

# FOIA MARKER

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**OA/ID Number:** 17800

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**Folder Title:**

Disabilities - ADA [Americans with Disabilities Act] Event Executive Action Comments

**Stack:**

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**Row:**

**97**

**Section:**

**4**

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**5**

**Position:**

**3**

U.S. DEPARTMENT OF JUSTICE  
OFFICE OF LEGAL COUNSEL  
WASHINGTON, D.C. 20530

FACSIMILE TRANSMISSION SHEET

DATE: JULY 19, 2000

FROM: *RH* ROSEMARY HART  
SENIOR COUNSEL

OFFICE PHONE: 202/514-2027

TO: MAC REED  
OFFICE OF MANAGEMENT AND BUDGET  
FAX: 395-7294

MICHELLE ARONOWITZ  
OFFICE OF THE COUNSEL TO THE PRESIDENT  
FAX:

NUMBER OF PAGES: 3 (PLUS COVER SHEET)

Mac and Michelle: Comments on EO concerning employment opportunities for individuals with disabilities. As we have mentioned to you already, we believe that there is a constitutional problem with the President mandating the hiring of 100,000 individuals with disabilities. We believe that the redrafted language, although it still poses litigation risks, is legally defensible.

*Mac - we'll send comments on the other EO and the two memoranda later this morning.*

*R.*

Section 1

Section 1. Increasing the Number of Hires of Qualified Persons With Disabilities. (a) Recent evidence demonstrates that, throughout the United States, qualified persons with disabilities have been refused employment despite their availability and qualifications, and many qualified persons with disabilities are never made aware of available employment opportunities. Evidence also suggests that increased efforts at outreach, and increased understanding of the reasonable accommodations available for persons with disabilities, will permit persons with disabilities to compete for employment on a more level playing field. Based on current hiring patterns and anticipated increases from expanded outreach efforts and appropriate accommodations, the Federal Government, over the next five years, will be able to hire 100,000 qualified individuals with disabilities. In furtherance of such efforts, federal agencies shall:

3 Section 2

DRAFT  
7-18-2000

Executive Order

11:00 am

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~~OPPORTUNITY FOR~~  
INCREASING THE ~~NUMBER OF~~ INDIVIDUALS WITH  
DISABILITIES EMPLOYED IN THE FEDERAL GOVERNMENT  
TO BE

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote an increase in the ~~representation of~~ opportunities for qualified individuals with disabilities to be employed at all levels and occupations of the Federal Government, and to support the goals articulated in § 501 of the Rehabilitation Act of 1973 as amended, it is hereby ordered as follows:

follows:

Federal Employment Opportunities for  
Section 1. Increase the Number of Hires of Individuals with Disabilities.

See insert A,  
attached.

~~(a) The Federal Government shall hire 100,000 qualified individuals with disabilities over 5 years into the full range of levels and occupations of the Federal Government. To achieve this goal, all Federal agencies shall:~~

- (1) use available hiring authorities, consistent with statute, regulation, and prior Executive Orders and Presidential Memoranda;
- (2) expand their outreach efforts, using both traditional and non-traditional methods; and
- (3) increase their efforts to accommodate individuals with disabilities.

(b) As a model employer, the Federal Government will take the lead in educating the public about employment opportunities available for individuals with disabilities.

(c) This ~~Order~~ does not require agencies to create new positions or to change existing qualification standards for any position.

Sec. 2. Implementation.

l.c.

opportunities for

Each Federal agency shall prepare a plan to increase the number of individuals with disabilities to be employed in the agency. Each agency shall submit that plan to OPM within 60 days from the date of this Order.

Sec. 3. Authority to Develop Guidance.

The Office of Personnel Management shall be authorized to develop guidance on the provisions of this Order to increase the number of individuals with disabilities opportunities for to be employed in the Federal Government.

Sec. 4. Judicial Review.

*l.c.* This Order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

THE WHITE HOUSE,

**U.S. DEPARTMENT OF JUSTICE  
OFFICE OF LEGAL COUNSEL  
WASHINGTON, D.C. 20530**

**FACSIMILE TRANSMISSION SHEET**

**DATE:** JULY 19, 2000

**FROM:** ROSEMARY HART  
SENIOR COUNSEL

**OFFICE PHONE:** 202/514-2027

**TO:** MAC REED  
OFFICE OF MANAGEMENT AND BUDGET  
FAX: 395-7294

MICHELLE ARONOWITZ  
OFFICE OF THE COUNSEL TO THE PRESIDENT  
FAX: 456-2256

**NUMBER OF PAGES: 8 (PLUS COVER SHEET)**

Mac and Michelle: Comments on "Reasonable Accommodation" EO and the two memoranda concerning individuals with disabilities.

**ANY QUESTIONS, PLEASE CONTACT OUR ADMINISTRATIVE OFFICE ON 514-2067  
OFFICE OF LEGAL COUNSEL FACSIMILE MACHINE NUMBER - 514-0563**

DRAFT  
7-18-2000  
11:00 a.m.

Executive Order

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REQUIRING FEDERAL AGENCIES TO ESTABLISH PROCEDURES  
TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION

By the authority invested in me as President by the Constitution and the laws of the United States of America, and in order to promote a model Federal workplace that grants (1) reasonable accommodations for individuals with disabilities in the application process for Federal employment; (2) reasonable accommodations that enable Federal employees with disabilities to perform the essential functions of a position; and (3) reasonable accommodations that enable Federal employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities, as required by the Rehabilitation Act of 1973, as amended, it is hereby ordered as follows:

Section 1. Establishment of Effective Written Procedures for to Facilitate the Provision of Reasonable Accommodation.

(a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation. The procedures are applicable to all employees with disabilities within the agency who request a reasonable accommodation. The agency may, in its discretion, establish different procedures for different components of <sup>the</sup> agency.

(b) As set forth in *Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities* (1998), effective written procedures for processing requests for reasonable accommodation should include the following:

- (1) Explain how an employee or job applicant initiates a request for reasonable accommodation, <sup>or provide any required</sup> ~~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 agency's written procedures;

(2) Specify to whom the request must be submitted and from whom the individual will receive a final decision;

(3) Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances;

(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 <sup>and (or?)</sup> 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 reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position, <sup>and</sup> in the case of reassignment to a lower graded position, <sup>give</sup> the agency <sup>has</sup> the option of providing pay retention because the action is not for personal cause;

(8) Provide that reasonable accommodation denials should be in writing and specify the reasons for denial;

(9) Insure that systems of record keeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulation.

(10) State that employees have the right to file a complaint in the event that their requests for reasonable accommodation are denied.

*Equal Employment  
Opportunity Commission  
(EEOC)*

Sec. 2. Submission of agency reasonable accommodation procedures to the EEOC

Within one year, each agency shall submit its procedures to the EEOC for comment.

Each agency shall further submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted.

Sec. 3. Collective Bargaining Obligations.

In adopting their reasonable accommodation procedures, agencies must honor their obligations to notify their collective bargaining representative(s) and bargain over such procedures to the extent required by law.

Sec. 3. Judicial Review.

This order is intended only to improve the internal management of the executive branch and is not intended to, <sup>and</sup> ~~not~~ <sup>not</sup> create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

Sec. 4. Implementation.

President's National?  
The <sup>^</sup>Presidential Task Force on the Employment of Adults with Disabilities shall be responsible for developing and implementing guidance to effectuate the provisions of this order.

THE WHITE HOUSE,

DRAFT  
7-18-2000  
11:00 a.m.

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Employing People with Significant Disabilities to Fill Federal Agency Jobs That Can Be Performed at Alternate Work Sites, Including the Home

enables (?)

Cutting edge telecommunications technology has recently made it possible for customer service "call/contact" centers to transmit voice and data to employees who are located at work sites other than the call/contact centers, employers' headquarters, or other centralized locations. Individuals employed as customer service representatives can work from their homes or any other accessible off-site location just as if they were working in the call /contact centers themselves. Technology also allows other types of work activities, such as the processing of insurance claims and financial transactions, to be carried out from such alternate work stations. Because of this technology, many of these customer service center and other work activities may operate more efficiently at off-site work stations.

how so?

The unemployment rate of individuals with significant disabilities is among the highest of disadvantaged groups in the nation. These individuals are an important untapped resource of talent and skills, and a key element in the capacity to sustain our historic economic growth. The increasing use of off-site work stations to carry out significant and competitive work activities provides a critical new source of employment opportunities for individuals with significant disabilities.

It is in the interest of the Federal government to utilize the skills of people with significant disabilities by recruiting them for appropriate off-site, home-based employment opportunities with Federal agencies, including employment as home-based customer service representatives linked to Federal customer service call /contact centers.

u.c. ✓

To harness the power of new technologies to promote Federal sector employment of people with significant disabilities and improve federal customer service representation. I direct executive departments and agencies as follows:

(a) Each head of an executive department or agency operating customer service call /contact centers shall conduct a Basic Feasibility Study to identify positions that can be relocated to home-based or other off-site facilities, and be filled by qualified individuals, including those with significant disabilities. This Basic Feasibility Study shall be completed and submitted to the Secretary of Labor within 90 days of this memorandum.

(b) Each head of an executive department or agency shall also conduct an Expanded Feasibility Study to identify the appropriateness of using home-based and other off-site positions to carry out other specific work activities, such as the processing of insurance

Question: Is the intent of this memo to identify positions that can be relocated and filled all of them w/ disabled individuals? If so, what is the authority?

claims and financial transactions, that could be accomplished by individuals with significant disabilities. This Expanded Feasibility Study shall be completed and submitted to the Secretary of Labor no later than 90 days from the date of this memorandum.

*qualified including those*

(c) If the head of a department or agency determines it is feasible and appropriate to establish home-based positions pursuant to the feasibility studies conducted under paragraphs (a) and (b) such head shall develop a Plan of Action and Implementation Guidelines that encourages the recruitment and employment of individuals with significant disabilities for such positions

*of this memorandum*

(d) The Plan of Action and Implementation Guidelines conducted and procedures established pursuant to this section shall be submitted to the Secretary of Labor within 120 days from the date of this memorandum. The implementation of the approved ~~plans~~ will be coordinated through the Secretary of Labor and the Director of the Office of Personnel Management.

*Plans*

*shall*

(e) In implementing this memorandum, agencies must honor their obligations to notify their collective bargaining representatives and bargain over such procedures to the extent permitted by law.

(f) This memorandum does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, its employees, or any other person.

THE WHITE HOUSE,

*Which section?  
Do you mean  
~~Set~~ or paragraph (c)?  
or this memorandum?*

DRAFT

7-18-2000

11:50 a.m.

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination.

(ADA)

✓ As we draw near the tenth anniversary of the Americans with Disabilities Act, we have much to celebrate. This landmark civil rights law has increased opportunities for employment, education, and leisure for millions of Americans. Our country is stronger as a result.

✓ As we celebrate the ADA, we cannot forget that it was built on the solid foundation of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended in 1978, which prohibits discrimination on the basis of disability in federal programs and activities. One important goal of section 504 is for the federal government to set an example for the rest of the country by being a model employer and providing exemplary service to its customers with disabilities. While this goal remains constant, the nature and structure of government have changed in the decades since the inception of section 504. New agencies have been formed, while others no longer exist. Government is more efficient and doing more with less.

✓✓ The time has come to reaffirm the federal government's commitment to ensuring that agencies' programs are free from discrimination. The means we use to accomplish our goals should be tailored to the changing nature of government.

upper case

I call upon the Department of Justice, the Equal Employment Opportunity Commission, the Interagency Disability Coordinating Council (IDCC), and the Presidential Task Force on Employment of Adults with Disabilities to provide leadership to ensure that all agencies meet a common goal: to ensure that today's federal programs — including programs of employment — continue to be readily accessible to and usable by persons with disabilities.

President National

Federal

in meeting their

To meet this goal, I hereby direct all agencies to engage in a Five Year Plan. Under this Five Year Plan, agencies will follow guidance to be provided by the Department of Justice and the Equal Employment Opportunity Commission (EEOC) to evaluate agency programs, activities, and facilities for compliance with sections 501 and 504 of the Rehabilitation Act, set targeted goals consistent with priorities developed by the Department of Justice and the EEOC, and implement all actions necessary to achieve those goals, within the next five years. As the initial steps in the Five Year Plan, agencies are directed to do the following:

- make all programs offered on their Internet and Intranet sites accessible to people with disabilities by July 27, 2001; and
- publish by various means, including by incorporation on all agency Internet home

pages, the name and contact information for the office(s) responsible for coordinating the agency's compliance with sections 501 and 504 of the Rehabilitation Act.

*President's National*

I furthermore direct the Department of Justice and the Equal Employment Opportunity Commission, in close consultation with the IDCC and the ~~Presidential~~ Task Force on Employment of Adults with Disabilities, to develop priorities and establish ~~for~~ the Five-Year Plan under which agencies will focus on specific programs or types of programs to ensure that they are readily accessible to persons with disabilities.

I direct the IDCC to coordinate executive agencies' efforts to make the federal government's electronic and information technology accessible to persons with disabilities.

*u.c.  
u.c.*

I designate the following persons to participate in the IDCC, in addition to those members set out by statute (29 U.S.C. § 794c):

- The Administrator of the General Services Administration
- The Secretary of Defense

These steps will enable federal agencies to work together as they renew their ongoing commitment to ensure that federal programs do not discriminate against people on the basis of disability.

*of November 2, 1980,*

Nothing in this memorandum is intended in any way to limit the effect or mandate of Executive Order 12250, which conveys certain authorities upon the Attorney General, or Executive Order 12067, which conveys certain authorities upon the Chair of the Equal Employment Opportunity Commission.

This memorandum is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

*of June 30, 1978*

THE WHITE HOUSE,



# EEOC fax

U. S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
OFFICE OF COMMUNICATIONS AND LEGISLATIVE AFFAIRS  
1801 L STREET, N.W.  
WASHINGTON, D. C. 20507  
FAX: (202) 663-4912

DATE: 7/19/00 TIME: \_\_\_\_\_

TO: MAC REED

FAX NUMBER: 395 - 7294

SENDER: Bill White

SENDER'S TELEPHONE NUMBER: (202) 663 - 4911

DOCUMENT: \_\_\_\_\_

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER): 13

SPECIAL INSTRUCTIONS: \_\_\_\_\_

PLEASE TELEPHONE SENDER IF YOU DO NOT RECEIVE ALL DOCUMENTS.



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
Washington, D.C. 20507

July 19, 2000

**MEMORANDUM**

TO: Mac Reed  
General Counsel's Office  
Office of Management and Budget

FROM: William J. White, Jr. *William J. White, Jr.*  
Acting Director  
Office of Communications and Legislative Affairs

SUBJECT: Draft Executive Orders and Memoranda

This memoranda sets forth our comments on the four documents which were circulated yesterday.

*25/2*  
First, we suggest that the proposed Executive Order to Increase the Number of Individuals with Disabilities Employed in the Federal Government add, after the first sentence in Section 1 (a): "The Federal Government shall strive to achieve the goal that at least 25% of the individuals hired should be qualified individuals who have severe disabilities."

*which one*  
Second, regarding the proposed Memorandum Regarding Employing People with Significant Disabilities to Fill Federal Agency Jobs That Can Be Performed at Alternate Work Sites, Including the Home, we recommend the following: The first sentence should be modified by adding the following at the beginning of the sentence *ok* ("While it is recognized that most people with severe disabilities can work at the employer's work site, > . ." Also, please replace the phrase "significant disabilities" with "severe disabilities." Severe is the term used in the literature and studies in this area.

Third, we have substantial comments on the draft Executive Order Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation. We describe below the reasons for the changes we propose; we have also attached redlined and clean copies of the draft with our modifications in place.

- **Paragraph (a).** We strongly recommend that the language of the paragraph be modified to make clear that these procedures are intended to benefit individuals with disabilities, and not to create new bureaucratic requirements. We also propose adding a requirement that agencies draft the procedures in plain language that will be readily comprehensible to

people with disabilities, and adding language to make clear that the changes agency components are authorized to make are those designed to streamline the process.

- **Paragraph (b)(1).** To ensure consistency with Rehabilitation Act requirements, we recommend modifying the language to make clear that requests for reasonable accommodation may be made orally or in writing.
- **Paragraph (b)(2).** We propose modifying the language to avoid any implication that agencies may establish rigid requirements that individuals with disabilities must follow in requesting reasonable accommodations. The law is clear that employees must retain flexibility in this regard.
- **Paragraph (b)(3).** We think it important that agencies make decisions on requests for accommodation as quickly as possible. We have added proposed language that makes this point.
- **Paragraph (b)(4).** The Rehabilitation Act permits agencies to request medical information from individuals requesting accommodation only where the disability and/or the need for accommodation is not obvious. We have added language to ensure that this paragraph conforms to these legal requirements.
- **Paragraph (b)(7).** Because the paragraph refers to reassignment to a lower-graded position, we recommend adding language to ensure that agencies are aware of the legal requirement that individuals with disabilities be reassigned to a position at the same pay and grade level where such a position is available. This will make the paragraph consistent with the requirements of the Rehabilitation Act, as set forth in EEOC's Enforcement Guidance on Reasonable Accommodation.
- **Paragraph (b)(9).** We believe that existing systems of recordkeeping are likely to be insufficient to track requests for reasonable accommodation. We believe that this tracking is important and that the Order should require it.
- **Paragraph (b)(10).** We believe that agencies should have in place an informal procedure, separate from the EEO complaint procedure, for individuals with disabilities to request reconsideration of denials of reasonable accommodation. Such an informal procedure would be particularly useful in circumstances in which routine requests for accommodation -- such as having an interpreter for an office meeting -- are denied, and the error can be corrected without triggering the more cumbersome EEO complaint process. The informal procedure must, however, be separate from the EEO complaint process to ensure that the rights of individuals with disabilities are not compromised if they pursue a request for reconsideration in the first instance. To protect those rights, moreover, agencies must inform individuals with disabilities of their right to file EEO complaints. We have proposed modifications to the paragraph to include each of these concepts.

- **Section 2.** Because of resource constraints, the EEOC will not be able to comment on every agency's reasonable accommodation procedures; we thus propose deleting the clause requiring such comment. The EEOC will, however, do its best to review agency procedures. The Order should be amended to make clear that the EEOC has the authority to require modifications in agency procedures that do not comply with the Order. We have added language to this effect.
- **Section 3.** We suggest moving the language "to the extent required by law," to make clear that it modifies both the agency's obligation to notify its collective bargaining representatives and to bargain over accommodation procedures.
- **Section 4.** We propose adding language to make clear that nothing in the Order is intended to affect an individual's rights under the Rehabilitation Act. To ensure clarity, moreover, we suggest that the existing sentence of the paragraph be reworded to state that the Order does not "independently" create any "new" rights or benefits. Because the paragraph does not in any way refer to judicial review, we further recommend substituting the word "Construction" in the title to make the title more descriptive of the section as a whole.
- **Section 5.** As the agency with enforcement authority over reasonable accommodation requirements, the EEOC is the appropriate agency to develop guidance under this Order. We propose changing the language of this paragraph accordingly.

Finally, we have significant concerns regarding the proposed Memorandum Regarding Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination. This Memorandum, which is based on work done in connection with the Presidential Task Force but was never fully vetted, would require EEOC to work with DOJ, the Interagency Disability Coordinating Council and the Presidential Task Force on the Employment of Adults with Disabilities to take a variety of steps in connection with federal programs and employment. This includes requiring the four entities to develop guidance for the Five-Year plans which are required under the Memorandum for agencies to come into compliance with sections 501 and 504 of the Rehabilitation Act.

*didn't they do this*

We are concerned that the draft Memorandum would impose requirements which would overlap with requirements currently existing under federal statute and would give certain agencies and entities authority over the enforcement of these requirements in a manner which would be inconsistent with such law. In particular, the draft Memorandum requires the creation of Five-Year plans which apply, *inter alia*, to federal sector employment and therefore overlap with requirements already in place under section 501. Moreover, EEOC has authority under section 501 of the Rehabilitation Act to enforce the Act's affirmative action requirements. However, this Memorandum appears to extend such enforcement authority to the Department of Justice, the Presidential Task Force and the IDCC. Such a change in enforcement authority cannot be effectuated through this Memorandum.

*enforcement*

In order to address these problems, we recommend the requirement of the ~~Five-Year~~ plan be deleted and that the directive focus on inter-agency coordination and planning, with an immediate emphasis on technology and information accessibility. We have attached a draft proposal to this effect.

## EXECUTIVE ORDER

- - - - -

## REQUIRING FEDERAL AGENCIES TO ESTABLISH PROCEDURES TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION

By the authority invested in me as President by the Constitution and the laws of the United States of America, and in order to promote a model Federal workplace that grants: (1) reasonable accommodations for individuals with disabilities in the application process for Federal employment; (2) reasonable accommodations that enable Federal employees with disabilities to perform the essential functions of a position; and (3) reasonable accommodations that enable Federal employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities, as required by the Rehabilitation Act of 1973, as amended, it is hereby ordered as follows:

Section 1. Establishment of Effective Written Procedures to Facilitate the Provision of Reasonable Accommodation.

(a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. The procedures should be clearly drafted in plain language and should permit flexibility in processing each accommodation request so that unnecessary burdens are not imposed on individuals with disabilities. Different components of an agency may tailor their procedures as necessary to ensure the expeditious processing of requests.

(b) As set forth in *Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities* (1998), effective written procedures for processing requests for reasonable accommodation should do the following:

1. Explain that an employee or job applicant may initiate a request for reasonable accommodation orally or in writing. If the agency requires an applicant or employee to complete a reasonable accommodation request form for recordkeeping purposes, the form must be provided as an attachment to the agency's written procedures.

2. Explain how the agency will process a request for reasonable accommodation; the role and responsibility of each agency official or office involved in considering the request; and from whom the individual will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. Time limits for decisionmaking should be as short as reasonably possible.

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 where the disability and/or need for accommodation is not obvious.

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 reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. Reassignment should be made to a position at the same pay grade level, if available. 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.

8. Provide that reasonable accommodation denials will be in writing and specify the reasons for denial.

9. Ensure that systems of record keeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulation.

10. Establish an informal process for individuals with disabilities to request prompt reconsideration of denials of reasonable accommodation. Agencies must also inform individuals with disabilities that they have the right to file complaints in the EEO process if their requests for reasonable accommodation, or requests for reconsideration, are denied.

## Section 2. Submission of agency reasonable accommodation procedures to the EEOC.

Within one year, each agency shall submit its reasonable accommodation procedures to the EEOC. Each agency shall further submit to the EEOC any modifications to its procedures at the time that those modifications are adopted. The EEOC is authorized to require modifications to an agency's procedures as necessary to ensure compliance with the requirements of this order.

## Section 3. Collective Bargaining Obligations.

In adopting their reasonable accommodation procedures, agencies must honor their obligations, to the extent required by law, to notify their collective bargaining representative(s) and bargain over such procedures.

## Section 4. Construction.

Nothing in this order limits the rights that individuals with disabilities may have under the Rehabilitation Act of 1973. This order is intended only to improve the internal management of the

executive branch and is not intended to, nor does it, independently create any new right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

Section 5. Implementation.

The EEOC shall be responsible for developing guidance to effectuate the provisions of this order.

## REQUIRING FEDERAL AGENCIES TO ESTABLISH PROCEDURES TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION

By the authority invested in me as President by the Constitution and the laws of the United States of America, and in order to promote a model Federal workplace that grants: (1) reasonable accommodations for individuals with disabilities in the application process for Federal employment; (2) reasonable accommodations that enable Federal employees with disabilities to perform the essential functions of a position; and (3) reasonable accommodations that enable Federal employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities, as required by the Rehabilitation Act of 1973, as amended, it is hereby ordered as follows:

### Section 1. Establishment of Effective Written Procedures for to Facilitate the Provision of Reasonable Accommodation.

(a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation. ~~The procedures are applicable to all by employees and applicants with disabilities within the agency who request a reasonable accommodation. The agency may, in its discretion, establish different procedures for different. The procedures should be clearly drafted in plain language and should permit flexibility in processing each accommodation request so that unnecessary burdens are not imposed on individuals with disabilities.~~ Different components of its an agency may tailor their procedures as necessary to ensure the expeditious processing of requests.

(b) As set forth in *Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities* (1998), effective written procedures for processing requests for reasonable accommodation should include the following:

1. Explain ~~how~~ that an employee or job applicant may initiates a request for reasonable accommodation orally or in writing. If the agency requires an applicant or employee to complete a reasonable accommodation request form for recordkeeping purposes, the form must be provided as an attachment to the agency's written procedures.

2. ~~Specify to whom the request must be submitted~~ Explain how the agency will process a request for reasonable accommodation; ~~the role and responsibility of each agency official or office involved in considering the request;~~ and from whom the individual will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. Time limits for decisionmaking should be as short as reasonably possible.

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 where the disability and/or need for accommodation is not obvious.

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 reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. ~~Reassignment should be made to a position at the same pay grade level, if available. 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.~~

8. Provide that reasonable accommodation denials should ~~be~~ be in writing and specify the reasons for denial.

9. <sup>Agencies</sup> ~~insure~~ Ensure that systems of record keeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulation.

~~10. State that employees~~ <sup>Encourage the use of informal dispute resolution processes to allow</sup> ~~dispute resolution.~~ <sup>existing agencies informal</sup>

10. Establish an ~~informal~~ <sup>obtain</sup> process for individuals with disabilities to ~~request~~ prompt reconsideration of denials of reasonable accommodation. Agencies must also inform individuals with disabilities that they have the right to file a complaint in the event that EEO process if their requests for reasonable accommodation, or requests for reconsideration, are denied.

Section 2. Submission of agency reasonable accommodation procedures to the EEOC.

Within one year, each agency shall submit its reasonable accommodation procedures to the EEOC ~~for comment.~~ Each agency shall further submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted. The EEOC is authorized to require modifications to an agency's procedures as necessary to ensure compliance with the requirements of this order.

~~NO~~ Not appropriate place to expand EEOC authority

Section 3. Collective Bargaining Obligations.

In adopting their reasonable accommodation procedures, agencies must honor their obligations, to the extent required by law, to notify their collective bargaining representative(s) and bargain over such procedures ~~to the extent required by law.~~

Section 4. Judicial Review.

Is this consistent with other policies. required/permitted strong w/ OPM checks w/ Suzanne

——Construction.

Nothing in this order limits the rights that individuals with disabilities may have under the Rehabilitation Act of 1973. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, independently create any new right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

Section 5. Implementation.

~~The Presidential Task Force on the Employment of Adults with Disabilities~~EEOC shall be responsible for developing ~~and implementing~~ guidance to effectuate the provisions of this order.

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination.

As we draw near the tenth anniversary of the Americans with Disabilities Act, we have much to celebrate. This landmark civil rights law has increased opportunities for employment, education and leisure for millions of Americans. Our country is stronger as a result.

As we celebrate the ADA, we cannot forget that it was built on the solid foundation of the Rehabilitation Act of 1973, 29 U.S.C. §§ 791 et seq., which, among other things, prohibits discrimination on the basis of disability in federal programs and activities. One important goal of the Rehabilitation Act is for the federal government to set an example for the rest of the country by being a model employer and providing exemplary service to its customers with disabilities. While this goal remains constant, the nature and structure of government have changed in the decades since the enactment of the Rehabilitation Act. New agencies have been formed, and new federal programs developed, while others no longer exist. Government is more efficient and doing more with less.

The time has come to reaffirm the federal government's commitment to ensuring that agencies' programs are free from discrimination. The means we use to accomplish our goals should be tailored to the changing nature of government.

I call upon the Department of Justice, the Equal Employment Opportunity Commission, the Presidential Task Force on Employment of Adults with Disabilities, and the Interagency Disability Coordinating Council (IDCC), established by 29 U.S.C. § 794(c), to provide leadership to ensure that all agencies meet a common goal: to ensure that today's federal programs – including programs of employment – continue to be readily accessible to and usable by persons with disabilities.

To meet this goal, I hereby direct the Department of Justice and the Equal Employment Opportunity Commission, in close consultation with the IDCC and the Presidential Task Force on Employment of Adults with Disabilities, to develop priorities under which agencies will focus on specific programs or types of programs to ensure that they are readily accessible to persons with disabilities. As the initial steps, agencies are directed to do the following:

- make all programs offered on their Internet and Intranet sites accessible to people with disabilities by July 27, 2001; and
- publish by various means, including by incorporation on all agency Internet home pages, the name and contact information for the office(s) responsible for coordinating the agency's compliance with sections 501 and 504 of the Rehabilitation Act.

I direct the IDCC to coordinate executive agencies' efforts to make the federal government's electronic and information technology accessible to persons with disabilities.

*In accordance w/ the requirements of 501 504 + 508 of the Rehabilitation Act.*

I designate the following person to participate in the IDCC, in addition to those members set out by statute:

- The Administrator of the General Services Administration
- The Secretary of Defense

These steps will enable federal agencies to work together as they renew their ongoing commitment to ensure that federal programs do not discriminate against people on the basis of disability.

Nothing in this memorandum is intended in any way to limit the effect or mandate of Executive Order 12250, which conveys certain authorities upon the Attorney General, or Executive Order 12067, which conveys certain authorities upon the Chair of the Equal Employment Opportunity Commission.

This memorandum is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE

# Office of General Counsel

U.S. Department of Transportation  
 400 Seventh Street, S.W.  
 C-40, Room 10100  
 Washington, D.C. 20590  
 Telephone: (202)366-4687  
 Telefax: (202)366-7153

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TO: Mac Reed FROM: Jane DeCell  
 DOT  
 366-9299

FAX #:

Number of pages (including this page)	4
DATE AND TIME	7/20/00 - 11:30 AM
DATE COMMENTS / RESPONSE (IF ANY) ARE DUE	

Remarks:

DOT comments on ADA  
 Executive orders

**DeCell, Jane**

---

**From:** DOT.LEGISLATION <OST>  
**Sent:** Thursday, July 20, 2000 11:26 AM  
**To:** 'McGavick\_D.\_Reed@omb.eop.gov'  
**Cc:** DeCell, Jane; Tochen, David; Brenman, Marc; Hallahan, Kate; Knapp, Lindy; Allen, Melissa  
**Subject:** FW: E.O., Individuals with Disabilities; E.O., Reasonable Accommodation; Memorandum One, Home-Based Representatives; Memorandum Two, Free from Disability-based Discrimination

-----  
**From:** DOT.LEGISLATION <OST>  
**Sent:** Wednesday, July 19, 2000 5:12 PM  
**To:** DOT.LEGISLATION <OST>  
**Cc:** DeCell, Jane  
**Subject:** RE: E.O., Individuals with Disabilities; E.O., Reasonable Accommodation; Memorandum One, Home-Based Representatives; Memorandum Two, Free from Disability-based Discrimination

#### Department of Transportation Comments

Re: Draft E.O. - Increasing the Number of Individuals with Disabilities Employed in the Federal Government  
 Draft E.O. - Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation  
 Draft Memorandum - Employing People with Significant Disabilities to Fill Federal Agency Jobs That can Be Performed at Alternate Work Sites, Including the Home  
 Draft Memorandum - Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination

The Department of Transportation has reviewed the draft executive order "Increasing the Number of Individuals with Disabilities Employed in the Federal Government," the draft executive order "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation," the draft memorandum "Employing People with Significant Disabilities to Fill Federal Agency Jobs That can Be Performed at Alternate Work Sites, Including the Home," and the draft memorandum "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination," and supports the policies contained in these documents.

The Department has the following comments. The proposed EO "Increasing the Number of Individuals With Disabilities Employees in the Federal Government" contains a provision in Section 2 that "Agencies must honor their obligations to notify their collective bargaining representative(s) and bargain over such procedures to the extent required by law." We support adding similar language concerning labor relations obligations in the proposed memo "Employment of People with Significant Disabilities by Federal Agencies to Serve as Home-based Customer Service Representatives and in Other Remote Off-site Work Stations." Setting up remote work stations can impact conditions of employment for bargaining unit positions and it is appropriate to note union obligations in the draft memorandum.

With regard to the draft Executive Order "Increasing the Number of Individuals with Disabilities Employed in the Federal Government," while DOT did not participate in developing the 100,000 target figure, we note that agency allocations take into consideration that agencies such as DOT, Justice, and Treasury have large numbers of positions with stringent medical qualifications that are not viable opportunities for disabled candidates. We further note that if we use welfare to work hiring percentages as a guide (i.e. DOT hires about 4% of the government-wide commitment) and our hiring patterns remain relatively constant, one out of every three DOT's hires over the next five years (excluding positions with medical requirements - i.e. air traffic controllers, law enforcement officers, etc.) might be disabled. While we are not opposing this potential impact, we did want to bring it to your attention.

The Department also notes that the time frame for submitting an agency plan to increase the number of qualified individuals with disabilities to OPM has been reduced from 90 days in the previous version to 60 days. While the Department would commit itself to meeting the deadline, it notes that this is a very tight time frame for developing and vetting a plan in an organization the size of DOT.

Following are our specific recommendations:

1. Sec. 2 of Hiring EO. "Each Federal agency shall prepare a plan to increase the number of individuals with targeted disabilities employed in the agency." Sec. 3: ""to increase the number of individuals with targeted disabilities employed..."
2. Sec. 1 (a) (4) "improve their efforts to retain, promote, and advance the career opportunities of employees with disabilities." SAM
3. Reas Accommo EO, Sec. 1 (b) 10, add to end of sentence, "and that retaliation for

participation in the complaint process and for requesting a reasonable accommodation is prohibited by law."

4. 60 days. In Sec. 2. of Reas. Accommo EO. New last sentence: "EEOC shall respond to agencies with comments within 60 days of receiving their procedures."

5. Renewing Commitment Memo, para. 5, new first sentence: "To meet this goal, I hereby direct all agencies to complete the activities required in the Memorandum within five years of its date." Delete all mentions of the phrase "Five Year Plan" and substitute, "Plan."

We also note the following technical items:

Page one of "Increasing the Number of Individuals with Disabilities Employed in the Federal Government," third to last line, "order" should be lower case.

Page two of "Increasing the Number of Individuals with Disabilities Employed in the Federal Government," in line two, the full agency title, "Office of Personnel Management," should be used in place of the acronym "OPM," as is the case with the first line of section three. Page three of "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation," second to last line, delete word "the" before Employment.

FAX TRANSMITTAL SHEET  
CROSS-CUTTING ISSUES LAW OFFICE  
OFFICE OF GENERAL COUNSEL  
ENVIRONMENTAL PROTECTION AGENCY

TO: Mac Reed  
Ofc #: 395-3563  
Fax #: 395-7294

FROM: Craig Annear  
Ofc #: 202-564-5538  
Fax #: 202-564-5541

Pages: 4 (including this cover sheet)

Date: 7/19/2000

Mac - 20  
8:30am



EPA's comments on the two proposed executive orders and two draft Presidential memoranda concerning the Rehabilitation Act are attached. Please call if you have questions. Thanks.

Craig Annear

*Sorry I couldn't get this to  
ya last night. Craig*



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 20 2000

OFFICE OF  
GENERAL COUNSEL

MEMORANDUM

SUBJECT: EPA Comments on Two Proposed Executive Orders and Two Draft Presidential Memoranda Relating to Employment of, and Access by, Individuals with Disabilities

FROM: James C. Nelson *JCN*  
Associate General Counsel  
Cross-Cutting Issues Law Office (2322A)

TO: Robert G. Damus  
General Counsel  
Office of Management and Budget

On behalf of the Environmental Protection Agency, I am providing a response to your July 14 request for comments and your July 18 revised request for review. We have several comments, categorized by document.

A. *Proposed Executive Order Entitled "Increasing the Number of Individuals with Disabilities Employed in the Federal Government"*

*Legal memo necessary* In revising the draft order, the Office of Domestic Policy removed the word "qualified" before "individuals with disabilities" in the title, while leaving it in the first sentence of Section 1(a). We recommend that "qualified" be reinserted in the title and be added before "individuals with disabilities" each time that term appears, i.e., in the Preamble; in the title of Section 1; in Section 1(b); in Section 2; and in Section 3.

B. *Proposed Executive Order Entitled "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation"*

- Similar to our comment above, we recommend adding "qualified" before "employees with disabilities" in Section 1(a).



- Section 1 (b)(7) (originally 1(b)(9)) should be revised. As written, it appears to diminish the effect of the current relevant provisions regarding reassignment in the EEOC regulations at 29 C.F.R. § 1614.203(g). The first sentence should be rewritten to read:

✓ 7  
"Provide that reassignment to a funded vacant position located in the same commuting area and serviced by the same appointing authority, the essential functions of which the individual would be able to perform with reasonable accommodation if necessary, will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position, unless the agency can demonstrate that the reassignment would impose an undue hardship on the operations of its program."

(It may be preferable to make reference to the need to comply with 29 C.F.R. § 1614.203(g), rather than fully reciting here several of its provisions).

1  
- Also with respect to Section 1(b)(7), we have concerns with regard to the pay retention option described in the last sentence. This option appears to fly in the face of merit principles in that an employee who is unable to do his or her job at a particular grade could still enjoy a higher salary without performing commensurate work solely because of a disability. In addition, if the President would like pay retention to be part of a reasonable accommodation as a matter of policy, such a decision should not be a matter of discretion. We suggest deletion of the last sentence of this section.

- The new provision in Section 5 would assign the Presidential Task Force on Employment of Adults with Disabilities responsibility for developing and implementing guidance to effectuate the provisions of this executive order. Notwithstanding that provision, we recommend that EEOC be tasked with the responsibility of drafting model written procedures for processing requests for reasonable accommodation. This would serve the goals of promoting consistency across federal agencies and of ensuring compliance with the Rehabilitation Act. Agencies could then adapt the model for their own use, taking into account their unique authorities and activities. If this comment is accepted, the one-year deadline in Section 2 should be modified so the year starts to run after EEOC publishes its model.

C. *Draft Presidential Memorandum Entitled "Employing People with Significant Disabilities to Fill Federal Agency Jobs That Can Be Performed at Alternate Work Sites, Including the Home"*

- Throughout the document, the term "significantly disabled" is used. This term, however, is not defined in the memorandum and does not have independent legal meaning under the Rehabilitation Act, the Americans With Disabilities Act or implementing EEOC regulations. We suggest that the term be defined or revised.

- We assume that there is no intent, through this draft order, to modify agency obligations under the FAIR Act. A clarification would be helpful.

D. *Draft Presidential Memorandum Entitled "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-based Discrimination."*

- The memorandum could be read to state that Section 504 of the Rehabilitation Act prohibits disability discrimination in federal government employment. There is a question as to whether or not Section 504 of the Rehabilitation Act prohibits such discrimination. Some sources contend that only section 501 prohibits disability discrimination in federal government employment. To avoid this issue, we suggest referring to the Rehabilitation Act in general, instead of referring to specific sections of the Act, in the memorandum.

Thank you for considering our comments. If you have any questions or would like to discuss this memorandum, please call me at 564-5532 or Craig Annear at 564-5538.

cc: Mac Reed

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NASA Headquarters  
300 E Street, SW  
Washington, DC 20546  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

# facsimile transmittal

To: Mac Reeb (OMB) Fax: 395-7294  
From: Doris Wojciarski (MSA) Date: 7/19/00  
Re: E.O. American Quality Act Pages: ((3) include cover sheets)  
CC: \_\_\_\_\_

- Urgent     For Review     Please Comment     Please Reply     Please Recycle



*Please forward, Thank You.*

Office of the General Counsel



National Aeronautics and  
Space Administration

Headquarters  
Washington, DC 20546-0001



July 19, 2000

Reply to Attn of:

GG

By Facsimile  
Mac Reed, Esq.  
Assistant General Counsel  
Executive Office of the President  
Office of Management and Budget  
Washington, DC 20503

Dear Mr. Reed:

Thank you for the opportunity to review the proposed Executive Orders and other documents to be issued in connection with the tenth anniversary of the Americans with Disabilities Act's passage. NASA supports the Act and the Administration's intent in reaffirming its commitment to the Act.

The draft Executive Order, "Increasing the Number of Individuals with Disabilities Employed in the Federal Government," would require Federal agencies to hire 100,000 qualified individuals with disabilities over 5 years. NASA supports the President's initiatives to improve the employment of persons with disabilities; however, we are concerned that the employment levels required may be unattainable. In order to meet this hiring goal, the Federal government will need to increase the hiring of persons with disabilities from an average of 5.5% per year to over 9% per year for the next 5 years. There is currently no relevant civilian labor force data available to enable agencies to determine the availability of persons with disabilities for the specific occupations most likely to have vacancies over that time period.

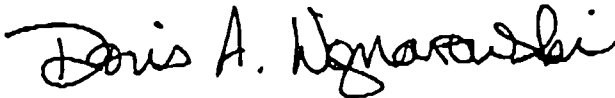
This is of particular concern to NASA because we employ a large population of scientists and engineers and will undoubtedly focus hiring opportunities on those professional and technical positions critical to the mission of the agency. In the absence of relevant civilian labor force data, we are concerned that the hiring goals established by the Administration may be too optimistic. Moreover, this lack of relevant labor force data makes the development of a recruiting and hiring plan within 60 days difficult.

The memorandum on "Employing People with Significant Disabilities to Fill Federal Agency Jobs That Can Be Performed at Alternate Work Sites, Including the Home" is somewhat confusing. The memorandum requires two feasibility studies. The first, a Basic Feasibility Study, shall be conducted only by agencies operating customer service call/contact centers. The second, an Expanded Feasibility Study, presumably is to be conducted by all agencies but

the name, Expanded Feasibility Study, suggests the study has a precursor. In many agencies, it will not. Subparagraph (c) on the second page of this memorandum appears to presume that if a study determines that work can feasibly be done at home or sites other than a Federal office and by persons with significant disabilities, the agency will be creating new positions. The latter does not necessarily follow from the former. In addition, we are concerned that the requirement to complete the studies within 90 days of the memorandum does not provide ample time to plan and implement a meaningful study.

Finally, the memorandum on "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination" does not include a reference to section 508 of the Rehabilitation Act of 1973, as amended, although the substance of the memorandum is focused on information technology accessibility, as is section 508. Also, the first full paragraph on page two of the memorandum appears to be an incomplete thought.

Again, thank you for the opportunity to review and comment on these Presidential documents.



Doris A. Wojnarowski  
Associate General Counsel (General Law)



UNITED STATES  
OFFICE OF PERSONNEL MANAGEMENT  
WASHINGTON, D.C. 20415

Office of Congressional Relations  
Legislative Analysis Staff

Fax: (202) 606-2526

Office: (202) 606-1424

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TELECOPIER TRANSMITTAL SHEET

---

FROM: C.C. Christensen

TO: Mac Reed

Receiving Telecopier Number: 395-7294

Pages sent (including transmittal sheet): 11

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Mac,  
In addition to these edits, please remove the last line in Sect. 7 in reasonable accommodation eo. We will provide guidance to agencies on pay retention.  
cc

DRAFT  
7-18-2000  
11:00 AM

Executive Order

-----

**INCREASING THE NUMBER OF INDIVIDUALS WITH  
DISABILITIES EMPLOYED IN THE FEDERAL GOVERNMENT**

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote an increase in the representation of individuals with disabilities employed at all levels and occupations of the Federal Government, and to support the goals articulated in § 501 of the Rehabilitation Act of 1973 as amended, it is hereby ordered as follows:

Section 1. Increase the Number of Hires of Individuals with Disabilities.

(a) The Federal Government shall hire 100,000 qualified individuals with disabilities over 5 years into the full range of levels and occupations of the Federal Government. To achieve this goal, all Federal agencies shall:

- (1) use available hiring authorities, consistent with statute, regulation, and prior Executive Orders and Presidential Memoranda;
- (2) expand their outreach efforts, using both traditional and non-traditional methods; and
- (3) increase their efforts to accommodate individuals with disabilities.

(b) As a model employer, the Federal Government will take the lead in educating the public about employment opportunities available for individuals with disabilities.

(c) This Order does not require agencies to create new positions or to change existing qualification standards for any position.

(Sec) 2. Implementation.

spell  
out

Each Federal agency shall prepare a plan to increase the number of individuals with disabilities employed in the agency. Each agency shall submit that plan to OPM within 60 days from the date of this Order.

spell  
out (Sec. 3. Authority to Develop Guidance.

The Office of Personnel Management shall be authorized to develop guidance on the provisions of this Order to increase the number of individuals with disabilities employed in the Federal Government.

spell  
out (Sec. 4. Judicial Review.

This Order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

THE WHITE HOUSE,

DRAFT  
7-18-2000  
11:06 a.m.

Executive Order

REQUIRING FEDERAL AGENCIES TO ESTABLISH PROCEDURES TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION

By the authority <sup>of</sup> invested in me as President by the Constitution and the laws of the United States of America, and in order to promote a model Federal workplace that <sup>provide</sup> grants: (1) <sup>reasonable</sup> accommodations for individuals with disabilities in the application process for Federal employment; (2) <sup>reasonable</sup> accommodations that enable Federal employees with disabilities to perform the essential functions of a position; and (3) <sup>reasonable</sup> accommodations that enable Federal employees with disabilities to enjoy <sup>equal</sup> benefits and privileges of employment <sup>equal to those</sup> as are enjoyed by employees without disabilities, as required by the Rehabilitation Act of 1973, as amended, it is hereby ordered as follows:

Section 1. Establishment of Effective Written Procedures for to Facilitate the Provision of Reasonable Accommodation.

(a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation. The procedures are applicable to all employees with disabilities within the agency who request a reasonable accommodation. The agency may, in its discretion, establish different procedures for different components of its agency.

(b) As set forth in *Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities* (1998), effective written procedures for processing requests for reasonable accommodation should include the following:

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 agency's written procedures.

2. Specify to whom the request must be submitted and from whom the individual will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances.

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 reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability 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 Remove.

8. Provide that reasonable accommodation denials should be in writing and specify the reasons for denial.

9. <sup>SE</sup> Insure that systems of record keeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulation.

10. State that <sup>individuals</sup> ~~employees~~ have the right to file a complaint in the event that their requests for reasonable accommodation are denied.

*spell out* Sec. 2. Submission of agency reasonable accommodation procedures to the EEOC.

*from the date of this Order*  
Within one year, each agency shall submit its procedures to the EEOC for comment.

Each agency shall further submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted, *by the agency.*

*spell out* Sec. 3. Collective Bargaining Obligations.

In adopting their reasonable accommodation procedures, agencies must honor their obligations to notify their collective bargaining representative(s) and bargain over such procedures to the extent required by law.

*spell out 5* Sec. 4. Judicial Review.

This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

*spell out 4* Sec. 5. Implementation.

The Presidential Task Force on the Employment of Adults with Disabilities shall be responsible for developing and implementing guidance to effectuate the provisions of this order.

THE WHITE HOUSE,

DRAFT  
7-18-2000

11:00 AM

## MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

**SUBJECT:** Employing People with Significant Disabilities to Fill Federal Agency Jobs That Can Be Performed at Alternate Work Sites, Including the Home ✓

Cutting edge telecommunications technology has recently made it possible for customer service "call/contact" centers to transmit voice and data to employees who are located at work sites other than the call/contact centers, employers' headquarters, or other centralized locations. Individuals employed as customer service representatives can work from their homes or any other accessible off-site location just as if they were working in the call /contact centers themselves. Technology also allows other types of work activities, such as the processing of insurance claims and financial transactions, to be carried out from such alternate work stations. ~~Because~~ of this technology, many of these customer service centers and other work activities may operate more efficiently at off-site work stations. ✓

As a result

The unemployment rate of individuals with significant disabilities is among the highest of disadvantaged groups in the nation. These individuals are an important untapped resource of talent and skills, and a key element in the capacity to sustain our historic economic growth. The increasing use of off-site work stations to carry out significant and competitive work activities provides a critical new source of employment opportunities for individuals with significant disabilities.

It is in the interest of the Federal government to utilize the skills of people with significant disabilities by recruiting them for appropriate off-site, home-based employment opportunities with Federal agencies, including employment as home-based customer service representatives linked to Federal customer service call /contact centers.

To harness the power of new technologies to promote Federal sector employment of people with significant disabilities and improve federal customer service representation, I direct executive departments and agencies as follows: ✓

(a) Each head of an executive department or agency operating customer service call /contact centers shall conduct a Basic Feasibility Study to identify positions that can be relocated to home-based or other off-site facilities, and be filled by qualified individuals with significant disabilities. This Basic Feasibility Study shall be completed and submitted to the Secretary of Labor within 90 days of this memorandum.

(b) Each head of an executive department or agency shall also conduct an Expanded Feasibility Study to identify the appropriateness of using home-based and other off-site positions to carry out other specific work activities, such as the processing of insurance

claims and financial transactions, that could be accomplished by individuals with significant disabilities. This Expanded Feasibility Study shall be completed and submitted to the Secretary of Labor no later than 90 days from the date of this memorandum.

(c) If the head of a department or agency determines it is feasible and appropriate to establish home-based positions pursuant to the feasibility studies conducted under paragraphs (a) and (b), such head shall develop a Plan of Action and Implementation Guidelines that encourages the recruitment and employment of individuals with significant disabilities for such positions

(d) The Plan of Action and Implementation Guidelines conducted and procedures established pursuant to this section shall be submitted to the Secretary of Labor within 120 days from the date of this memorandum. The implementation of the approved plans will be coordinated through the Secretary of Labor and the Director of the Office of Personnel Management.

(e) In implementing this memorandum, agencies must honor their obligations to notify their collective bargaining representatives and bargain over such procedures to the extent permitted by law.

(f) This memorandum does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, its employees, or any other person.

Note: The Task Force should be prepared to provide samples of the various plans & studies.

THE WHITE HOUSE,

DRAFT  
7-17-2000  
11:00 a.m.

**MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES**

**SUBJECT: Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination.**

As we draw near the tenth anniversary of the Americans with Disabilities Act, we have much to celebrate. This landmark civil rights law has increased opportunities for employment, education, and leisure for millions of Americans. Our country is stronger as a result. (ADA)

As we celebrate the ADA, we cannot forget that it was built on the solid foundation of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended in 1978, which prohibits discrimination on the basis of disability in federal programs and activities. One important goal of section 504 is for the federal government to set an example for the rest of the country by being a model employer and providing exemplary service to its customers with disabilities. While this goal remains constant, the nature and structure of government have changed in the decades since the inception of section 504. New agencies have been formed, while others no longer exist. Government is more efficient and doing more with less.

The time has come to reaffirm the federal government's commitment to ensuring that agencies' programs are free from discrimination. The means we use to accomplish our goals should be tailored to the changing nature of government.

I call upon the Department of Justice, the Equal Employment Opportunity Commission, the Interagency Disability Coordinating Council (IDCC), and the Presidential Task Force on Employment of Adults with Disabilities to provide leadership to ensure that all agencies meet a common goal: to ensure that today's federal programs — including programs of employment — continue to be readily accessible to and usable by persons with disabilities. (DoJ) (EEOC)

To meet this goal, I hereby direct all agencies to engage in a Five Year Plan. Under this Five Year Plan, agencies will follow guidance to be provided by the Department of Justice and the Equal Employment Opportunity Commission (EEOC) to evaluate agency programs, activities, and facilities for compliance with sections 501 and 504 of the Rehabilitation Act, set targeted goals consistent with priorities developed by the Department of Justice and the EEOC, and implement all actions necessary to achieve those goals, within the next five years. As the initial steps in the Five Year Plan, agencies are directed to do the following:

- make all programs offered on their Internet and Intranet sites accessible to people with disabilities by July 27, 2001; and
- publish by various means, including by incorporation on all agency Internet home

pages, the name and contact information for the office(s) responsible for coordinating the agency's compliance with sections 501 and 504 of the Rehabilitation Act.

I furthermore direct <sup>DOJ</sup> the Department of Justice and <sup>PTFEAD</sup> <sup>EEOC</sup> the Equal Employment Opportunity Commission in close consultation with the IDCC and the Presidential Task Force on Employment of Adults with Disabilities, to develop priorities and establish for the Five-Year Plan under which agencies will focus on specific programs or types of programs to ensure that they are readily accessible to persons with disabilities.

I direct the IDCC to coordinate executive agencies' efforts to make the federal government's electronic and information technology accessible to persons with disabilities.

I designate the following persons to participate in the IDCC, in addition to those members set out by statute (29 U.S.C. § 794c):

- The Administrator of the General Services Administration
- The Secretary of Defense

These steps will enable federal agencies to work together as they renew their ongoing commitment to ensure that federal programs do not discriminate against people on the basis of disability.

Nothing in this memorandum is intended in any way to limit the effect or mandate of Executive Order 12250, which conveys certain authorities upon the Attorney General, or Executive Order 12067, which conveys certain authorities upon the Chair of the Equal Employment Opportunity Commission. <sup>EEOC</sup>

This memorandum is for the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

THE WHITE HOUSE,

reasonable accommodation request form, the form must be provided as an attachment to the agency's written procedures.

2. Specify to whom the request must be submitted and from whom the individual will receive a final decision.

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances.

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.

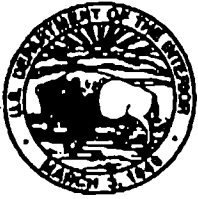
5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform 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 reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability 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.

8. Provide that reasonable accommodation denials should be in writing and specify the reasons for denial.

*For employees covered by 2 J U.S/C. 5361-5365, who are reassigned to a lower-graded position, the agency may provide pay retention because the action is not for personal cause. - and are otherwise eligible*



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240



Mr. Mac Reed  
Office of the General Counsel  
Executive Office of the President  
Office of Management and Budget  
Washington, D.C. 20503

JUL 19 2000

Dear Mr. Reed:

Thank you for the opportunity to provide comments on four proposed documents addressing the American Disabilities Act of 1990. We fully support the intent of the proposed actions. We have one recommendation and we have one comment. Both are provided below:

**Executive Order:** "Increasing the Number of Qualified Individuals with Disabilities Employed in the Federal Government"

**Recommendation:** Section 1(a) : Clarify the language to ensure that the hiring goal of 100,000 is not a quota. Revise the first line to read: The Federal Government should strive to hire 1000,000....."

**Memorandum:** "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination"

✓ **Comment:** We are concerned that the first bullet of the draft Memorandum "Renewing the Commitment...", which says, "Make all programs offered on their Internet and Intranet sites accessible to people with disabilities..." if followed literally would greatly reduce the impact and usefulness of many helpful web sites. There is no reason that agencies should not be allowed to show charts and graphs just because a tiny fraction of the population have trouble reading them -- it should be sufficient to make the information available in other formats if needed. There is no reason that publications should not be made available on the Internet just because they have not been redone without the charts and pictures -- it should be sufficient to offer assistance to those who need a different format.

If you have questions or need additional information, please call me on (202) 208-6193.

Sincerely,

Hazel A. Wilson