people with disabilities. Hiring may be accomplished through the competitive hiring process or, if the qualifications are met, through the use of excepted service appointment authorities.

Federal employers may use a variety of hiring options to bring people with disabilities into their workforce. Descriptions of key options are listed below.

Competitive Appointments

Most Federal employees obtain jobs competitively. Applicants apply directly to the hiring departments and agencies for most positions. Federal employers use a variety of assessment tools in evaluating applicants and conducting hiring. ~~If passing a written test is required, special~~Appropriate auxiliary aids and services leading to effective communication and other reasonable accommodations should be provided during all aspects of job application, including testing ~~arrangements are available, if requested~~and interviewing. –

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~~Once this process is completed, an agency may select from a list of qualified people from the appropriate list of eligible candidates to fill vacancies. The agency may then interview and make a selection for the vacancy. Special interview "reasonable accommodation" arrangements may be made, if requested.~~

Time-limited Appointments

An agency may fill a position using a temporary or term appointment when the need for an employee's services is not permanent. Temporary appointments are made not to exceed one year, with one 1-year extension. The work must not be permanent in nature. In contrast, term appointments are made for a period of more than one year but not to exceed four years.

Term appointments are appropriate when there is project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

Student Employment Programs

The Student Educational Employment Program helps Federal employers find the right people to fill current and future hiring needs. The program also gives students the opportunity to get hands-on experience in their chosen career field. The program has two major components; Student Temporary Employment and Student Career Experience.

- **Student Temporary Employment** opportunities range from summer jobs to positions that can last as long as the student is enrolled. The Federal job does not have to be related to the student's academic field of study.

- **Student Career Experience** opportunities include formal periods of work and study while the student attends school. This requires a commitment by the student, the school, and the Federal employer. Work experience is directly related to the student's academic field of study. After successfully completing the educational and work requirements, the student is eligible for permanent job

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opportunities.

~~Presidential Management Intern (PMI) Program~~

~~The PMI Program is designed to attract to the federal service outstanding graduate students from a wide variety of academic disciplines who have an interest in, and commitment to, a career in the analysis and management of public policies and programs.~~

Presidential Management Intern (PMI) Program

The PMI Program is designed to attract to the Federal service outstanding graduate students from a wide variety of academic disciplines who have an interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals eligible to be nominated for the PMI Program are graduate students completing a master's or doctoral-level degree from an accredited college or university during the current academic year.

Students are nominated for the PMI Program by the appropriate dean, director or chairperson of their graduate academic program. All nominees are evaluated by an OPM-developed structured assessment process. Selection as a PMI finalist is based on review of the PMI application and the structured assessment process.

PMIs receive an initial two-year appointment. During the two-year internship, PMIs experience structured orientation and graduation training programs facilitated by OPM, as well as seminars, briefings, conferences, on-the-job training, rotational assignments, and other developmental opportunities arranged by participating Federal employers.

After successfully completing the two-year program, PMIs may be eligible for conversion to a permanent position and further promotional opportunities.

Appointment Under Special Authorities

The Federal Government's hiring options include excepted service special appointing authorities for people with disabilities. Federal employers are authorized to use these authorities when considering certain people with disabilities (those who have ~~a~~ severe physical, cognitive, or ~~emotional disability~~psychiatric disabilities or who have a history of ~~having such disabilities~~ or who are ~~perceived~~regarded as having such disabilities). The authorities provide a unique opportunity to

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demonstrate the potential to successfully perform the essential duties of a position with or without reasonable accommodation in the workplace.

- **Schedule A, 5 CFR 213.3102(t) for Hiring People with Mental Retardation.** This authority is used to appoint persons with cognitive disabilities (mental retardation) who meet the eligibility requirements. Upon completion of 2 years of satisfactory performance the employee may qualify for conversion to the competitive service.

- **Schedule A, 5 CFR 213.3102(u) for Hiring People With Severe Physical Disabilities.** This authority is used to appoint persons with severe physical disabilities who (1) under a temporary appointment have demonstrated their ability to perform duties satisfactorily; or (2) have been certified by a counselor from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affair's Vocational Rehabilitation Office as likely to succeed in performance of duties. Upon completion of two years of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

- **Schedule B, 5 CFR 213.3202(k) for Hiring People Who Have Recovered from Mental Illness.** This authority permits appointments at Grades GS-15 and below when filled by individuals who: (l) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a ~~significant~~severe period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Department of Veterans Affairs counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the position to which they will be appointed, and that any residual disability is not job related. ~~Employment under this authority may not exceed 2~~After two years ~~following each significant period of mental illness~~satisfactory service, the employee may qualify for conversion to the competitive service. Executive Order # 13124 (June 4, 1999).

In addition, Federal employers can use the following authority to provide assistance to employees with disabilities:

- **Schedule A, 5 CFR 213.3102(ll) for Hiring Readers Interpreters, and Other Personal Assistants.** This authority permits appointments of readers,

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interpreters, and personal assistants for employees with severe disabilities when filled on a full-time, part-time, or intermittent basis. Upon completion of at least one year of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

Disabled Veterans

- **30 Percent or More Disabled Veterans.** Federal employers may give a noncompetitive temporary appointment of more than 60 days (see 5 CFR 316.302(b)(4)) or a term appointment (see 5 CFR 316.402(b)(4)) to a veteran:

  - retired from active military service with a disability rating of 30 percent or more; or

  - rated by the Department of Veterans Affairs (VA) within the preceding year as having a compensable service-connected disability of 30 percent or more.

  There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement. Reasonable accommodations must be provided for any written test.

  The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment.

- **Disabled Veterans Enrolled in VA Training Programs, 5 CFR 315.604.** ~~Disabled veterans~~Veterans with disabilities who are eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a Federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA. The training is tailored to individual needs and goals so there is no set length. If the training is intended to prepare the individual for eventual appointment in the agency rather than just work experience, the agency must insure that the training will enable the veteran to meet qualification requirements for the position.

  Upon successful completion, the VA and the host agency give the veteran a Certificate of Training showing the occupational series and grade level of the position for which he or she has been trained. The Certificate of Training allows

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any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

Certification

An individual who ~~is physically disabled~~has a physical disability is considered to have met OPM qualification standards for either a temporary competitive service appointment or an excepted service Schedule A appointment when an appropriate certification is received from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affairs. The certification is prepared by a counselor on the basis of job-site inspection, analysis of job tasks, and evaluation of the proposed appointee's abilities and disabilities. The certification must state that in the counselor's judgement the proposed appointee is able to perform the duties of the position and is physically qualified to do the work safely. The certification must be supported by a medical report and a narrative statement documenting the counselor's conclusions. Factors to be discussed include training, education, work history, modification of job or worksite if needed, and limitations of the proposed appointee.

The certification required for an excepted service Schedule A appointment of an individual who is mentally retarded need only state that the individual has the ability to perform the duties of the position; is physically able to do the job safely; and can maintain himself or herself in the work environment. No medical report is required.

The certification required for appointment of individuals with psychiatric disabilities under an excepted Schedule B appointment must include documentation of a history of mental illness which includes periods of hospitalization or outpatient treatment within the previous two years; a statement by a psychologist or psychiatrist as to the individual's capability to function in the work setting; and a statement indicating that the individual is currently unemployed or has had a significant period of substantially disrupted employment within the previous two years.

Any ~~certificate issued under the authority of an SVRA or Department of Veterans Affairs counselor and other related medical records~~of these certificates must be maintained in a ~~medical~~separate, confidential folder, rather than ~~their~~ the person's official personnel folder (OPF) ~~for persons with disabilities.~~

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DEALING

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WORKING WITH PEOPLE WITH DIFFERENT DISABILITIES

People with Mobility Impairments

Countless injuries, diseases, and conditions can cause mobility impairments that affect an individual's ability to find and keep a job. Some disabilities are acquired at birth. Others stem from accidents or illnesses later in life. Basic mobility, coordination and balance, strength and endurance, and other aspects of body function may be affected.

Many people who have mobility impairments use adaptive equipment of one kind or another. Mobility aids ~~are especially common, and the most ordinary are~~such as canes, crutches, walkers, and wheelchairs are especially common. ~~Artificial limbs~~Prosthetic devices (such as artificial arms ~~and~~or legs), ~~and~~ body braces ~~are~~may also be used.

Some people with mobility impairments use service animals to assist them with carrying or retrieving items, opening doors, and achieving greater independence.

One may wish to consider the following suggestions when interacting with individuals who have mobility impairments:

- When scheduling a job interview or meeting, make sure the location is ~~wheelchair~~does not have any barriers such as a step at the threshold or inadequate accessible parking.

- Do not hold the person's wheelchair or assume the individual wants to be pushed; always ask first.

- A wheelchair is considered part of the person's personal space. Offer assistance but do not insist. If the person needs help, he or she will accept the offer and tell exactly what will be helpful.

- ~~Put yourself at the wheelchair user's eye level~~For prolonged conversations with someone who uses a wheelchair, ~~whenever possible~~sit down so as to be at the eye level of the wheelchair user.

- Do not be surprised if the person transfers from a wheelchair to a piece of

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furniture or gets out of the wheelchair to move about. Not all wheelchair users ~~are paralyzed~~have paralysis; many can walk with or without the aid of canes, braces, or crutches.

- If a person uses crutches, a walker, or some other assistive equipment, offer assistance with coats, bags, or other belongings.

- Ensure ~~non-slip floor coverings for the safety of a person who uses crutches and~~ extra maneuvering space and non-slip floor coverings for the safety of a person who uses crutches or a walker.

- Do not be sensitive about using words like "walking" or "running." People in~~w~~who use wheelchairs often use the same words.

~~Blindness and Visual~~People Who Are Blind or Who Have Vision Impairments

The ~~term "blindness" should be reserved for complete loss of sight, even with the best corrective lenses. For lesser disabilities, "visual impairment" is~~terms "blindness" and "vision impairment" may mean either a ~~better description~~complete or partial loss of vision. ~~In visually impaired persons overall sight may not be affected~~With many, only the edges or a part of the visual field may be obscured, or there may be no central vision although side or peripheral vision still exists. A person's visual acuity may also change under different light conditions.

~~Most~~Many people who are blind ~~persons~~ get around on their own by using a guide dog or cane. ~~Visually impaired persons~~People with vision impairments may or may not ~~need~~use these or other mobility aids. For many jobs, vision simply is not necessary. Successful employment of people who are blind ~~and visually impaired individuals~~or who have vision impairments depends upon thorough job analysis, enlightened employer acceptance, and proper management support. —

One may wish to consider the following suggestions when interacting with individuals who ~~have blindness~~are blind or ~~visual~~who have vision impairments:

- If the person seems to need assistance, offer one's services. If a person who is blind needs guidance through a door or to a chair, let the person take one's arm and follow the motion of one's body. ~~Guide his~~Tell him or her ~~hand or arm to the back of~~where the chair is in relation to his or her body. ~~-~~If one approaches steps, mention how many and the direction.

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- Speak directly to the individual who is blind or ~~visually impaired~~who has a vision impairment. Speak in a normal tone of voice.

- Introduce other people in the room or have them introduce themselves. This will assist the individual in orienting himself or herself to the room and its occupants.

- Never touch or distract a service guide dog without first asking the owner. Service animals are not pets and generally should not be disturbed while in a working mode.

- When giving directions, do not use references a person cannot see. "Over there" is not a good way of describing a location. When using directional words, use them with the orientation of the person who is blind or ~~visually impaired~~who has a vision impairment.

- Tell the individual when one is leaving the room.

- When guiding a person into a new or strange surrounding, one may want to describe special features or decorations.

- One should be prepared to read aloud information that is written, or ask the person if he or she ~~would like~~could use the services of a trained reader.

- When interviewing or meeting with people with ~~visual~~vision impairments, ~~ensure~~ask whether they would prefer a ~~well lit~~well-lit area ~~and avoid sharp contrasts of light and dark areas.~~ Avoid sharp contrasts of light and dark areas.

People Who Are Deaf or Hard of Hearing

Individuals may be deaf or hard of hearing and be able to speak clearly. They may be placed in almost any type of position, except those for which acute hearing is a legitimate safety requirement. Even in those circumstances, an individualized assessment should be performed.

Extra time may be required in settings where there is a lot of verbal communication, such as interviews and meetings.

~~**Deafness and Hearing Impairments**~~

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~~Electronic devices can often compensate for partial hearing impairment. Individuals who are hard of hearing usually speak clearly and communicate in the usual manner. They may be placed in almost any type of position, except those for which acute hearing is a safety requirement.~~

~~Extra time and interest may be required during oral communications settings, such as interviews and meetings. Communication problems should not be regarded as indicative of more extensive impairments and should not be allowed to obscure an applicant's knowledge, skills and abilities. In complex situations, it is desirable to obtain the services of a professional sign language interpreter.~~

~~Many persons who are deaf or hard of hearing can speak understandably. Those that do not speak well may communicate by sign language, writing notes, using gestures, and demonstrating concepts or problems. If offering a seat, place the individual's hand on the back or arm of the chair and let him or her sit down by him or herself.~~ Communication difficulties should not be regarded as indicative of more extensive impairments and should not be allowed to obscure an applicant's knowledge, skills and abilities. In ~~complex~~many situations, it is ~~desirable~~necessary to obtain the services of a ~~professional~~qualified sign language interpreter.~~—~~

~~Many persons~~ to provide effective communication, if the person who ~~are~~is deaf or hard of hearing ~~can speak understandably~~uses sign language as his or her primary means of communication. ~~Those~~Other accommodations that ~~do not speak well~~ may ~~communicate by sign language, writing notes, using gestures,~~be required include the use of assistive listening systems and ~~demonstrating concepts or problems~~devices for persons who are hard of hearing, or computer-assisted real-time transcription (CART), where a stenographer works to display aural communication on a computer monitor or screen in "real time." ~~—~~

One may wish to consider the following suggestions when interacting with individuals who are deaf or hard of hearing:

- When speaking with someone who is deaf or hard of hearing, face the person directly. Gain his or her visual attention before starting a conversation. ~~by a gentle touch~~For instance, if you are entering his or her office and the person's back is to you, flicker the room lights.

- When speaking to persons who are deaf or hard of hearing, use meaningful facial expressions and gestures to emphasize one's intent and attitude. This ~~substitutes~~helps to substitute for ~~voice~~one's tone of voice. Try to find a quiet

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place away from computers, telephones, and other sources of noise, and one which has adequate lighting.

- Not all people who are deaf or hard of hearing know or use sign language. Do not assume they need ~~an interpreter~~interpreters.

- If using a sign language or oral interpreter, speak directly to the person ~~who is~~with the hearing ~~impaired~~impairment, not the interpreter. Face the light, speak clearly, in a normal tone of voice, and keep one's hands away from one's face.

- If one cannot understand the person with a hearing impairment, do not be afraid to ask him or her to repeat. If this approach does not work, one can ask if it would be helpful to communicate by writing or using a computer terminal.

People with Invisible (Hidden) Disabilities

There are many invisible disabilities such as asthma, arthritis, heart disease, environmental illness, AIDS, chronic fatigue, psychiatric or mental illnesses, attention deficit hyperactivity disorder, ~~and~~ learning disabilities, and mild mental retardation.

If an applicant brings the condition to the prospective employer's attention, one may ask whether the condition might have an impact on his or her work and if there are any necessary accommodations.

~~A person who has recovered from a heart attack may be able to resume arduous work to which he or she previously was accustomed or may be so weakened that even administrative work is too stressful. Managers and supervisors do not need to be overcautious, as fitness for duty can be determined only by a medical specialist.~~

~~Some people with learning disabilities have adapted to their limitations, through classes, counseling sessions, or through life itself. Many can compensate for their problems so well that it is barely noticeable. A strong match between the person's strengths and the work to be performed is particularly important to the learning disabled individual. A careful job analysis is essential in determining the task and competency requirements of the job. Rehabilitation counselors can be very helpful to candidates by assisting them in assessing their strengths and finding jobs that utilize their strong points.~~

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For additional information regarding a description of invisible disabilities, please see the resources section of this handbook.

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People with Mental Retardation

Many people with mental retardation have average or superior abilities in some respects. While it is true that some people ~~who are mentally retarded~~with mental retardation may not be able to think, reason or remember as well as ~~other people~~others, it is important to remember that ~~—~~ like others ~~—~~ they~~are proficient in some ways~~ have their own ~~deficient in others~~strengths and weaknesses. Mental retardation should not be confused with mental illness or behavioral and emotional problems. The effect of the disability can be lessened, and skills and abilities increased, through rehabilitation, ~~special~~ education, and experience on the job.

People ~~who have~~with mental retardation ~~usually~~ ~~—~~ like others ~~—~~ may want to be independent and responsible for their own support. The object should be to reduce the need for learning details, exercising judgment, and finding new solutions to problems.

Success on the job often depends upon the willingness of others to devote reasonable time and interest to helping the individual adjust initially and meet new challenges as they arise. One of the greatest obstacles to equal employment opportunity for these individuals is persistent lack of employer confidence in, and lowered expectations of their capabilities. ~~—~~

One may wish to consider the following suggestions when interacting with individuals with mental retardation:

- For the most part, one should talk to the individual in the same manner as anyone else, but be more specific.
- In an interview setting, ask questions and occasionally repeat responses to ~~insure~~ensure effective communication.
- Provide information as to where things are located, such as time clock, lockers, restroom, cafeteria, drinking fountain, supply room, etc.
- Take care to explain about working hours, proper dress for the job, work station location, rate of pay, reporting official, and transportation options.

People with Psychiatric Disabilities

~~For the purposes of employment~~Psychiatric disabilities are diverse and include

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anxiety disorders, ~~a person with a psychiatric disability is one who has experienced a mental or emotional difficulty that currently is under control to the extent that the individual is able to function effectively and satisfactorily in a specific job~~depression, mania, schizophrenia, and other conditions. ~~The qualifications of people with psychiatric disabilities must be given the same consideration as those of other applicants.~~

—One may wish to consider the following suggestions when interacting with individuals who have a psychiatric disability:

- Talk to the individual as one would to anyone else. Integrate the person as fully into office activities as other employees. Do not ostracize him or her due to his psychiatric condition.

- As many psychiatric medications cause extreme thirst, upon request allow the person to have access to beverages even where food and drink are normally prohibited.

- ~~Through personal demeanor, show that one trusts~~Consider offering a flexible schedule to allow the ~~individual's ability~~person to ~~control his~~attend medical appointments and therapy sessions and to deal with medication issues, insomnia, fatigue, or ~~her behavior~~other conditions that often accompany psychiatric disabilities.

People with Muscular or Neurological Limitations

Muscular or neurological disabilities may affect motor ability and/or speech. Intelligence is not affected. Some involuntary or halting movement or limitation of movement in one or more than one appendage may be observed, as well as some lisping, indistinct speech or flatness of tone due to lack of fine motor control of the tongue and lips. The severity and functional effects of the disability vary from person to person. Unless the person ~~is severely disabled~~has a significant disability, or has the involvement of other disabilities, no accommodation may be needed during an interview setting or meeting.

If the person's speech is difficult to understand, ~~one should~~ ask him or her to repeat what was said. Some people who have ~~severe~~significant cerebral palsy, ~~for example, find it more effective to~~ or other muscular or neurological disabilities may communicate by writing, typing, or using a communication ~~boards~~board or other electronic ~~devices~~device.

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INTEGRATING PEOPLE WITH DISABILITIES INTO THE WORKFORCE

The President's Committee on Employment of People with Disabilities has a six-step process for integration. It consists of:

1) **Commitment** - Let the people in the agency know of the commitment to employ, advance and retain people with disabilities. Workforce diversity includes people with disabilities.

2) **Recruitment** - Let the Personnel/Human Resource office and Disability Employment Program Managers know that one is aggressively seeking job candidates with disabilities. Send agency vacancy announcements to disability-related organizations and Federal employers. State the agency's interest in receiving applications from people with disabilities on the job announcement.

3) **Interviewing** - Look at the essential functions and competency requirements of the job, the qualifications of the individual, and the availability of reasonable accommodations. Do not let the disability distract from evaluating the candidate's qualifications.

4) **Placement** - Test accommodations and adaptations once the person is on the job. Ask the employee with a disability to help in the process.

5) **Training** - Any employee's success hinges on proper orientation and training. Insure that all such agency programs are available and accessible to employees with ~~a disability~~disabilities. This includes training programs that may lead to upward mobility and career advancement.

6) **Awareness/Sensitivity** - Train managers, supervisors, and employees about disability myths and misconceptions. An educated workforce will be better able to ensure the success of employees with disabilities.

Interviewing

Interviewing people with disabilities is the same as interviewing people who ~~are~~do not ~~disabled~~have disabilities. In general, the selecting official should ask all applicants about their qualifications, experience, and skills for doing the job.

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However, there are some guidelines that are specific to people with disabilities. Unless an individual is seeking appointment under one of the special excepted appointment authorities, a selecting official should **only** ask questions about the person's ability to do the job.—[5] The office should make sure that all questions are job-related. The focus of the interview should be on the individual's ability to successfully perform the essential functions of the job and demonstrating the competencies or knowledge, skills, and abilities needed to perform the job. ~~"Essential functions" are the tasks that are fundamental and intrinsic to the job.~~ Understanding what are the job's essential functions and the competencies required to perform those functions is particularly important to prepare for applicant interviews.

If the person ~~indicates~~volunteers that he or she has a disability which makes it difficult to perform particular functions of a job, or if the selecting official believes that a person's readily apparent disability may make it difficult to perform certain job functions, the selecting official may ask job-related follow-up questions, such as~~: describe~~, "Describe how you can perform the job." The answer to such questions will indicate whether a reasonable accommodation is needed to enable the individual to perform the essential functions of the job. ~~Allow the~~It is the responsibility of the job applicant to ~~request reasonable~~inform the employer of any accommodation needs, but once the issue has been raised, the employer and prospective employee should engage in a meaningful dialogue about the job functions and how they can be accomplished. ~~It is the responsibility of the job applicant~~Employers should not make general assumptions that an individual with a disability will be unable to ~~inform the employer of any~~do a certain part of the job or that a reasonable accommodation ~~needs~~will be needed. ~~However, employers'~~Hiring decisions should ~~not make a general assumption that an individual~~never take into account the additional costs associated with providing a ~~disability will be unable~~reasonable accommodation to ~~do~~an applicant with a ~~certain part of~~disability, unless the applicant could not perform the essential job, ~~or that a reasonable accommodation will be needed~~ functions without a specific reasonable accommodation that was so expensive that it would impose an undue hardship on the agency.—

Career Development

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[5] An agency may invite job applicants to disclose whether they would qualify for an agency affirmative action program, as discussed previously in the section entitled "Affirmative Action Programs."

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One of the major problems facing many people with disabilities is underutilization of their knowledge, skills, and abilities. Developmental details and reassignments can be used as a means of providing on-the-job training which will enhance opportunities

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for promotion. In addition, it is easy to fall into the trap of isolating employees with disabilities from others. Make sure employees with disabilities have opportunities not only to work with others on group projects, but, when appropriate, to take on leadership roles.

Federal employers should ensure that employees with disabilities are given full consideration for inclusion in upward mobility programs, and that they are aware of career counseling. Recognize that people with disabilities have career goals. Agency managers should sit down with employees and talk about goals. Identify role models and mentors for ~~disabled~~ employees with disabilities or encourage them to do so. Every effort should be made to ensure that ~~disabled~~employees with disabilities — like others — are given the opportunity to reach their maximum potential—.

Performance~~Evaluation~~ Evaluations

People with disabilities should be held accountable for their work performance. Supervisors are responsible for communicating performance expectations to their employees and monitoring and appraising their work. When the individual with a disability begins a job, he or she should be given a clear description of the~~a~~ll job functions, ~~and the specific duties~~including those that are essential. ~~Employees~~All employees should be provided with encouragement and feedback regarding their work performance. It is important to ensure that when evaluating ~~a person~~people with ~~a disability~~disabilities, aspects of their physical or mental ~~disability~~disabilities are not held against them. They should be evaluated for their ability to do ~~a~~ the job with any appropriate reasonable accommodations. For example, it would be inappropriate to negatively evaluate an individual who uses a wheelchair for not attending a meeting, when the meeting was held in a physically inaccessible building.

If an employee with a disability cannot ~~perform~~satisfactorily perform the essential functions of his or her job after a full and fair trial period and with appropriate reasonable accommodations, then his or her employment should be terminated. ~~No supervisor or manager owes a job to any person with a disability~~Federal employers must provide equal employment opportunity. The ~~goal and the only obligation is equal employment opportunity. The~~ same job-related performance criteria should be applied to ~~disabled employees~~employees with disabilities that is applied to ~~all other employees~~others. If it becomes necessary to terminate the appointment of ~~a disabled~~an employee with a disability, the Human Resources or Personnel Office will help in making this decision and taking appropriate action.

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Awards

People with disabilities should have equal opportunity to receive incentive awards (special achievement/act or performance), quality step increases, and all other agency-sponsored or non-agency sponsored awards. Efforts should not be limited to special awards programs geared specifically to ~~those who are disabled~~employees with disabilities.

Training

Give employees with disabilities an equal chance to benefit from training and development opportunities. Ensure that classes are held in accessible facilities, and, as necessary to provide effective communication, that materials are available in electronic format, large print ~~for persons who are visually impaired,~~, Braille, or audio cassette for persons with vision impairments, trained note-takers and qualified sign language interpreters ~~are provided for participants who~~or computer-assisted real-time transcription services are provided for persons who are deaf or hard of hearing, assistive listening systems and devices are provided for persons who are hard of ~~hearing-impaired~~hearing, ~~or~~and other appropriate reasonable accommodations are made. Any training ~~which would provide growth opportunities~~that would provide growth ~~will~~opportunities to allow ~~disabled~~ employees with disabilities to advance in their careers should be encouraged. Such training could include developmental detail assignments, lateral reassignments, and leadership training.

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PROMOTING THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

Communication is the key to increasing organizational understanding and support for the employment of people with disabilities. The positive portrayal of employees with disabilities can greatly affect the public's and co-workers' perception of, and enhance ~~self-worth~~the self-esteem of, ~~affected~~such employees. ~~What one says and writes can enhance their dignity and promote positive attitudes about their abilities.~~ There are a number of target groups to be reached: ~~the disabled community~~people with disabilities, advocacy ~~the~~and rehabilitation ~~establishment~~organizations, the agency workforce, students, and community groups.

Communicating messages or events such as planned initiatives, programs or exhibits, employee success stories, activities and accomplishments, and training and career development opportunities will enhance the employment and advancement of people with disabilities. One of the most effective and efficient media for some messages are internal memorandum or personal contact with the organization head, managers, supervisors and employees. Messages may also be integrated into existing media, such as an agency newsletter.

Other communications media may also be considered:

- Agency publications
- Bulletin boards
- Press releases
- Film or slide-tape presentations
- Local newspapers
- Local radio and television stations
- Chambers of Commerce
- Trade and technical magazines
- Community organizations newsletters
- Flyers
- ~~Web~~Accessible Internet or Intranet sites

An agency's public affairs office may be able to assist in preparing professional copy or in maximizing one's communication tools. Outside organizations such as the President's Committee on Employment of People with Disabilities, Veterans' service organizations (VSOs), Federally Employed Women, State Vocational

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Rehabilitation Centers, and local news media may be able to help in the preparation of materials.

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Experience has shown that programs and initiatives require dedicated and sustained support from departmental and agency leadership to achieve success. Thus, a clearly articulated commitment of agency leadership to achieving the goal of greater inclusion for adults with disabilities in the Federal workforce is critical to transforming such an aim into reality ~~at the agency level.~~ -

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APPENDIX 1: STATISTICAL INFORMATION

The Office of Personnel Management (OPM) published a *Statistical Profile of People with Disabilities in the Federal Workforce* in 1998. Copies of the report can be obtained by calling OPM's Office of Diversity at (202) 606-1059. Some of the findings are listed below:

- Despite downsizing and employment changes, the representation of persons with disabilities in the Federal Government since 1992 has remained fairly stable near 7% of the workforce. In 1997, the approximately 127,076 employees with disabilities represented 7.2% of the Federal Executive Branch workforce.

- The average pay of Federal employees with disabilities lags below the overall average Federal employee pay. ~~A higher proportion of~~ Federal employees with disabilities ~~are in~~tend to occupy lower grade ~~occupations~~levels.

- Nearly two thirds of our Federal employees with disabilities are in professional, administrative and technical occupations. This is a positive factor given that, in 1992, 40% of Federal employees with disabilities were in blue-collar and clerical occupations; jobs with more limited pay and advancement opportunities. However, other employment indicators merit further scrutiny.

- Of the 195,903 new hires in FY 1997, only 11,847, or 5.7% were people with disabilities.

- Over half (55%) of all new FY 1997 hires with disabilities were hired into blue-collar and clerical occupations. While these occupational groups have constituted traditional employment vehicles for persons with disabilities, these employment pipelines offer limited career advancement opportunities and will continue shrinking due to changes in Federal agency operations.

- From FY 1992 thru FY 1997, there has been some decline in the use of special non-competitive hiring authorities, such as Schedule A, for severely physically handicapped and mentally retarded persons, and Schedule B, for persons recovered from mental illness. During FY 1997, five special hiring authorities for persons with disabilities accounted for 11 percent of all new hires of employees with disabilities.

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APPENDIX 2: FEDERAL RESOURCES

1) **President's Committee on Employment of People with Disabilities (PCEPD)**
1331 F Street, NW
Washington, DC 20004-1107
Phone: (V) (202) 376-6200
(TDD) (202) 376-6205

Website: http://www.pcepd.gov
EMAIL: info@pcepd.gov

2) **President's Committee Job Accommodation Network (JAN)**
918 Chestnut Ridge Road, Suite 1
West Virginia University - PO Box 6080
Morgantown, WV 26506-6080
Phone: (V) (800) 526-7234
(TDD) (800) 232-9675

Website: http://www.pcepd.gov and click on JAN or go directly to JAN at http://janweb.icdi.wvu.edu/english/homeus.htm

3) **Equal Employment Opportunity Commission**
1801 L Street NW (Federal Sector Programs)
Washington, DC 20507
Phone: (V) (800) 669-3362
(TDD) (800) 800-3302

Website: http://www.eeoc.gov

For specific Federal employment questions, call the "ATTORNEY OF THE DAY" at (202) 663-4599.

4) **Department of Labor: Office of Federal Contractor Compliance Programs (OFCCP)** [administers Federal contractor compliance for affirmative action in the employment of people with disabilities]
Department of Labor
Frances Perkins Building,
200 Constitution Avenue NW
Washington, DC 20210
Phone: (V) (888) 376-3227
(V) (202) 219-9475
(TDD) (202) 208-0452

Website: http://www.dol.gov/dol/esa

5) **U.S. Office of Personnel Management**[for Federal employment information]
1900 E Street, NW
Washington, DC 20415
Phone: (V) (202) 606-2700
(TDD) (912) 744-2299

Website: http://www.opm.gov

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APPENDIX 3: STATE VOCATIONAL AND REHABILITATION AGENCIES

State Vocational and Rehabilitation Agencies provide a number of services for persons with disabilities. Services include counseling, evaluation, training, and job placement. For more information, call or write the office nearest you. Internet addresses for each agency can be accessed at:

www.nchrtm.okstate.edu/ncrtm_links/state_VR.html

ALABAMA
Dept. of Rehabilitation Services
PO Box 11586
Montgomery, AL 36111-0586
(334) 281-8780
Toll free: (800) 441-7607

ALASKA
Division of Vocational Rehabilitation
801 W. 10th Street, Suite 200
Juneau, AK 99801-1894
Voice/TDD: (907) 465-2814
Toll Free: (800) 478-2815

ARIZONA
Rehabilitation Services Admin. (930A)
1789 West Jefferson, NW (2nd Floor)
Phoenix, AZ 85007
(602) 542-3332
Voice/TDD: (602) 542-6049

ARKANSAS
Department of Education
Arkansas Rehabilitation Services
Div. of Vocational & Technical Education
PO Box 3781
Little Rock, AR 72203
(501) 296-1616
Toll Free: (800) 330-0632

CALIFORNIA
Department of Rehabilitation
830 K Street Mall
Sacramento, CA 95814
Voice/TDD: (916) 445-3971

COLORADO
Division of Vocational Rehabilitation
110 16th Street, 2nd Floor
Denver, CO 80202
Voice/TDD: (303) 620-4153

CONNECTICUT
State Department of Social Services
Bureau of Rehabilitation Services
Division of Client Services
10 Griffin Road North
Windsor, CT 06095
(860) 298-2000
Toll Free: (800) 537-2549
TDD: (860) 298-2231

DELAWARE
Department of Labor
Division of Vocational Rehabilitation
4425 North Market Street
PO Box 9969
Wilmington, DE 19809-0969
(302) 761-8300
Voice/TDD: (302) 761-8349

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DISTRICT OF COLUMBIA
Department of Human Services
DC Rehabilitation Services Administration
800 9th Street, SW, Fourth Floor
Washington, DC 20024
(202) 645-5703

FLORIDA
Dept. of Labor and Employment Security
Division of Vocational Rehabilitation
2002 Old Augustine Road, Building A
Tallahassee, FL 32399-0696
(850) 488-6210
Voice/TDD: (850) 488-2867

GEORGIA
Department of Human Resources
Division of Rehabilitation Services
2 Peachtree Street, NW, 23rd Floor
Atlanta, GA 30330-3166
Voice/TDD: (404) 657-3000

GUAM
Department of Vocational Rehabilitation
122 Harmon Plaza, Room B-201
Harmon Industrial Park, GU 96911
011-671-475-4645
001-671-475-4635 (Consumer Information)

HAWAII
Department of Human Services
Division of Vocational Rehabilitation
and Services for the Blind
PO Box 339
Honolulu, HI 96809
(808) 586-5355
(808) 586-5366

IDAHO
Division of Vocational Rehabilitation
650 West State-L. B. Jordan Bldg, Rm 150
Boise, ID 83720-0096
Voice/TDD: (208) 334-3390
Toll Free: (800) 856-2720

ILLINOIS
Department of Rehabilitation Services
623 East Adams Street
Springfield, IL 62794
(217) 785-0218
Toll Free: (800)ASK-DORIS
TDD: (217) 782-5734

INDIANA
Division of Disability, Aging and Rehabilitation Services
402 West Washington Street, Rm W-451
PO Box 7083
Indianapolis, IN 46207-7083
(317) 232-1147
Toll free: (800) 545-7763
TDD Toll free: (800) 962-8408

IOWA
Department of Education
Div. of Vocational Rehabilitation Services
510 East 12th Street
Des Moines, IA 50319
Voice/TDD: (515) 281-4311
Toll free: (800) 532-1486

KANSAS
Dept. of Social and Rehabilitation Services
300 SW Oakley-Biddle Building, 1st Floor
Topeka, KS 66606
(913) 296-3911
TDD: (913) 296-7029

KENTUCKY
Department of Vocational Rehabilitation
209 Street Clair
Frankfort, KY 40601
Voice/TDD: (502) 564-4440
Toll free: (800) 372-7172
TDD: (502) 564-6742

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LOUISIANA
Department of Social Services
Louisiana Rehabilitation Services
8225 Florida Blvd.
Baton Rouge, LA 70806-4834
(504) 925-4168
Toll free: (800) 737-2958
Voice/TDD: (504) 925-4179

MAINE
Department of Labor,
Division of Vocational Rehabilitation
35 Anthony Avenue
Augusta,, ME 04333-0150
(207) 624-5300
Toll free: (800) 332-1003
Voice/TDD: (207) 624-5322

MARIANA ISLANDS
Vocational Rehabilitation Division
Comm. of Northern Mariana Islands
PO Box 1521
Saipan, Mariana Islands 96950
011-670-234-6538

MARYLAND
State Department of Education
Division of Rehabilitation Services
2301 Argonne Drive
Baltimore, MD 21218
(410) 554-9385
TDD: (410) 554-9412

MASSACHUSETTS
Massachusetts Rehabilitation Commission
4 Point Place, 27-43 Wormwood Street
Boston, MA 02210
(617) 727-2172
TDD: (617) 727-9063

MICHIGAN
Michigan Rehabilitation Services
Michigan Jobs Commission
PO Box 30010
Lansing, MI 48909
(517) 373-3390
Toll free: (800) 605-6722
TDD: (517) 373-4035

Family Independence Agency
Disability Determination Service
PO Box 30011
Lansing, MI 48909
(517) 373-7830
(517) 373-4533
Toll free: (800) 366-3404

MINNESOTA
Michael Coleman, Assistant Commissioner
Department of Economics and Security
Rehabilitation Services Branch
390 North Robert Street, 5th Floor
Street Paul, MN 55101
(612) 296-1822
TDD: (612) 296-3900

MISSISSIPPI
Nell C. Carney, Executive Director
Department of Rehabilitation Services
Vocational Rehabilitation Division
1281 Highway 51
PO Box 22806
Madison, MS 39110
(601) 853-5100
Toll free: (800) 443-1000

MISSOURI
Don Gann, Assistant Commissioner
State Department of Education
Division of Vocational Rehabilitation
3024 W. Truman Blvd.
Jefferson City, MO 65109
Voice/TDD: (573) 751-3251

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MONTANA
Dept. of Public Health & Human Services
Disability Services Division
PO Box 4210
Helena, MT 59604-4210
Voice/TDD: (406) 444-2590

NEBRASKA
State Department of Education
Div. of Vocational Rehabilitation Services
PO Box 94987
Lincoln, NE 68509
(402) 471-3649
Voice/TDD: (402) 471-3659

NEVADA
Nevada Rehabilitation Division
505 East King Street, Room 502
Carson City, NV 89710
Voice/TDD: (702) 687-4440

NEW HAMPSHIRE
State Department of Education
Division of Adult Learning & Rehabilitation
78 Regional Drive, Bldg 2
Concord, NH 03301
Voice/TDD: (603) 271-3471

NEW JERSEY
Div. of Vocational Rehabilitation Services
135 East State Street, CN 398
Trenton, NJ 08625-0398
(609) 292-5987
Voice/TDD: (609) 292-2919

NEW MEXICO
Department of Education
Division of Vocational Rehabilitation
435 Street Michaels Drive, Bldg D
Santa Fe, NM 87505
Toll free: (800) 235-5387
Voice/TDD: (505) 827-3500

NEW YORK
New York State Education Department
Office of Vocational and Educational
Services for Individuals with Disabilities
One Commerce Plaza, Room 1606
Albany, NY 12234
(518) 474-2714
Toll free: (800) 222-JOBS
TDD: (518) 486-3773

NORTH CAROLINA
Department of Human Resources
Div. of Vocational Rehabilitation Services
PO Box 26053
Raleigh, NC 27611
(919) 733-3364
Voice/TDD: (919) 733-5924

NORTH DAKOTA
Department of Human Services
Division of Vocational Rehabilitation
Dacotah Foundation Bldg
600 S. Second Street, Suite IB
Bismarck, ND 58504-5729
(701) 328-8950
Toll free: (800) 755-2745
TDD: (701) 328-8968

OHIO
Rehabilitation Services Commission
400 East Campus View Blvd.
Columbus, OH 43235-4604
Voice/TDD: (614) 438-1210
Toll free: (800) 282-4536, ext. 1210

OKLAHOMA
Department of Rehabilitation Services
3535 NW 58, Suite 500
Oklahoma City, OK 73112
(405) 951-3400

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OREGON
Department of Human Resources
Division of Vocational Rehabilitation
Human Resources Bldg,
500 Summer Street, N.E.
Salem, OR 97310-1018
(503) 945-5880
TDD: (503) 378-3933

PENNSYLVANIA
Office of Vocational Rehabilitation
Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17120
(717) 787-5244
Voice/TDD: (717) 783-8917
Toll free: (800) 442-6351

PUERTO RICO
Administration for Vocational Rehabilitation
PO Box 191118
San Juan, PR 00919-1118
(809) 725-1792

RHODE ISLAND
Department of Human Services
Office of Rehabilitation Services
40 Fountain Street
Providence, RI 02903-1898
(401) 421-7005
TDD: (401) 421-7016

SOUTH CAROLINA
Vocational Rehabilitation Department
1410 Boston Avenue
PO Box 15
West Columbia, SC 29171
(803) 896-6504
Voice/TDD: (803) 896-6635

SOUTH DAKOTA
Department of Human Services
Division of Rehabilitation Services
East Highway 34, Hillsview Plaza
c/o 500 E. Capitol
Pierre, SD 57501-5070
Voice/TDD: (605) 773-3195
Toll free: (800) 265-9684

TENNESSEE
Rehabilitation Services
Department of Human Services
Citizens Plaza State Office Bldg
400 Deaderick Street, 15th Floor
Nashville, TN 37248-0060
Voice/TDD: (615) 313-4714

TEXAS
Texas Rehabilitation Commission
4900 North Lamar
Austin, TX 78751
(512) 483-4001
Toll free: (800) 628-5115

UTAH
Utah State Office of Rehabilitation
250 East Fifth South
Salt Lake City, UT 84111
Voice/TDD: (801) 538-7530
Toll free: (800) 473-7530

VERMONT
Vocational Rehabilitation Division
103 South Main Street
Waterbury, VT 05671-2303
Voice/TDD: (802) 241-2186

VIRGIN ISLANDS
Virgin Islands Dept. of Human Services
Div. for Disabilities and Rehabilitation Services
1303 Hospital Ground, Hansen Complex
Saint Thomas, VI 00802
(809) 774-0930

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VIRGINIA
Department of Rehabilitation Services
4901 Fitzhugh Avenue
PO Box 11045
Richmond, VA 23230
(804) 367-0316
Voice/TDD: (804) 367-0315
Toll free: (800) 552-5019

WASHINGTON
Department of Social and Health Services
Division of Vocational Rehabilitation
PO Box 45340
Olympia, WA 98504-5340
Voice/TDD: (360) 427-2135
Toll free: (800) 637-5627

WEST VIRGINIA
Division of Rehabilitation Services
State Capitol Complex
PO Box 50890
Charleston, WV 25305-0890
(304) 766-4600
Voice/TDD: (304) 766-4970
Toll free: (800) 642-3021

WISCONSIN
Department of Workforce Development
Division of Vocational Rehabilitation
2917 International Lane, 3rd Floor
PO Box 7852
Madison, WI 53707-7852
(608) 243-5600
TDD: (608) 243-5601

WYOMING
Department of Employment
Division of Vocational Rehabilitation
1 East Herschler Building
Cheyenne, WY 82002
(307) 777-7385
Voice/TDD: (307) 777-7389

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APPENDIX 4: REFERENCES AND REGULATIONS

I. General Medical Personnel Guidance

Law:

A. The Americans with Disabilities Act of 1990 - 42 U.S.C. §§ 12101 et seq.

B. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq.; See also, 29 U.S.C. §§ 791(g), 794(d) (Incorporating standards of Americans with Disabilities Act into the Rehabilitation Act)

C. The Family and Medical Leave Act of 1993, Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, et seq. Title I of the Act applies to non-Federal employees and certain Federal employees and is administered by the Department of Labor. Title II of the Act applies to most Federal employees and is administered by the Office of Personnel Management.

Regulation:

A. 5 CFR 339, Medical Qualification Determinations, March 8, 1989

B. 29 CFR 1614, Equal Employment Opportunity Commission

NOTE: Part 1614 of the Federal sector Equal Employment Opportunity (EEO) complaint processing regulations replace part 1613, with the objective of promoting greater administrative fairness in the investigation and consideration of Federal sector EEO complaint by creating a process that is quicker and more efficient. Every Federal employee and applicant for Federal employment has the right to use the administrative EEO discrimination complaints process.

C. For most Federal employees, 5 CFR Part 630, Subpart L, Family and Medical Leave.

NOTE: The final rule became effective on January 6, 1997.

D. For certain Federal employees, including Postal Service employees, 29 CFR Part 825, The Family and Medical Leave Act of 1993.

NOTE: The final rule became effective on February 6, 1995.

Information:

A. Equal Employment Opportunity Commission (EEOC)

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1. EEOC - *ADA Enforcement Guidance: Preemployment Disability Related Questions and Medical Examinations*, October 10, 1995

   NOTE: This document provides the EEOC's position under the Americans with Disabilities Act of 1990, on preemployment disability-related questions and medical examinations.

2. EEOC - *EEOC Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities*, March 25, 1997

   NOTE: This guidance is designed to facilitate the full enforcement of the ADA with respect to individuals alleging employment discrimination based on psychiatric disabilities; respond to questions and concerns expressed by individuals with psychiatric disabilities regarding ADA; and answer questions posed by employers about how principles of ADA analysis apply in the context of psychiatric disabilities.

3. EEOC - *The Family and Medical Leave Act, The Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964*

   NOTE: This fact sheet was prepared by the Equal Opportunity Commission's (EEOC) Office of Legal Counsel. It is intended to provide technical assistance on some common questions that have arisen about the Americans with Disabilities Act of 1990 (ADA) and Title VII of the Civil Rights Act of 1964 (Title VII) when the Family and Medical Leave Act of 1993 (FMLA) also applies.

4. EEOC - *Compliance Manual Section on the Definition of the Term "Disability"*

5. EEOC - *Interim Enforcement Guidance on the Application of the ADA to the Disability-based Distinctions in Employer Provided Health Insurance*

6. EEOC - *Questions and Answers About Disability and Service Retirement Plans Under the ADA*

7. EEOC - *Enforcement Guidance on Workers' Compensation and the ADA*

8. EEOC - *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA*

9. EEOC - *Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person is a "Qualified Individual with a Disability"*

B. U.S. Office of Personnel Management (OPM)

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1. OPM - *Operating Manual - Qualification Standards for General Schedule Positions*, August, 1994, prepared by OPM's Washington Service Center

   NOTE: This operating manual replaces the Qualification Standards Handbook for General Schedule Positions.

3. OPM - *The Role of the Agency Medical Review Officer (MRO[6])*, March, 1996, prepared by OPM's Staffing Reinvention Office

4. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, December, 1994, prepared by OPM's Personnel Resources and Development Center

5. OPM - *Developing and Conducting the Structured Situational Interview: A Practical Guide*, January, 1994, prepared by OPM's Personnel Resources and Development Center

6. OPM - *Family-Friendly Leave Policies for Federal Employees: Employee Brochure*, November 1997, prepared by OPM's Workforce Compensation and Performance Service

7. OPM - *Federal Employee Entitlement Under the Family and Medical Leave Act of 1993*, December 1996, prepared by OPM's Workforce Compensation and Performance Service

C. Social Security Administration (SSA)

1. U.S. Department of Health and Human Services, Social Security Administration - *Disability Evaluation Under Social Security*, January, 1995

   NOTE: This new publication replaces the October, 1992 edition of *Disability Evaluation Under Social Security*. It is intended to provide physicians and other health professionals with an understanding of the disability programs administrated by the Social Security Administration, how each program works, and the kinds of medical information a health professional can furnish to help ensure sound and prompt decisions on disability claims.

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[6] See Section VI, Information (E, F) for HHS Drug Testing Medical Review Officer Source List and Manual for Federal Workplace Drug Testing Programs

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II. Aeromedical-FAA Medical Standards and Certification

Law:

A. 49 U.S.C. 106 (G), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45303.

Regulation:

A. 14 CFR Part 67, Federal Aviation Regulations, Medical Standards and Certification, recently revised, March, 1996, See 61 Federal Register 11256, March 19, 1996

NOTE: This establishes medical standards for airman (e.g., pilots) who have to hold an FAA issued medical certificate.

Information:

A. U.S. Department of Transportation, Federal Aviation Administration, Office of Aviation Medicine, *FAA Guide for Aviation Medical Examiners*, Revised 1992

NOTE: This 1992 revision supersedes previous editions of the *FAA Guide* which should now be discarded.

III. Conduct or Performance Problems Involving Medical Considerations

NOTE: See Section I, Information (A) for information regarding an Agency's right to order/offer a medical or psychiatric examination.

IV. Excepted Service Appointing Authorities for Persons with Disabilities

Schedule A:

A. 5 CFR 213.3102(ll) - This hiring authority applies to readers, interpreters and other personal assistants for other employees with a severe disability(ies).

B. 5 CFR 213.3102(t) - This hiring authority applies to persons with mental retardation.

C. 5 CFR 213.3102(u) - This hiring authority applies to persons with severe physical disabilities.

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Schedule B:

A. 5 CFR 213.3202(k), as amended by Executive Order 13124 (June 4, 1999) - This hiring authority applies to persons who ~~are mentally restored~~have recovered from a serious mental illness that resulted in a significant period of substantially disrupted employment within the previous two years.

Executive Order:

A. Amending the Civil Service Rules Relating to Federal Employees with Psychiatric Disabilities, Executive Order 13124, ___ Federal Register ____ (June 4, 1999)

Veteran Specific:

A. 5 CFR 316.402(b)(5) - This hiring authority applies to 30 percent or more Disabled Veterans.

Information:

A. OPM - *People with Disabilities in the Federal Government - A Statistical Profile*, July, 1998, prepared by OPM's Office of Diversity

B. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, (PRDC-94-11), December, 1994, prepared by OPM's Personnel Research and Development Center

NOTE: This publication replaces the 1980 *Guide for Administering Examinations to Handicapped Individuals for Employment Purposes*.

V. Disability Retirement (CSRS and FERS)

Regulation:

A. CSRS - 5 CFR Part 831, Civil Service Retirement System, Disability Retirement, September 22, 1993

Information:

A. CSRS - Documentation in Support of Disability Retirement Application, July, 1984

B. CSRS - OPM Pamphlet *Information for Disability Annuitants*, March, 1995

C. CSRS - Application for Immediate Retirement, January, 1990

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Regulation:

A. FERS - 5 CFR Part 844, Federal Employees Retirement System - Disability Retirement, 1995

Information:

A. FERS - Documentation in Support of Disability Retirement Application, August, 1987

B. FERS - OPM Pamphlet *Information for FERS Disability Annuitants*, October, 1995

C. FERS - Application for Immediate Retirement, March, 1988

VI. Drug and Alcohol Testing[57]

Executive Order:

A. Drug-Free Federal Workplace, Executive Order 12564, 51 Federal Register 32,889 (1986)

NOTE: Executive Order 12564 requires that the Head of each Executive Agency establish a program to test for the use of illegal drugs by employees in safety or security-sensitive positions.

Law:

A. Section 503 of the Supplemental Appropriations Act of 1987, Pub. L. 100-71, 101 Stat. 468, codified at 5 U.S.C. § 7301 note (1987)

B. The Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143, Title V, 105 Stat. 952 (1991)

NOTE: This Act requires that a program be established to test for the use of alcohol or controlled substances. This program is mandated for Federal Aviation Administration (FAA) employees whose duties include responsibility for safety-sensitive functions and for any other Federal employee whose position requires a Commercial Drivers License (CDL) under Federal Highway Administration (FHWA) regulations.

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[7] See Section IX, Information (A) for information regarding the role of OPM in the adjudication of medical objections to preference eligibles who test positive on a preemployment drug screen.

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C. Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 42 U.S.C. § 290ee-1 et seq., as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. § 290dd et seq., Pub. L. 102-321, 106 Stat. 367 (1992) (codified at 42 U.S.C. § 201 note)

D. Federal Employee Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570, Title VI, 100 Stat. 3207-157 (1986)

NOTE: This Act requires agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.

Regulation:

A. 5 CFR Part 792, Federal Employees' Health and Counseling Programs

B. 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing

NOTE: This regulation is issued by the Federal Highway Administration (FHWA) and contains the requirements applicable to positions requiring Commercial Drivers' License (CDL).

C. 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

NOTE: This regulation is issued by the U.S. Department of Transportation (DOT) and contains the technical procedures designed for use when testing is required pursuant to 49 CFR Part 382.

Mandatory Guidelines:

A. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Register Vol. 59, No. 110, June 9, 1994

NOTE: This establishes mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to Executive Order 12564.

Information:

A. National Institute on Drug Abuse - *Model Plan for a Comprehensive Drug-Free Workplace Program*, 1990

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B. U.S. Department of Transportation - *Alcohol & Drug Rules - An Overview*, February, 1994

C. U.S. Department of Health and Human Services - Substance Abuse and Mental Health Services Administration - *Basic Information on Breath Alcohol Testing for Implementation of the DOT Rules*, February, 1995

D. U.S. Department of Health and Human Services - An Overview of HHS Division of Workplace Programs (Federal Drug and Alcohol Program Oversight Responsibility)

E. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer Manual for Federal Workplace Drug Testing Programs*, 1997

NOTE: This manual applies to Federal agency drug testing programs that come under Executive Order 12564 and the Department of Health and Human Services (HHS) Mandatory Guidelines. The Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) programs have drug testing program requirements that may differ from those required by HHS. Therefore, Medical Review Officers (MROs) must be aware of those differences in reviewing results for other Federally regulated programs.

F. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer (MRO) Source List*, March 3, 1996

VII. Hearing Conservation

Regulation:

A. 29 CFR 1910.95, Occupational Noise Exposure Standard, U.S. Department of Labor, Occupational Safety and Health Administration

Information:

A. U.S. Department of Labor, OSHA Guideline *Occupational Noise Exposure Compliance Assistance Guideline*, 1991

B. U.S. Department of Labor, Occupational Safety and Health Administration, *Hearing Conservation*, (OSHA Publication 3074), 1995

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are exposed to excessive/high noise levels that could cause hearing loss.

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VIII. Infectious Diseases (HIV/AIDS, Hepatitis, Tuberculosis, etc.) Involving Employee Relations

Regulation:

A. 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogens, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: A bloodborne pathogen's protection program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are potentially exposed to infectious blood or body fluids as part of their employment.

Information:

A. OPM - *HIV/AIDS Policy Guidelines,* August 30, 1995, prepared by OPM's Office of Employee Relations

NOTE: These guidelines replace FPM letter 792-21, "Acquired Immune Deficiency Syndrome (AIDS) in the Workplace."

B. U.S. Department of Health and Human Services, Social Security Administration - *A Guide to Social Security and SSI Disability Benefits for People with HIV Infection*, May, 1997

C. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, September 8, 1995/Vol. 44/No. RR-11, *Essential Components of a Tuberculosis Prevention and Control Program, Screening for Tuberculosis and Tuberculosis Infection in High-Risk Populations*

D. U.S. Department of Labor, Occupational Disease - *Claims for Pulmonary Tuberculosis,* FECA Bulletin No. 95-20, June 21, 1995

E. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, October 28, 1994/Vol. 43/No. RR-13 1994, *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities*

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IX. Medical Disqualifications of Veterans Preference Eligibles (TP, CP, CPS, XP)

Law:

A. 5 U.S.C., Sections 3312 and 3318, Preference Eligibles

Regulation:

A. 5 CFR 339.306 Medical Qualification Determinations

B. 5 CFR 351.702(d) Reduction in Force

Information:

A. Interagency Advisory Group, Memorandum for Directors of Personnel, dated March 14, 1997, "OPM Adjudication of Medical Disqualifications to Preference Eligibles"

NOTE: This is a reminder that in accordance with Title 5, United States Code, Sections 3312 and 3318, and 5 CFR 339, Medical Qualification Determinations, any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management (OPM) **before** the position can be filled.

B. OPM - *Procedures Guide in Processing Medical Objections to Preference Eligibles*, March, 1996, prepared by OPM's Staffing Reinvention Office

C. OPM - *Typical Reasons for Not Sustaining Agency Medical Passover Requests*, March, 1996, prepared by OPM's Staffing Reinvention Office

X. Medical Records

Law:

A. Privacy Act of 1974, 5 U.S.C. 552a

Regulation:

A. 5 CFR Part 293, Subpart E, Employee Medical File System Records, prepared by OPM's Office of Workforce Information

B. 5 CFR Part 297, Privacy Procedures for Personnel Records, prepared by OPM's Office of Workforce Information

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C. 29 CFR 1910.1020(d)(I) (1990) Access to Employee Exposure and Medical Records, U.S. Department of Labor, Occupational Safety and Health Administration

D. 29 CFR 1904 (June 1986), A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics

E. 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient's Records (This regulation applies only to Employee Assistance Program (EAP) records)

Information:

A. OPM/GOVT-10 "Employee Medical File System Records," 57 Federal Register, 35,722, (August 10, 1992), prepared by OPM's Office of Workforce Information

B. OPM Medical Record Procedures, (covered in OPM's Operating Manual) *The Guide to Personnel Recordkeeping*, prepared by OPM's Office of Workforce Information

C. U.S. Department of Labor, Occupational Safety and Health Administration, *Access to Medical and Exposure Records*, (OSHA Publication 3110), 1993

XI. Mental Health Issues

NOTE: See Section I, Regulation (A), for specific information regarding an Agency's right to order/offer a medical or psychiatric examination.

XII. OWCP Issues

Law:

A. 5 U.S.C. 8101 et seq. The Federal Employees Compensation Act, as amended

Regulation:

A. 20 CFR Parts 1 to 25, Federal Employees Compensation Act

B. 5 CFR Parts 353, Restoration to Duty from Uniform Service or Compensable Injury (Interim Regulations, September 1, 1995)

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Information:

A. OPM - Pamphlet *Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses*, January, 1992, prepared by OPM's Staffing Reinvention Office

B. U.S. Department of Labor - *Injury Compensation for Federal Employees* (A Handbook for Employing Agency Personnel), (Publication CA-810), February, 1994

C. U.S. Department of Labor, *Questions and Answers About the Federal Employees' Compensation Act*, (Publication CA-550), September, 1988

D. U.S. Department of Labor, *Resource Book - Training for Federal Employing Agency Compensation Specialists*, 1994

XIII. Pregnancy Related Issues

Law:

A. Pregnancy Discrimination Act, P.L. 95-555, October 31, 1978, 92 Stat. 2076, 42 U.S.C. § 2000e(k)

Regulation:

A. 29 CFR § 1604.10(b), See also, 29 CFR Pt. 1604 App. (Questions and Answers on the Pregnancy Discrimination Act)

XIV. Respiratory Protection Program

Regulation:

A. 29 CFR 1910.134, Respiratory Protection, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers must wear respirators to protect themselves from actual or potential airborne hazards.

B. 29 CFR Part 1910.1001, Occupational Exposure to Asbestos, June 29, 1995, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

C. 29 CFR Part 1910.1200, Hazard Communication, March 11, 1994, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

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XV. Safety and Occupational Health Programs

Law:

A. Occupational Safety and Health Act of 1970, 84 Stat. 1590, Public Law 91-596, Section 19, Federal Agency Safety Programs and Responsibilities, December 29, 1970

NOTE: This act is to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; and by providing for research, information, education and training in the field of occupational safety and health.

Federal Regulation:

A. 29 CFR 1910.151, Medical Services, U.S. Department of Labor, Occupational Safety and Health Administration

B. 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, U.S. Department of Labor, Occupational Safety and Health Administration

C. 29 CFR 1910.1200, Hazardous Communication, U.S. Department of Labor, Occupational Safety and Health Administration

D. 5 CFR Part 339.205, Medical Evaluation Programs, Medical Surveillance Program

XVI. Veterans and the Civil Service

Information:

A. OPM - *VetGuide, Federal Employment Policy Handbook: Veterans and the Civil Service,* December, 1998, prepared by OPM's Employment Service

NOTE: VetGuide explains the special rights and privileges that veterans enjoy in Federal civil service employment. The guide conveniently summarizes in one place material from many laws and regulations that affect the employment of veterans. The guide will help Federal personnel specialist ensure that veterans receive the advantages they have earned.

B. The Office of Personnel Management (OPM) administers entitlement to veterans' preference in employment under Title 5, United States Code, and oversees other statutory employment requirements in Titles 5 and 38. (Title 38 also governs veterans' entitlement to benefits administered by the Department of Veterans Affairs (VA).

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XVII. Violence in the Workplace

Information:

A. OPM - *Dealing with Workplace Violence: A Guide for Agency Planners*, written by the Office of Workforce Relations, February 1998

B. U.S. Department of Labor, Occupational Safety and Health Administration - *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, (OSHA Publication 3148), 1996

C. U.S. Department of Justice, United States Marshals Service - *Security in the Workplace: Improving the Safety of Federal Employees,* (USMS Pub. No.61) September, 1995

D. U.S. Department of Justice - *Combating Workplace Violence: Guidelines for Employers and Law Enforcement*, International Association of Chiefs of Police (publication funded by Office of Justice Programs, Bureau of Justice Assistance)

E. U.S. Department of Justice, National Institute of Justice - *Understanding and Preventing Violence*, February, 1994

F. U.S. Department of Justice, National Institute of Justice - *Psychoactive Substances and Violence*, February, 1994

G. U.S. Department of Justice, National Institute of Justice - *The Cycle of Violence*, September, 1992

H. ADA Information Brief, Volume 1, Number 4, *Violence and Workers with Psychiatric Disabilities: Myths and Facts*[8]

I. Worldwide Web Information: *Partnership Against Violence Network (PAVNET)*. The Departments of Justice, Agriculture, Education, Housing and Urban Development, and Labor. A database of programs dealing with violence. Access through the Web at: www.pavnet.org.

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[8] Listed with permission of the Washington Business Group on Health

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INTRODUCTION

The Federal Government must strive to create and maintain a sound, diverse, and cooperative work environment. Equal opportunity in employment for all people, regardless of race, color, sex, age, religion, national origin, sexual orientation, or disability should be the common goal across government. However, persons with disabilities are often overlooked as a source of employable talent.

On March 13, 1998, President Clinton addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force was charged with creating a coordinated and aggressive national policy to bring working-age individuals with disabilities into gainful employment at a rate approaching that of the general adult population.

This guide and its companion piece, *"Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government,"* was developed in support of the Task Force's efforts and recommendations. The purpose of this guide is to provide guidance, information, and references to aid Federal employers in their efforts to hire and advance employees with disabilities.

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LEGAL FRAMEWORK

There are several laws which support and encourage the employment, retention, and advancement of people with disabilities.

1) **Section 501 of the Rehabilitation Act of 1973** prohibits discrimination on the basis of disability in Federal employment and requires the Federal government to engage in affirmative action for people with disabilities.[1] The law:

- Requires Federal employers not to discriminate against qualified job applicants or employees with disabilities. Persons with disabilities should be employed in all grade levels and occupational series commensurate with their qualifications. Federal employers should ensure that their policies do not unnecessarily exclude or limit persons with disabilities because of a job's structure or because of architectural, transportation, communication, procedural, or attitudinal barriers.

- Requires employers to make "reasonable accommodations" to applicants and employees with disabilities. Such accommodations may involve, for example, restructuring the job, modifying work schedules, adjusting or modifying examinations, providing readers or interpreters, and acquiring or modifying equipment and/or facilities (including the use of adaptive technology such as voice recognition software).

- Prohibits selection criteria and standards which tend to screen out people with disabilities, unless such procedures have been determined through a job analysis to be job-related and consistent with business necessity, and an appropriate individualized assessment indicates that the job applicant cannot perform the essential functions of the job, with or without reasonable accommodation.

- Requires Federal agencies to develop affirmative action programs for hiring, placement, and advancement of persons with disabilities. Affirmative action should be an integral part of ongoing agency personnel management programs.

2) **Section 508 of the Rehabilitation Act of 1973** requires Federal agencies to procure, use, maintain, and develop only accessible electronic and information

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[1] Section 501 was amended by the Rehabilitation Act Amendment of 1992 to apply the ADA's employment standards to all non-affirmative action employment discrimination claims filed by Federal applicants or employees. 29 U.S.C. § 791(g).

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technology, unless doing so imposes an undue burden. National security systems are exempt. Federal agencies will be required to comply with standards promulgated by the Architectural and Transportation Barriers Compliance Board (the Access Board) that take effect on August 7, 2000, when they will become part of the Federal Acquisition Regulation (FAR). Agencies must biannually evaluate their compliance with Section 508 and must report the results of these self-evaluations to the Attorney General.

3) **The Vietnam Era Veterans' Readjustment Assistance Act of 1974.** In furtherance of the policy of promoting "the maximum of employment and job advancement opportunities within the Federal Government for veterans with disabilities and certain veterans of the Vietnam era and of the post-Vietnam era who are qualified for such employment and advancement," this act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans' Readjustment Appointment (VRA). The act also ensures that all veterans are considered for employment under merit system rules and requires a separate affirmative action plan for the hiring, placement, and advancement of veterans with disabilities. (Please note, however, that this law does not provide any preferences to veterans with disabilities or to veterans of the Vietnam era.)

4) **The Civil Service Reform Act of 1978** requires "fair and equitable" treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or disabling condition, and with proper regard for privacy and constitutional rights.

5) **The Americans with Disabilities Act (ADA) of 1990** covers employers in the private sector and State and local governments. The substantive employment standards of the ADA which are applicable to the Federal government through the Rehabilitation Act can be found at 42 U.S.C. §§ 12111 *et. seq.* and 42 U.S.C. §§ 12201-204 and 12210.

6) **The Veterans Education and Employment Program Amendments of 1991** require expanded job opportunities for veterans with and without disabilities through the Veterans Readjustment Appointment (VRA) Authority.

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7) **The Architectural Barriers Act,** enforced by the Access Board, requires that buildings and facilities be accessible to people with disabilities if they were constructed or altered by or on behalf of the Federal government or with certain Federal funds, or leased for occupancy by Federal agencies, after 1968. When individuals with disabilities are unable to use a building because there are no accessible parking spaces, no curb ramps, no ramps at the entrance, no accessible rest rooms, no accessible drinking fountains, no raised lettering on signs, or other barriers exist, they may file a complaint with the Access Board.

8) **The Pregnancy Discrimination Act** amended Title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions. This amendment requires that employers treat pregnancy and related conditions as any other short-term disability.

9) **Title 5, United States Code, Sections 3312 and 3318** require that any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management before the position can be filled. This includes an agency medical disqualification of a 30 percent or more disabled veteran for assignment to another position in a reduction in force.

10) **The Family and Medical Leave Act of 1993** requires Federal agencies and departments to allow employees to take up to twelve weeks of leave without pay, provided that the employee or a member of his or her immediate family (spouse, son, daughter, or parent) has a serious health condition and the employee meets several other statutory criteria. The leave may be taken intermittently or on a reduced leave schedule when medically necessary. Agencies may require the employee to transfer temporarily to another position under certain circumstances. 5 U.S.C. § 6382.

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U.S. Office of Personnel Management (OPM)

OPM provides nationwide program leadership, development, and coordination for the employment of people with disabilities, including veterans with service-connected disabilities. This includes providing direction, guidance, and technical support to agency heads, directors of personnel, agency personnel offices and officials; developing recruitment policy and appointing authorities; providing information on employment methods and program development to departments and agencies; developing publications for use in promoting employment; developing, monitoring, and modifying examining procedures to facilitate the employment consideration of qualified applicants with disabilities; and developing medical policy and realistic medical and suitability standards.

OPM takes the lead role in promoting reemployment of employees with or recovered from compensable injuries or illnesses and fostering research and demonstration projects on disability related issues. Further, OPM maintains consistent liaison with the national offices of Federal, private, community, and other organizations concerned with the employment of people with disabilities.

President's Committee on Employment of People with Disabilities

The President's Committee on Employment of People with Disabilities (PCEPD) is a small Federal agency whose mission is to communicate, coordinate, and promote public and private efforts to enhance the employment of people with disabilities. The PCEPD provides information, training, and technical assistance related to the employment of people with disabilities. Some of the projects and resources developed by the PCEPD include:

- The Job Accommodation Network (JAN), a toll-free information service on workplace accommodations and the employment provisions of the Americans with Disabilities Act. Anyone may call JAN at (800) 232-9675 or (800) 526-7234. One can also obtain information from the JAN Website: http://www.jan.wvu.edu/english/homeus.htm.

- The Workforce Recruitment Program (WRP) for college students with disabilities, a joint venture with the Department of Defense which identifies college and university students with disabilities seeking summer and permanent jobs. Federal employers may access the candidate database by calling the PCEPD's Job Accommodation Network (JAN) at (800) 526-7234.

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- Education Kits containing timely fact sheets on disability employment issues. These and a list of publications are available by calling (202) 376-6200.

- The PCEPD's Website on the Internet is http://www.pcepd.gov. It provides visitors direct access to their publications, speeches, press releases, statistical data, workplace laws, and other related topics affecting the employment of persons with disabilities.

Federal Employers

Federal agency managers and supervisors are responsible for the employment and advancement of people with disabilities. This includes recruitment, hiring, training, career development, mentoring support, providing reasonable accommodations, and engaging in affirmative action.

Career development and promotion opportunities, training, awards, and other similar programs must be an integral part of an agency's responsibilities towards employees with disabilities.

Further, Federal employers must make reasonable accommodations to the known physical or mental limitations of a qualified applicant or employee with a disability, unless the agency can demonstrate that the accommodation(s) would impose an undue hardship on the agency.

Federal employers should establish procedures to ensure that the employment and advancement of people with disabilities meet affirmative action program objectives, diversity planning, emphasis, and accountability.

Agencies should remove physical barriers as a matter of reasonable accommodation to particular employees for whom necessary elements of facilities are inaccessible.

Federal employers should also ensure that there are no personnel or management policies, practices or procedures which unnecessarily restrict hiring, placement and advancement of people with disabilities.

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It is illegal for a Federal agency to discriminate in employment against qualified individuals with disabilities. Anyone who believes he or she has been subjected to discrimination on the basis of disability may file a complaint with the employing agency's equal employment opportunity (EEO) office. Departments and agencies should refer to EEOC's MD-110 and 29 CFR, Part 1614, for additional guidance on the EEO complaint process.

Other Services and Resources

Many invaluable resources exist within the Federal government to help agencies meet their legal obligations:

- Equal Employment Opportunity Commission
- U.S. Department of Education:
  - Rehabilitation Services Administration;
  - Assistive Technology Program;
- U.S. Architectural and Transportation Barriers Compliance Board ("Access Board");
- U.S. Department of Transportation;
- U.S. Department of Veterans Affairs, Vocational Rehabilitation Program;
- President's Committee on Employment of People with Disabilities and its Job Accommodation Network (JAN); and
- General Services Administration;

Employees with disabilities within the agency are another vital resource. Many of them are active in advocacy groups, serve on agency advisory committees, and are experts on various aspects of disability and rehabilitation.

Other resources include:

- Local and State Committees on Employment of People With Disabilities;
- University medical centers and counseling programs;
- Gallaudet University (Washington, DC); and
- Advocacy organizations for persons with disabilities.

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DEFINITIONS AND TERMS

Person with a disability: The Rehabilitation Act of 1973, as amended, defines a "person with a disability" as an individual who:

- Has a physical or mental impairment which substantially limits one or more of such person's major life activities (such as: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working). A "physical or mental impairment" means:

  1) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems such as: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genito-urinary, hemic and lymphatic, skin, and endocrine systems; or

  2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Whether a person has a substantial impairment of a major life activity is determined with consideration of mitigating measures, such as the effectiveness of medication to alleviate hypertension or glasses or contact lenses to correct vision impairments.

- Has a record of such an impairment (this means that the person has a history of, or has been classified -or misclassified- as having a mental or physical impairment that substantially limits one or more major life activities, such as a person who has survived cancer); or

- Is regarded as having such an impairment; this includes individuals who are perceived to have disabilities, such as a person who is perceived to have a substantially limiting facial disfigurement.

Qualified person with a disability: A qualified person with a disability is a person with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question.

Discrimination by Association: People are also protected from discrimination on the basis of their association with someone who has a disability. For instance, it is illegal for an employer to refuse to hire a job applicant because his or her spouse is a person with HIV.

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Invisible (hidden) disabilities: These are disabilities that are not readily apparent, such as asthma, arthritis, chronic fatigue syndrome, epilepsy, kidney disease, diabetes, cancer, chronic depression, learning disabilities, and mild mental retardation.

Targeted disabilities: Targeted disabilities, as defined by the Equal Employment Opportunity Commission (EEOC), are disabilities "targeted" for emphasis in affirmative action planning. These are: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, mental retardation, mental illness, and genetic or physical condition affecting limbs and/or spine. Although the list of targeted disabilities is meant to include those who are most likely to suffer job discrimination, the EEOC recognizes that some disabilities that are not targeted are nevertheless just as severe or more severe than some of the targeted disabilities.

Drug addicts and alcoholics: The Americans with Disabilities Act of 1990 amended the Rehabilitation Act (1973) definition of an individual with a disability to **exclude** "individuals currently engaging in the illegal use of drugs" regardless of whether it can be shown to adversely affect job performance or safety. Federal employers are no longer required to offer a firm choice or last chance agreement[s] unless mandated by agency policy or a collective bargaining agreement. Managers should consult with their agency Human Resources, EEO, and legal counsel.

Persons with Human Immunodeficiency Virus (HIV): Protection under the Rehabilitation Act begins the moment a person becomes infected with HIV.

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NON-DISCRIMINATION IN HIRING AND PROMOTION

Qualified Job Applicant

Federal agencies must not discriminate against qualified job applicants with disabilities. See page 10 for the definition of "disability." An applicant with a disability is "qualified" if he or she:

- satisfies the agency's job requirements for educational background, employment experience, skills, licenses, and any other qualification standards that are job related and consistent with business necessity; and
- is able to perform those tasks that are essential to the job, with or without reasonable accommodation.[2]

Essential Job Functions

Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation. Agencies should carefully examine each job to determine which functions or tasks are essential to performance. This is particularly important before taking an employment action such as recruiting, advertising, hiring, promoting, or firing.

Agencies should ask the following questions to determine if a job's functions are "essential:"

- Are employees in that position actually required to perform the function?

  Ex: If an announcement for a receptionist's position lists "typing" as a requirement, but other receptionists do not actually type as part of their job, the function is not "essential" to the job.

- How many other employees are available to perform the function or among whom the performance of the function can be distributed?
- Would removing the function fundamentally change the job?

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[2] The term "reasonable accommodation" is discussed in the next section.

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- What degree of expertise or skill is required to perform the function?

When asking these questions, the employer should focus on the purpose of the job, not on how the purpose is to be accomplished.

Ex: If a job requires mastery of information contained in technical manuals, this essential function would be "ability to learn technical material," rather than "ability to read technical manuals." People with vision and other reading impairments could perform this function using other means, such as audiotapes.

The same analysis applies to current employees with disabilities who are eligible for promotion consideration. That is, an employee with a disability is "qualified" for all promotions for which a similarly-situated non-disabled person would be eligible, provided that he or she can perform the "essential functions" of the job to which he or she would be promoted, with or without reasonable accommodation.

Individualized Assessment

When determining whether a particular job applicant with a disability can perform the essential functions of a job with or without reasonable accommodation, Federal employers must conduct what is called an "individualized assessment." If this assessment indicates that due to the person's disability, even when given appropriate reasonable accommodations he or she could not perform the essential job functions, or could not perform them without posing a substantial risk of significant harm to the applicant or others, the agency does not have to give further consideration to him or her. The agency must look objectively at the particular person's current ability to perform the essential job functions, with or without reasonable accommodation. Generalized "blanket" exclusions of an entire group of people with a certain disability prevent such individualized assessments. Agencies generally should not make such broad-based exclusions that do not reflect up-to-date medical knowledge and technology or that are based on fears about future medical or worker's compensation costs.

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Medical Examinations and Inquiries

Agencies must be careful about when and how they make disability-related inquiries of job applicants or ask them to take medical examinations.

- Pre-offer: Before it makes a job offer, an agency cannot require a job applicant to take a medical examination, respond to disability-related inquiries, or provide information about prior worker's compensation claims.

- Post-offer: After an agency has made a job offer to a particular applicant, the agency may ask disability-related inquiries or require the person to submit to a medical examination. These questions or examinations do not have to be job-related and consistent with business necessity. If, however, the person is NOT hired because the medical examination or questions reveal a disability, the reasons for not hiring the person must be job-related and consistent with business necessity. The agency must show that no reasonable accommodation was available that would enable that person to perform the essential functions of the job, or that a necessary accommodation would impose an undue hardship.

- Inquiries made of existing employees: After a person starts work, a medical examination or disability-related inquiry of an employee must be job-related and consistent with business necessity. Employers may conduct employee medical examinations where there is evidence of a job performance or safety problem, where examinations are required by Federal law, where they are to determine current "fitness" to perform a particular job, and where voluntary examinations are part of an employee health program.

- Affirmative action: Agencies may, as part of their affirmative action programs, invite persons to disclose their status as persons with disabilities — especially those with targeted disabilities. However, certain restrictions apply. Agencies are encouraged to seek additional guidance from the EEOC before making such invitations.

Confidentiality of Disability-Related Personal Information

All information obtained from permissible affirmative action inquiries and post-offer medical examinations and inquiries must be collected and maintained on separate forms, in files that are separate from the standard personnel files, and must be treated as confidential medical records.

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REASONABLE ACCOMMODATION

Federal departments and agencies are required to provide reasonable accommodations to qualified applicants or employees with disabilities upon request[3] unless the accommodation would impose an undue hardship on the agency. An undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as the agency's size, financial resources, nature, and structure.[4]

The concept of reasonable accommodation also applies to recruitment, training, promotion, reassignment, and developmental assignments.

A reasonable accommodation is an adjustment or alteration that enables people with disabilities to apply for jobs, to gain access to the work environment, to perform job duties, or to enjoy the benefits and privileges of employment. There are many types of accommodations such as worksite modifications; adjusting work schedules; restructuring jobs; acquisition or modification of equipment or devices; obtaining accessible technology or other workplace adaptive equipment; ensuring effective communication by providing interpreters, assistive devices, readers, and other auxiliary aids and services; and reassigning employees.

Accommodations are determined on a case-by-case basis, taking into consideration the applicant or employee, his/her specific disability and the existing limitations, the essential functions of the particular job, the work environment, and the effectiveness of the proposed accommodation. In all cases, accommodation decisions should be the result of an interactive process with the employee or applicant. Accommodations are highly individualized and what may be successful for one individual with a disability may not be appropriate for another. An accommodation that has worked for an individual in the past may need to be re-evaluated as the person's disability changes in nature or severity.

The value and nature of a particular accommodation may be clarified by considering questions such as:

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[3] For affirmative action purposes, there are some limited circumstances in which an agency should initiate the reasonable accommodation process even absent a request from the individual with a disability. Please contact the EEOC for further guidance.

[4] Departments and Agencies should consult the Enforcement Guidance on Reasonable Accommodation issued by the EEOC on March 1, 1999.

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- Does the reasonable accommodation remove the workplace barrier that is preventing the individual from effectively applying for a job, performing a job, or gaining access to the benefits and privileges of employment?
- Will the accommodation give the person the opportunity to function, participate, or compete on an equal basis with others?
- Are there alternatives that would accomplish the same purpose?

In determining undue hardship, consider the following factors:

- Overall size of the agency, with respect to the number of employees, number and type of facilities, and size of budget;
- Type of agency operation; and
- Nature and cost of the accommodation.

Reasonable accommodations are as varied as the needs of the individuals involved, the type of position in question, and ingenuity of the agency. Some examples are provided below:

Testing with Appropriate Accommodations

Federal employers may not use any test or other selection criterion that screens out or tends to screen out people with disabilities, unless the test is job-related for the position in question and consistent with business necessity. Agencies must select and administer tests to ensure that the scores of applicants or employees who have disabilities that impair sensory, manual, or speaking skills accurately reflect the ability of the applicant to do the job in question rather than disabilities of the employee or applicant.

Modifying Written Examinations: The objective is to eliminate any artificial barriers which would prevent persons with disabilities from demonstrating their capabilities in the examination process. Modification of examination procedures can include modifying test administration methods. Consideration should be given to scheduling individual or small group testing, allowing extra time, and using examiners who are aware of the test-taker's disability and have received appropriate training in test administration. Accommodations may include providing auxiliary aids and services leading to effective communication, such as providing Braille, large-print, or tape-recorded tests for persons with vision impairments, tape-recorded tests to people with reading disabilities; scribes or recording devices for persons who have difficulties using their hands to record answers; qualified sign language interpreters or computer-assisted real-time transcription services to

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convey spoken portions of tests -- including instructions -- to persons who are deaf; and assistive listening systems and devices for those who are hard of hearing.

Modifying exam content: If an applicant's disability causes some part of a test to be unusable or inappropriate, it may be necessary to modify exam content or to develop alternate materials which measure the same knowledge, skills, and abilities that do not screen out people with disabilities. OPM has modified certain examinations for persons with hearing or vision impairments and may be able to offer advice about types of modifications.

Accessible Examination Facilities: Examinations must be offered in accessible facilities. If a thorough review of an examination facility reveals the presence of barriers (stairs, inaccessible parking, etc.), steps should be taken to remove those barriers or, when this is not feasible, to arrange for use of an alternate, accessible location.

Many people with disabilities, even those with significant disabilities may not need testing accommodations. Others for whom testing accommodations are often made include persons with neurological disorders such as cerebral palsy or multiple sclerosis, persons who have limited mobility or motor control of their arms or hands, persons with brain injuries, and persons with learning disabilities such as dyslexia. In many of these instances, extended time for testing will be appropriate, in addition to other types of accommodations.

Restructuring Jobs

Job restructuring is one way of integrating qualified people with disabilities into the workforce. Job restructuring, however, does not alter the essential function of the job. Federal employers should identify which factors make a job incompatible with an individual's disability and, if possible, eliminate incompatible factors so that the capabilities of the person may be used to the best advantage. This may involve changing job content by isolating and eliminating non-essential duties through reassignment, or altering the way objectives are accomplished.

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The following things must occur before job restructuring:

- Federal employers must understand the capabilities of individuals and identify limitations prior to job restructuring. The person with a disability should be consulted throughout the process. Supplemental information can be obtained through consultation with disability specialists.

- Careful job analysis to determine the exact demands of positions must also precede job restructuring. Inputs by those with intimate knowledge of the tasks involved, such as supervisors and persons who currently perform the job functions or those who have performed them in the past, should be included in the analysis. This enables the most accurate differentiation to be made between essential functions and those which are non-essential and can be reassigned.

The restructuring and job analysis processes should also be used in creating positions, modifying existing position descriptions, developing recruitment strategies, determining selection criteria, designing performance plans, determining training needs, and other human resource initiatives.

Modifying Worksites

Changes in the work environment and technology will enable some people with disabilities to more effectively perform their duties. Alterations may consist of: rearranging files or shelves to improve accessibility for people who use wheelchairs; using Braille labels for persons with vision impairments; raising or lowering equipment to provide comfortable working heights for people with back injuries; installing special holding devices on desks, machines, or benches for people with mobility impairments; using adaptive technology such as screen readers for people who are blind; or providing special heating or air conditioning units for persons who are sensitive to environmental temperature.

Work locations should be reviewed by supervisors, Disability Employment Program Managers, SVRA counselors, building managers, and persons with disabilities to identify needed worksite and workstation modifications.

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Physical Barriers

Under section 504 of the Rehabilitation Act, all Federal agencies must ensure that their programs and activities are accessible to persons with disabilities. This does not mean that every element of every Federal facility has to be fully accessible. Rather, it means that agencies must take necessary steps to make all of their programs accessible to persons with disabilities.The Architectural Barriers Act requires buildings and facilities to be accessible if, after 1968, they were constructed or altered by or on behalf of the Federal government, leased by the Federal government, or financed by certain sources of Federal money. A facility is "accessible" for the purposes of the Architectural Barriers Act if it complies with the Uniform Federal Accessibility Standard (UFAS). Older Federal facilities, which have not been altered since 1968, do not have to comply with UFAS, but the programs contained in those buildings must still meet the "program access" standard discussed above.

Additionally, agencies may have to eliminate architectural barriers as a matter of reasonable accommodation to an individual employee or applicant under section 501 of the Rehabilitation Act. Physical and/or structural changes should be made in order to create as barrier-free an environment as possible, unless doing so would impose an undue hardship. Eliminating architectural barriers through such means as ramps, wider doorways, elevators, work platforms, and handrails often make the work facility more usable by all employees, not just those with disabilities.

Adjusting Work Schedules

Some people with disabilities possess great productive potential which is not utilized because they cannot meet the requirements of a standard 40-hour work week. By taking advantage of the flexibility of alternative work schedules, accommodations can be made for various disabilities. For example, people with mobility impairments may find it difficult to maneuver during peak periods on public transportation systems and may require an earlier or later work day. In another instance, employees requiring medical treatments may need a flexible schedule on certain days of a week. Employees requiring shorter hours may be accommodated by use of a part-time schedule or a job sharing arrangement.

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Assistive Devices

Many assistive devices are available to people with disabilities. Such devices can ensure successful job performance, enabling people with disabilities to perform tasks they would not otherwise be able to do or to increase the quantity, quality, or efficiency of their work. Before purchasing any assistive equipment, the agency should engage in a meaningful dialogue with the individual requesting the accommodation as to what is needed and/or desired.

Agencies should look to their own resources to fund reasonable accommodations such as obtaining and supporting assistive technology. In certain cases, however, the Department of Veterans Affairs or State vocational rehabilitation office may provide the assistive device to the individual requesting a reasonable accommodation if the employee is already a client of that agency or office.

Federal employers are authorized to purchase equipment if it is determined that the use of the equipment is a reasonable accommodation that will enable an employee with a disability to better perform his or her job. Even if the equipment is not required as a matter of reasonable accommodation, its purchase is authorized if it is in furtherance of the agency's affirmative action goals as a model employer.

Effective Communication

One key component of reasonable accommodation is to ensure effective communication with employees who have communication-related disabilities, such as those with vision, hearing, or speech impairments. Agencies must provide appropriate "auxiliary aids and services" such as qualified sign language interpreters, trained readers, computer-assisted real time transcription services, and alternate format documents (Braille, large print, audio cassette, or computer disk), unless doing so would fundamentally alter the program or impose an undue hardship on the agency.

Readers: Persons who are blind or who have low vision may need trained readers to be able to access information contained in otherwise-inaccessible material. For instance, a lawyer who is blind may need a trained reader to read aloud deposition transcripts and correspondence from opposing counsel. Appropriate assistive technology, such as screen readers or Braille displays, can make much computer-based information accessible to someone who is blind or who has low vision, thus reducing (though not eliminating) the employee's reliance on a trained reader.

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Interpreters: Persons who are deaf or hard of hearing and who use sign language may need qualified sign language interpreters. Someone who is deaf and who does not know sign language may benefit from a qualified oral interpreter in certain circumstances. Many people who have been deaf since before they learned to communicate use American Sign Language (ASL), rather than English, as their primary means of communication. ASL has a different vocabulary and syntax than English.

Someone is a "qualified sign language interpreter" if he or she can interpret competently, accurately, and impartially, both receptively and expressively, using any specialized terminology necessary for effective communication in the employment setting. Someone who has only a rudimentary familiarity with sign language or finger spelling is not a "qualified sign language interpreter." Likewise, someone who is fluent in sign language but who does not have the interpreter skills necessary to process spoken communication into the proper signs or to observe someone else signing and change their signed or fingerspelled communication into spoken words is not a qualified sign language interpreter.

While an employee who is deaf or hard of hearing and who uses sign language may not need a qualified sign language interpreter dedicated to his or her full-time use, qualified interpreters should be used in at least the following circumstances:

- employee orientations;
- staff meetings;
- training;
- whenever job duties change or when there is a new major assignment;
- any meetings at which more than two people are involved (it is extremely difficult to follow group discussions by lipreading);
- annual or semi-annual performance evaluation meetings;
- any time when promotion eligibility or disciplinary action is being discussed; and, if needed,
- any other time when efficient and effective communication is important, or when verbal communication will be lengthy.

When qualified sign language interpreters are not necessary, such as for relatively short, routine matters, communication with an employee who is deaf may be accomplished by exchanging handwritten notes or typing back and forth on a computer keyboard or TTY.

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TTY's: A "TTY" — also known as a "text typewriter" or "TDD" — is a device which allows someone who is deaf or hard of hearing or someone with a speech impairment to communicate by telephone by sending and receiving typed communications. The TTY user can communicate directly with someone else who also uses a TTY, or with those who do not use TTY's by calling a relay operator who will voice the person's typed communication and then type the non-disabled person's spoken communications.

Agencies are strongly encouraged to provide training to all co-workers of persons who use TTY's in how to make and receive calls using the relay system. The Federal Relay Service will provide appropriate training materials upon request.

Use of Untrained Co-workers as Readers or Interpreters: It is generally inappropriate for an agency to rely on the untrained co-workers of a person who is blind to act as a reader, and nearly always inappropriate for an agency to rely on a co-worker to act as a sign language interpreter for a person who is deaf, unless the co-workers are qualified to do this work and it falls within their job description. Inappropriate reliance on untrained co-workers as readers or sign language interpreters for persons with disabilities is likely to create resentment among all parties: co-workers have their own work to do and people with disabilities have the legal right to effective communication -- which can often only be provided through the use of appropriately trained individuals. Even if co-workers of someone who uses sign language have learned rudimentary signs through daily communication with the person who is deaf, they are unlikely to be able to provide effective communication in an employment setting.

CART — Computer Assisted Real-Time Transcription: CART is a way of making verbal communication accessible to persons who are deaf or hard or hearing and who do not use sign language. It requires a trained person, like a stenographer, to use special equipment to transcribe verbal communication as it is taking place. The transcription may appear on a computer monitor or be projected onto a screen. The service is similar to closed captioning of a live television program.

Alternate Format Materials: Agencies must provide alternate format materials or other auxiliary aids and services that will allow persons who have vision impairments full access to written materials used in the course of their employment -- including such things as employee manuals and leave and earning statements. Alternate formats include Braille, large print, audio cassette recordings, and electronic copies on computer disks.

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Flexible Leave Policies

Federal employers have the authority to adopt flexible leave policies that will accommodate people with disabilities. While the administration of the leave system is subject to certain laws and regulations, departments and agencies should adopt flexible leave policies for people with disabilities, both as a matter of reasonable accommodation and as part of the agency's affirmative action program. Agencies should, for instance, allow employees with disabilities to take additional annual leave without the advance notice that is generally required of others, or consider granting them administrative leave in the following circumstances:

- When extreme weather conditions make it difficult for employees with mobility impairments to get to or from work. For example, employees are generally expected to report for work after snow removal has been accomplished. However, in many cases, snow removal equipment makes travel by mobility-impaired individuals even more difficult by creating snow drifts at the curb cuts. Federal employers can adopt separate leave policies for such situations, but should identify in advance employees who would be covered by the extended policy.

- When temporary building conditions adversely affect performance or health, such as extremes of heat or cold which could affect persons with neurological disorders or respiratory ailments.

Under the Family and Medical Leave Act, agencies and departments must allow eligible employees to take up to twelve weeks of leave without pay, provided that the employee or a member of his or her immediate family (spouse, son, daughter, or parent) has a serious health condition, whether or not the condition legally qualifies as a disability. The leave may be taken intermittently or on a reduced leave schedule when medically necessary.

Under their reasonable accommodation and affirmative action obligations, agencies must consider whether to go beyond FLMA's provisions and grant additional amounts of leave without pay, or provide extended paid administrative, sick or annual leave to people with disabilities under appropriate circumstances.

Reassignment

In cases of current Federal employees who develop disabilities during their employment, or whose disabilities are aggravated during their careers, Federal

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employers have a responsibility to make a concerted effort for their continued employment. An employee who, because of a disability, is unable to continue to perform the essential functions of his or her current position may have options available other than applying for disability retirement. The first step should be to explore the possibility of accommodating the employee in his or her current position. Minor job modifications or changes in the physical environment are often all that is needed to allow an employee with a disability to continue working productively.

Agencies must consider reassignment as a reasonable accommodation when an employee, due to a disability, can no longer continue performing the essential functions of his/her current position, even with reasonable accommodation. A Federal employer should always first attempt to provide reasonable accommodation in an employee's current position. If that is not possible, then a Federal employer must look for a vacant position that is equivalent to the employee's current position in terms of a number of factors, including grade, level of work assignments, pay, benefits, and geographic location. If no equivalent vacancy exists, then the employer must look for a lower position that is as close as possible to the employee's current position. Although this is a non-competitive process, the employee must be qualified for the vacant position. In order to determine the employee's qualifications for a vacant position, the employer should consult with the employee about his/her work experience, skills, and education.

Retraining

Federal employers should consider retraining employees with disabilities for positions for which they have the basic qualifications and capabilities. Although there are initial expenses involved, the result will often justify the expenditure if the employee and the position are matched carefully beforehand.

Eliminating Transportation Barriers

One of the most difficult problems people with disabilities face is transportation to and within the work site. Federal employers can do a great deal to help people with disabilities solve their personal transportation problems. Such assistance can consist of helping employees form car pools, helping people with disabilities locate co-workers with whom they may car pool; or allocate parking spaces to employees with disabilities.

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Drivers who provide transportation to Federal employees with disabilities may make use of parking privileges for people with disabilities who ride with them. The General Services Administration has ruled that Federal employers are to give these persons the same priority in assignment of parking spaces that they give persons with disabilities.

Agencies that provide transportation for workers, such as shuttle buses between work sites, must ensure that equivalent accessible transportation is provided to employees with disabilities. Shuttle bus drivers should announce the location of stops to enable persons with vision impairments to use the service effectively. Shuttle buses should have lifts for persons who use wheelchairs or alternate equivalent means of transportation should be provided to such individuals.

Services Provided Through Contractors

Agencies must ensure that when support services are provided through contractors, reasonable accommodations are provided to persons with disabilities who use those services. For instance, if an agency contracts with a computer firm to provide software training, the agency must ensure that training for an employee who is deaf is communicated effectively to that employee, usually by a qualified sign language interpreter. Training materials provided by the contractor must be made accessible to persons who have vision impairments, such as by putting them in Braille, large print, audio tape, or on computer disk, depending on what would be effective for the person with a disability.

Minimal Cost Accommodations

In many cases, the cost of a job or work environment accommodation can be minimal. A few examples are as follows:

- To accommodate a person who uses a wheelchair, reasonable accommodations may include the ability to access the building, the office, and files. The desk must be the right height to accommodate the wheelchair. This may be accomplished by raising the desk using wooden blocks to prop it up, and then moving furniture so that the employee may freely move around the office. Files can be placed to make them easily accessible.

- An individual with arthritis experiencing difficulty with maintaining stamina during the workday may be accommodated by providing flexibility in work hours, and a recliner to allow change in body positions to cut down on fatigue.

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- Visual aids, screen readers and enlargers; voice activated software; and refreshable Braille displays may assist people who are blind or have vision impairments. Initial contact should start with the person with a disability and the office responsible for information technology (IT) management. Other resources for technology-related technical assistance and accommodation assessment are the Assistive Technology Program at the Department of Education, the Computer/Electronic Accommodations Program (CAP) at the Department of Defense, and the Center for Information Technology Accommodation at the Office of Government Wide Policy at General Services Administration.

Although most reasonable accommodations are low- or no-cost, Federal agencies may also need to provide accommodations such as readers or sign language interpreters, since the costs of these accommodations will generally not rise to the level of an undue hardship to most agencies.

Federal employers wishing to learn more about reasonable accommodation policies and guidelines may wish to contact the Equal Employment Opportunity Commission (EEOC). Free copies of the EEOC's published guidance on reasonable accommodation and other issues pertaining to non-discrimination against people with disabilities can be obtained by calling (800) 669-3362. They can also be reviewed at EEOC's website, www.eeoc.gov.

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AFFIRMATIVE ACTION PROGRAMS

As part of the Federal government's obligation to be a model employer of people with disabilities, agencies must do more than simply respond to requests for reasonable accommodation and comply with the basic non-discrimination obligations. Agencies should, for example, consider providing accommodations even in circumstances in which an undue hardship defense might, as a legal matter, be available, or provide an accommodation that courts have found is not "reasonable" and, therefore, would not be required of private employers. For instance, agencies should consider whether to take the following voluntary actions to meet the needs of employees with disabilities:

- providing personal assistants, who could help individuals with disabilities with daily functions such as eating and toileting;

- providing transportation-related services, including free parking or accessible vans to transport persons with disabilities to and from work, even where transportation services are not available to employees generally;

- creating a new job for an individual with a disability where the agency cannot reallocate the functions of an existing job that the individual cannot perform because of her or his disability or where reassignment to a vacant position is not possible or required;

- reallocating essential job functions;

- providing an individual with a disability with the accommodation of his or her choice, or with the accommodation that is most effective, even though the agency could meet its non-discrimination obligations by providing another effective, but less expensive, accommodation; and

- authorizing agency-wide Flexiplace or other work-at-home arrangements, and expanding agency part-time work opportunities, to promote maximum flexibility for individuals with disabilities.

Additionally, agencies should adopt practices that will facilitate the agency's ability to consider and grant requests for reasonable accommodation or affirmative action, including:

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- Creating central offices that can, among other services, demonstrate and evaluate equipment and assistive devices; expeditiously purchase equipment needed for reasonable accommodation or affirmative action; provide technical assistance and referrals for information on reasonable accommodations; coordinate training on reasonable accommodations and other non-discriminatory obligations; and expeditiously prepare agency printed and audiovisual materials in alternate formats upon request (or routinely for documents in high demand);

- Establishing a central pool of staff assistant slots, that would not be included in any particular office's personnel ceiling, to provide trained readers, qualified sign language interpreters, and other assistants throughout the agency or agency component;

- Implementing funding mechanisms that will avoid charging individual offices for the cost of accommodations;

Managerial Policies and Procedures to Ensure Reasonable Accommodation

All agencies should adopt the policies and procedures listed below to enable them to respond effectively and efficiently to requests for reasonable accommodation. The goal is to provide for a meaningful dialogue between the employee with a disability and his or her supervisor. Agencies should:

- Define the agency's legal obligations, including key legal terms (e.g., reasonable accommodation, disability, qualified individual with a disability, and undue hardship) in plain language.

- Explain how an employee or applicant should initiate a request for reasonable accommodation.

- Specify to whom a request should be submitted, from whom an individual will receive a final decision, and the time period in which decisions will be made.

- Explain restrictions on obtaining and handling medical and disability-related information.

- Compile a list of resources, including sources for technical assistance, available to provide information about, and fund, accommodations.

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- Set forth the requirement that the agency consider reassignment in appropriate cases.

- Require that decisions on reasonable accommodation, including on requests for particular accommodations, be in writing and specify the reasons for denial, if applicable.

- Create a flexible and informal process for reconsidering denials of reasonable accommodation.

These policies and procedures should be implemented in a way that permits flexibility in processing each request for reasonable accommodation. They should be easy to understand, impose as few burdens as possible on employees or applicants with disabilities, and allow for expedited consideration and streamlined procedures.

HIRING OPTIONS

Agency personnel offices work with State vocational rehabilitation agencies (SVRAs), the Department of Veterans Affairs, Gallaudet University and other various organizations to locate and identify qualified people with disabilities. In addition, many Federal employers participate in focused job fairs and campus recruitment visits to identify qualified people with disabilities. Hiring may be accomplished through the competitive hiring process or, if the qualifications are met, through the use of excepted service appointment authorities.

Federal employers may use a variety of hiring options to bring people with disabilities into their workforce. Descriptions of key options are listed below.

Competitive Appointments

Most Federal employees obtain jobs competitively. Applicants apply directly to the hiring departments and agencies for most positions. Federal employers use a variety of assessment tools in evaluating applicants and conducting hiring. Appropriate auxiliary aids and services leading to effective communication and other reasonable accommodations should be provided during all aspects of job application, including testing and interviewing.

Time-limited Appointments

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An agency may fill a position using a temporary or term appointment when the need for an employee's services is not permanent. Temporary appointments are made not to exceed one year, with one 1-year extension. The work must not be permanent in nature. In contrast, term appointments are made for a period of more than one year but not to exceed four years.

Term appointments are appropriate when there is project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization.

Student Employment Programs

The Student Educational Employment Program helps Federal employers find the right people to fill current and future hiring needs. The program also gives students the opportunity to get hands-on experience in their chosen career field. The program has two major components; Student Temporary Employment and Student Career Experience.

- **Student Temporary Employment** opportunities range from summer jobs to positions that can last as long as the student is enrolled. The Federal job does not have to be related to the student's academic field of study.

- **Student Career Experience** opportunities include formal periods of work and study while the student attends school. This requires a commitment by the student, the school, and the Federal employer. Work experience is directly related to the student's academic field of study. After successfully completing the educational and work requirements, the student is eligible for permanent job opportunities.

Presidential Management Intern (PMI) Program

The PMI Program is designed to attract to the Federal service outstanding graduate students from a wide variety of academic disciplines who have an interest in, and commitment to, a career in the analysis and management of public policies and programs. Individuals eligible to be nominated for the PMI Program are graduate students completing a master's or doctoral-level degree from an accredited college or university during the current academic year.

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Students are nominated for the PMI Program by the appropriate dean, director or chairperson of their graduate academic program. All nominees are evaluated by an OPM-developed structured assessment process. Selection as a PMI finalist is based on review of the PMI application and the structured assessment process.

PMIs receive an initial two-year appointment. During the two-year internship, PMIs experience structured orientation and graduation training programs facilitated by OPM, as well as seminars, briefings, conferences, on-the-job training, rotational assignments, and other developmental opportunities arranged by participating Federal employers.

After successfully completing the two-year program, PMIs may be eligible for conversion to a permanent position and further promotional opportunities.

Appointment Under Special Authorities

The Federal Government's hiring options include excepted service special appointing authorities for people with disabilities. Federal employers are authorized to use these authorities when considering certain people with disabilities (those who have severe physical, cognitive, or psychiatric disabilities or who have a history of or who are regarded as having such disabilities). The authorities provide a unique opportunity to demonstrate the potential to successfully perform the essential duties of a position with or without reasonable accommodation in the workplace.

- **Schedule A, 5 CFR 213.3102(t) for Hiring People with Mental Retardation.** This authority is used to appoint persons with cognitive disabilities (mental retardation) who meet the eligibility requirements. Upon completion of 2 years of satisfactory performance the employee may qualify for conversion to the competitive service.

- **Schedule A, 5 CFR 213.3102(u) for Hiring People With Severe Physical Disabilities.** This authority is used to appoint persons with severe physical disabilities who (1) under a temporary appointment have demonstrated their ability to perform duties satisfactorily; or (2) have been certified by a counselor from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affair's Vocational Rehabilitation Office as likely to succeed in performance of duties. Upon completion of two years of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

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- **Schedule B, 5 CFR 213.3202(k) for Hiring People Who Have Recovered from Mental Illness.** This authority permits appointments at Grades GS-15 and below when filled by individuals who: (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a severe period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Department of Veterans Affairs counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the position to which they will be appointed, and that any residual disability is not job related. After two years of satisfactory service, the employee may qualify for conversion to the competitive service. Executive Order # 13124 (June 4, 1999).

In addition, Federal employers can use the following authority to provide assistance to employees with disabilities:

- **Schedule A, 5 CFR 213.3102(ll) for Hiring Readers Interpreters, and Other Personal Assistants.** This authority permits appointments of readers, interpreters, and personal assistants for employees with severe disabilities when filled on a full-time, part-time, or intermittent basis. Upon completion of at least one year of satisfactory service under this authority, the employee may qualify for conversion to the competitive service.

Disabled Veterans

- **30 Percent or More Disabled Veterans.** Federal employers may give a noncompetitive temporary appointment of more than 60 days (see 5 CFR 316.302(b)(4)) or a term appointment (see 5 CFR 316.402(b)(4)) to a veteran:

  - retired from active military service with a disability rating of 30 percent or more; or

  - rated by the Department of Veterans Affairs (VA) within the preceding year as having a compensable service-connected disability of 30 percent or more.

  There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement. Reasonable accommodations must be provided for any written test.

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The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment.

- **Disabled Veterans Enrolled in VA Training Programs, 5 CFR 315.604.** Veterans with disabilities who are eligible for training under the Department of Veterans Affairs' (VA) vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. The veteran is not a Federal employee for most purposes while enrolled in the program, but is a beneficiary of the VA. The training is tailored to individual needs and goals so there is no set length. If the training is intended to prepare the individual for eventual appointment in the agency rather than just work experience, the agency must insure that the training will enable the veteran to meet qualification requirements for the position.

  Upon successful completion, the VA and the host agency give the veteran a Certificate of Training showing the occupational series and grade level of the position for which he or she has been trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

Certification

An individual who has a physical disability is considered to have met OPM qualification standards for either a temporary competitive service appointment or an excepted service Schedule A appointment when an appropriate certification is received from a State vocational rehabilitation agency (SVRA) or the Department of Veterans Affairs. The certification is prepared by a counselor on the basis of job-site inspection, analysis of job tasks, and evaluation of the proposed appointee's abilities and disabilities. The certification must state that in the counselor's judgement the proposed appointee is able to perform the duties of the position and is physically qualified to do the work safely. The certification must be supported by a medical report and a narrative statement documenting the counselor's conclusions. Factors to be discussed include training, education, work history, modification of job or worksite if needed, and limitations of the proposed appointee.

The certification required for an excepted service Schedule A appointment of an individual who is mentally retarded need only state that the individual has the

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ability to perform the duties of the position; is physically able to do the job safely; and can maintain himself or herself in the work environment. No medical report is required.

The certification required for appointment of individuals with psychiatric disabilities under an excepted Schedule B appointment must include documentation of a history of mental illness which includes periods of hospitalization or outpatient treatment within the previous two years; a statement by a psychologist or psychiatrist as to the individual's capability to function in the work setting; and a statement indicating that the individual is currently unemployed or has had a significant period of substantially disrupted employment within the previous two years.

Any of these certificates must be maintained in a separate, confidential folder, rather than in the person's official personnel folder (OPF).

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WORKING WITH PEOPLE WITH DIFFERENT DISABILITIES

People with Mobility Impairments

Countless injuries, diseases, and conditions can cause mobility impairments that affect an individual's ability to find and keep a job. Some disabilities are acquired at birth. Others stem from accidents or illnesses later in life. Basic mobility, coordination and balance, strength and endurance, and other aspects of body function may be affected.

Many people who have mobility impairments use adaptive equipment of one kind or another. Mobility aids such as canes, crutches, walkers, and wheelchairs are especially common. Prosthetic devices (such as artificial arms or legs) and body braces may also be used. Some people with mobility impairments use service animals to assist them with carrying or retrieving items, opening doors, and achieving greater independence.

One may wish to consider the following suggestions when interacting with individuals who have mobility impairments:

- When scheduling a job interview or meeting, make sure the location does not have any barriers such as a step at the threshold or inadequate accessible parking.
- Do not hold the person's wheelchair or assume the individual wants to be pushed; always ask first.
- A wheelchair is considered part of the person's personal space. Offer assistance but do not insist. If the person needs help, he or she will accept the offer and tell exactly what will be helpful.
- For prolonged conversations with someone who uses a wheelchair, sit down so as to be at the eye level of the wheelchair user.
- Do not be surprised if the person transfers from a wheelchair to a piece of furniture or gets out of the wheelchair to move about. Not all wheelchair users have paralysis; many can walk with or without the aid of canes, braces, or crutches.

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- If a person uses crutches, a walker, or some other assistive equipment, offer assistance with coats, bags, or other belongings.

- Ensure extra maneuvering space and non-slip floor coverings for the safety of a person who uses crutches or a walker.

- Do not be sensitive about using words like "walking" or "running." People who use wheelchairs often use the same words.

People Who Are Blind or Who Have Vision Impairments

The terms "blindness" and "vision impairment" may mean either a complete or partial loss of vision. With many, only the edges or a part of the visual field may be obscured, or there may be no central vision although side or peripheral vision still exists. A person's visual acuity may also change under different light conditions.

Many people who are blind get around on their own by using a guide dog or cane. People with vision impairments may or may not use these or other mobility aids. For many jobs, vision simply is not necessary. Successful employment of people who are blind or who have vision impairments depends upon thorough job analysis, enlightened employer acceptance, and proper management support.

One may wish to consider the following suggestions when interacting with individuals who are blind or who have vision impairments:

- If the person seems to need assistance, offer one's services. If a person who is blind needs guidance through a door or to a chair, let the person take one's arm and follow the motion of one's body. Tell him or her where the chair is in relation to his or her body. If one approaches steps, mention how many and the direction.

- Speak directly to the individual who is blind or who has a vision impairment. Speak in a normal tone of voice.

- Introduce other people in the room or have them introduce themselves. This will assist the individual in orienting himself or herself to the room and its occupants.

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- Never touch or distract a service guide dog without first asking the owner. Service animals are not pets and generally should not be disturbed while in a working mode.

- When giving directions, do not use references a person cannot see. "Over there" is not a good way of describing a location. When using directional words, use them with the orientation of the person who is blind or who has a vision impairment.

- Tell the individual when one is leaving the room.

- When guiding a person into a new or strange surrounding, one may want to describe special features or decorations.

- One should be prepared to read aloud information that is written, or ask the person if he or she could use the services of a trained reader.

- When interviewing or meeting with people with vision impairments, ask whether they would prefer a well-lit area. Avoid sharp contrasts of light and dark areas.

People Who Are Deaf or Hard of Hearing

Individuals may be deaf or hard of hearing and be able to speak clearly. They may be placed in almost any type of position, except those for which acute hearing is a legitimate safety requirement. Even in those circumstances, an individualized assessment should be performed.

Extra time may be required in settings where there is a lot of verbal communication, such as interviews and meetings. Communication difficulties should not be regarded as indicative of more extensive impairments and should not be allowed to obscure an applicant's knowledge, skills and abilities. In many situations, it is necessary to obtain the services of a qualified sign language interpreter to provide effective communication, if the person who is deaf or hard of hearing uses sign language as his or her primary means of communication. Other accommodations that may be required include the use of assistive listening systems and devices for persons who are hard of hearing, or computer-assisted real-time transcription (CART), where a stenographer works to display aural communication on a computer monitor or screen in "real time."

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One may wish to consider the following suggestions when interacting with individuals who are deaf or hard of hearing:

- When speaking with someone who is deaf or hard of hearing, face the person directly. Gain his or her visual attention before starting a conversation. For instance, if you are entering his or her office and the person's back is to you, flicker the room lights.

- When speaking to persons who are deaf or hard of hearing, use meaningful facial expressions and gestures to emphasize one's intent and attitude. This helps to substitute for one's tone of voice. Try to find a quiet place away from computers, telephones, and other sources of noise, and one which has adequate lighting.

- Not all people who are deaf or hard of hearing know or use sign language. Do not assume they need interpreters.

- If using a sign language or oral interpreter, speak directly to the person with the hearing impairment, not the interpreter. Face the light, speak clearly, in a normal tone of voice, and keep one's hands away from one's face.

- If one cannot understand the person with a hearing impairment, do not be afraid to ask him or her to repeat. If this approach does not work, one can ask if it would be helpful to communicate by writing or using a computer terminal.

People with Invisible (Hidden) Disabilities

There are many invisible disabilities such as asthma, arthritis, heart disease, environmental illness, AIDS, chronic fatigue, psychiatric or mental illnesses, attention deficit hyperactivity disorder, learning disabilities, and mild mental retardation.

If an applicant brings the condition to the prospective employer's attention, one may ask whether the condition might have an impact on his or her work and if there are any necessary accommodations.

For additional information regarding a description of invisible disabilities, please see the resources section of this handbook.

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People with Mental Retardation

Many people with mental retardation have average or superior abilities in some respects. While it is true that some people with mental retardation may not be able to think, reason or remember as well as others, it is important to remember that — like others — they have their own strengths and weaknesses. Mental retardation should not be confused with mental illness or behavioral and emotional problems. The effect of the disability can be lessened, and skills and abilities increased, through rehabilitation, education, and experience on the job.

People with mental retardation — like others — may want to be independent and responsible for their own support. The object should be to reduce the need for learning details, exercising judgment, and finding new solutions to problems.

Success on the job often depends upon the willingness of others to devote reasonable time and interest to helping the individual adjust initially and meet new challenges as they arise. One of the greatest obstacles to equal employment opportunity for these individuals is persistent lack of employer confidence in, and lowered expectations of their capabilities.

One may wish to consider the following suggestions when interacting with individuals with mental retardation:

- For the most part, one should talk to the individual in the same manner as anyone else, but be more specific.
- In an interview setting, ask questions and occasionally repeat responses to ensure effective communication.
- Provide information as to where things are located, such as time clock, lockers, restroom, cafeteria, drinking fountain, supply room, etc.
- Take care to explain about working hours, proper dress for the job, work station location, rate of pay, reporting official, and transportation options.

People with Psychiatric Disabilities

Psychiatric disabilities are diverse and include anxiety disorders, depression, mania, schizophrenia, and other conditions.

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One may wish to consider the following suggestions when interacting with individuals who have a psychiatric disability:

- Talk to the individual as one would to anyone else. Integrate the person as fully into office activities as other employees. Do not ostracize him or her due to his psychiatric condition.

- As many psychiatric medications cause extreme thirst, upon request allow the person to have access to beverages even where food and drink are normally prohibited.

- Consider offering a flexible schedule to allow the person to attend medical appointments and therapy sessions and to deal with medication issues, insomnia, fatigue, or other conditions that often accompany psychiatric disabilities.

People with Muscular or Neurological Limitations

Muscular or neurological disabilities may affect motor ability and/or speech. Intelligence is not affected. Some involuntary or halting movement or limitation of movement in one or more than one appendage may be observed, as well as some lisping, indistinct speech or flatness of tone due to lack of fine motor control of the tongue and lips. The severity and functional effects of the disability vary from person to person. Unless the person has a significant disability, or has the involvement of other disabilities, no accommodation may be needed during an interview setting or meeting.

If the person's speech is difficult to understand, ask him or her to repeat what was said. Some people who have significant cerebral palsy or other muscular or neurological disabilities may communicate by writing, typing, or using a communication board or other electronic device.

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INTEGRATING PEOPLE WITH DISABILITIES INTO THE WORKFORCE

The President's Committee on Employment of People with Disabilities has a six-step process for integration. It consists of:

1) **Commitment** - Let the people in the agency know of the commitment to employ, advance and retain people with disabilities. Workforce diversity includes people with disabilities.

2) **Recruitment** - Let the Personnel/Human Resource office and Disability Employment Program Managers know that one is aggressively seeking job candidates with disabilities. Send agency vacancy announcements to disability-related organizations and Federal employers. State the agency's interest in receiving applications from people with disabilities on the job announcement.

3) **Interviewing** - Look at the essential functions and competency requirements of the job, the qualifications of the individual, and the availability of reasonable accommodations. Do not let the disability distract from evaluating the candidate's qualifications.

4) **Placement** - Test accommodations and adaptations once the person is on the job. Ask the employee with a disability to help in the process.

5) **Training** - Any employee's success hinges on proper orientation and training. Insure that all such agency programs are available and accessible to employees with disabilities. This includes training programs that may lead to upward mobility and career advancement.

6) **Awareness/Sensitivity** - Train managers, supervisors, and employees about disability myths and misconceptions. An educated workforce will be better able to ensure the success of employees with disabilities.

Interviewing

Interviewing people with disabilities is the same as interviewing people who do not have disabilities. In general, the selecting official should ask all applicants about their qualifications, experience, and skills for doing the job.

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However, there are some guidelines that are specific to people with disabilities. Unless an individual is seeking appointment under one of the special excepted appointment authorities, a selecting official should **only** ask questions about the person's ability to do the job.[5] The office should make sure that all questions are job-related. The focus of the interview should be on the individual's ability to successfully perform the essential functions of the job and demonstrating the competencies or knowledge, skills, and abilities needed to perform the job. Understanding what are the job's essential functions and the competencies required to perform those functions is particularly important to prepare for applicant interviews.

If the person volunteers that he or she has a disability which makes it difficult to perform particular functions of a job, or if the selecting official believes that a person's readily-apparent disability may make it difficult to perform certain job functions, the selecting official may ask job-related follow-up questions, such as, "Describe how you can perform the job." The answer to such questions will indicate whether a reasonable accommodation is needed to enable the individual to perform the essential functions of the job. It is the responsibility of the job applicant to inform the employer of any accommodation needs, but once the issue has been raised, the employer and prospective employee should engage in a meaningful dialogue about the job functions and how they can be accomplished. Employers should not make general assumptions that an individual with a disability will be unable to do a certain part of the job or that a reasonable accommodation will be needed. Hiring decisions should never take into account the additional costs associated with providing a reasonable accommodation to an applicant with a disability, unless the applicant could not perform the essential job functions without a specific reasonable accommodation that was so expensive that it would impose an undue hardship on the agency.

Career Development

One of the major problems facing many people with disabilities is underutilization of their knowledge, skills, and abilities. Developmental details and reassignments can be used as a means of providing on-the-job training which will enhance opportunities

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[5] An agency may invite job applicants to disclose whether they would qualify for an agency affirmative action program, as discussed previously in the section entitled "Affirmative Action Programs."

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for promotion. In addition, it is easy to fall into the trap of isolating employees with disabilities from others. Make sure employees with disabilities have opportunities not only to work with others on group projects, but, when appropriate, to take on leadership roles.

Federal employers should ensure that employees with disabilities are given full consideration for inclusion in upward mobility programs and that they are aware of career counseling. Recognize that people with disabilities have career goals. Agency managers should sit down with employees and talk about goals. Identify role models and mentors for employees with disabilities or encourage them to do so. Every effort should be made to ensure that employees with disabilities — like others — are given the opportunity to reach their maximum potential.

Performance Evaluations

People with disabilities should be held accountable for their work performance. Supervisors are responsible for communicating performance expectations to their employees and monitoring and appraising their work. When the individual with a disability begins a job, he or she should be given a clear description of all job functions, including those that are essential. All employees should be provided with encouragement and feedback regarding their work performance. It is important to ensure that when evaluating people with disabilities, aspects of their physical or mental disabilities are not held against them. They should be evaluated for their ability to do the job with any appropriate reasonable accommodations. For example, it would be inappropriate to negatively evaluate an individual who uses a wheelchair for not attending a meeting, when the meeting was held in a physically inaccessible building.

If an employee with a disability cannot satisfactorily perform the essential functions of his or her job after a full and fair trial period and with appropriate reasonable accommodations, then his or her employment should be terminated. Federal employers must provide equal employment opportunity. The same job-related performance criteria should be applied to employees with disabilities that is applied to others. If it becomes necessary to terminate the appointment of an employee with a disability, the Human Resources or Personnel Office will help in making this decision and taking appropriate action.

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Awards

People with disabilities should have equal opportunity to receive incentive awards (special achievement/act or performance), quality step increases, and all other agency-sponsored or non-agency sponsored awards. Efforts should not be limited to special awards programs geared specifically to employees with disabilities.

Training

Give employees with disabilities an equal chance to benefit from training and development opportunities. Ensure that classes are held in accessible facilities, and, as necessary to provide effective communication, that materials are available in electronic format, large print, Braille, or audio cassette for persons with vision impairments, trained note-takers and qualified sign language interpreters or computer-assisted real-time transcription services are provided for persons who are deaf or hard of hearing, assistive listening systems and devices are provided for persons who are hard of hearing, and other appropriate reasonable accommodations are made. Any training that would provide growth opportunities to allow employees with disabilities to advance in their careers should be encouraged. Such training could include developmental detail assignments, lateral reassignments, and leadership training.

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PROMOTING THE EMPLOYMENT OF PEOPLE WITH DISABILITIES

Communication is the key to increasing organizational understanding and support for the employment of people with disabilities. The positive portrayal of employees with disabilities can greatly affect the public's and co-workers' perception of, and enhance the self-esteem of, such employees. There are a number of target groups to be reached: people with disabilities, advocacy and rehabilitation organizations, the agency workforce, students, and community groups.

Communicating messages or events such as planned initiatives, programs or exhibits, employee success stories, activities and accomplishments, and training and career development opportunities will enhance the employment and advancement of people with disabilities. One of the most effective and efficient media for some messages are internal memorandum or personal contact with the organization head, managers, supervisors and employees. Messages may also be integrated into existing media, such as an agency newsletter.

Other communications media may also be considered:

- Agency publications
- Bulletin boards
- Press releases
- Film or slide-tape presentations
- Local newspapers
- Local radio and television stations
- Chambers of Commerce
- Trade and technical magazines
- Community organizations newsletters
- Flyers
- Accessible Internet or Intranet sites

An agency's public affairs office may be able to assist in preparing professional copy or in maximizing one's communication tools. Outside organizations such as the President's Committee on Employment of People with Disabilities, Veterans' service organizations (VSOs), Federally Employed Women, State Vocational Rehabilitation Centers, and local news media may be able to help in the preparation of materials.

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Experience has shown that programs and initiatives require dedicated and sustained support from departmental and agency leadership to achieve success. Thus, a clearly articulated commitment of agency leadership to achieving the goal of greater inclusion for adults with disabilities in the Federal workforce is critical to transforming such an aim into reality.

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APPENDIX 2: FEDERAL RESOURCES

1) **President's Committee on Employment of People with Disabilities (PCEPD)**
1331 F Street, NW
Washington, DC 20004-1107
Phone: (V) (202) 376-6200
(TDD) (202) 376-6205

Website: http://www.pcepd.gov
EMAIL: info@pcepd.gov

2) **President's Committee Job Accommodation Network (JAN)**
918 Chestnut Ridge Road, Suite 1
West Virginia University - PO Box 6080
Morgantown, WV 26506-6080
Phone: (V) (800) 526-7234
(TDD) (800) 232-9675

Website: http://www.pcepd.gov and click on JAN or go directly to JAN at http://janweb.icdi.wvu.edu/english/homeus.htm

3) **Equal Employment Opportunity Commission**
1801 L Street NW (Federal Sector Programs)
Washington, DC 20507
Phone: (V) (800) 669-3362
(TDD) (800) 800-3302

Website: http://www.eeoc.gov

For specific Federal employment questions, call the "ATTORNEY OF THE DAY" at (202) 663-4599.

4) **Department of Labor: Office of Federal Contractor Compliance Programs (OFCCP)** [administers Federal contractor compliance for affirmative action in the employment of people with disabilities]
Department of Labor
Frances Perkins Building,
200 Constitution Avenue NW
Washington, DC 20210
Phone: (V) (888) 376-3227
(V) (202) 219-9475
(TDD) (202) 208-0452

Website: http://www.dol.gov/dol/esa

5) **U.S. Office of Personnel Management**[for Federal employment information]
1900 E Street, NW
Washington, DC 20415
Phone: (V) (202) 606-2700
(TDD) (912) 744-2299

Website: http://www.opm.gov

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APPENDIX 3: STATE VOCATIONAL AND REHABILITATION AGENCIES

State Vocational and Rehabilitation Agencies provide a number of services for persons with disabilities. Services include counseling, evaluation, training, and job placement. For more information, call or write the office nearest you. Internet addresses for each agency can be accessed at:

www.nchrtm.okstate.edu/ncrtm_links/state_VR.html

ALABAMA
Dept. of Rehabilitation Services
PO Box 11586
Montgomery, AL 36111-0586
(334) 281-8780
Toll free: (800) 441-7607

ALASKA
Division of Vocational Rehabilitation
801 W. 10th Street, Suite 200
Juneau, AK 99801-1894
Voice/TDD: (907) 465-2814
Toll Free: (800) 478-2815

ARIZONA
Rehabilitation Services Admin. (930A)
1789 West Jefferson, NW (2nd Floor)
Phoenix, AZ 85007
(602) 542-3332
Voice/TDD: (602) 542-6049

ARKANSAS
Department of Education
Arkansas Rehabilitation Services
Div. of Vocational & Technical Education
PO Box 3781
Little Rock, AR 72203
(501) 296-1616
Toll Free: (800) 330-0632

CALIFORNIA
Department of Rehabilitation
830 K Street Mall
Sacramento, CA 95814
Voice/TDD: (916) 445-3971

COLORADO
Division of Vocational Rehabilitation
110 16th Street, 2nd Floor
Denver, CO 80202
Voice/TDD: (303) 620-4153

CONNECTICUT
State Department of Social Services
Bureau of Rehabilitation Services
Division of Client Services
10 Griffin Road North
Windsor, CT 06095
(860) 298-2000
Toll Free: (800) 537-2549
TDD: (860) 298-2231

DELAWARE
Department of Labor
Division of Vocational Rehabilitation
4425 North Market Street
PO Box 9969
Wilmington, DE 19809-0969
(302) 761-8300
Voice/TDD: (302) 761-8349

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DISTRICT OF COLUMBIA
Department of Human Services
DC Rehabilitation Services Administration
800 9th Street, SW, Fourth Floor
Washington, DC 20024
(202) 645-5703

FLORIDA
Dept. of Labor and Employment Security
Division of Vocational Rehabilitation
2002 Old Augustine Road, Building A
Tallahassee, FL 32399-0696
(850) 488-6210
Voice/TDD: (850) 488-2867

GEORGIA
Department of Human Resources
Division of Rehabilitation Services
2 Peachtree Street, NW, 23rd Floor
Atlanta, GA 30330-3166
Voice/TDD: (404) 657-3000

GUAM
Department of Vocational Rehabilitation
122 Harmon Plaza, Room B-201
Harmon Industrial Park, GU 96911
011-671-475-4645
001-671-475-4635 (Consumer Information)

HAWAII
Department of Human Services
Division of Vocational Rehabilitation
and Services for the Blind
PO Box 339
Honolulu, HI 96809
(808) 586-5355
(808) 586-5366

IDAHO
Division of Vocational Rehabilitation
650 West State-L. B. Jordan Bldg, Rm 150
Boise, ID 83720-0096
Voice/TDD: (208) 334-3390
Toll Free: (800) 856-2720

ILLINOIS
Department of Rehabilitation Services
623 East Adams Street
Springfield, IL 62794
(217) 785-0218
Toll Free: (800)ASK-DORIS
TDD: (217) 782-5734

INDIANA
Division of Disability, Aging and Rehabilitation Services
402 West Washington Street, Rm W-451
PO Box 7083
Indianapolis, IN 46207-7083
(317) 232-1147
Toll free: (800) 545-7763
TDD Toll free: (800) 962-8408

IOWA
Department of Education
Div. of Vocational Rehabilitation Services
510 East 12th Street
Des Moines, IA 50319
Voice/TDD: (515) 281-4311
Toll free: (800) 532-1486

KANSAS
Dept. of Social and Rehabilitation Services
300 SW Oakley-Biddle Building, 1st Floor
Topeka, KS 66606
(913) 296-3911
TDD: (913) 296-7029

KENTUCKY
Department of Vocational Rehabilitation
209 Street Clair
Frankfort, KY 40601
Voice/TDD: (502) 564-4440
Toll free: (800) 372-7172
TDD: (502) 564-6742

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LOUISIANA
Department of Social Services
Louisiana Rehabilitation Services
8225 Florida Blvd.
Baton Rouge, LA 70806-4834
(504) 925-4168
Toll free: (800) 737-2958
Voice/TDD: (504) 925-4179

MAINE
Department of Labor,
Division of Vocational Rehabilitation
35 Anthony Avenue
Augusta,, ME 04333-0150
(207) 624-5300
Toll free: (800) 332-1003
Voice/TDD: (207) 624-5322

MARIANA ISLANDS
Vocational Rehabilitation Division
Comm. of Northern Mariana Islands
PO Box 1521
Saipan, Mariana Islands 96950
011-670-234-6538

MARYLAND
State Department of Education
Division of Rehabilitation Services
2301 Argonne Drive
Baltimore, MD 21218
(410) 554-9385
TDD: (410) 554-9412

MASSACHUSETTS
Massachusetts Rehabilitation Commission
4 Point Place, 27-43 Wormwood Street
Boston, MA 02210
(617) 727-2172
TDD: (617) 727-9063

MICHIGAN
Michigan Rehabilitation Services
Michigan Jobs Commission
PO Box 30010
Lansing, MI 48909
(517) 373-3390
Toll free: (800) 605-6722
TDD: (517) 373-4035

Family Independence Agency
Disability Determination Service
PO Box 30011
Lansing, MI 48909
(517) 373-7830
(517) 373-4533
Toll free: (800) 366-3404

MINNESOTA
Michael Coleman, Assistant Commissioner
Department of Economics and Security
Rehabilitation Services Branch
390 North Robert Street, 5th Floor
Street Paul, MN 55101
(612) 296-1822
TDD: (612) 296-3900

MISSISSIPPI
Nell C. Carney, Executive Director
Department of Rehabilitation Services
Vocational Rehabilitation Division
1281 Highway 51
PO Box 22806
Madison, MS 39110
(601) 853-5100
Toll free: (800) 443-1000

MISSOURI
Don Gann, Assistant Commissioner
State Department of Education
Division of Vocational Rehabilitation
3024 W. Truman Blvd.
Jefferson City, MO 65109
Voice/TDD: (573) 751-3251

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MONTANA
Dept. of Public Health & Human Services
Disability Services Division
PO Box 4210
Helena, MT 59604-4210
Voice/TDD: (406) 444-2590

NEBRASKA
State Department of Education
Div. of Vocational Rehabilitation Services
PO Box 94987
Lincoln, NE 68509
(402) 471-3649
Voice/TDD: (402) 471-3659

NEVADA
Nevada Rehabilitation Division
505 East King Street, Room 502
Carson City, NV 89710
Voice/TDD: (702) 687-4440

NEW HAMPSHIRE
State Department of Education
Division of Adult Learning & Rehabilitation
78 Regional Drive, Bldg 2
Concord, NH 03301
Voice/TDD: (603) 271-3471

NEW JERSEY
Div. of Vocational Rehabilitation Services
135 East State Street, CN 398
Trenton, NJ 08625-0398
(609) 292-5987
Voice/TDD: (609) 292-2919

NEW MEXICO
Department of Education
Division of Vocational Rehabilitation
435 Street Michaels Drive, Bldg D
Santa Fe, NM 87505
Toll free: (800) 235-5387
Voice/TDD: (505) 827-3500

NEW YORK
New York State Education Department
Office of Vocational and Educational
Services for Individuals with Disabilities
One Commerce Plaza, Room 1606
Albany, NY 12234
(518) 474-2714
Toll free: (800) 222-JOBS
TDD: (518) 486-3773

NORTH CAROLINA
Department of Human Resources
Div. of Vocational Rehabilitation Services
PO Box 26053
Raleigh, NC 27611
(919) 733-3364
Voice/TDD: (919) 733-5924

NORTH DAKOTA
Department of Human Services
Division of Vocational Rehabilitation
Dacotah Foundation Bldg
600 S. Second Street, Suite IB
Bismarck, ND 58504-5729
(701) 328-8950
Toll free: (800) 755-2745
TDD: (701) 328-8968

OHIO
Rehabilitation Services Commission
400 East Campus View Blvd.
Columbus, OH 43235-4604
Voice/TDD: (614) 438-1210
Toll free: (800) 282-4536, ext. 1210

OKLAHOMA
Department of Rehabilitation Services
3535 NW 58, Suite 500
Oklahoma City, OK 73112
(405) 951-3400

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OREGON
Department of Human Resources
Division of Vocational Rehabilitation
Human Resources Bldg,
500 Summer Street, N.E.
Salem, OR 97310-1018
(503) 945-5880
TDD: (503) 378-3933

PENNSYLVANIA
Office of Vocational Rehabilitation
Labor and Industry Building
7th and Forster Streets
Harrisburg, PA 17120
(717) 787-5244
Voice/TDD: (717) 783-8917
Toll free: (800) 442-6351

PUERTO RICO
Administration for Vocational Rehabilitation
PO Box 191118
San Juan, PR 00919-1118
(809) 725-1792

RHODE ISLAND
Department of Human Services
Office of Rehabilitation Services
40 Fountain Street
Providence, RI 02903-1898
(401) 421-7005
TDD: (401) 421-7016

SOUTH CAROLINA
Vocational Rehabilitation Department
1410 Boston Avenue
PO Box 15
West Columbia, SC 29171
(803) 896-6504
Voice/TDD: (803) 896-6635

SOUTH DAKOTA
Department of Human Services
Division of Rehabilitation Services
East Highway 34, Hillsview Plaza
c/o 500 E. Capitol
Pierre, SD 57501-5070
Voice/TDD: (605) 773-3195
Toll free: (800) 265-9684

TENNESSEE
Rehabilitation Services
Department of Human Services
Citizens Plaza State Office Bldg
400 Deaderick Street, 15th Floor
Nashville, TN 37248-0060
Voice/TDD: (615) 313-4714

TEXAS
Texas Rehabilitation Commission
4900 North Lamar
Austin, TX 78751
(512) 483-4001
Toll free: (800) 628-5115

UTAH
Utah State Office of Rehabilitation
250 East Fifth South
Salt Lake City, UT 84111
Voice/TDD: (801) 538-7530
Toll free: (800) 473-7530

VERMONT
Vocational Rehabilitation Division
103 South Main Street
Waterbury, VT 05671-2303
Voice/TDD: (802) 241-2186

VIRGIN ISLANDS
Virgin Islands Dept. of Human Services
Div. for Disabilities and Rehabilitation Services
1303 Hospital Ground, Hansen Complex
Saint Thomas, VI 00802
(809) 774-0930

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VIRGINIA
Department of Rehabilitation Services
4901 Fitzhugh Avenue
PO Box 11045
Richmond, VA 23230
(804) 367-0316
Voice/TDD: (804) 367-0315
Toll free: (800) 552-5019

WASHINGTON
Department of Social and Health Services
Division of Vocational Rehabilitation
PO Box 45340
Olympia, WA 98504-5340
Voice/TDD: (360) 427-2135
Toll free: (800) 637-5627

WEST VIRGINIA
Division of Rehabilitation Services
State Capitol Complex
PO Box 50890
Charleston, WV 25305-0890
(304) 766-4600
Voice/TDD: (304) 766-4970
Toll free: (800) 642-3021

WISCONSIN
Department of Workforce Development
Division of Vocational Rehabilitation
2917 International Lane, 3rd Floor
PO Box 7852
Madison, WI 53707-7852
(608) 243-5600
TDD: (608) 243-5601

WYOMING
Department of Employment
Division of Vocational Rehabilitation
1 East Herschler Building
Cheyenne, WY 82002
(307) 777-7385
Voice/TDD: (307) 777-7389

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APPENDIX 4: REFERENCES AND REGULATIONS

I. General Medical Personnel Guidance

Law:

A. The Americans with Disabilities Act of 1990 - 42 U.S.C. §§ 12101 et seq.

B. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701, et seq.; See also, 29 U.S.C. §§ 791(g), 794(d) (Incorporating standards of Americans with Disabilities Act into the Rehabilitation Act)

C. The Family and Medical Leave Act of 1993, Pub. L. 103-3, Feb. 5, 1993, 107 Stat. 6, et seq. Title I of the Act applies to non-Federal employees and certain Federal employees and is administered by the Department of Labor. Title II of the Act applies to most Federal employees and is administered by the Office of Personnel Management.

Regulation:

A. 5 CFR 339, Medical Qualification Determinations, March 8, 1989

B. 29 CFR 1614, Equal Employment Opportunity Commission

NOTE: Part 1614 of the Federal sector Equal Employment Opportunity (EEO) complaint processing regulations replace part 1613, with the objective of promoting greater administrative fairness in the investigation and consideration of Federal sector EEO complaint by creating a process that is quicker and more efficient. Every Federal employee and applicant for Federal employment has the right to use the administrative EEO discrimination complaints process.

C. For most Federal employees, 5 CFR Part 630, Subpart L, Family and Medical Leave.

NOTE: The final rule became effective on January 6, 1997.

D. For certain Federal employees, including Postal Service employees, 29 CFR Part 825, The Family and Medical Leave Act of 1993.

NOTE: The final rule became effective on February 6, 1995.

Information:

A. Equal Employment Opportunity Commission (EEOC)

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1. EEOC - *ADA Enforcement Guidance: Preemployment Disability Related Questions and Medical Examinations*, October 10, 1995

   NOTE: This document provides the EEOC's position under the Americans with Disabilities Act of 1990, on preemployment disability-related questions and medical examinations.

2. EEOC - *EEOC Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities*, March 25, 1997

   NOTE: This guidance is designed to facilitate the full enforcement of the ADA with respect to individuals alleging employment discrimination based on psychiatric disabilities; respond to questions and concerns expressed by individuals with psychiatric disabilities regarding ADA; and answer questions posed by employers about how principles of ADA analysis apply in the context of psychiatric disabilities.

3. EEOC - *The Family and Medical Leave Act, The Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964*

   NOTE: This fact sheet was prepared by the Equal Opportunity Commission's (EEOC) Office of Legal Counsel. It is intended to provide technical assistance on some common questions that have arisen about the Americans with Disabilities Act of 1990 (ADA) and Title VII of the Civil Rights Act of 1964 (Title VII) when the Family and Medical Leave Act of 1993 (FMLA) also applies.

4. EEOC - *Compliance Manual Section on the Definition of the Term "Disability"*

5. EEOC - *Interim Enforcement Guidance on the Application of the ADA to the Disability-based Distinctions in Employer Provided Health Insurance*

6. EEOC - *Questions and Answers About Disability and Service Retirement Plans Under the ADA*

7. EEOC - *Enforcement Guidance on Workers' Compensation and the ADA*

8. EEOC - *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the ADA*

9. EEOC - *Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person is a "Qualified Individual with a Disability"*

B. U.S. Office of Personnel Management (OPM)

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1. OPM - *Operating Manual - Qualification Standards for General Schedule Positions*, August, 1994, prepared by OPM's Washington Service Center

   NOTE: This operating manual replaces the Qualification Standards Handbook for General Schedule Positions.

3. OPM - *The Role of the Agency Medical Review Officer (MRO[6])*, March, 1996, prepared by OPM's Staffing Reinvention Office

4. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, December, 1994, prepared by OPM's Personnel Resources and Development Center

5. OPM - *Developing and Conducting the Structured Situational Interview: A Practical Guide*, January, 1994, prepared by OPM's Personnel Resources and Development Center

6. OPM - *Family-Friendly Leave Policies for Federal Employees: Employee Brochure*, November 1997, prepared by OPM's Workforce Compensation and Performance Service

7. OPM - *Federal Employee Entitlement Under the Family and Medical Leave Act of 1993*, December 1996, prepared by OPM's Workforce Compensation and Performance Service

C. Social Security Administration (SSA)

1. U.S. Department of Health and Human Services, Social Security Administration - *Disability Evaluation Under Social Security*, January, 1995

   NOTE: This new publication replaces the October, 1992 edition of *Disability Evaluation Under Social Security*. It is intended to provide physicians and other health professionals with an understanding of the disability programs administrated by the Social Security Administration, how each program works, and the kinds of medical information a health professional can furnish to help ensure sound and prompt decisions on disability claims.

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[6] See Section VI, Information (E, F) for HHS Drug Testing Medical Review Officer Source List and Manual for Federal Workplace Drug Testing Programs

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II. Aeromedical-FAA Medical Standards and Certification

Law:

A. 49 U.S.C. 106 (G), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45303.

Regulation:

A. 14 CFR Part 67, Federal Aviation Regulations, Medical Standards and Certification, recently revised, March, 1996, See 61 Federal Register 11256, March 19, 1996

NOTE: This establishes medical standards for airman (e.g., pilots) who have to hold an FAA issued medical certificate.

Information:

A. U.S. Department of Transportation, Federal Aviation Administration, Office of Aviation Medicine, *FAA Guide for Aviation Medical Examiners*, Revised 1992

NOTE: This 1992 revision supersedes previous editions of the *FAA Guide* which should now be discarded.

III. Conduct or Performance Problems Involving Medical Considerations

NOTE: See Section I, Information (A) for information regarding an Agency's right to order/offer a medical or psychiatric examination.

IV. Excepted Service Appointing Authorities for Persons with Disabilities

Schedule A:

A. 5 CFR 213.3102(ll) - This hiring authority applies to readers, interpreters and other personal assistants for other employees with a severe disability(ies).

B. 5 CFR 213.3102(t) - This hiring authority applies to persons with mental retardation.

C. 5 CFR 213.3102(u) - This hiring authority applies to persons with severe physical disabilities.

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Schedule B:

A. 5 CFR 213.3202(k), as amended by Executive Order 13124 (June 4, 1999) - This hiring authority applies to persons who have recovered from a serious mental illness that resulted in a significant period of substantially disrupted employment within the previous two years.

Executive Order:

A. Amending the Civil Service Rules Relating to Federal Employees with Psychiatric Disabilities, Executive Order 13124, ___ Federal Register _____ (June 4, 1999)

Veteran Specific:

A. 5 CFR 316.402(b)(5) - This hiring authority applies to 30 percent or more Disabled Veterans.

Information:

A. OPM - *People with Disabilities in the Federal Government - A Statistical Profile*, July, 1998, prepared by OPM's Office of Diversity

B. OPM - *Guide for Administering Written Employment Examinations to Persons with Disabilities*, (PRDC-94-11), December, 1994, prepared by OPM's Personnel Research and Development Center

NOTE: This publication replaces the 1980 *Guide for Administering Examinations to Handicapped Individuals for Employment Purposes*.

V. Disability Retirement (CSRS and FERS)

Regulation:

A. CSRS - 5 CFR Part 831, Civil Service Retirement System, Disability Retirement, September 22, 1993

Information:

A. CSRS - Documentation in Support of Disability Retirement Application, July, 1984

B. CSRS - OPM Pamphlet *Information for Disability Annuitants*, March, 1995

C. CSRS - Application for Immediate Retirement, January, 1990

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C. Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 42 U.S.C. § 290ee-1 et seq., as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. § 290dd et seq., Pub. L. 102-321, 106 Stat. 367 (1992) (codified at 42 U.S.C. § 201 note)

D. Federal Employee Substance Abuse Education and Treatment Act of 1986, Pub. L. 99-570, Title VI, 100 Stat. 3207-157 (1986)

NOTE: This Act requires agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.

Regulation:

A. 5 CFR Part 792, Federal Employees' Health and Counseling Programs

B. 49 CFR Part 382, Controlled Substances and Alcohol Use and Testing

NOTE: This regulation is issued by the Federal Highway Administration (FHWA) and contains the requirements applicable to positions requiring Commercial Drivers' License (CDL).

C. 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

NOTE: This regulation is issued by the U.S. Department of Transportation (DOT) and contains the technical procedures designed for use when testing is required pursuant to 49 CFR Part 382.

Mandatory Guidelines:

A. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - Mandatory Guidelines for Federal Workplace Drug Testing Programs, Federal Register Vol. 59, No. 110, June 9, 1994

NOTE: This establishes mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to Executive Order 12564.

Information:

A. National Institute on Drug Abuse - *Model Plan for a Comprehensive Drug-Free Workplace Program*, 1990

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B. U.S. Department of Transportation - *Alcohol & Drug Rules - An Overview*, February, 1994

C. U.S. Department of Health and Human Services - Substance Abuse and Mental Health Services Administration - *Basic Information on Breath Alcohol Testing for Implementation of the DOT Rules*, February, 1995

D. U.S. Department of Health and Human Services - An Overview of HHS Division of Workplace Programs (Federal Drug and Alcohol Program Oversight Responsibility)

E. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer Manual for Federal Workplace Drug Testing Programs*, 1997

NOTE: This manual applies to Federal agency drug testing programs that come under Executive Order 12564 and the Department of Health and Human Services (HHS) Mandatory Guidelines. The Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) programs have drug testing program requirements that may differ from those required by HHS. Therefore, Medical Review Officers (MROs) must be aware of those differences in reviewing results for other Federally regulated programs.

F. U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration - *Medical Review Officer (MRO) Source List*, March 3, 1996

VII. Hearing Conservation

Regulation:

A. 29 CFR 1910.95, Occupational Noise Exposure Standard, U.S. Department of Labor, Occupational Safety and Health Administration

Information:

A. U.S. Department of Labor, OSHA Guideline *Occupational Noise Exposure Compliance Assistance Guideline*, 1991

B. U.S. Department of Labor, Occupational Safety and Health Administration, *Hearing Conservation*, (OSHA Publication 3074), 1995

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are exposed to excessive/high noise levels that could cause hearing loss.

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VIII. Infectious Diseases (HIV/AIDS, Hepatitis, Tuberculosis, etc.) Involving Employee Relations

Regulation:

A. 29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogens, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: A bloodborne pathogen's protection program is initiated as part of a comprehensive Occupational Safety and Health Program when workers are potentially exposed to infectious blood or body fluids as part of their employment.

Information:

A. OPM - *HIV/AIDS Policy Guidelines,* August 30, 1995, prepared by OPM's Office of Employee Relations

NOTE: These guidelines replace FPM letter 792-21, "Acquired Immune Deficiency Syndrome (AIDS) in the Workplace."

B. U.S. Department of Health and Human Services, Social Security Administration - *A Guide to Social Security and SSI Disability Benefits for People with HIV Infection*, May, 1997

C. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, September 8, 1995/Vol. 44/No. RR-11, *Essential Components of a Tuberculosis Prevention and Control Program, Screening for Tuberculosis and Tuberculosis Infection in High-Risk Populations*

D. U.S. Department of Labor, Occupational Disease - *Claims for Pulmonary Tuberculosis,* FECA Bulletin No. 95-20, June 21, 1995

E. U.S. Public Health Service, Centers for Disease Control, Morbidity and Mortality Weekly Report, October 28, 1994/Vol. 43/No. RR-13 1994, *Guidelines for Preventing the Transmission of Mycobacterium Tuberculosis in Health Care Facilities*

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IX. Medical Disqualifications of Veterans Preference Eligibles (TP, CP, CPS, XP)

Law:

A. 5 U.S.C., Sections 3312 and 3318, Preference Eligibles

Regulation:

A. 5 CFR 339.306 Medical Qualification Determinations

B. 5 CFR 351.702(d) Reduction in Force

Information:

A. Interagency Advisory Group, Memorandum for Directors of Personnel, dated March 14, 1997, "OPM Adjudication of Medical Disqualifications to Preference Eligibles"

NOTE: This is a reminder that in accordance with Title 5, United States Code, Sections 3312 and 3318, and 5 CFR 339, Medical Qualification Determinations, any disqualification, non-selection, or passover of a veterans' preference eligible applicant for medical reasons must be approved by the Office of Personnel Management (OPM) **before** the position can be filled.

B. OPM - *Procedures Guide in Processing Medical Objections to Preference Eligibles,* March, 1996, prepared by OPM's Staffing Reinvention Office

C. OPM - *Typical Reasons for Not Sustaining Agency Medical Passover Requests,* March, 1996, prepared by OPM's Staffing Reinvention Office

X. Medical Records

Law:

A. Privacy Act of 1974, 5 U.S.C. 552a

Regulation:

A. 5 CFR Part 293, Subpart E, Employee Medical File System Records, prepared by OPM's Office of Workforce Information

B. 5 CFR Part 297, Privacy Procedures for Personnel Records, prepared by OPM's Office of Workforce Information

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C. 29 CFR 1910.1020(d)(I) (1990) Access to Employee Exposure and Medical Records, U.S. Department of Labor, Occupational Safety and Health Administration

D. 29 CFR 1904 (June 1986), A Brief Guide to Recordkeeping Requirements for Occupational Injuries and Illnesses, U.S. Department of Labor, Bureau of Labor Statistics

E. 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient's Records (This regulation applies only to Employee Assistance Program (EAP) records)

Information:

A. OPM/GOVT-10 "Employee Medical File System Records," 57 Federal Register, 35,722, (August 10, 1992), prepared by OPM's Office of Workforce Information

B. OPM Medical Record Procedures, (covered in OPM's Operating Manual) *The Guide to Personnel Recordkeeping*, prepared by OPM's Office of Workforce Information

C. U.S. Department of Labor, Occupational Safety and Health Administration, *Access to Medical and Exposure Records*, (OSHA Publication 3110), 1993

XI. Mental Health Issues

NOTE: See Section I, Regulation (A), for specific information regarding an Agency's right to order/offer a medical or psychiatric examination.

XII. OWCP Issues

Law:

A. 5 U.S.C. 8101 et seq. The Federal Employees Compensation Act, as amended

Regulation:

A. 20 CFR Parts 1 to 25, Federal Employees Compensation Act

B. 5 CFR Parts 353, Restoration to Duty from Uniform Service or Compensable Injury (Interim Regulations, September 1, 1995)

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Information:

A. OPM - Pamphlet *Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses*, January, 1992, prepared by OPM's Staffing Reinvention Office

B. U.S. Department of Labor - *Injury Compensation for Federal Employees* (A Handbook for Employing Agency Personnel), (Publication CA-810), February, 1994

C. U.S. Department of Labor, *Questions and Answers About the Federal Employees' Compensation Act*, (Publication CA-550), September, 1988

D. U.S. Department of Labor, *Resource Book - Training for Federal Employing Agency Compensation Specialists*, 1994

XIII. Pregnancy Related Issues

Law:

A. Pregnancy Discrimination Act, P.L. 95-555, October 31, 1978, 92 Stat. 2076, 42 U.S.C. § 2000e(k)

Regulation:

A. 29 CFR § 1604.10(b), See also, 29 CFR Pt. 1604 App. (Questions and Answers on the Pregnancy Discrimination Act)

XIV. Respiratory Protection Program

Regulation:

A. 29 CFR 1910.134, Respiratory Protection, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

NOTE: This program is initiated as part of a comprehensive Occupational Safety and Health Program when workers must wear respirators to protect themselves from actual or potential airborne hazards.

B. 29 CFR Part 1910.1001, Occupational Exposure to Asbestos, June 29, 1995, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

C. 29 CFR Part 1910.1200, Hazard Communication, March 11, 1994, U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)

XV. Safety and Occupational Health Programs

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Law:

A. Occupational Safety and Health Act of 1970, 84 Stat. 1590, Public Law 91-596, Section 19, Federal Agency Safety Programs and Responsibilities, December 29, 1970

NOTE: This act is to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; and by providing for research, information, education and training in the field of occupational safety and health.

Federal Regulation:

A. 29 CFR 1910.151, Medical Services, U.S. Department of Labor, Occupational Safety and Health Administration

B. 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, U.S. Department of Labor, Occupational Safety and Health Administration

C. 29 CFR 1910.1200, Hazardous Communication, U.S. Department of Labor, Occupational Safety and Health Administration

D. 5 CFR Part 339.205, Medical Evaluation Programs, Medical Surveillance Program

XVI. Veterans and the Civil Service

Information:

A. OPM - *VetGuide, Federal Employment Policy Handbook: Veterans and the Civil Service,* December, 1998, prepared by OPM's Employment Service

NOTE: VetGuide explains the special rights and privileges that veterans enjoy in Federal civil service employment. The guide conveniently summarizes in one place material from many laws and regulations that affect the employment of veterans. The guide will help Federal personnel specialist ensure that veterans receive the advantages they have earned.

B. The Office of Personnel Management (OPM) administers entitlement to veterans' preference in employment under Title 5, United States Code, and oversees other statutory employment requirements in Titles 5 and 38. (Title 38 also governs veterans' entitlement to benefits administered by the Department of Veterans Affairs (VA).

XVII. Violence in the Workplace

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Information:

A. OPM - *Dealing with Workplace Violence: A Guide for Agency Planners*, written by the Office of Workforce Relations, February 1998

B. U.S. Department of Labor, Occupational Safety and Health Administration - *Guidelines for Preventing Workplace Violence for Health Care and Social Service Workers*, (OSHA Publication 3148), 1996

C. U.S. Department of Justice, United States Marshals Service - *Security in the Workplace: Improving the Safety of Federal Employees*, (USMS Pub. No.61) September, 1995

D. U.S. Department of Justice - *Combating Workplace Violence: Guidelines for Employers and Law Enforcement*, International Association of Chiefs of Police (publication funded by Office of Justice Programs, Bureau of Justice Assistance)

E. U.S. Department of Justice, National Institute of Justice - *Understanding and Preventing Violence*, February, 1994

F. U.S. Department of Justice, National Institute of Justice - *Psychoactive Substances and Violence*, February, 1994

G. U.S. Department of Justice, National Institute of Justice - *The Cycle of Violence*, September, 1992

H. ADA Information Brief, Volume 1, Number 4, *Violence and Workers with Psychiatric Disabilities: Myths and Facts*[8]

I. Worldwide Web Information: *Partnership Against Violence Network (PAVNET)*. The Departments of Justice, Agriculture, Education, Housing and Urban Development, and Labor. A database of programs dealing with violence. Access through the Web at: www.pavnet.org.

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[8] Listed with permission of the Washington Business Group on Health

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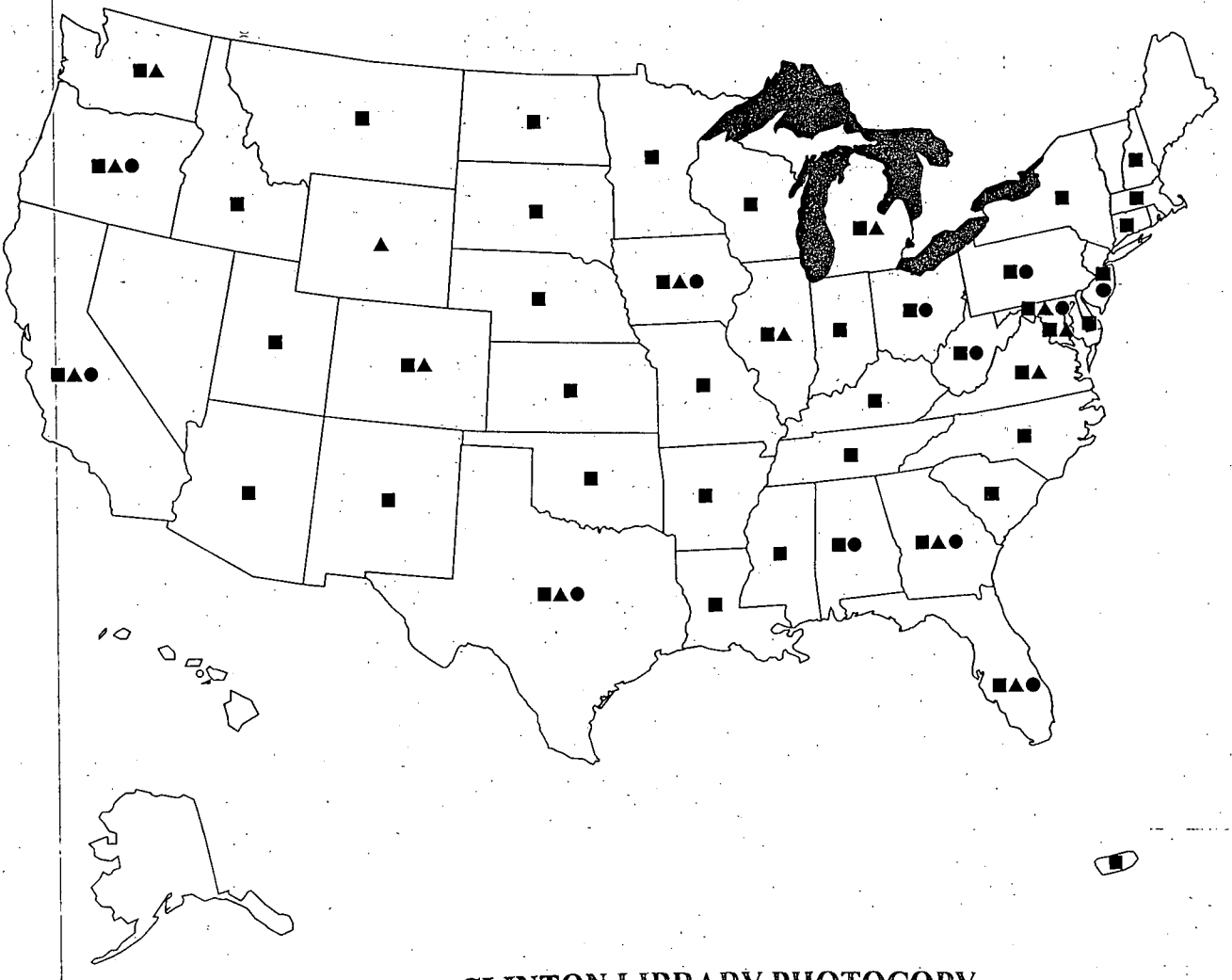
ANNUAL REPORT 1998

REAL SOLUTIONS FOR REAL NEEDS: MAKING A DIFFERENCE IN THE WORKPLACE



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PRESIDENT'S COMMITTEE ON EMPLOYMENT
OF PEOPLE WITH DISABILITIES

The President's Committee on Employment of People with Disabilities is a small, dynamic federal agency that harnesses the skills, energy and expertise of the business community, labor organizations and government agencies to bring people with disabilities into America's workforce. The President's Committee provides up-to-date, accurate information, technical assistance and leadership to employers and employees with disabilities as they turn possibilities for work into actualities for employment. The Committee further promotes the employability of people with disabilities by modeling innovative programs and disseminating information about successful programs. The President's Committee also informs the President on the progress and problems of maximizing employment opportunities for people with disabilities.

FISCAL YEAR 1998 IN NUMBERS

- 1,476,000 hits on the President's Committee's Job Accommodation Network (JAN) Web site
- 355,000 hits on the President's Committee's Web site
- 40,000+ "Opening Doors to Ability" education kits distributed nationwide
- 38,570 telephone queries received by JAN
- 20,056 people with disabilities were hired or kept a job using information from JAN
- 1,600 people attended conferences sponsored by the President's Committee
- 1,300 students with disabilities participated in 28 High School/High Tech programs
- 1,108 students with disabilities from 43 states, the District of Columbia and Puerto Rico participated in the Workforce Recruitment Program
- 376 employers involved in 14 state Business Leadership Networks
- 300+ members on the President's Committee
- 650+ governor's and mayor's representatives in every state and U. S. territory

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REAL SOLUTIONS FOR REAL NEEDS: MAKING A DIFFERENCE IN THE WORKPLACE

ANNUAL REPORT
OF THE
PRESIDENT'S COMMITTEE ON EMPLOYMENT OF
PEOPLE WITH DISABILITIES

FISCAL YEAR 1998

This report to the President, the Congress and the American public represents the work of the President's Committee during Fiscal Year 1998 (October 1, 1997–September 30, 1998). In its efforts to enhance and increase employment opportunities for qualified workers with disabilities, the Committee seeks to make a difference in the nation's workplaces by providing real solutions for the real needs of employers.

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"We must not rest until 100 percent of the nation's employers will hire a qualified person with a disability without reservations."
—CHAIRMAN TONY COELHO

THE CHAIRMAN'S PERSPECTIVE

Since its creation by President Truman more than 50 years ago, the President's Committee on Employment of People with Disabilities has focused solely on the removal of attitudinal and systemic barriers to employment for people with disabilities. We want all Americans to be judged by their ability and given an opportunity to be part of the country's workforce. With the support and assistance of our dedicated national network of partners—small businesses and large corporations; labor unions; civil rights, veterans and disability organizations; and federal, state and local governments—we have made significant progress, but we must do better. Our nation cannot compete in today's global economy if we continue to waste our human resources.

The nation's economy is currently providing the best opportunity in recent memory for showing employers that people with disabilities can be an important and productive part of the workforce. The general unemployment rate is the lowest in many years, and employers report having trouble finding qualified workers. Yet, the unemployment rate for the 30 million working age adults with disabilities remains almost 50 percent, and the rate for those with the most significant disabilities is 74 percent. At the same time, national polls reveal that the majority of working age people with disabilities want to work. The disparity between an employer's difficulty finding workers and the large numbers of unemployed people with disabilities stems from the unfounded fears by employers about hiring people with disabilities based on misinformation, myths and stereotypes.

The President's Committee is working aggressively to alleviate this waste of human potential. During Fiscal Year 1998, we have made significant progress identifying impediments to employment of people with disabilities and designing programs and partnerships to respond to them. Through public education, technical assistance, linking with new partners and demonstration projects, the President's Committee is providing real solutions to meet the real needs of employers and employees with disabilities.

As Chairman of the President's Committee, I am pleased to share a few of this year's highlights with you.

IMPORTANT NEW PARTNERSHIPS:

- Thomas J. Donohue, President and Chief Executive Officer of the U. S. Chamber of Commerce, agreed to serve as national Chief Executive Officer of the Business Leadership Network
- President Clinton appointed Linda Chavez-Thompson, Executive Vice President of the AFL-CIO, as a Vice Chair of the President's Committee, emphasizing the importance of the labor community to the Committee's work
- Expanding our new partnerships with minority organizations, I appointed Dr. Rolando Blackburn-Moreno, Executive Director of ASPIRA, an organization serving Hispanic youth, to the President's Committee's

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Executive Board, where he joins John Johnson, Director of Programs for the NAACP. Robert Walters, National Urban League, serves as a member of the President's Committee's Subcommittee on Employee Disability Concerns.

KEY PROGRAMS:

- Through our popular new Internet feature, Job Links, companies and organizations can recruit qualified individuals with disabilities by requesting a link on the Committee's Web site to the employer's job postings. Job seekers with disabilities now have direct and immediate access to open jobs at more than 80 companies and organizations and employers have a viable new recruitment tool.
- The Workforce Recruitment Program experienced a 37 percent increase in placements, with 300 well-qualified students with disabilities receiving summer internships or permanent jobs.
- The High School/High Tech Program established 12 new sites, bringing the total number of programs in the country to 28. In 1998, more than 1,300 high school students with disabilities explored careers in technology at sites throughout the country, with a majority going on to post-secondary education and training leading to permanent employment.
- Our Job Accommodation Network (JAN) assisted more than 38,000 callers with questions related to the hiring, retaining, training, and promoting of people with disabilities. Fifty-two percent of employers who consulted JAN on a specific case report hiring or retaining the individual with a disability.

On March 13, 1998, President Clinton signed Executive Order 13078, establishing the National Task Force on Employment of Adults with Disabilities. The Task Force, led by Secretary of Labor Alexis M. Herman, with myself as Vice Chair, supports the mission of the President's Committee by creating a focal point for the development of a coordinated and aggressive national policy within the federal government to bring working-age individuals with disabilities into gainful employment at a rate close to that of the general population. The President's Committee, working closely with the National Council on Disability and other government agencies, spearheaded the drive for the creation of this important Task Force. Support for the Task Force will continue to be an important part of our effort in the future.

I would like to thank the hundreds of volunteers on the Committee and around the country for their unselfish contributions of time and energy to our important work. Together we are making a difference in the lives of people with disabilities who seek to join the nation's workforce. I ask everyone to join in our effort to achieve this goal. If you are an employer, make an effort to bring more people with disabilities into your workforce. If you are a person with a disability, continue to strive for your dreams and do not let anyone tell you that you cannot achieve them. And, if you are a person without a disability, consider being a mentor to a young person with a disability. Together we must continue to forge ahead in finding real solutions to the real problems that people with disabilities face as we take our rightful place in the world of work.

T Coelho

Tony Coelho
Chairman

CLINTON LIBRARY PHOTOCOPY

"As we approach the 21st century, employers need to learn ... about the technological advances that continuously enhance the productivity of all workers, particularly those of us with disabilities."
—Chairman Tony Coelho

SOLVING THE NEED FOR INFORMATION

Fifty-one years of experience have taught the President's Committee that employers need information—information about people with disabilities and their employability, about job accommodations and about legal rights and responsibilities of both the employer and the employee. The Committee finds that many employers who have never hired persons with disabilities often have misconceptions or misinformation about them. Negative stereotypes are plentiful about the abilities of people with disabilities, costs associated with hiring them or the availability of assistive technology to enhance their productivity. The President's Committee responds to this real need by providing accurate and timely information through several channels.

BUSINESS LEADERSHIP NETWORK (BLN)

THE NEED

As employers become more receptive to hiring people with disabilities, they ask for useful information and for qualified applicants.

THE SOLUTION

The Business Leadership Network provides both information and access to qualified candidates through locally organized networks of employers who have been successful in hiring people with disabilities. They share their experiences with employers who have not yet included people with disabilities in their workforce. Each state network develops an agenda responsive to local needs, but with several common elements—

- sharing of successful disability employment practices
- identification of qualified job applicants with disabilities
- a supportive, peer based environment
- recognition of exemplary disability employment practices
- partnerships with local sources of applicants and information.

FISCAL YEAR 1998 RESULTS

- Thomas J. Donohue, President and CEO of the U.S. Chamber of Commerce, was appointed chair of the national BLN Business Steering Group, which will provide guidance and assistance to states who are developing BLNs.
- Six new networks were organized: California, Illinois, District of Columbia, Virginia, Washington and Iowa. Thirteen states and the District of Columbia now have active networks.
- The Colorado BLN announced that it has assisted 250 people with disabilities to become employed in the three years of its existence. It also has provided education and training to more than 2,000 employer representatives and generated $150,000 in corporate investment for new services and activities.

CLINTON LIBRARY PHOTOCOPY

- Crestar Bank, lead company of the new Virginia BLN, announced the hiring of 42 people with disabilities.

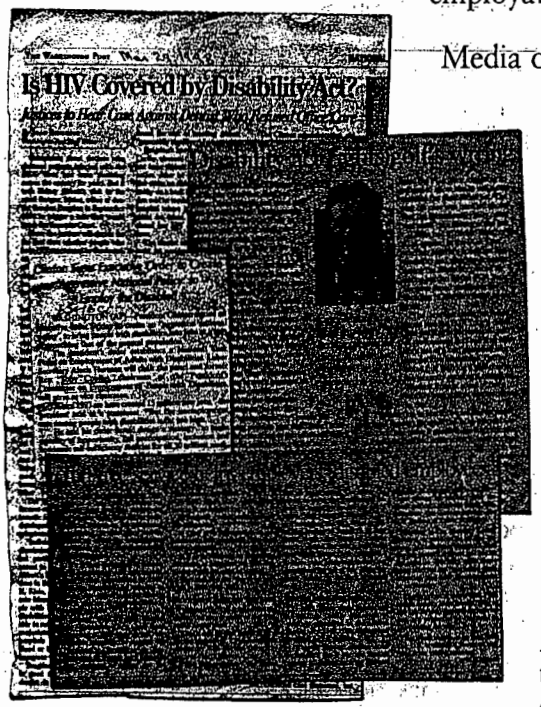
EDUCATION

THE NEED

People with disabilities have been hampered in their efforts to join the nation's workforce by myths, stereotypes and misinformation about their ability to work competitively.

THE SOLUTION

The Education program of the President's Committee continued its aggressive campaign in 1998 to provide accurate, timely information to employers, government agencies, people with disabilities and the general public about the employability of people with disabilities.



Media outreach

The President's Committee provided information on Committee programs and key issues relating to the employment of people with disabilities to more than 500 media outlets in Fiscal Year 1998. As a result, millions of people across the country read, saw or heard from the President's Committee and Chairman Coelho about—

- the Americans with Disabilities Act
- statistical data on people with disabilities
- types and costs of reasonable accommodations
- locating employers and persons with disabilities to interview
- identification of employment programs that serve people with disabilities
- barriers to employment for persons with disabilities.

Among the diverse national media who reported on the President's Committee's programs or other disability employment issues were—

- *New York Times*
- *60 Minutes*
- *National Public Radio*
- *CNN Financial News*
- *Working Women*
- *Black Enterprise Magazine*
- *The Wall Street Journal.*

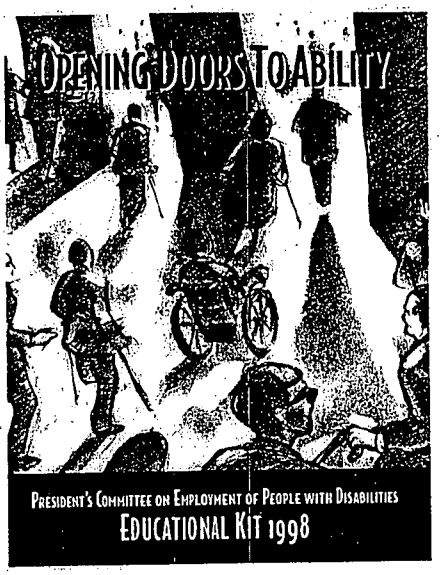
CLINTON LIBRARY PHOTOCOPY

Education Kit

Each year the President's Committee publishes an Education Kit full of information about disability and employment. "Opening Doors to Ability," the 1998 theme, signifies the ultimate objective of the President's Committee: the removal of attitudinal and structural barriers to employment for all Americans who want an opportunity to contribute to our nation's workforce. After exhausting its supply of 40,000 kits within the first three months of publication, the Committee posted the kit on its Web site, where it could be downloaded. Prepared to support nationwide activities conducted for National Disability Awareness Month in October of each year, the kit was used year-round by employers, rehabilitation officials, labor unions, service providers and

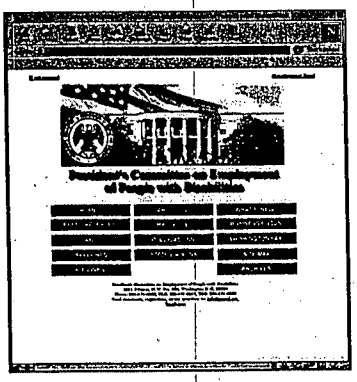
others. For example—

- Mesa State College in Colorado used materials from the kit in an upper level course on disability employment law
- Rehabilitation Services Administration Region 10 used the materials to educate employers and job applicants at a job fair
- SAFECO Corporation used the kit to train its recruiters and managers.



Publications

The President's Committee has prepared more than 65 easy-to-read, fact-filled documents covering a wide spectrum of topics related to the employment of people with disabilities. A publications list and the documents can be ordered by telephone (202-376-6200), fax (202-376-6868) or E-mail (info@pcepd.gov). They can also be downloaded from the Committee's Web site (www.pcepd.gov).



The Internet

www.pcepd.gov

The President's Committee's award-winning WorldWideWeb site describes the agency's programs and activities and has links to other valuable resources on the Web that expand and supplement the Committee's information. Most of the Committee's publications, including the Education Kit, are available for downloading. In this, its second full year of operation, the Committee's Web site received more than 355,000 hits. The Job Links page, which leads job seekers with disabilities directly to job openings in organizations and companies, has been the most-visited page of the site since its launch in April 1998. By the end of Fiscal Year 1998, 80 companies and organizations who are seeking to recruit and hire people with disabilities were listed on Job Links.

National Conference and Job Fair

"Tapping Worker Potential Through Technology" was the theme of the 1998 National Conference of the President's Committee, held May 6 and 7 in New Orleans, LA. The conference brought together more than 1,200 employers, personnel specialists, rehabilitation and job placement professionals, organized labor representatives, college career and disability services coordinators, veterans, consumers and advocates to discuss issues related to the employment of people with disabilities.

Technology issues were addressed in many of the workshops and in a major symposium featuring a discussion of the future of technology, and its implications for people with disabilities, by representatives from major technology organizations and agencies: AT&T, Oracle Corporation, United Technologies Corporation, the World Wide Web Consortium and the Federal Communications Commission.

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Other workshops covered—
- Making the Federal Government a Model Employer
- Disability Employment Law
- White Collar Employment for Workers with Cognitive Disabilities
- Work site Accommodations
- Starting Your Own Business on the Internet
- The Americans with Disabilities Act and workers' compensation.

The conference also included—
- keynote speakers, including
  - Thomas J. Donohue, President and CEO, U.S. Chamber of Commerce;
  - Andrew L. Stern, President, Service Employees International Union;
  - Susan M. Daniels, Deputy Commissioner for Disability and Income Security Programs, Social Security Administration;
- an exhibit hall of more than 80 booths showcasing state-of-the-art technology, products and resources with potential to enhance workplace efficiency and productivity;
- an employment fair where 38 employers interviewed more than 500 job seekers with disabilities, resulting in at least 12 job offers.

PERSPECTIVES CONFERENCE

THE NEED

The Federal government must demonstrate leadership in the hiring and promoting of people with disabilities.

THE SOLUTION

The "Perspectives on Employment of People with Disabilities in the Federal Sector" annual conference provided more than 400 federal sector human services managers the information they need to fulfill their obligations in the recruitment, hiring, accommodation and advancement of individuals with disabilities in the federal workforce. The Fiscal Year 1998 conference, convened by the President's Committee, the Department of Defense and six other federal agencies, was held December 10-12, 1997, in Bethesda, MD.

Twenty-five workshops covered a wide range of topics including: reasonable accommodation in the workplace, availability and use of assistive technology, alternate dispute resolution, recent case law and a review of federal employment programs for hiring people with disabilities. Speakers included—
- Shirley Wilcher, Deputy Assistant Secretary, Office of Federal Contract Assistance, Department of Labor
- Isabelle Katz Pinzler, Acting Assistant Attorney General for Civil Rights, Department of Justice
- Fred Grandy, President and CEO, Goodwill Industries International
- William Paul, Retired, Executive Vice-President and Chairman of International Operations, United Technologies Corporation.

The following agencies joined the President's Committee and the Department of Defense as cosponsors of the conference—
- The National Council on Disability
- Department of Agriculture
- Department of Health and Human Services
- Department of State
- Department of Veterans Affairs
- Department of Labor.

CLINTON LIBRARY PHOTOCOPY

"It's a win-win situation. Employers who know how to tap into the disability community get trained, dedicated workers and increased access to new markets. People with disabilities get the chance they deeply deserve to become independent and self-sufficient."
—Chairman Tony Coelho

SOLVING THE NEED TO FIND QUALIFIED WORKERS WITH DISABILITIES

Many employers report that they do not have qualified people with disabilities in their applicant pools, while at the same time, qualified people with disabilities are not able to find jobs. The President's Committee responds to the real need of employers to find qualified people with disabilities by providing access to people with disabilities eager to prove their worth in the workplace.

WORKFORCE RECRUITMENT PROGRAM

THE NEED

Students with disabilities often have difficulty finding summer employment while in school or full-time employment after graduation.

THE SOLUTION

The Workforce Recruitment Program (WRP), co-sponsored by the President's Committee and the U.S. Department of Defense, with 14 other cooperating federal agencies, connects public and private sector employers with highly motivated postsecondary students and recent graduates with disabilities. The WRP prepares students with disabilities for the workforce through work experience, and demonstrates to employers, through on-the-job experience, that people with disabilities can work successfully in a wide variety of jobs.

Participants are recruited from colleges and universities across the United States and Puerto Rico.

FISCAL YEAR 1998 RESULTS

- Three hundred students received paid internships or permanent jobs, many in professional or technical positions, a 37% increase over 1997.
- Students were placed in 12 federal agencies: the Departments of Defense, Agriculture, Veterans Affairs, Health and Human Services, Justice, State, Treasury and Labor; the Social Security Administration; the Environmental Protection Agency; the Export/Import Bank of the United States and the President's Committee on Employment of People with Disabilities.
- Private sector employers who hired students included Bear Stearns, Coopers and Lybrand, HBO, NationsBank, Simon and Schuster, Turner Broadcasting, Traveler's Group Inc., Irving Burton Associates, Turnpikes Appliance Service and the American Association for the Advancement of Science.

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YOUTH LEADERSHIP FORUMS

"The Youth Leadership Forum not only taught me about my past, but it also showed me that there are realistic goals that are obtainable for people with disabilities."
—Rachel Wade, 1998 YLF participant

THE NEED

Young people with disabilities often have fewer opportunities than other youth to develop the leadership skills that will help them become good citizens and good employees.

THE SOLUTION

The Youth Leadership Forums (YLF) for Students with Disabilities is a unique career leadership training program which gives high school juniors and seniors with disabilities the opportunity to practice leadership, citizenship and personal growth skills. Future employers of forum participants get highly motivated, promotable employees with disabilities, and forum participants develop skills and gain knowledge that will enhance their careers.

Forum activities include—

- training about job readiness programs, civil rights, postsecondary education and assistive technology
- small discussion groups on leadership topics and career planning
- social, artistic, athletic and recreational activities
- development of "personal leadership plans" by each student
- tours of the state capital, including meetings with governors and other officials.

Program alumni return as forum faculty and staff to serve as role models and share their newfound knowledge.

FISCAL YEAR 1998 RESULTS

- Supported by funds from the Social Security Administration, the President's Committee taught 83 people from 39 states, the District of Columbia and Puerto Rico how to replicate the YLF model originally developed by the California Governor's Committee for Employment of Disabled Persons.
- The California Governor's Committee held its seventh annual YLF for approximately 50 delegates.
- The Puerto Rico Governor's Committee for Employment of People with Disabilities conducted its first YLF for 25 delegates.
- Twenty-four additional states have begun planning forums for 1999, 2000 and beyond.

HIGH SCHOOL/HIGH TECH

"A lot of people with disabilities who are intelligent might still let their disabilities overshadow them. [High School/High Tech] does not allow that. It opened so many doors for me."
—Libby Youmans, former High School/High Tech program participant, now a Program Analyst at Marshall Space Flight Center

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The Need

Technology and science companies who want to hire people with disabilities have trouble finding qualified applicants. Students with disabilities are seldom encouraged to pursue technology and science careers.

The Solution

High School/High Tech is a rapidly expanding program that seeks to increase the number of people with disabilities who pursue careers in science, engineering and technology. High school students with disabilities participate in "hands on" enrichment activities, including high technology and scientific site visits, mentoring, shadowing, exposure to postsecondary educational resources and paid internships in scientific and technology-related fields. More than 90 percent of the participants in this program go on to higher education and careers in the sciences. This program has been particularly successful in serving minority youth with disabilities, with more than 40 percent of participating students being minorities.

Fiscal Year 1998 Results

- Twelve communities—11 in Georgia and one in California—started High School/High Tech programs in collaboration with local school districts.
- Goodwill Industries formed a partnership with the President's Committee calling for local Goodwill agencies to become project operators.
- Student activities in 1998 included:
  - participating in a robotic design contest at Epcot Center, Disney World
  - witnessing two liftoffs at the Kennedy Space Flight Center
  - attending the Space Congress and meeting several astronauts.

National co-sponsors in 1998 were:

- American Association for the Advancement of Science
- National Alliance of Business
- Mitsubishi Electric America Foundation
- United Cerebral Palsy Association.

Project EMPLOY

"By planting a few tangible examples of how the employment of people with disabilities can work in Prudential, we ended up with a full garden of employees in our workforce."
—Prudential Insurance executive Bruce Dalziel discussing the results of Prudential's decision to hire employees with cognitive impairments

The Need

People with mental retardation and other cognitive impairments are often stereotypically hired only for entry level, minimum wage jobs, most often in food, custodial and horticultural fields.

The Solution

Project EMPLOY is a multi-year initiative to increase the placement of people with cognitive impairments in jobs at above minimum wages, with benefits and promotional potential, by replicating successful programs identified by the President's Committee. Through local partners, the Committee will share information about the employment potential of people with cognitive impairments with employers using demonstrations, outreach, education and providing technical assistance.

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SCHOLARSHIP PROGRAM

Three national businesses and a foundation supported scholastic excellence by generously funding 11 scholarships in 1998, four more than the year before. The 1998 scholarship winners were selected from among 183 candidates by a panel of President's Committee members. Students were evaluated on two essays, letters of recommendation and grade point averages.

Sprint
Sprint provided three $2,500 scholarships for students pursuing business or technical degrees.

Stephen Horne
Glastonbury, CT
Rensselaer Polytechnic Institute

Melanie Rose
Idaho Falls, ID
Southwest Baptist University

Mark Riccobono
Milwaukee, WI
University of Wisconsin

Nordstrom
Nordstrom funded five $2,000 scholarships for students pursuing business degrees.

Minda Dentler
Spokane, WA
Boston University

Stacy Rogers
Derby, KS
Wichita State University

David Wise
Mohnton, PA
Slippery Rock University

Noah Gordon
Manchester, MI
Michigan State University

Marcus Templeton
New Iberian, LA
Louisiana, State University

Nike
Nike sponsored one $2,500 scholarship for a student pursuing a degree in sports or recreation management, marketing, medicine or retailing sports or recreation equipment.

Eli Abarbanel-Wolff
Washington, D.C.
Brown University

ELA Foundation
The ELA Foundation awarded two fellowships of $2,000 each for women graduate students studying, researching and writing on disability policy in a graduate program at an accredited college or university in the United States.

Lorie Bowman
Getzville, NY
State University of New York at Buffalo

Kimberly Floyd
Chapel Hill, NC
University of North Carolina at Chapel Hill

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FISCAL YEAR 1998 RESULTS

- A 15-minute video, "Discovering an Untapped Resource," was completed and distributed through employer associations. The video is being used to educate employers about the employment potential of people with cognitive disabilities.
- "White Collar Employment Opportunities for People with Cognitive Disabilities," a state of the art report, was completed and placed on the Committee's Web site. The report was based on President's Committee research conducted in Fiscal Year 1997 to identify existing programs which are placing persons with cognitive disabilities in "white collar" occupations.
- A description of the model programs of "white collar" and other non-traditional employment opportunities identified in the Fiscal Year 1997 research was completed and placed on the President's Committee's Web site. The programs identified were
  The ARC of Delaware with Dupont Merck, Wilmington DE
  Best Buddies Jobs, Miami FL
  Community Services for Autistic Adults and Children, Rockville MD
  Employment in Disability Agencies
  Howard County Department of Recreation and Parks, MD
  Iowa CEO Corporate Initiative
  King County Government, Washington State
  MBNA American Bank, N.A.
  Our House, Inc. Employment Services, New Brunswick NJ
  Options of Linn County, Iowa
  Project Opportunity, San Francisco CA

Some companies that have successfully hired people with cognitive disabilities in jobs with career potential are—
Prudential Insurance
DuPont-Merck
MBNA America Bank
Schering-Plough
Wells Fargo Bank.

CULTURAL DIVERSITY INITIATIVE

THE NEED

Although the overall unemployment rate for people with disabilities is unacceptably high, the rates for minorities with disabilities are even higher. Minorities not only face compounded discrimination, but often must overcome cultural attitudes about disability within their own communities.

UNEMPLOYMENT STATISTICS

All people with disabilities—nearly 48 percent

African-Americans with disabilities—72.2 percent

African-Americans with severe disabilities—85.5 percent

Hispanics with disabilities—51.9 percent

Hispanics with severe disabilities—75.4 percent

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Unemployment statistics regarding working-age individuals with disabilities as reported by the U.S. Census Bureau are shown in the accompanying chart.

THE SOLUTION

The Cultural Diversity Initiative, in cooperation with the U.S. Department of Education's Office of Special Education and Rehabilitation Services (OSERS), Howard University and national minority organizations, uses two strategies to improve the employment of minority persons with disabilities:

- training minority individuals with disabilities on disability employment issues, and
- working with organizations representing diverse minority communities, including African Americans, Hispanics, Asian Americans and Native Americans, to develop strategies for them to implement for reducing unemployment rates for minorities with disabilities.

FISCAL YEAR 1998 RESULTS

- Supported by funds from OSERS, the President's Committee conducted the second annual "New Leadership Development for Minorities with Disabilities" training session. Thirty-nine individuals with disabilities from minority backgrounds representing 21 states participated in the program.
- The NAACP established an Advisory Group on African Americans with Disabilities under the leadership of Richard A. Womack, Director of the AFL-CIO's Civil Rights Department and a member of the President's Committee's Executive Board.
- The Urban League of Nebraska established the National Clearinghouse on Minorities with Disabilities, which will make available to the 114 Urban League affiliates statistics and other information about the employment of minorities with disabilities.
- The Urban League of Nebraska, working with the University of Nebraska Medical Center and the National Family for Advancement of Minorities with Disabilities, trained other Midwestern League chapters about the unique needs of minority persons with disabilities.

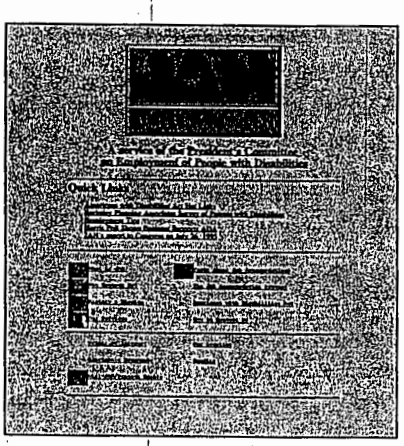
CLINTON LIBRARY PHOTOCOPY

"As we approach the 21st century, employers need to learn ... about the technological advances that continuously enhance the productivity of all workers, particularly those of us with disabilities."
—Chairman Tony Coelho

SOLVING THE NEED FOR RESOURCES THROUGHOUT THE EMPLOYMENT CYCLE

People with disabilities who are seeking employment and employers who hire them sometimes need assistance locating accessible technology, developing reasonable accommodations or removing procedural and systemic barriers. In some cases, today's service delivery system is inadequate or not readily available to people with disabilities. The President's Committee provides both short-term and long-term solutions benefitting both employers and employees with disabilities.

JOB ACCOMMODATION NETWORK



THE NEED

For many people with disabilities, the only obstacle to full job performance is the lack of information about how to make modest adjustments to their work environment. Use of reasonable accommodations, such as adaptive equipment or modified work methods, is both low-cost and cost-effective.

THE SOLUTION

The President's Committee's Job Accommodation Network (JAN) is a dynamic, comprehensive, toll free counseling and information service which provides confidential consultations about job accommodations. Counselors draw upon a database of more than 200,000 real accommodations provided for real people in real job situations. During Fiscal Year 1998, 97 percent of all callers found the information provided by the well-trained JAN counselors to be useful, and over half of the employers who called used the information from JAN to hire or keep an employee with a disability. JAN counselors also provide information about the employment provisions of the Americans with Disabilities Act.

JAN also operates an Internet site with information about reasonable accommodation for people with disabilities, relevant laws and links to other helpful sites.

JAN benefits everyone:
Employers
- hire, retain, and promote qualified employees with disabilities
- reduce workers' compensation and other insurance costs
- eliminate the cost of training new employees
- increase the worker's productivity,

Rehabilitation professionals
- facilitate placement of clients
- find local resources for workplace assessment
- discover resources for device manufacture and modification,

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People with disabilities
- get new jobs or keep jobs
- get accommodation information for use during job interviews and on the job.

REACHING THE JOB ACCOMMODATION NETWORK

Hours: 8:00 a.m. to 8:00 p.m., Monday through Thursday; 8:00 a.m. to 7:00 p.m. on Friday, Eastern Time

By phone: 1-800-526-7234 (Voice/TDD)
1-800-ADA-WORK (1-800-232-9675) (Voice/TDD)

e-mail: jan@jan.icdci.wvu.edu

JAN also provides information through a Web site:
www.jan.wvu.edu/english/homeus.htm

DISABLED VETERANS FORUMS

THE NEED

Although our nation has not fought a major war in almost 25 years, more than 20,000 disabled veterans return to civilian life each year. Unfortunately, their employment experience mirrors that of civilians with disabilities, with more than two out of three disabled veterans not working. They encounter systemic and attitudinal barriers similar to those faced by civilians with disabilities, but also face problems unique to veterans with disabilities.

THE SOLUTION

The President's Committee's Subcommittee on Disabled Veterans convenes public forums to hear first-hand from disabled veterans, veterans' service organizations and employers about current problems faced by disabled veterans who seek work.

Recommendations responding to concerns raised at the forums are presented to policy makers and service providers in federal agencies serving veterans and to the Congress.

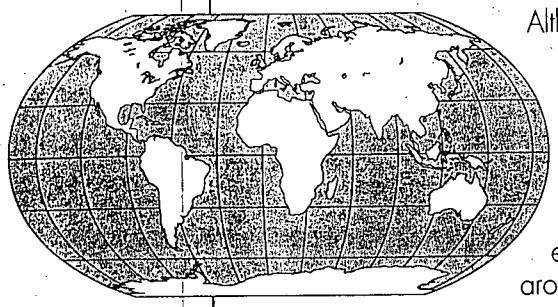
FISCAL YEAR 1998 RESULTS

- Forums were held in Sacramento, CA, and Los Angeles, CA.
- A report summarizing the results of those two forums, and three others held previously, was presented to the Veterans Affairs committees of the U.S. Senate and House of Representatives and to relevant federal agencies. The report contained recommendations that respond to issues raised at the forums.
- Issues identified included—
  - inadequate funding for programs
  - poor implementation of existing programs
  - poor enforcement of preference and priority provisions for disabled veterans
  - programs not meeting the needs of disabled veterans who are women, Native Americans, African Americans, Hispanics or homeless.

CLINTON LIBRARY PHOTOCOPY

- Recommendations have resulted in—
  - increased coordination between the Veteran's Administration and the Department of Labor for delivery of employment services
  - Increased emphasis on the application of veterans' priorities for services through the new "one stop" employment centers being established across the country
  - increased attention from veterans' organizations to the unique issues involving women and minorities with disabilities.

INTERNATIONAL ACTIVITIES



Although people with disabilities around the world are experiencing unemployment rates similar to ours, many nations are beginning to realize the value and importance of including all their citizens, including those with disabilities, in the economic development of their countries. The President's Committee has been pleased to contribute to international efforts to increase employment opportunities for people with disabilities around the world by:

1. training U.S. Department of State labor officers on policy and programs for employment of people with disabilities in the U.S.
2. hosting more than 40 visitors from foreign countries seeking information about United States employment policies and programs and
3. participating in two international conferences held in Washington, D.C.

Two activities in particular promise to have a direct effect on the employability of people with disabilities in Europe and Vietnam. The President's Committee worked with the U.S. Department of Labor to coordinate the United States' presentations for the "Harnessing the Information Society to Raise Employment Levels for People with Disabilities" conference scheduled for October 1998 in Madrid, Spain. Conference organizers planned to use case studies from around the world to examine the potential for improving employment possibilities for people with disabilities through the use of technology.

In addition, the President's Committee, working with U.S. Vietnam Assistance for the Handicapped, a private organization based in the United States, has developed a strong bond with Vietnamese government officials. These relationships resulted in the passage in 1998, by the National Assembly of Vietnam, of an ADA-inspired disability policy law. To ensure its successful implementation, the President's Committee helped secure funding from the U.S. Agency for International Development to establish a technical assistance office in Hanoi, Vietnam, to assist the Vietnamese government in the implementation of its new disability policies.

CLINTON LIBRARY PHOTOCOPY

KEY TO MAP

■ WORKFORCE RECRUITMENT PROGRAM

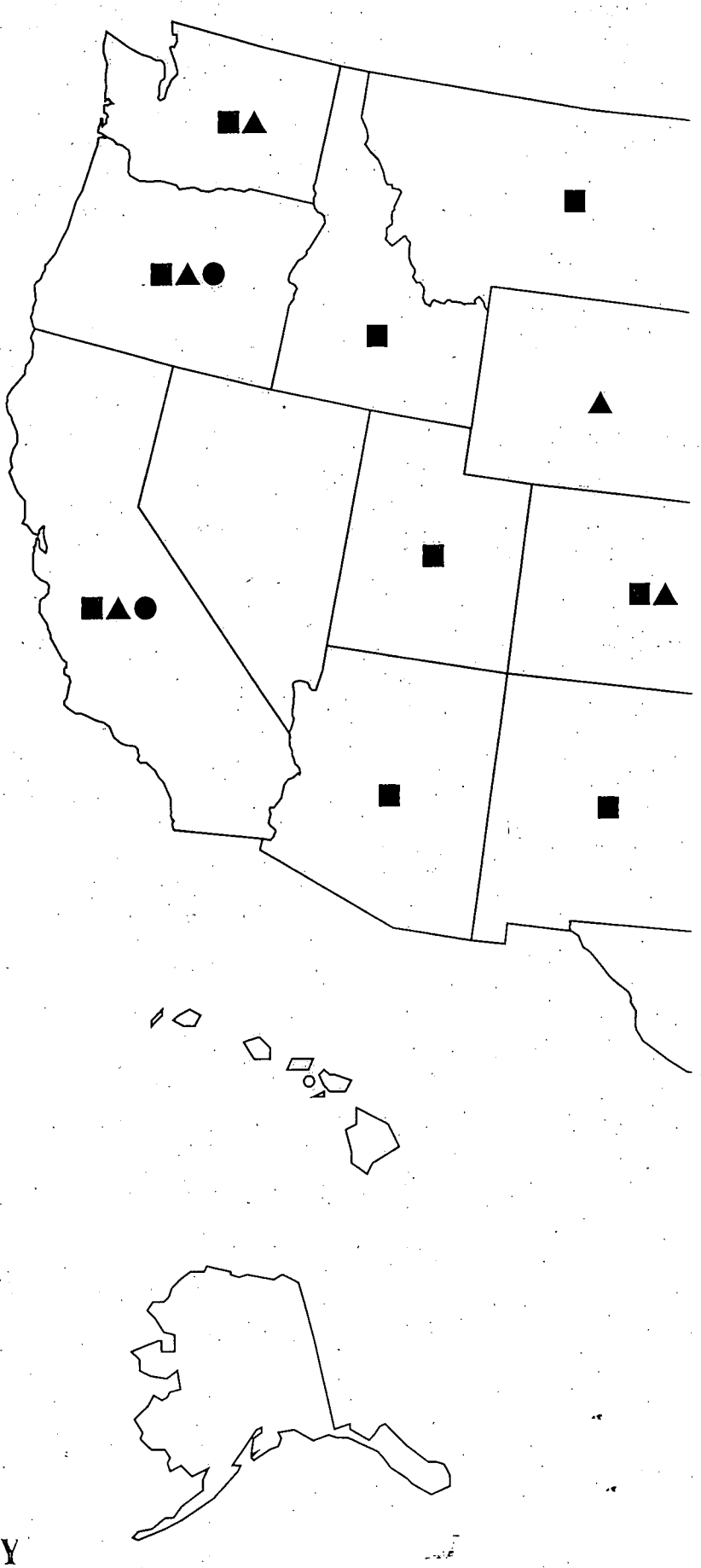
Recruiters interviewed students with disabilities for the Workforce Recruitment Program at 135 colleges in these 46 states and territories in FY '98.

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
South Carolina
South Dakota
Tennessee
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin

▲ BUSINESS LEADERSHIP NETWORK SITES

Business Leadership Networks were active in these 14 locations in FY '98.

California
Colorado
District of Columbia
Florida
Georgia
Illinois
Iowa
Maryland
Michigan
Oregon
Texas
Virginia
Washington
Wyoming



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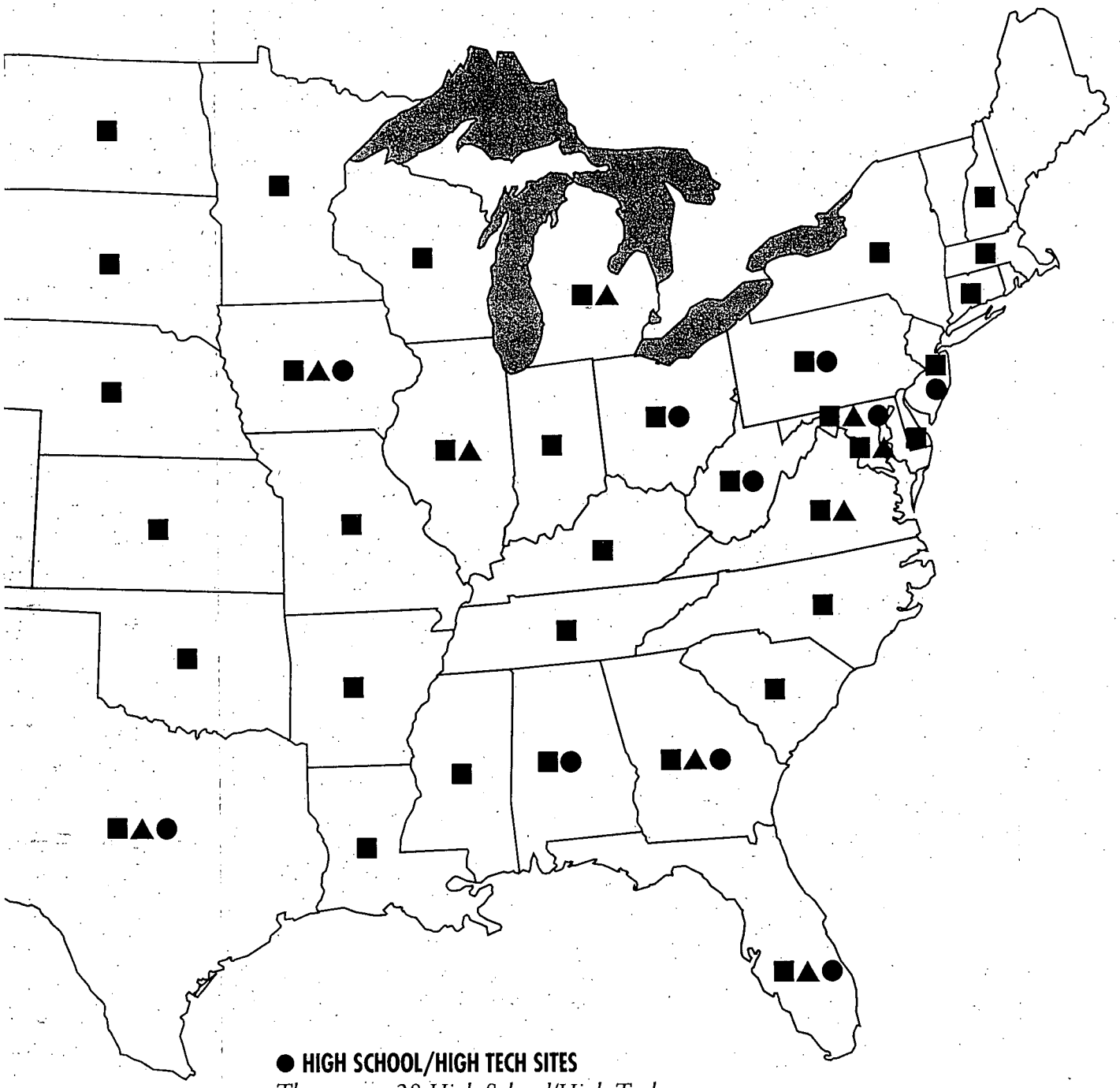

● **HIGH SCHOOL/HIGH TECH SITES**
There were 28 High School/High Tech programs in these 12 states during FY '98.

Alabama	New Jersey
California	Ohio
Florida	Oregon
Georgia	Pennsylvania
Iowa	Texas
Maryland	West Virginia

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TECHNOLOGY INITIATIVE

THE NEED

The rapid development of new technologies in computer hardware, software, phone equipment and telecommunications services threatens to leave people with disabilities behind. Adaptive equipment that enabled people with disabilities to use yesterday's technology does not work with the new technologies. Manufacturers routinely design new products without considering the needs of people with speech, vision, hearing, cognitive or other impairments.

THE SOLUTION

The Technology Initiative, a new program of the Committee, will promote innovative or best design and manufacturing practices by information technology and telecommunications companies, with a goal of making technology products and services accessible to the widest range of users, thereby improving employment opportunities for people with disabilities.

FISCAL YEAR 1998 RESULTS

The President's Committee supported the availability of accessible technology by:

- surveying disability accessibility development practices at telecommunications and information technology companies, such as Bell Atlantic, Microsoft, GTE, Oracle, AT&T, Motorola, Nokia and Pitney Bowes
- providing information and technical assistance to technology companies about Section 508 of the Rehabilitation Act of 1973, as amended, (a disability accessibility requirement imposed on federal procurement of information technology) and about Section 255 of the Telecommunications Act of 1996 (a disability access requirement for telecommunications equipment manufacturers and service providers)
- participating directly in critical federal regulatory and standards development such as—
  - the Electronic and Information Technology Access Advisory Committee of the U.S. Access Board, which is charged with developing standards for Section 508
  - the Federal Communications Commission Section 255 and ADA Telecommunications Relay Services rulemakings
  - the National Committee for Information Technology Standards study group on disability interface standards.

OUTREACH TO SMALL BUSINESS

"Hiring an individual that wants to be a part of your workforce and wants to be part of your dream is the dream of any employer, and that is what I have discovered in the workforce with people with disabilities."
—Philip Kosak, President of Carolina Fine Snacks

THE NEED

Many small and medium size businesses, the primary source of new jobs in our economy, do not include people with disabilities in their workforces.

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The Solution

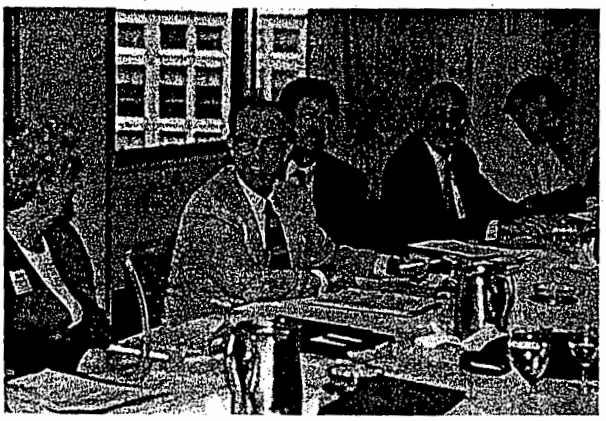
The Outreach to Small and Medium Business Project seeks to educate businesses about the benefits of hiring people with disabilities through trade associations and professional service organizations. Topics include:

- the Americans with Disabilities Act
- the benefits of hiring, retaining and promoting people with disabilities
- the availability of key resources, including the President's Committee.

Fiscal Year 1998 Results

- The project produced "Surprising Answers," a videotape featuring members of the President's Committee's Employer Subcommittee speaking about hiring people with disabilities. The featured employers answer frequently asked questions about hiring and retaining employees with disabilities.
- A speaker's kit is being developed for use with the video. The package will be available in 1999.

Promoting Small Business and Self-Employment Opportunities



The Need

Self-employment and small business opportunities for people with disabilities are often overlooked by government programs and by many people with disabilities as an avenue from the public rolls to self sufficiency. People with disabilities face the same financial, legal and resource acquisition problems experienced by all entrepreneurs; however, they must also address the many barriers to success created by their disabilities.

The Solution

The President's Committee is working with federal and state government agencies, private nonprofit service providers, financiers and organizations serving individuals with disabilities, to increase access and support for entrepreneurs with disabilities. With the recent growth of small business opportunities in general, improved assistive technologies and changes in the American workplace, the time is right to explore self-employment and small business options for people with disabilities.

Fiscal Year 1998 Results

The second year of the Promoting Small Business and Self-Employment Opportunities project was devoted to gathering information about current resources available to entrepreneurs with disabilities and identifying the remaining obstacles they face, especially obstacles that are unique to an entrepreneur with a disability.

- The President's Committee convened a "Blue Ribbon Panel on Self-Employment, Small Business and Disability," 53 experts in facilitating self employment and small business ownership for people with disabilities, to discuss ways to increase opportunities for entrepreneurs with disabilities. The panel's recommendations will be published in 1999. Conducted by the World Institute on Disability under a contract with the President's Committee, the conference was co-sponsored by the Social Security

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Administration, Association for Enterprise Opportunity, Levi Strauss Foundation, Wells Fargo Bank and UNUM Life Insurance.

- The President's Committee provided staff support for a Presidential Task Force workgroup on entrepreneurial issues. This workgroup used the information from the Blue Ribbon Panel as the basis for recommendations to the President included in the first interim Task Force report, "Re-Charting the Course."
- The Committee contracted with West Virginia University to establish the Small Business–Self-Employment Service, to be available in 1999. The service will be a source of comprehensive information about entrepreneurship for people with disabilities, including a World Wide Web page with links to other sites about entrepreneurship and a telephone counseling service.
- The President's Committee worked with the Small Business Administration to ensure inclusion of people with disabilities in their programs.

AWARDS

In 1998, the President's Committee honored two individuals who have made exceptional contributions to public awareness of empowerment and employment of people with disabilities.

Evan Kemp Entrepreneurship Award

Ted Henter
President, Henter-Joyce, Inc.
St. Petersburg, FL

This award, named for the late Evan Kemp, former Equal Employment Opportunities Commission Chairman and disability rights leader, recognizes an individual with a disability who has displayed the exemplary skills, energy, leadership, initiative and courage necessary to establish and operate a successful business venture in the private sector. This award was presented to Mr. Henter, in the presence of Vice-President Albert Gore, as part of the Small Business Administration's award program during Small Business Week.

Justin Dart Achievement Award
(Chairman's Award)

Catherine Kelly Baird
Executive Director, California Governor's Committee on Employment of People with Disabilities
Sacramento, CA

This award, named for the former President's Committee Chairman and disability rights leader, is given for distinguished national service in elevating the dignity, equality, independence, empowerment and employment of people with disabilities.

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The mission of the President's Committee on Employment of People with Disabilities is to facilitate public and private efforts to enhance the employment of people with disabilities. The Chairman and Vice Chairs are appointed by the President of the United States. All other members are appointed by the Chairman. All members serve as volunteers, without compensation, to develop programs that have the potential to maximize employment opportunities for people with disabilities. The following individuals serve on the President's Committee.

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