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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LABOR BRANCH FAX SHEET

DATE: 11/16TO: ERIC GOULDFROM: ALISON PERKINS-COHEN

COMMENTS: as per your request, attached are
the comments I've received so far
(including DOJ which I just received).
I'm ~~sending~~ faxing it in two batches.

1

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

November 15, 1999

MEMORANDUM

TO: Alison Perkins
 Legislative Reference Division
 Office of Management and Budget

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

SUBJECT: Presidential Task Force on Employment of Adults with Disabilities Draft
 Report "Re-charting the Course: If not now, when?"

The Equal Employment Opportunity Commission (EEOC) has reviewed the draft report of the Presidential Task Force on Employment of Adults with Disabilities and we provide the following comments.

✓ **Title of Report:**

As we understand it, the title, "Re-charting the Course: If Not Now, When?" is intended to convey the idea that this is the optimum time for improving the employment prospects of people with disabilities. However, as presently written, it is confusing and sets a tentative tone for the report. We suggest a declarative statement, e.g., "Re-charting the Course: The Time Is Now."

✓ **Letter to the President:**

Lines 6 and 7 - What does "attitude of inability" mean?

Forward:

Page 1, last paragraph - The chronology of the events discussed in the paragraph is confusing. We suggest that you discuss the Workgroups first and then move to a discussion of the Committees.

The Year at a Glance:

Page 7 - The entry for March 1 does not reflect the fact that EEOC's policy guidance on Reasonable Accommodation applies to the federal government. It should read as follows:

Page 2 of 3

EEOC releases policy guidance, "Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act," addressing the duty of employers, including federal agencies, to provide "reasonable accommodations" to applicants and employees with disabilities under Title I of ADA and section 501 of the Rehabilitation Act of 1973, as amended.

Page 8 - Insert a May 24 entry that reads as follows:

U.S. Supreme Court unanimously rules in Cleveland v. Policy Management Systems Corp. that individuals who apply for and receive Social Security Disability Insurance (SSDI) benefits are not precluded from pursuing an ADA claim of employment discrimination.

Page 10 - Insert a September 15 entry for commencement of work on an interim method for measuring the employment rate of adults with disabilities.

Executive Summary:

This is not an executive summary of the report. It is instead an essay about changes that are needed in disability policy and should be denominated as such.

Highlights of the Task Force Committee Reports:

Page 40, 1st Goal and Steps (at top of page) - Move Project Impact section to "Civil Rights" section because the project is primarily aimed at increasing awareness of civil rights for this culturally diverse population. Change goal to read: "Ensure that racial and ethnic minorities are aware of their civil rights in the workplace and remind the federal community of its responsibility to meet their unique cultural needs."

Page 41, 1st Goal and Steps (at top of page) - If the Committee develops "implementation strategies" for EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship, they should be issued in the form of recommendations to the EEOC.

Page 41, 3rd Goal and Steps (at bottom of page) - We are concerned that the Committee's development of "methods and forums" to ensure federal agencies' accountability for their Rehab Act obligations will conflict with the EEOC's draft Management Directive setting forth the agencies' affirmative action obligations. To ensure consistency, you should insert language in the last paragraph on page 41 that says that all policies developed by the Committee will be coordinated with the EEOC and will be consistent with EEOC policies.

Page 42, 1st Goal and Steps (at top of page) - It is not clear what sort of ADR program is being contemplated by the Committee. However, the Committee should be aware that the EEOC has just issued Management Directive 110 which, inter alia, requires all agencies to have ADR

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programs in place by January 2000. In addition, the Coordination and Enforcement subcommittee of the Civil Rights Committee will be working on accessibility issues in ADR programs. We should be careful to avoid duplicative efforts in this area.

Appendix A - Cornell University Study

Federal agencies are subject to the requirements of the Rehabilitation Act of 1973, as amended, while private employers are subject to the Americans with Disabilities Act. We have marked up the report to delete references to the ADA and to add references to the Rehabilitation Act in the sections on federal agencies, and to include references to both laws in the discussion comparing the federal and private sectors.

Page 9 - Agency Accommodation Structure: If the point here is that first line supervisors should be polled on whether there have been any accommodation requests, then it needs to be made more directly. As written, it is not clear what "further information gathering" is required.

Pages 10-12 - Change "mental health disabilities" to "mental disabilities."

Page 11 - Alternative Dispute Resolution: Are the drafters of the Cornell Report aware of Management Directive 110's requirement that all agencies have ADR programs in place by January 2000?

Appendix D

Page 84 - Add the following language to the end of the description of the Rehabilitation Act Amendments of 1992:

; and provided that ADA Title 1 standards shall be applied to determine whether there has been nonaffirmative action discrimination under the Rehabilitation Act.

We hope these comments are helpful. Our marked up pages of the report are attached.

Attachments

FOREWORD

If Not Now, When? The Second Report of the Presidential Task Force on Employment of Adults with Disabilities is proud to submit this second annual report to the President, Vice President and the general public for their review. This report highlights activities that have taken place since the release of the first report of the Task Force November, 1998, as mandated by Executive Order 13078. ✓

This report has the ~~unique opportunity to come~~ ^{a uniquely opportune} at a time when we are closing out a century and beginning a new millennium. In looking back over the course of time one is struck with the evolving nature of disability policy. ~~The majority of this change in policy and programs began with~~ ^{the passage} the passage of the Americans with Disabilities Act, signed into law on July 26, 1990, and has since been carried forth with the leadership and commitment of the Clinton/Coore Administration. The establishment of the Presidential Task Force on March 13, 1998, mandates the development of a forward-looking aggressive strategy that will lead our nation into the new millennium with policy that enables people with disabilities to take their rightful place in all aspects of society. The scope of the Executive Order is unique, and touches the jurisdiction of virtually all agencies of the federal government. The mission of the Task Force calls for changes in the systemic, structural and attitudinal barriers that continue to exclude adults with disabilities from employment. Its vision is a nation where individuals with disabilities have a real choice to work, where employers are helped to eliminate barriers to workforce entry and advancement, and where creativity and innovation are the basis for organizing jobs to meet ~~both~~ the needs of employers and their employees. This vision is a nation where employment opportunities include not just jobs, but careers. Ultimately the goal is a road out of poverty, experienced by an overwhelming number of people with disabilities - over 70% of whom are unemployed. ✓

A meeting of the Task Force was convened on December 14, 1998 by the Secretary of Labor, Alexis M. Herman, who serves as Chair of the Task Force, and Tony Coelho, Chair of the President's Committee on Employment of People with Disabilities, who serves as Vice-Chair. This meeting highlighted release of the first Task Force report, *Re-charting the Course*, which was issued on November 15, 1998. The report laid out a committee structure for Task Force members to begin putting a strategy in place to increase employment of adults with disabilities to a rate comparable to that of the nation's non-disabled population. ✓

The full Task Force endorsed the establishment of six Committees and one Subcommittee at the December 14th meeting. This Committee structure is designed to continue and expand the work of the Work Groups established under Section 2 of the Executive Order. The benefit of the collaboration and interagency activities resulting from these Work Groups was immediately obvious. As a result, Secretary Alexis Herman, Chair of the Task Force, and Tony Coelho, Vice-Chair, worked with other Task Force members to identify a Committee structure to carry on and expand the work of the Work Groups, and put a structure into place for the Task Force to accomplish its mission. The intent is to have this strategy in place by the time the Task Force is set to expire on July, 2002. ✓

These first activities of the Task Force laid the foundation for future initiatives enumerated in this second report: *If Not Now, When?* Executive Director Rebecca Ogle, was charged with providing leadership to coordinate and continually elevate the Task Force mandate and vision with Task Force Members government wide. Her responsibilities included ensuring that the Task Force was fully staffed, which was accomplished in March, 1999. The Committees formally began their work in April, with inaugural meetings held through the late spring and into early summer. Each Committee was asked to develop an action plan with short and longer term actions that would be undertaken through their respective agencies and in collaboration with each other, in order to address barriers to employment for people with disabilities and to begin developing their strategies for change. These plans, and their subsequent actions, contributed to reports developed by each Committee, which are summarized in Chapter One of this report.

In January, 1999, President Clinton formally endorsed the initial recommendations of the Task Force, as included in *Re-charting the Course*. The impressive support of and action on these recommendations by the President and his Administration is commendable. *The President included the budgetary implications of these initial Task Force recommendations in his proposed budget for Fiscal Year 2000.* This included:

- Proposal for full funding for The Work Incentives Improvement Act proposed by Senators Jeffords and Kennedy;
- Proposal of a \$1,000 tax credit to assist in paying work-related expenses for people with disabilities;
- proposal of \$50 million for a Work Incentives Grants program to promote coordination and integration of employment services at the state and local level;
- proposal of \$35 million for expanded access to information and communication technologies for employees in the federal government and support for new and expanded loan programs to make assistive technology more affordable for Americans with disabilities; and
- support of a strong Patient's Bill of Rights.

The Task Force notes with grave disappointment that Congressional action resulted in elimination of funding for the tax credit and the assistive technology proposals, and reduced funding for the Work Incentives Grants program.

The Task Force is proud that other recommendations are being acted on by the Administration. These include:

- elimination of the stricter standard applied to adults with psychiatric disabilities (versus other disabilities) in the ~~exempted~~ ^{earmarked} appointment process within the federal government, accomplished on June 4, 1999; ✓
- ~~an~~ increasing the substantial gainful activity (SGA) amount for people receiving Supplemental Security Income and/or Social Security Disability Insurance from \$500 to \$700 per month beginning June 1, 1999; ✓✓

- developing ^{ment of} a Model Plan to increase representation of adults with disabilities in the federal workforce, released on October 15, 1999 by the Office of Personnel Management (OPM); ✓
- developing ^{and beginning} implementation of an intensive new outreach campaign by the Small Business Administration to help people with disabilities start their own businesses. ✓✓

The Task Force began a multi-year effort in response to Section 2(g) of the Executive Order mandating that all executive agencies that are not members of the Task Force review their programs and policies to ensure that they are being conducted and delivered in a manner that facilitates and promotes the employment of adults with disabilities. This multi-faceted effort began with a survey of federal agencies to determine their response to employment discrimination, affirmative action, and accommodation requirements of the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended. The survey results document many positive accomplishments that have resulted in opening the door to employment of people with disabilities in the Federal workforce. They also describe persistent barriers and recommendations to increase the employment of adults with disabilities in Federal agencies. A summary of the report is included in Appendix.

In addition, Section 2(d) of Executive Order 13078 required that *"the Department of Housing and Urban Development...report to the Task Force on its programs to see if they can be used to create new work incentives and remove barriers to work for adults with disabilities."* On September 16, 1999, HUD submitted its report: *HUD: Opportunity for All - Jobs for Adults with Disabilities*, to the Chair and Vice-Chair of the Task Force. HUD's report addresses sixteen different issue areas and represents an action plan to promote adequate and affordable housing, economic opportunities and a living environment free of discrimination for adults with disabilities. A summary of the HUD report is included in Appendix X. The Task Force will address seriously the issues from this report as a priority during the coming year.

Throughout the summer and fall the Task Force continued acting on recommendations identified through the work of the Committees. As communication and collaboration increase, agencies are finding new and innovative ways to attack barriers that exclude people with disabilities from employment. The critical importance of technology across multiple Committee actions resulted in establishment of a cross-committee work group to begin mapping a coordinated strategy in this area. In addition, the importance of implementation of Section 255 of the Telecommunications Act was acknowledged on DATE, when William E. Kennard, Chairman of the Federal Communications Commission, was added to the Task Force, raising the number of Task Force members to fourteen. Additional recommendations for membership from Secretaries of the Departments of Housing and Urban Development, Agriculture and Interior are recommended by the Task Force in this second report.

Throughout the year the White House ensured that the need for increased employment of people with disabilities was elevated ^{both} through policy initiatives and other activities. In June, a White House Conference on Mental Health explored issues related to people with psychiatric disabilities. Policy recommendations from this landmark meeting are helping to guide the work of the Task

Force. Another June White House event honored individuals who have made exemplary contributions and demonstrated outstanding achievement for increasing public awareness about Americans with disabilities in the workforce, and an event on July 26th acknowledged the importance of anti-discrimination laws at an anniversary celebration of enactment of the Americans With Disabilities Act. A September 8th event provided the opportunity to increase understanding of multiple health care priorities of the Administration, including passage of the Work Incentives Improvement Act, the Patient's Bill of Rights, and the Long Term Care Tax Credit. These and other events continued throughout the year to demonstrate and elevate commitment to disability issues by the President.

In addition, through the leadership and extraordinary effort of Jonathan Young, Associate Director for Disability Outreach in the White House Office of Public Liaison, Americans across the nation have been continually apprized of these and other key happenings related to disability throughout the year. This included multiple events during the month of October, designated by the President as National Disability Employment Awareness Month. ✓

Recognizing that policy direction cannot be established in isolation, the Task Force held numerous Town Hall meetings to provide a forum for key stakeholders and interested persons to discuss their thoughts, concerns and experiences about employment for people with disabilities. The first Town Hall meeting, held in Los Angeles on June 3rd, focused on two key areas: expanding employment opportunities for youth with disabilities, and expanding self-employment and entrepreneurial opportunities. A second Town Hall was held in Birmingham on October 25th, focusing on civil rights laws such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, as amended. The testimony of women and minority participants at this meeting was of particular interest to Task Force members. A third Town Hall will be held on December 8th in Chicago, and will focus on issues related to employment for people with the most significant disabilities, including strategies for increasing choice and community-based employment and use of technology. Input from these Town Halls has been of invaluable assistance to the Task Force as it develops its strategy for eliminating barriers to employment. As a result, additional Town Hall meetings are planned throughout the year 2000.

In addition, the Task Force has made concerted effort to gather important information on innovative strategies to making employment a possibility. The Task Force convened numerous meetings throughout the year - reaching beyond the Beltway of Washington, D.C. to people with disabilities, employers and providers across the nation. These included summits on welfare-to-work, youth leadership, and ongoing state and local systems change initiatives, as well as outreach to particular disenfranchised groups, such as Native Americans. A Research Roundtable brought together for the first time federal agencies conducting research to begin to identify gaps and needed areas for future focus of federal discretionary dollars. The goal of these meetings was to identify specific policy-related actions for Task Force consideration, or to put a strategy into place to determine this information in these areas. These meetings began what will be an ongoing process for ensuring access to cutting-edge, policy-related information by the Task Force and its staff.

April 20 First Meeting of the Task Force Civil Rights Committee.

April 28 Public Event - Task Force Speaker: Annual meeting of the Illinois Coalition of Citizens with Disabilities

May Rehabilitation Services Administration and SSA host first joint meeting with systems change grantees to exchange project information and foster collaboration.

May Mental Health Month

May 2-5 Oakland, California - DOL Women's Bureau participates in first forum as part of a new project, "Global Strategies to Increase Employment of Women with Disabilities," a joint initiative of SSA and the Department of Education.

May 2-5 National Institute on Disability and Rehabilitative Research (NIDRR) annual project directors' meeting in Washington, DC introduces the six new employment-focused rehabilitation research and training centers.

May 6 First Meeting of the Task Force Federal Government as a Model Employer Committee.

First Meeting of the Task Force Access to Employment and Lifelong Learning Committee

May 10 - 12 Welfare to Work Forum - designed to bring together a wide range of views and experiences to discuss how best to approach disability and welfare issues, and any tie-ins to implementation of the Workforce Investment Act. Sponsors include the Task Force; Department of Labor's Welfare-to-Work office; Department of Education's Office of Special Education and Rehabilitative Services and Office of Vocational and Adult Education; HHS's Administration for Children and Families, President's Committee on Mental Retardation, and Substance Abuse and Mental Health Services Administration, SSA, National Council on Disability, and National Institute on Literacy.

May 21 Public Event - Task Force Speaker: Texas PASS Meeting

May 24 *12.5 Supreme Court unanimously rules in Cleveland v. Policy Management Systems Corp. that individuals who apply for and receive Social Security Disability Insurance (SSDI) benefits are precluded from pursuing an ADA claim of employment discrimination*

May 25 Public Event - Task Force Speaker: Special Olympics Symposium on Health, Education and Employment

June 3 Task Force Town Hall Meeting in Los Angeles, California: focus on youth with disabilities entering the workforce.

June 4 White House Event - President's Award to PCEPD honorees.

June 4 President Clinton signs an executive order ensuring that individuals with psychiatric disabilities are given the same hiring opportunities as persons with severe physical disabilities or mental retardation in the Federal workforce.

June 7 White House Mental Health Summit - President and Vice President announcements.

- Department of Transportation holds ADA Event, with Secretary of Transportation Rodney Slater announcing new departmental policy on accessibility as well as action items that will help ensure access to transportation for people with disabilities

July 27 National Workforce Development Research Symposium

August SSA establishes new Office of Employment Support Programs to improve service to people with disabilities who want to work: www.ssa.gov/work.

August SSA holds a training seminar, "Entrepreneurs with Disabilities: Challenges and Solutions," on ways SSA can assist beneficiaries who want to enter or re-enter the workforce through self-employment or small business start-ups.

August Small Business Administration and Department of Education produce a show featuring a successful, self-employed entrepreneur with a disability for the Public Broadcasting System's (PBS) "Small Business 2000" series. The show aired on about 200 public television stations and a copy was distributed to every SBA district office.

August 4-7 HHS Center for Disease Control and Prevention sponsors conference in Houston, Texas, "Promoting the Health and Wellness of Women With Disabilities"

August 12-13 DOL and RSA hold meeting on the Workforce Investment Act and disability, Philadelphia, Pennsylvania

September Task Force, Small Business Administration, and the President's Committee on Employment of People with Disabilities enter into a "Memorandum of Understanding" to increase entrepreneurial opportunities for people with disabilities by developing local networks of federal, state, and local agencies and private sector entities involved in promoting and financing small businesses and those serving people with disabilities.

September 2 Department of Labor releases new report, "Futurework: Trends and Challenges for Work in the 21st Century."

September 8 White House Health Care Event

September 10 Public Event - Task Force Speaker: Partners in Policymaking Workshop.

September 12-14 National School-to-Work Office convenes Second National School to Work Forum on the inclusion of youth with disabilities in school to work systems with 20 states participating.

September 15 *Commencement of work as an interim method for measuring the employment rate of adults with disabilities.*

September 17 Annual Family Forum of the American Academy of Cerebral Palsy and Developmental Medicine (AACPDMD) addressing the challenges and opportunities facing young people with disabilities and their families.

September 22 NCD/IDFA Event

State Partnership Systems Change Initiatives Symposium: Overcoming Barriers to Employment of People with Disabilities - agencies involved include SSA, DOL, RSA, and SAMHSA

What has become abundantly clear is that the shift in thinking and acting that is required to create systemic change is hard – particularly for agencies and systems that have for decades worked largely in isolation. Establishing new working patterns, establishing bridges where there have been walls, learning to share resources for the benefit of people with disabilities – these are major and difficult changes that require going to the root of how services and supports are organized and made available in our nation. As described by Wittgenstein (1980): *Getting hold of the difficulty deep down is what is hard. Because if it is grasped near the surface it simply remains the difficulty it was. It has to be pulled out by the roots; and that involves our beginning to think about things in a new way. ...* (Ludwig Wittgenstein (1980). *Culture and Value*. Oxford: Basil Blackwell, p. 43). President Clinton and Vice President Gore, the shift envisioned by the Task Force will require the systemic rethinking and redesign of many of our policies and practices. It will require coming to understand, embrace, and act on changes that go to the root of current policies and practices that act as barriers to employment and full community participation. The Task Force applauds your willingness to lead our nation into the next century with this critical charge.

The actions of Task Force members have already begun changing the way government thinks about, and does business with, people with disabilities and employers across the public and private sector. The Task Force is forging new working relationships to look deeply into policy and practice – to develop new ways of doing business that result in increased employment, choice, self-direction and economic independence for people with disabilities. Task Force members have begun to take short term actions and identify longer-term initiatives that will result in changes that are substantive, that go beyond the surface to the roots of our national infrastructure.

Through these collaborative efforts the foundation of a revolutionary strategy is beginning to emerge. It includes recognition of the need for expanding collaboration and partnership across the public and private sector. It includes de-medicalizing public policy so that people can get the supports they need, and increasing choice and direction for people with disabilities in how those supports are made available. It includes addressing the digital divide so that needed technology is available, accessible and affordable. It includes arming the grassroots with information so they can effectively partner with policymakers and leaders at the federal, state and local levels. It includes making the federal government an exemplary model for employment and support of people with disabilities. And it includes ensuring development of a new generation of leaders to continue the battle for equality and full participation for all people.

The Context for Change: Political Devolution, a Changing Workforce, Purchasing Power and the Right to Technology:

Political Context: Devolution of Government. Our nation is in the midst of a major shift in how government operates. According to Drucker, the shift is one that is transforming multiple aspects of how we live as a society. He states that *...every few hundred years throughout Western history, a sharp transformation has occurred. In a matter of decades, society altogether rearranges itself – its world view, its basic values, its social and political structure, its arts, its key institutions. Fifty years later a new world exists, and the people born into that world cannot even imagine the world in which their own grandparents were born. Our age is in such a period of transformation ...* (Drucker, *Harvard Business Journal*, 1991).

The transformation we are undergoing is one in which significant influence over public policy and its implementation is devolving to state and local government. Increasingly, federal dollars are flowing to states in blocks of funds – with fewer strings attached than in recent decades, providing an increase in control and power

ACCESS TO EMPLOYMENT AND LIFELONG LEARNING COMMITTEE – Technology, telecommuting, transportation, re-training, tax credits, needs of diverse cultural groups, the needs of individuals with the most significant disabilities, and ensuring both physical access and programmatic access to welfare-to-work programs and the Workforce Investment Act.

- **SUBCOMMITTEE ON EXPANDING EMPLOYMENT OPPORTUNITIES FOR YOUNG PEOPLE WITH DISABILITIES** – Programs for youth with disabilities and those that are supposed to serve all young adults but which have historically left out those with disabilities, as well as current transition policies under the Individuals with Disabilities Education Act.

CIVIL RIGHTS COMMITTEE – Americans with Disabilities Act (ADA) issues, as well as technology issues related to Section 508 of the Rehabilitation Act. *and Rehabilitation Act*

ECONOMIC INCENTIVES AND ENTREPRENEURSHIP COMMITTEE – Tax credits and other incentives that may be needed to help individuals move into jobs and self-employment.

FEDERAL GOVERNMENT AS A MODEL EMPLOYER COMMITTEE – Changes that Federal agencies can make to set an example for other employers and businesses.

HEALTHCARE AND INCOME SUPPORT COMMITTEE – Facilitating access to appropriate and affordable health benefits and services, including long term services and supports, and developing strategies for reducing and avoiding reliance on income support programs.

STATISTICS COMMITTEE – Exploring ways of collecting better data so as to implement new strategies, and policy and programmatic changes, that remove barriers to employment.

- A coordinated enforcement initiative targeting hiring discrimination related to unnecessary qualification standards in state and local laws, ordinances, regulations and professional certification requirements.
- An interagency coordination working group, ^{including} consisting of representatives from EEOC, DOJ, OFCCP, the Department of Education, and the Department of Health and Human Services, that is examining the implications of the recent Supreme Court decisions interpreting the ADA and developing a response strategy..
- ~~Enhance~~ ^(Improved and increased) training for investigators and attorneys across federal agencies on disability discrimination laws, and the development of targeted training materials in the area of discrimination faced by persons with disabilities who are non-English speakers and/or from diverse cultural and racial backgrounds.

GOAL: *Work with the Department of Transportation to implement regulations that do not discriminate against individuals with disabilities who are employed, or would like to be employed, by the nation's transportation carriers. [Civil Rights Committee]*

STEPS: The Civil Rights Committee reviewed the Department of Transportation's interstate commercial motor carrier driver qualifications which have served as absolute barriers to individuals with disabilities. The Committee's goal is to modify them to be more responsive to an individual's actual ability to perform the job while fostering the Federal government's mandate to ensure the safety of the nation's roadways. One particularly problematic barrier to employment has been DOT's regulations prohibiting the employment of any individual who has diabetes requiring use of insulin for treatment as a commercial motor carrier driver. The Committee believes that an evaluation for the diabetes standard and its appropriate modification may serve as a model for addressing other standards in the regulations that, in their current form, appear to be inconsistent with Federal disability law. DOT has created a panel of medical experts that is reviewing all aspects of diabetes, with the ultimate goal of providing medically-based recommendations. The panel's report will be issued in December 1999 and the Civil Rights Committee will then issue a final recommendation on changing the regulation.

EQUAL ACCESS TO EMPLOYMENT OPPORTUNITIES

GOAL: *People with disabilities fully participate in One-Stop Career Centers and other programs/initiatives under the Workforce Investment Act (WIA) that are intended to promote employment and lifelong learning. [Access to Employment and Lifelong Learning]*

STEPS: The Access to Employment and Lifelong Learning Committee has developed, and ^{is} supporting, recommendations to ensure the inclusion of persons with disabilities in WIA program, including physical and programmatic accessibility.

GOAL: *racial and ethnic* Ensure that ~~the unique employment-related needs of minorities with disabilities are addressed~~ *over or their* ~~(Civil Rights Committee and Access to Employment and Lifelong Learning Committee)~~ *civil* *rights* *in the* *workplace* *and that* *the Federal* *community* *strive* *to* *meet* *the* *unique* *needs* *of the* *diverse* *population*

EPS: The Civil Rights Committee has developed three major initiatives under Project ~~Impact~~ *IMPACT*

- A comprehensive pilot program in the Baltimore area to educate racial and ethnic minorities with disabilities about their civil rights relating to employment. Planning meetings with representatives of multiple Federal agencies and community-based organizations have been held to develop the Baltimore project, which is scheduled to begin in January 2000. The project is intended to serve as a model for other pilot projects around the country.

Move to
Section on

"Civil Rights"

Talking points *to be used in increased education and outreach efforts by members of the Task Force and high-level government officials using talking points regarding the intersection of disability and minority status.* These talking points are designed to describe the reasons why racial and ethnic minorities have a high rate of disability, to increase awareness about the unique needs of minorities with disabilities and provide examples of how agencies and organizations can meet those needs.

- Contract/grant language acknowledging the civil rights of minorities with disabilities for inclusion in all requests for contract bids and grant proposals solicited by Federal agencies regarding employment, housing, healthcare, transportation and education.

The Access to Employment and Lifelong Learning Committee held two roundtable discussions at the "Native Health Promotion and Disability Conference" looking at the cultural and political barriers to developing and delivering programs and services for Native Americans with disabilities. Recommendations that came out of these discussions include the following:

- The President should direct the Secretary of the Department of the Interior to designate the Assistant Secretary for the Bureau of Indian Affairs as a full member of the Task Force and the President should direct the Secretary of HHS to designate the Director of Indian Health Service as a full member of the Task Force.
- The President should direct the Secretary of the Department of Education to develop and establish a priority to fund an American Indian Disability Technical Assistance Center to assist the 557 Federally recognized American Indian tribes and Alaska Native Villages to examine the implication of, and potential for adoption of, culturally appropriate laws, policies and programs to assist their members with disabilities to live healthy, productive and integrated lives within their communities. This Center should be designed to provide TA to Tribes across a number of different disciplines and service delivery mechanisms.

THE FEDERAL GOVERNMENT AS A MODEL EMPLOYER

GOAL: *Implementation of White House and OPM Initiatives working to make the Federal government a model employer. [Federal Government as a Model Employer Committee]*

STEPS: This year the White House and OPM, in cooperation with many of the Task Force agencies, announced a number of initiatives that affect individuals with disabilities who are currently working for, or seeking employment with, the Federal government. The Committee is developing implementation strategies for these initiatives, which include the following:

any implementation strategies for EEOC's Guidelines should be issued as recommendations to EEOC

- OPM Model Plan;
- Improving the Excepted Appointing Authorities for Hiring Persons with Disabilities;
- Improving Federal Health Insurance Coverage for Mental Health and Substance Abuse Treatment; and
- EEOC Guidelines on Reasonable Accommodation and Undue Hardship.

GOAL: *A Federal government fellowship program in disability policy. [Federal Government as a Model Employer Committee]*

STEPS: The Committee is exploring the feasibility and appropriateness of establishing a new Federal government fellowship program in disability policy. Individuals would be selected on a competitive basis to work in specified Federal agencies for a minimum of one year. During their tenure, the fellows would be responsible for such activities as gathering input from the disability communities on Federal policy issues; assisting internal agency "disability advisory councils" in determining their respective priorities and establishing effective relationships with the executive management of their agencies; overseeing the marketing and dissemination of disability-relevant information; and providing cross-agency coordination on a variety of disability employment issues.

GOAL: *Federal agencies meet their legal obligations as public sector employers under the Rehabilitation Act and the Americans with Disabilities Act, and effectively implement the reasonable accommodation requirements. [Federal Government as a Model Employer Committee]*

STEPS: The Federal Government as a Model Employer Committee is developing a set of methods and forums that will ensure that all Federal agencies have consistent government-wide written procedural guidelines and accountability mechanisms for meeting their obligations under the Rehabilitation Act and the ADA.

Add all policies developed by Committee will be coordinated with EEOC + consistent with EEOC policies

GOAL: *Consistent Federal policies and procedures for handling requests for "reasonable accommodation." [Federal Government as a Model Employer Committee]*

EPS: The Committee is exploring the feasibility of developing/promoting the use of alternative dispute resolution (ADR) techniques and systems that would complement and strengthen the ADR program recently set up and expanded at the EEOC. Through the use of internal agency ADR systems, individual agencies may be able to resolve "reasonable accommodation" complaints *before* such charges are filed with the EEOC. *See comment*

GOAL: *"Progress Measures" for Ensuring Federal Government Accountability in the Areas of Reasonable Accommodation and Accessibility. [Federal Government as a Model Employer Committee]*

STEPS: The Committee is identifying mechanisms for measuring the progress of Federal agencies against their plans and policies for providing reasonable accommodations and ensuring accessibility. Benchmarks for measuring success might come from reviews, data and information around EEO complaints and around Employee Assistance Program consultations; from data on employee retention, funds allocated and spent; from reasonable accommodation tracking systems; from agency self-evaluations of technology accessibility employee surveys.

GOAL: *Ongoing, structured or formal training of supervisors, managers, executive administrators, and employees regarding "accessibility and accommodation" issues. [Federal Government as a Model Employer]*

STEPS: The Committee has recommended a training program on reasonable accommodation and accessibility for managers, supervisors and employees and is exploring the extent to which such training should be regarded as "mandatory" ~~must be implemented~~ ✓

GOAL: *More effective communication and dissemination of internal Federal policies that promote the employment of adults with disabilities within the Federal government. [Federal Government as a Model Employer]*

STEPS: The Committee recommends the creation of a mechanism or system that can be used routinely to promote and disseminate widely all Federal agency policy initiatives intended to impact directly the employment of adults with disabilities. Possible activities include:

- Work through the Interagency Advisory Group (IAG) of Human Resource (HR) Directors and Small Agency HR Council to reach the smaller Federal agencies;

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Executive Summary November, 1999

Disability Employment Policies and Practices in U.S. Federal Government Agencies

Background.

This research is a part of the efforts of the Presidential Task Force on Employment of Adults with Disabilities to meet the Section 2(g) mandate of the Executive Order. This mandate states that "All executive agencies that are not members of the Task Force shall: (a) coordinate and cooperate with the Task Force; and (b) review their programs and policies to ensure that they are being conducted and delivered in a manner that facilitates and promotes the employment of adults with disabilities." One step in this endeavor is an analysis of the efforts of federal agencies in recruiting and retaining persons with disabilities in federal employment. A survey of US federal agencies, titled Survey of the Federal Government on Human Resources/EEO Policies and Practices in Employment of People with Disabilities was initiated by the Presidential Task Force in June. This research identifies how federal agencies are responding to the employment disability nondiscrimination requirements of the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973, as amended. ✓

The Presidential Task Force was created by Executive Order 13078 on March 13, 1998 to create a coordinated and aggressive national policy to increase the employment rate of persons with disabilities. ✓

This report identifies areas in which progress has been made as well as areas which warrant further investigation and follow-up in order to increase opportunities and eliminate barriers to the employment, retention, and career advancement of people with disabilities in the Federal workforce. The information contained in this report will be broadly disseminated to Task Force members and Committees, as well as federal departments and agencies for further action. Of particular importance, this report will be used by the Task Force's Committee on the Federal Government as a Model Employer in its ongoing work. In addition, the US Office of Personnel Management will be asked to consider the implications of this report in implementing its recently released *Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government*¹. This plan serves as a framework for Federal departments and agencies to use as they create strategies and initiatives to recruit, hire, develop, and retain more people with disabilities.

This US federal agency survey research effort was under the direction of the Presidential Task Force, conducted by the Program on Employment and Disability with the assistance of the Computer Assisted Survey Team (CAST), both located in the School of Industrial and Labor Relations at Cornell University.

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Methodology

A ten page survey was designed to capture information on the human resources and equal employment opportunity practices of U.S. federal agencies in response to the employment nondiscrimination requirements of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973 as Amended. The survey ~~items~~ draw extensively from a similar survey used by Cornell University to conduct comparable research on private sector employers in 1998². The ten-page survey covers issues dealing with: the reasonable accommodation process; recruitment, pre-employment screening, testing, and new employee orientation; health and other benefits of employment; opportunities for promotion and training; disciplinary process/grievance, dismissal or termination; interaction with labor/industrial/collective bargaining issues and other employment legislation/considerations; federal agency employee training on the employment disability nondiscrimination and the accommodation process; resources used and found most helpful in handling disability nondiscrimination and accommodation disputes; and the role of disability management (return to work) programs in contributing to the accommodation process and the acceptance of employees with disabilities.

A list was obtained from the US Office of Personnel Management's Interagency Advisory Group across 96 federal agencies. A preliminary letter was sent out prior to the survey's initiation from the Executive Director of the Presidential Task Force, Rebecca Ogle, to all agency heads, alerting them about the survey and clarifying its purpose. A letter was sent to each potential interviewee approximately two weeks prior to the initiation of the survey. The survey was conducted by telephone from Cornell University by the Computer Assisted Survey Team (CAST), using a Computer Assisted Telephone Interview (CATI) system.

Survey Respondents

A total of 403 surveys were completed, out of 415 agency representatives who were contacted (a 97% response rate). The majority of the respondents had job titles of directors/chiefs of human resources and EEO (41%) or personnel managers (18%), whose positions were in the functional areas of human resources (41%) or equal opportunity (35%). They responded primarily for the entire agency (49%) or their regional office (40%), of agencies that employ more than 500 employees (71%). All information is provided in aggregate to protect the confidentiality of individual respondents and their agencies.

Findings at a Glance

** Most agencies report having made accommodations for their employees with disabilities. At least nine out of ten respondents reported their agency has made existing facilities accessible to employees with disabilities, been flexible in the application of HR policies, or modified the work environment (93% for each). Agencies were less likely to acquire or modify training materials (49%), or provide a job coach (41%).

DRAFT November 5, 1999

**** Seventy-one percent reported that their agency has a formal process for handling accommodation requests. Twenty-seven percent report that the immediate supervisor of the employee making the request is responsible for making the final decision regarding the provision of an accommodation.**

**** Fifty-six percent reported that they had received ten or fewer accommodation requests in fiscal year 1999 to date, with 20% reporting that they had received no such requests.**

**** Twenty-six percent of respondents frequently use Schedule A or B provisions for hiring persons with disabilities; 49% of respondents reported occasionally using these provisions. Twenty-eight percent reported frequently using the special hiring program for disabled veterans; 52% reported occasionally using this program.**

**** The majority of agencies have made changes in their existing recruitment, pre-employment screening, testing, and orientation procedures in order to comply with the ADA and Rehabilitation Act ✓**

**** The pre-employment area where change was reported as difficult to make was making information accessible for a person who is deaf or hard of hearing, or a person with a visual or learning disability.**

**** Respondents indicated that their interview staff are least familiar with interview considerations relating to people with visual disabilities, or people who are deaf or hard of hearing, such as using a text telephone (TTY) or relay service to set up interviews with deaf or hard of hearing applicants, using a reader to assist a person with a visual impairment or learning disability, or with adapting print materials used in interviews to large print, diskette, or Braille.**

**** More than three-quarters of respondents indicated that staff who perform interviews at their agency are familiar or very familiar with restrictions on eliciting information about medical issues affecting applicant's health and safety on the job, framing questions about the ability to perform job tasks, knowing when to ask an applicant about how specific job tasks would be performed, and accessing sign language interpreters.**

**** The remaining barriers to employment for persons with disabilities identified were attitudes and stereotypes about people with disabilities (43%), supervisors' lack of knowledge about accommodations (33%), lack of related experience (53%) and lack of requisite skills and training (45%) in the person with a disability.**

**** Ninety percent of respondents thought that the most effective means of barrier reduction is visible top management commitment.**

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LABOR BRANCH FAX SHEET

DATE: 11/16

TO: Eric Goulet

FROM: Alison Perkins-Cohen

COMMENTS: As per your request, attached are
the comments I've received so far
(including DOJ which I just received).
I'm ~~sending~~ faxing it in two batches.

NUMBER OF PAGES
(INCLUDING COVER)

#1 ~~20~~

#2 22

CONFIRMATION: (202) 395-3262
FAX NUMBER: (202) 395-1596

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** Sixteen percent of respondents indicated that their agency had experienced filed disability claims in five or more of 11 specified categories of discrimination claims; 50% said they had not had a claim filed in any of the listed areas.

** The disability discrimination claims most commonly reported by agencies were 1) failure to provide a reasonable accommodation, and 2) failure to promote.

** Seventy-three percent are covered by a collective bargaining agreement, and of those, 66% reported that unions are involved in the accommodation process.

** Sixty-nine percent indicated that they would like more information on accommodation for mental health disabilities and 66% wanted more information on Rehabilitation Act requirements.

** Two-thirds of respondents reported that their agency has a formal or informal disability management program; respondents who have such a program indicated that these programs contribute to ADA implementation. *Rehab Act*

Survey Results**Accommodations and the Accommodation Process**

Most agencies report having made accommodations for their employees with disabilities (see Table 1). At least nine in ten respondents reported that their agency has made existing facilities accessible to employees with disabilities, been flexible in the application of IIR policies, or modified the work environment (93% for each). Agencies were less likely to acquire or modify training materials (49%), or provide a job coach (41%).

Seventy-one percent reported that their agency has a formal process for handling accommodation requests. Twenty-seven percent report that the immediate supervisor of the employee making the accommodation request is responsible for the final decision regarding its provision.

Fifty-six percent reported that they had received ten or fewer accommodation requests to date in the fiscal year (FY 1999), with 20% reporting that they had received no such requests.

Accommodations in Recruitment, Interviewing, and Pre-Employment Screening

Twenty-six percent of respondents reported frequent use of Schedule A or B provisions for hiring persons with disabilities; 49% of respondents reported occasionally using these provisions. Twenty-eight percent of respondents reported frequently using the special hiring program for disabled veterans; 52% reported occasionally using this program.

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The majority of agencies represented by the respondents report that they have made changes in their existing recruitment, pre-employment screening, testing, and orientation procedures in order to comply with the ADA and Rehabilitation Act. ✓

The pre-employment area where change was reported as difficult to make was making information accessible for a person who is deaf or hard of hearing, or with a visual or learning impairment.

Respondents indicated that their interview staff are least familiar with interview considerations relating to people with visual or auditory disabilities, such as using a text telephone (TTY) or relay service to set up interviews with deaf or hard of hearing applicants, using a reader to assist a person with a visual impairment or learning disability, or with adapting print materials used in interviews to large print, diskette, or Braille.

More than three-quarters of respondents indicated that staff who perform interviews at their agency are familiar or very familiar with restrictions on eliciting information about medical issues affecting applicant's health and safety on the job, framing questions about the ability to perform job tasks, knowing when to ask an applicant about how specific job tasks would be performed, and accessing sign language interpreters.

Barriers to Promotion and Training for People with Disabilities

The remaining barriers to employment for persons with disabilities identified were attitudes and stereotypes about people with disabilities (43%), supervisors' lack of knowledge about accommodations (33%), lack of related experience (53%) and lack of requisite skills and training (45%) in the person with a disability (see Chart 1).

Ninety percent of respondents thought that the most effective means of barrier reduction is visible top management commitment.

To help overcome barriers to the employment and advancement of people with disabilities, the majority of agencies made changes to organizational policies and practices (see Table 2). Agencies reported changing co-worker or supervisor attitudes towards employees with disabilities (91%), creating flexibility within the performance management system (83%), and ensuring equal pay and benefits for employees with disabilities (81%). Changing attitudes, the change most often attempted, was also seen as the most difficult change to make.

ADA Dispute Resolution Process and ADA Claims Experience

Sixteen percent of respondents indicated that their agency had disability claims filed in five or more of 11 specified categories of discrimination claims; 50% said they had not had a claim filed in any of the listed areas (see Table 3).

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The disability discrimination claims most commonly reported by agencies were: 1) failure to provide a reasonable accommodation, and 2) failure to promote.

A high percentage of respondents reported having a grievance or dispute resolution process in place to deal with disability and accommodation issues (93%).

Rehab Act
The ADA and Labor Relations/Collective Bargaining Issues

Seventy-three percent of these agencies are covered by a collective bargaining agreement, and of those, 66% reported that unions are involved in the accommodation process.

Unions are most often involved by providing representation in reasonable accommodation discussions (75%).

Interaction with Other Employment Legislation

Rehab Act Forty-one percent of respondents reported being uncertain about coordination of leave under the ADA and the Family Medical Leave Act (FMLA), Worker's Compensation, short term and long term disability, and sick leave/salary continuation. ✓

Thirty percent of respondents were uncertain about Section 501 of the Rehabilitation Act's requirements for designing and implementing affirmative action requirements. A similar percentage was unsure about the new requirements of Section 508 of the Rehabilitation Act, which requires the purchase of accessible technology and equipment by federal agencies.

Rehab Act
ADA Personnel Training Conducted

Fifty percent of respondents indicated that their employees had been trained in at least 10 of 12 listed areas for ADA training (see Table 4). ✓

Rehab Act Ninety-one percent of respondents reported that agency employees had been trained in non-discriminatory recruitment and hiring practices.

Rehab Act In all twelve ADA-related areas, more than eight of ten agencies which had trained any staff had trained their human resources (HR) staff. ✓

Sixty-nine percent indicated that they would like more information on accommodation for mental health disabilities and 66% wanted more information on Rehabilitation Act requirements.

Rehab Act
Resources Used to Resolve ADA Issues

Ninety percent of respondents reported that they use their agency's EEO office as a resource to resolve disability discrimination or accommodation issues at their agency. ✓

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Eighty-five percent consult an internal legal counsel.

Internal legal counsel and disability management/benefits staff were considered the most helpful resources (84% found each "helpful" or "very helpful"). The agency's EEO office received a similar rating (83%).

Forty-three percent of respondents report using the President's Committee on Employment of People with Disabilities Job Accommodation Network (JAN) to resolve ADA issues; 73% found JAN "helpful" or "very helpful." *Rehab Act* ✓

Presence of a Disability Management Program and Contribution to the ADA *Rehab Act* ✓

Two-thirds of respondents reported that their agency has a formal or informal disability management program; respondents who have such a program indicated that these programs contribute to ADA implementation. *Rehab Act* ✓

Comparison with the Non-Federal Sector

A similar survey was conducted on a random sample of the membership of the Society for Human Resource Management (SHRM) and the entire membership of the Washington Business Group on Health (WBGH)1. The comparative results presented here are based on the feedback of approximately 800+ private sector and 400+ federal sector employer representatives, mostly HR representatives, since an HR membership organization (SHRM) was surveyed and HR and EEO representatives were the informants selected for the federal sector research.

Employers in both groups are responding to the ADA by making accommodations, most often by making existing facilities accessible, being flexible in the application of HR policies, and restructuring jobs and work hours. Other often-made changes by both groups were modifying the work environment and making transportation accommodations. Least often made accommodations were in the areas of modifying training materials and making changes in supervisory methods. There was a difference in the groups' responses to making these changes in all of the 11 categories, with federal agencies more likely to have made each change. Non-federal sector organizations were also more likely to indicate that they had never been asked to make the changes.

More federal agencies than non-federal employers keep data to fulfill reporting requirements (48% for non-federal, 62% for federal), but the numbers in each group keeping data for future accommodations was quite similar (52% and 49% respectively).

Across both groups, respondents were much less familiar with considerations in the applicant interview process with accommodations for people with visual disabilities or who are deaf or hard of hearing: adapting print materials for people with visual disabilities, use of a reader for a person with visual disabilities, and the use of TTY/text telephones to set up interviews. However, federal

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sector respondents indicated a much greater familiarity with accessing sign language interpreters (33% of non-federal vs. 76% of federal respondents reported their staff was "familiar" or "very familiar" with this issue). Federal respondents, while least familiar with accommodations for people who are deaf or hard of hearing or who have visual disabilities, were far more familiar with them than their non-federal sector counterparts.

Continuing barriers to employment and advancement for persons with disabilities reported by employers were identified as being both within the workplace itself and within the individual with a disability. In terms of workplace barriers, attitudes or stereotypes among co-workers and supervisors towards persons with disabilities was seen as a significant barrier (43% of federal respondents, 22% of non-federal respondents). Approximately one-third in each group saw supervisor lack of knowledge of how to make accommodations as a continuing barrier (31% of the non-federal employers and 34% in federal agencies). In terms of barriers in the individual with a disability, lack of requisite skills and training were cited as a continuing barrier by 39% of non-federal employers and 45% of federal, as was lack of related experience (49% of non-federal and 53% of federal employers).

There was little difference in the top choice of method of reducing employment barriers identified by both groups, which was visible top management commitment (81% for the non-federal, 90% for federal respondents).

When asked about the types of access provided to enhance opportunities for promotion and training, federal agencies reported significantly more provision of communication access for persons who are hearing impaired (91% in the federal sector compared to 43% in the non-federal), and persons who are visually impaired (77% in the federal sector compared to 37% in the non-federal sector).

under the Rehabilitation Act

Non-federal employers reported significantly fewer claims filed against them under the ADA than did federal respondents. Failure to provide reasonable accommodation was reported by federal agencies as the most often experienced claim, at 36%. The most commonly filed claim for non-federal employers was wrongful discharge (19%).

Federal workplaces were more significantly unionized (73%) compared to the non-federal sector (23%). In both groups, among those who have collective bargaining agreements and have union involvement in the accommodation process, unions were most often used to provide representation in discussions about the accommodation process (69% non-federal, 75% federal).

and Rehabilitation Act

The staff training profiles on the ADA for both groups were, on the whole, very similar. The areas in which training was most often conducted were the accommodation process and non-discriminatory recruiting and hiring. Areas where the least training was conducted were allowable limitations on health plans, interaction with other legislation, and accommodations for people with mental health disabilities. Both sector respondents identified further information on

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accommodations for persons with mental health disabilities as a significant ongoing need (69% of federal respondents and 65% of non-federal respondents).

Across both groups, legal counsel ranked highly as a resource often used to resolve ADA disputes (82 and 88% for the non-federal and federal respectively). This was the most-often used resource for the non-federal group, and a close second in the federal group, topped only by the agency EEO office (90%). Next most often used in the non-federal sector were professional societies such as the Society for Human Resource Management (SHRM), and safety and disability staff within the organization. For federal agencies, after EEO and legal advisors the next most often used resources to resolve ADA disputes were safety staff and state rehabilitation agencies.

Rehab Act

The majority of people in both groups reported having formal or informal disability management or return-to-work programs, although non-federal employers had a significantly higher number. In both groups, of those who have disability management or return to work programs, they report that these programs contributed to implementation of the ADA and the Rehabilitation Act.

Implications

This report identifies how federal departments and agencies are responding to the employment of disability nondiscrimination requirements of the ADA and the Rehabilitation Act. The results from this research indicates that while much progress has been made, there remain many barriers to the recruitment, hiring, retention, and career advancement of adults with disabilities in the federal workforce that warrant consideration.

Agency Accommodation Structure

Most agencies report having made accommodations for their employees with disabilities. However, one in five agencies reported having received no accommodation requests in the prior fiscal year. There would seem to be a ready mechanism for getting further information on this from most agencies as most reported having a formal process for handling accommodation requests in place. Since the immediate supervisor is most often cited as the final decision-maker in accommodation decisions, however, there may not be a ready reporting mechanism at the central level, and further information gathering may need to occur deeper within the agency structure.

Increase Use of Hiring Authorities

Another area for concern is the extent to which federal agencies use special hiring authorities. Only one in four agencies reported frequently using the Schedule A or B provisions for hiring persons with disabilities or using the special hiring program for veterans with disabilities. These provisions appear to be an under-utilized tool by federal agencies, lessening the effectiveness of federal agencies to increase the employment of people with disabilities. These are areas for further exploration where changes might be indicated.

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Supports Needed for Specific Populations

The majority of agencies report having made changes in their existing recruitment, pre-employment screening, testing, and orientation procedures in order to comply with the ADA and the Rehabilitation Act. However, making information accessible for a person with a visual or learning disability, or a person who is deaf or hard of hearing, was an area reported more difficult than others, in terms of accommodations in the pre-employment area. Respondents indicated that their interview staff are least familiar with interview considerations relating to people with visual or auditory impairments, such as using a text telephone or relay service to set up interviews with deaf or hard of hearing applicants, using a reader to assist a person with a visual impairment or learning disability, or with adapting print materials used in interviews to large print, diskette, or Braille. This finding is significant in light of the recent addition of Section 508 to the Rehabilitation Act. Section 508 mandates that all federal technology purchases be fully accessible to employees with disabilities. Significant technical assistance and training at the agency level will be required if Section 508 is to be successfully implemented. ✓

Another area for further exploration is the workplace supports needed for persons with mental health disabilities. Respondents in both the federal and non-federal sectors indicated a need for further information on accommodations for persons with mental health disabilities. Exploration of how to use the proposed new hiring authorities for this group, as well as how to provide supports, once individuals have been employed, need to be examined. This, again, may be a place where federal and private sector employers can join to find effective solutions to enhance the hiring and retention of this group. ✓

Employ Diversity Strategies

The remaining barriers to employment for persons with disabilities identified by federal agencies were both in the workplace and within the individual. Attitudes toward people with disabilities continues as a workplace integration issue, even though this was an area where most agencies reported having made changes. Perhaps this is an area that can be merged with diversity programming or addressed independently with continued training across all agencies. It would be a valuable discussion with federal agencies as to whether the presence of diversity programs has been of any assistance in addressing issues of disability discrimination and negative attitudes or stereotypes toward persons with disabilities. Since diversity programs are increasing in popularity in the private sector, joint exploration with non-federal employers of application of this use might be most beneficial. The Task Force should closely examine federal agency training programs and curriculums to determine the extent to which disability issues are included.

Engage Unions and Advisory Councils

Since the federal workplace is heavily unionized and unions are often involved in the accommodation process, focus groups with unions might be a good place to continue information

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gathering in this process to learn more about barriers to employment for people with disabilities. Another possible source of information close to the workplace about employment and disability issues is the disability advisory councils. Both might be groups for further follow up with focus groups in the future for continued research.

Increase Supervisors' Knowledge of Accommodations

Supervisors' lack of knowledge about accommodations was also reported as an ongoing barrier in the work environment for persons with disabilities. Since the majority of training in the federal agencies has been focused on human resource personnel in the past, this is not surprising, and a place where training and technical assistance should be focused in the future. Since supervisors reportedly make the final decision on accommodations in most federal workplaces, it is imperative that they have the training needed to be able to make appropriate decisions and access needed resources for particular accommodation requests.

Areas for Further Training & Technical Assistance

When asked about areas for further information and technical assistance, respondents indicated needing assistance and further resources in the area of accommodations for people with mental health disabilities. This is also an area of great concern for non-federal employers, and also perhaps an area where jointly developed products around best practices and available resources might be helpful in both sectors. Another area where further training was identified in the federal sector respondents in this study was for more information and training on the Rehabilitation Act requirements.

Alternative Dispute Resolution

Almost all of the agencies reported having a grievance or dispute resolution process in place for accommodations, yet a US General Accounting Office (GAO) report indicates that many employment discrimination disputes, including those relating to disability discrimination, are making their way to the EEOC³. The length of time for processing these disputes continues to increase. It would appear that significant further work must be done to encourage and inform dispute resolution particularly on accommodation issues, earlier on and closer to the workplace. Alternative dispute resolution is an area that is gaining in popularity in the private sector, and again may be an area that the federal sector might want to further explore. An example might be setting up model teams within agencies that represent the various interested parties in the accommodation process such as the person with a disability, HR representative, supervisor, health and safety representative, union, and EEO representative.

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Directive
110*

Use of Disability Management Programs

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Two-thirds of respondents reported that their agency has a formal or informal disability management program; respondents who have such a program indicated that these programs contribute to ADA and Rehabilitation Act implementation. This is an area that perhaps could be further explored as a programmatic structure for support for workplace disability nondiscrimination policies and practices. ✓

Disability Employment and Training Policy

Lack of related experience and lack of requisite skills and training were areas within the person identified as continuing to present barriers to employment for people with disabilities. This identified barrier has implications for employment and disability social policy changes that advance the interests of people with disabilities in the employment and training arena. One of the areas across both federal and non-federal organizations seen as a remaining barrier to the employment of people with disabilities is the lack of requisite training, skills, and related work experience in persons with disabilities. It is imperative that initiatives such as those in existence under the Workforce Investment Act include people with disabilities in their mandate and implementation. This means not only having the direction for such inclusion written into the legislation and resulting regulations, but also making certain that implementation at the local level takes into account the unique service delivery needs of such system users. Success at this level calls for skilled professionals who will understand and be able to identify the service needs of persons with disabilities to assist them in making meaningful choices for training and subsequent employment. This also necessitates physical and communication accessibility of such service systems.

Also of interest for further study is the perspective of nonfederal employers about the effectiveness of tax incentives as a means to remove barriers for persons with disabilities in the hiring and retention employment processes. Tax incentives was seen as the least effective means to reduce such barriers, by non-federal sector employers; indeed only 26% reported these as effective or very effective in reducing barriers. A parallel item on special budget allocations as a way to reduce accommodation costs to employers was asked in the federal survey. Sixty-nine percent of those interviewed saw this as effective or very effective.

As evidenced by this research, federal and non-federal organizations are making significant strides in responding to employment disability nondiscrimination legislation such as the ADA and the Rehabilitation Act to change internal business organization environments and policies to respond to the law. Such efforts must be complemented by supporting national employment and training policies that provide persons with disabilities with training and experience resulting in skills that are marketable in a labor market that needs skilled workers.

Further Research Needed

The results discussed in this report indicate a need for further research. One direction for further research is to gain the perspective of nondiscriminatory practices from federal employees with

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disabilities, supervisors, and co-workers. Additional areas for future research include federal training programs and technology applications. Finally, this report highlights many areas where the federal government can and should provide additional promotion, outreach, and technical assistance to federal agencies. This includes use of special hiring authorities; accommodations for people with visual, learning, and hearing impairments and people with mental health disabilities; alternative dispute resolution; and laws governing employment of people with disabilities. ✓

Next Steps for the Presidential Task Force

This report to the Presidential Task Force identifies significant areas which warrant further investigation and follow-up in order to increase opportunities and eliminate barriers to the employment, retention, and career advancement of people with disabilities in the Federal workforce. The information contained in this report will be broadly disseminated to Task Force members and Committees, as well as federal departments and agencies for further action, including the following:

- ** The Committee on the Federal Government as a Model Employer will be asked to examine the results from this survey. The Committee's three Subcommittees on Federal Policy Development, Recruitment, Retention, and Career Advancement, and Reasonable Accommodations will use the results in their ongoing work.
- ** The Office of Personnel Management will use the information to implement Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government. The Plan, released in October, serves as a framework for Federal departments and agencies to use as they create strategies and initiatives to recruit, hire, develop, and retain more people with disabilities.
- ** The Committee on Civil Rights will use the report to continue its examination of coordinated enforcement of various Federal nondiscrimination employment policies.
- ** Federal departments and agencies will be sent copies of the report for consideration in their efforts to increase opportunities and remove barriers for adults with disabilities.
- ** The report will be used by the Task Force to continue its examination of Federal employment practices and to consider actions on the additional data collection efforts recommended.

A copy of the full survey report is available from the Task Force, or from Cornell University. Contact information is provided at the end of this summary.

NOV-08-1999 15:26 TO:92 - OPM

FROM:LINDSEY J

P. 4/4

LRM ID: CJB126 SUBJECT: Presidential Task Force of Employment of Persons with Disabilities
Draft Report to the President on "Re-charting the Course: If Not Now, When: Second Report"

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Alison Perkins-Cohen Phone: 395-7753 Fax: 395-1586
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3262

FROM: November 12, 1999 (Date)
 CC Christakos (Name)
 OPM (Agency)
 606-1460 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur

☐ No Objection

☐ No Comment

☒ See proposed edits on pages In Enclosed section + page 42.

☐ Other: _____

☐ FAX RETURN of _____ pages, attached to this response sheet

FOREWORD

If Not Now, When? The Second Report of the Presidential Task Force on Employment of Adults with Disabilities is proud to submit this second annual report to the president, Vice President and the general public for their review. This report highlights activities that have taken place since the release of the first report of the Task Force November, 1998, as mandated by Executive Order 13078.

This report has the unique opportunity to come at a time when we are closing out a century and beginning a new millennium. In looking back over the course of time one is struck with the evolving nature of disability policy. The majority of this change in policy and programs began with the passage of the Americans with Disabilities Act, signed into law on July 26, 1990, and has since been carried forth with the leadership and commitment of the Clinton/Gore Administration. The establishment of the Presidential Task Force on March 13, 1998 mandates the development of a forward-looking aggressive strategy that will lead our nation into the new millennium with policy that enables people with disabilities to take their rightful place in all aspects of society. The scope of the Executive Order is unique, and touches the jurisdiction of virtually all agencies of the federal government. The mission of the Task Force calls for changes in the systemic, structural and attitudinal barriers that continue to exclude adults with disabilities from employment. Its' vision is a nation where individuals with disabilities have a real choice to work, where employers are helped to eliminate barriers to workforce entry and advancement, and where creativity and innovation are the basis for organizing jobs to meet both the needs of employers and their employees. This vision is a nation where employment opportunities include not just jobs, but careers. Ultimately the goal is a road out of poverty, experienced by an overwhelming number of people with disabilities - over 70% of whom are unemployed.

A meeting of the Task Force was convened on December 14, 1998 by the Secretary of Labor, Alexis M. Herman, who serves as Chair of the Task Force, and Tony Coelho, Chair of the President's Committee on Employment of People with Disabilities, who serves as Vice-Chair. This meeting highlighted release of the first Task Force report, *Re-charting the Course*, which was issued on November 15, 1998. The report laid out a committee structure for Task Force members to begin putting a strategy in place to increase employment of adults with disabilities to a rate comparable to that of the nations non-disabled population.

The full Task Force endorsed the establishment of six Committees and one Subcommittee at the December 14th meeting. This Committee structure is designed to continue and expand the work of the Work Groups established under Section 2 of the Executive Order. The benefit of the collaboration and interagency activities resulting from these Work Groups was immediately obvious. As a result, Secretary Alexis M. Herman, Chair of the Task Force, and Tony Coelho, Vice-Chair, worked with other Task Force members to identify a Committee structure to carry on and expand the work of the Work Groups, and put a structure into place for the Task Force to accomplish its mission. The intent is to have this strategy in place by the time the Task Force is set to expire on July, 2002.

These first activities of the Task Force laid the foundation for future initiatives enumerated in this second report: *If Not Now, When?* Executive Director Rebecca Ogle, was charged with providing leadership to coordinate and continually elevate the Task Force mandate and vision with Task Force Members government wide. Her responsibilities included ensuring that the Task Force was fully staffed, which was accomplished in March, 1999. The Committees formally began their work in April, with inaugural meetings held through the late spring and into early summer. Each Committee was asked to develop an action plan with short and longer term actions that would be undertaken through their respective agencies and in collaboration with each other, in order to address barriers to employment for people with disabilities and to begin developing their strategies for change. These plans, and their subsequent actions, contributed to reports developed by each Committee, which are summarized in Chapter One of this report.

In January, 1999, President Clinton formally endorsed the initial recommendations of the Task Force, as included in *Re-charting the Course*. The impressive support of and action on these recommendations by the President and his Administration is commendable. *The President included the budgetary implications of these initial Task Force recommendations in his proposed budget for Fiscal Year 2000.* This included:

- Proposal for full funding for The Work Incentives Improvement Act proposed by Senators Jeffords and Kennedy;
- Proposal of a \$1,000 tax credit to assist in paying work-related expenses for people with disabilities;
- proposal of \$50 million for a Work Incentives Grants program to promote coordination and integration of employment services at the state and local level;
- proposal of \$35 million for expanded access to information and communication technologies for employees in the federal government and support for new and expanded loan programs to make assistive technology more affordable for Americans with disabilities; and
- support of a strong Patient's Bill of Rights.

The Task Force notes with grave disappointment that Congressional action resulted in elimination of funding for the tax credit and the assistive technology proposals, and reduced funding for the Work Incentives Grants program.

The Task Force is proud that other recommendations are being acted on by the Administration. These include:

- elimination of the stricter standard applied to adults with psychiatric disabilities (versus other disabilities) in the ~~exempted~~ appointment process within the federal government, accomplished on June 4, 1999; ^{excepted}
- increasing the substantial gainful activity (SGA) amount for people receiving Supplemental Security Income and/or Social Security Disability Insurance from \$500 to \$700 per month beginning June 1, 1999;

- developing a Model Plan to increase representation of adults with disabilities in the federal workforce, released on October 15, 1999 by the Office of Personnel Management (OPM);
- developing and beginning implementation of an intensive new outreach campaign by the Small Business Administration to help people with disabilities start their own businesses.

The Task Force began a multi-year effort in response to Section 2(g) of the Executive Order mandating that all executive agencies that are not members of the Task Force review their programs and policies to ensure that they are being conducted and delivered in a manner that facilitates and promotes the employment of adults with disabilities. This multi-faceted effort began with a survey of federal agencies to determine their response to employment discrimination, affirmative action, and accommodation requirements of the Americans with Disabilities Act and the Rehabilitation Act of 1973, as amended. The survey results document many positive accomplishments that have resulted in opening the door to employment of people with disabilities in the Federal workforce. They also describe persistent barriers and recommendations to increase the employment of adults with disabilities in Federal agencies. A summary of the report is included in Appendix *which one?*

In addition, Section 2(d) of Executive Order 13078 required that *"the Department of Housing and Urban Development...report to the Task Force on its programs to see if they can be used to create new work incentives and remove barriers to work for adults with disabilities."* On September 16, 1999, HUD submitted its report: *HUD: Opportunity for All - Jobs for Adults with Disabilities*, to the Chair and Vice-Chair of the Task Force. HUD's report addresses sixteen different issue areas and represents an action plan to promote adequate and affordable housing, economic opportunities and a living environment free of discrimination for adults with disabilities. A summary of the HUD report is included in Appendix X. The Task Force will address seriously *the issues from this report as a priority during the coming year.* *deluxe spec*

Throughout the summer and fall the Task Force continued acting on recommendations identified through the work of the Committees. As communication and collaboration increase, agencies are finding new and innovative ways to attack barriers that exclude people with disabilities from employment. The critical importance of technology across multiple Committee actions resulted in establishment of a cross-committee work group to begin mapping a coordinated strategy in this area. In addition, the importance of implementation of Section 255 of the Telecommunications Act was acknowledged on DATE, when William E. Kennard, Chairman of the Federal Communications Commission, was added to the Task Force, raising the number of Task Force members to fourteen. Additional recommendations for membership from Secretaries of the Departments of Housing and Urban Development, Agriculture and Interior are recommended by the Task Force in this second report.

Throughout the year the White House ensured that the need for increased employment of people with disabilities was elevated both through policy initiatives and other activities. In June a White House Conference on Mental Health explored issues related to people with psychiatric disabilities. Policy recommendations from this landmark meeting are helping to guide the work of the Task

- GOAL:** *Consistent Federal policies and procedures for handling requests for "reasonable accommodation." [Federal Government as a Model Employer Committee]*
- EPS:** The Committee is exploring the feasibility of developing/promoting the use of alternative dispute resolution (ADR) techniques and systems that would complement and strengthen the ADR program recently set up and expanded at the EEOC. Through the use of internal agency ADR systems, individual agencies may be able to resolve "reasonable accommodation" complaints *before* such charges are filed with the EEOC.
- GOAL:** *"Progress Measures" for Ensuring Federal Government Accountability in the Areas of Reasonable Accommodation and Accessibility. [Federal Government as a Model Employer Committee]*
- STEPS:** The Committee is identifying mechanisms for measuring the progress of Federal agencies against their plans and policies for providing reasonable accommodations and ensuring accessibility. Benchmarks for measuring success might come from reviews, ~~data and information around EEO complaints and around Employee Assistance Program consultations;~~ from data on employee retention, funds allocated and spent; from reasonable accommodation tracking systems; from agency self-evaluations of technology accessibility employee surveys.
- GOAL:** *Ongoing, structured or formal training of supervisors, managers, executive administrators, and employees regarding "accessibility and accommodation" issues. [Federal Government as a Model Employer]*
- STEPS:** The Committee has recommended a training program on reasonable accommodation and accessibility for managers, supervisors and employees and is exploring the extent to which such training should be regarded as "mandatory." ~~must be implemented.~~
- GOAL:** *More effective communication and dissemination of internal Federal policies that promote the employment of adults with disabilities within the Federal government. [Federal Government as a Model Employer]*
- STEPS:** The Committee recommends the creation of a mechanism or system that can be used routinely to promote and disseminate widely all Federal agency policy initiatives intended to impact directly the employment of adults with disabilities. Possible activities include:
- Work through the Interagency Advisory Group (IAG) of Human Resource (HR) Directors and Small Agency HR Council to reach the smaller Federal agencies;

LRM ID: CJB126 SUBJECT: Presidential Task Force of Employment of Persons with Disabilities
Draft Report to the President on "Re-charting the Course: If Not Now, When: Second Report"

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Allison Perkins-Cohen Phone: 395-7753 Fax: 395-1598
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3262

FROM: 11/16/99 (Date)
Velma Taylor (Name)
DDJ (Agency)
514-7279 (Telephone)

URGENT

The following is the response of our agency to your request for views on the above-captioned subject:

☐ Concur

☐ No Objection

☐ No Comment

☒ See proposed edits on page 38

☒ Other: 3 page memo

☒ FAX RETURN of 4 pages, attached to this response sheet



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 16, 1999

MEMORANDUM

TO: Alison Perkins-Cohen, OMB

FROM: Velma Taylor, DOJ *VT*

RE: Presidential Task Force Report on Employment of Persons with Disabilities (LRM-CJB126)

The Department of Justice recommends the following changes to the draft report of the Presidential Task Force of Employment of Persons with Disabilities, "Re-Charting the Course: If Not Now, When?"

p. 14, second full paragraph.

This paragraph's discussion of the *Yeskey* case is incorrect. Contrary to the report's text, the Court's holding was not so sweeping as to suggest that "the [ADA] applies to everything a state and local government does." Instead, it ruled only with regard to the applicability of the ADA to state prison inmates. In reaching its decision, moreover, the Court did not "side with the plain intent of Congress" — it in fact suggested that Congress' intent was irrelevant here in the context of an unambiguous statutory text. We suggest replacing the paragraph as follows:

In its other 1998 case, *Pennsylvania Department of Corrections v. Yeskey*, the Court unanimously rejected an argument, which had been accepted by some lower courts, that state prison inmates were not protected by the nondiscrimination provisions of the ADA. The Court emphasized that state prisons fell squarely within the statute's definition of public entities, which include "any department, agency, special purpose district, or other instrumentality of a State or States or local government."

p. 14, third full paragraph

Please give full names for cases cited. Replace "*Olmstead*" with "*Olmstead v. L.C.*"; "*Cleveland*" with "*Cleveland v. Policy Management Systems Corp.*"; "*Sutton*" with "*Sutton v. United Air Lines*"; "*Murphy*" with "*Murphy v. United Parcel Service*"; and "*Albertsons*" with "*Albertsons, Inc. v. Kirkingburg*."

p. 14, last paragraph

The first sentence incorrectly states that the Court was "endorsing" a particular perspective and made a finding that unjustified isolation of persons with disabilities was intolerable. While the Court may have done so inadvertently, it did not specifically endorse a view on unjustified isolation. Also, the Court itself made no findings with regard to unjustified isolation; rather, it was simply expounding on what judgments underlay Congress' "comprehensive view of the concept of discrimination advanced in the ADA." *Olmstead*, 119 S. Ct. at 2186. As the Court stated, "Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments." *Id.* at 2187. We would suggest replacing the first statement as follows:

Accepting the core claims of the disability rights movement - and the position urged by the Administration - Justice Ruth Bader Ginsburg's opinion for the Court pointed to two reasons why "unjustified institutional isolation of persons with disabilities" would fall under Congress' "comprehensive view of the concept of discrimination advanced in the ADA."

p. 15, first paragraph

For clarification purposes, we recommend that you insert the phrase, "that under the ADA," and delete the comma after "held" in the sentence which begins, "Accordingly." The statement would thus read, "Accordingly, the Court held that under the ADA, states may not place people with disabilities"

p. 15, third full paragraph

The second sentence, "The Court recognized a key point that underlies the ADA - that sometimes it's nothing but discrimination that makes someone 'unable' to work," is somewhat misleading. The Court did not make this point directly; rather, in explaining how the statement, "I am too disabled to work" in the SSI context would not necessarily be in conflict with the statement, "I am not too disabled to work" in the ADA context, the Court pointed to the fact that while the availability of reasonable accommodation is relevant in the ADA context, it is not so in the SSI context. *Cleveland*, 119 S. Ct. at 1602. Hence, the Court explained, "an ADA suit

claiming that the plaintiff can perform her job with reasonable accommodation may well prove consistent with an SSDI claim that the plaintiff could not perform her own job (or other jobs) without it." *Id.* In order to avoid giving a potentially misleading description of the Court's opinion, we recommend that the sentence be altered by deleting the phrase "discrimination," and replacing it with, "the failure to provide reasonable accommodation." The statement would thus read: "The Court recognized a key point that underlies the ADA - that sometimes it's nothing but the failure to provide reasonable accommodation that makes someone 'unable' to work."

p. 15, last paragraph

This paragraph fails to explain adequately the Court's reasoning. We recommend that the statement that begins with "Concluding that the Department of Transportation," be deleted and that the following statement replace it:

Because the DOT had adopted the waiver program in order to collect empirical data to reevaluate visual acuity standards for driving commercial motor vehicles, and had not modified its standards, the Court concluded that Albertsons was entitled to disregard the DOT waiver and insist that the employee meet the DOT's minimum visual acuity standard as a condition of employment.

Also, the statement which begins, "Even if the Department grants waivers," should be modified. The phrase "should not be forced" should be replaced with "are not required under the ADA." The statement would thus read: "Even if the Department grants waivers in some cases, the Court said, employers are not required under the ADA to take part in the Department of Transportation's experiment."

p. 16, first full paragraph

The second sentence does not clearly explicate the Court's ruling in *Sutton and Murphy*. We suggest replacing that sentence with the following two:

In *Sutton v. United Air Lines* and *Murphy v. United Parcel Service*, the Court ruled that a determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment. Thus, an individual would not be found disabled if he or she employed measures that mitigated the impairment.

p. 16, last paragraph

The draft states:

"But there is no denying that the Court's decisions place significant obstacles in the path of people with disabilities who attempt to vindicate their rights."

This is incorrect. Disability protection is exclusively statutory -- there is no constitutional dimension. The Supreme Court has interpreted the scope of the statutory rights of the disabled under the ADA. Rather than obstructing the "rights" of the disabled, the Court defined more precisely those rights in a more narrow manner than some might like. For this reason, this sentence should be deleted. The second sentence of the paragraph concerning the importance of the Administration's role can stand alone.

If you have any questions, please let me know.

- *A coordinated enforcement initiative targeting hiring discrimination related to unnecessary qualification standards in state and local laws, ordinances, regulations and professional certification requirements.*
- *An interagency coordination working group, consisting of representatives from EEOC, DOJ, OFCCP, the Department of Education, and the Department of Health and Human Services, that is examining the implications of the recent Supreme Court decisions interpreting the ADA and developing a response strategy..*
- *Uniform training for investigators and attorneys across federal agencies on disability discrimination laws, and the development of targeted training materials in the area of discrimination faced by persons with disabilities who are non-English speakers and/or from diverse cultural and racial backgrounds.*

GOAL: *Work with the Department of Transportation to implement regulations that do not discriminate against individuals with disabilities who are employed, or would like to be employed, by the nation's transportation carriers. [Civil Rights Committee]*

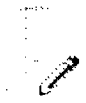
STEPS: *The Civil Rights Committee reviewed the Department of Transportation's interstate commercial motor carrier driver qualifications which have served as absolute barriers to individuals with disabilities. The Committee's goal is to modify them to be more responsive to an individual's actual ability to perform the job while fostering the Federal government's mandate to ensure the safety of the nation's roadways. One particularly problematic barrier to employment has been DOT's regulations prohibiting the employment of any individual who has diabetes requiring use of insulin for treatment as a commercial motor carrier driver. The Committee believes that an evaluation of the diabetes standard and its appropriate modification may serve as a model for addressing other standards in the regulations that, in their current form, appear to be inconsistent with Federal disability law. DOT has created a panel of medical experts that is reviewing all aspects of diabetes, with the ultimate goal of providing medically-based recommendations. The panel's report will be issued in December 1999 and the Civil Rights Committee will then issue a final recommendation on changing the regulation.*

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EQUAL ACCESS TO EMPLOYMENT OPPORTUNITIES

GOAL: *People with disabilities fully participate in One-Stop Career Centers and other programs/initiatives under the Workforce Investment Act (WIA) that are intended to promote employment and lifelong learning. [Access to Employment and Lifelong Learning]*

EPS: *The Access to Employment and Lifelong Learning Committee has developed, and are supporting, recommendations to ensure the inclusion of persons with disabilities in WIA program, including physical and programmatic accessibility.*



Alison Perkins-Cohen
11/16/99 12:11:45 PM

Record Type: Record

To: J. Eric Gould/OPD/EOP@EOP

cc:

Subject: Comments on Draft Task Force on Employment of Adults with Disabilities materials

----- Forwarded by Alison Perkins-Cohen/OMB/EOP on 11/16/99 12:12 PM -----



"Hansen, Randy" <Randy_Hansen@ed.gov>
11/15/99 05:16:57 PM

Record Type: Record

To: Alison Perkins-Cohen/OMB/EOP

cc: See the distribution list at the bottom of this message

Subject: Comments on Draft Task Force on Employment of Adults with Disabilities materials

First, it is difficult to review the draft report documents because they are fragmented and not yet complete. We understand that, even now, the drafts are being revised. Additionally, it is not clear to us that the draft's proposed activities involving ED programs and officials, attributed to committees in which we participated, have in fact been discussed and approved by those committees. We believe this should be done. A meeting might be the most efficient way to these questions.

Second, will the recommendations to the President (page 30), "vetted separately by the White [sic] House", be limited to activities to be undertaken directly by the President and the Task Force? We understand and respect the reasons why the recommendations must be closely held prior to release, but as we would want to have an opportunity to comment on them as well as Task Force members and because some recommendations are almost certain to involve programs we administer.

Specific edits and comments:

Forward:

If this section is to be used for acknowledgements, could we reference the Task Force members and designees, if possible, as putting forth effort in

the last year, in addition to Becky, Jonathan Young, etc?

On page 1, in the 4th sentence, "mandates" probably refers to the EO and not the Task Force.

On page 2, there is inconsistent capitalization within the bullets. Also, in the 3rd paragraph "some of" should be inserted before "assistive technology" (the statement is not entirely true, and, moreover, Congressional action is not yet complete).

On page 3. We never received the appendix and a DATE is left unspecified in the third paragraph. In the 4th paragraph, a comma is necessary after "In June".

On page 4 in the second paragraph, "apprized" is spelled wrong.

Executive Summary:

Two important thematic areas are slighted. There is virtually no mention of transition, or of WIA and its implementation. The Executive Summary does not integrate information on eliminating barriers for young people with disabilities as they transition from school to employment. These ideas are outlined in the report of the Subcommittee on Expanding Employment Opportunities for Young People with Disabilities. Some of this should be picked up. Likewise, language available from the Access Committee's report regarding WIA should be used in the Exec. Summary.

Highlights of the Committee Reports:

There are problems with the way proposed activities are presented in this report. Recommendations from outside stakeholders "will go to the Task Force committees for action..." This language does not indicate that they will be evaluated to assure their validity and workability, a needed step. For example, on page 37 re choice, the first bullet under steps states: "By the year 2009, redirect all funding to support customer controlled resources." This would require many statutory changes and a great deal of discussion by each Federal Department affected. What does this very broad statement mean? Do present Rehab Act choice provisions mean this has been effectuated already for VR?

Page 4, the last paragraph, indicates that for the first time "a Research Roundtable was brought together to begin to identify gaps and needed areas for future focus of federal discretionary dollars." This is not correct in our view. The ICDR is undertaking such a review and has discussed these problems. The IOM report addresses budgets.

Page 6: , The Year at a Glance.

The 7th paragraph in Year at a Glance is incorrect. It states that Labor received a Hammer Award in partnership with ED. This is not so, and the only other assistive technology hammer we are aware of was for the CAP program at DOD (and that was for their center).

Should following be included in "Year at a Glance"

? In February, 1999, Vice President Gore's National Partnership for Reinventing Government presented the Team with the prestigious "Hammer Award." This event also was highlighted by recognition of Ed's partners from industry and research, including IBM, Microsoft, and the Trace Rehabilitation Engineering Research Center, University of Wisconsin-Madison, as co-award winners for their collaboration with ED in this effort.

* In March, 1999, the Association of Access Engineering Specialists recognized the Department of Education OCIO Assistive Technology Team with the Association's Excellence in Access Award in the Significant Innovative Technical Contributions (SITC) category for significantly expanding the body of knowledge for access engineering for the contribution the development and sharing of their "Requirements for Accessible Software Design".

? In May, 1999, the Department of Education OCIO Assistive Technology Team opened an Assistive Technology Demonstration Center where employees, supervisors, customers, other government agencies, and the public could view and test assistive technologies for applicability to personal disabilities or research solutions for employees.

* September, 1999, the Association for Federal Information Resources Management recognized the Department's Assistive Technology Team for its significant contributions in the area of assistive technology in application systems development through their work with major information technology development firms, the inclusion of standard contract language requiring all software developed or acquired for the Department be accessible the continued growth of their Assistive Technology Program.

Also, ICDR meeting dates are not included and should be. The ICDR met on the following dates: March 9, July 8, October 15 and December 14. Page 6, last item: what disability content for these WIA meetings? Add mention of the publication of the final IDEA regs, March 12.

Pages 27 and page 47 contain statements about creation of a new DoL PAS position for disability, and an "office". Are these the same? What would be the relation to ED WIA partners?

Page 39, re bullet 4 of the "Access to One-stops" section. References to WIA cost-sharing and leveraging are extremely sensitive at this time. To attribute such a broad and sweeping action step to a committee that in our recollection has never made such a statement before is very problematic and potentially politically inflammatory. Please either delete this bullet or tighten the language to reflect that we are working at the Federal, State, and local levels to encourage effective collaboration, keeping in mind the unique features of the programs involved.

Page 39, re the TANF goal: There is no reference here to these programs developing and implementing effective means to screen participants for hidden or undiagnosed disabilities, such as learning disabilities. In reverse, this HAS been a key component of Access Committee work and thinking.

Page 40 in the last bullet, we would prefer this be stated without having the President "direct" the Secretary to do this.

Page 44, understanding by managers step, second sentence: This sentence does not go far enough to compel Federal departments to meet their hiring goals. Education and outreach are fine, but what other incentives, rewards, or sanctions are recommended for agencies falling behind?

P. 46: lifelong Learning: "Establish a permanent disability office within the DOL." Why is this step under Lifelong Learning?

Page 47, life-long learning, first bullet: We have never seen this and do not believe that it should be stated as a committee action.

Page 48, systems change, second bullet: "requiring a unified plan" would require a statutory change. States could be "encouraged" to have unified plans. Again, this did not come from the Access Committee's report.

Pages 50-51, full access to databases goal, second bullet: We would ask that VR agencies, in addition to SSA, be added as subscribers to America's Learning Exchange.

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