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Disability Programs

Vol. 23 No. 17

August 24, 2000

Page 133

Disability Benefits

SSA Proposes Tying Indicators To Increases in Wage Index

In the waning days of the Clinton administration this January, the Social Security Administration (SSA) will hand employment counselors and advocates a new tool for reducing joblessness among consumers.

First, SSA is proposing yearly cost-of-living increases for three indicators used in determining disability benefits. In addition, SSA would make substantial one-time hikes next year for two of the indicators. Taken together, these actions would lessen the work disincentive effect that results when these indicators do not keep up with inflation and remain at low levels.

These actions also are in line with President Clinton's directives to federal agencies delivered late last month on the occasion of ADA's 10th anniversary (RDP, July 27, p. 115). The changes would take effect Jan. 1, 2001. The disability community and other members of the public are invited to comment on them through Oct. 20.

Putting Increases on 'Autopilot'

The first indicator affected is the substantial gainful activity (SGA) level, the dollar amount of earned monthly income above which SSA can reduce or eliminate disability benefits. Last year, it was increased — for the first time in about nine years — from \$500 to \$700. Starting next year, under the proposed rule, SSA would tie SGA to a national average wage index. Depending on this index, SGA most likely would increase each year, or possibly remain the same. But it would never decrease beneath the prior year's level.

Under similar guidelines, SSA would institute automatic yearly adjustments for the "monthly amount" that defines trial work periods and the student earned income exclusion. Unlike SGA, these did not get recent boosts. So, SSA proposes hiking them, respectively, by 165 percent and 222 percent.

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SSA wants to increase the work-period monthly amount from \$200 to \$530 for 2001. When beneficiaries have earned income that at least meets this level for 9 months — not necessarily in consecutive months — through a 60-month period, their eligibility ends.

The student earned-income exclusion, designed to help with the extra expenses of attending classes incurred by students with disabilities, currently sits at \$400 per month with a \$1,620 yearly maximum. The new rule would raise those figures to \$1,290 and \$5,200 beginning Jan. 1.

Scrapping Another Measure

Along with SGA, SSA has also used a related measure, the "secondary SGA amount." Now set at \$300, this is the income level *below* which SSA considers that a disability beneficiary is definitely not engaged in SGA. For those with monthly earnings in the gray area between this \$300 level and the \$700 regular SGA level, SSA was supposed to collect further evidence to determine whether there was income being suppressed or deferred, which may have added up to SGA. But now, because SSA says that the secondary SGA amount "is not as useful a tool as we would have liked," the agency proposes discontinuing its use.

Eliminating the secondary SGA will have little impact on beneficiaries because there have been only a few who were able to suppress or defer their income, the agency says. SSA insists this action is necessary "to simplify our rules and to improve our work efficiency."

(Continued)



Disables
f: ADA anniversary

Agencies Act To Ease Use Of Internet By Disabled

*Changes Mandated
By 1998 Amendment
Affect Business Too*

By **CARRIE JOHNSON**
Washington Post Staff Writer

For Ginny Finch, a visit to the Internet can turn painful in just a few seconds.

The charts and photos and whiz-bang graphics that designers are paid so much to deliver make Finch, a marketing specialist at the Federal Highway Administration, recoil. She is legally blind, and though at work she uses a computer monitor that is nearly two feet wide, many destinations on the World Wide Web still feel remote, if not jarring, to her eyes.

"I often avoid getting on the Internet because it's just too difficult," said Finch.

In the next few months, the federal government is expected to make parts of the Web less cumbersome for Finch and others with disabilities. The changes, long awaited by advocates for the disabled, will apply to Web sites, software programs and other technology products prepared by federal agencies for the public or their own employees.

The new accessibility standards have been in the works since 1998, when Congress reauthorized and amended the Rehabilitation Act, making the mandate more explicit. After two years of study and comment by disability rights groups, government entities and businesses, the changes are likely to take effect by the middle of next year—six months after they are publicly released.

But government projects, which require months or even years of planning, already are beginning to reflect the new goals. And federal agencies are scrambling to ensure that not only their Web sites, but also the internal software programs they use, are disability-friendly.

"Most IT [information technology] managers know they've got to do this, and they're trying to," said Diana Hynek, who coordinates the effort at the

Commerce Department. Hynek said Commerce is first revamping its Web sites rather than the systems it uses in-house, because the Web sites represent the "public face" of the agency.

The standards are likely to have a ripple effect on private businesses, because the federal government is the largest purchaser of information technology in the country, spending more than \$38 billion this year, according to the Office of Management and Budget. Companies that win government contracts will need to make those tech products accessible to comply with the Rehabilitation Act.

Government estimates for the cost of revamping federal Web sites and other technology to comply with the new standards range wildly, from \$85 million to \$691 million, according to the Architectural and Transportation Barriers Compliance Board.

Yet sites built from scratch or those that are redesigned will not incur many new costs, said Judy Brewer, director of the Web Accessibility Initiative at the World Wide Web Consortium, an international organization that sets Internet standards.

"If you've got a small site or a simple site, there's very little you've got to do to make the site accessible," said Brewer.

Retooling sites filled with data-heavy charts and large graphics and making changes to intricate software programs, however, could be a costly enterprise.

Just as federal buildings boast ramps for people in wheelchairs, government Web sites soon must offer alternatives for people who cannot see multi-tiered charts or hear online interviews with agency leaders. Many blind people use

electronic devices that read aloud text and captions that appear on a computer screen. But the screen readers can stumble over pictures and graphics, as well as links to other parts of the site.

To solve the problem, programmers will need to create "text only" versions of Web sites or to better explain in words the information that charts and photos convey. They'll also need to break up unwieldy tables filled with government statistics into bite-sized chunks of information. Streaming video excerpts will require captions for the deaf.

The issue of access to the Internet for disabled users has picked up steam in recent months, as President Clinton celebrated the 10th anniversary of the Americans with Disabilities Act in July.

Under the new Rehabilitation Act standards, people who are dissatisfied with agency efforts to achieve IT accessibility can file lawsuits or lodge administrative complaints with federal agencies.

Jennifer Mechem, a disability policy coordinator in the Education Department's office of management, said her agency has been moving toward accessible software for three years. She said Education is not paying extra for software, but leaders there are spending more time on accessibility issues.

"The cycle of IT is so quick that we're going to be using different software in two or three years anyway," Mechem said.

■ **High-tech firms develop more disabled-friendly software.** | Page E2

Giving the Disabled Increased E-Access

Firms Helping Agencies Obey New Rules

By **CARRIE JOHNSON**
Washington Post Staff Writer

Making the Web easier to navigate for people with disabilities has always been a mission for the true believers—a small band of volunteers, motivated by empathy or personal experience rather than business acumen.

But that's about to change.

In the next few months, all federal agencies will begin making their Web sites, software programs and other electronic sources of information accessible to people with disabilities, including the blind, deaf and wheelchair-bound. And a variety of companies and entrepreneurs are already preparing to provide products and services for this rich new market.

The potential stakes are enormous. The cost of revamping federal Web sites and other information technology for the disabled is estimated to range from \$85 million to \$691 million, according to the Architectural and Transportation Barriers Compliance Board.

Large vendors such as Microsoft Corp., Lotus Development Corp., International Business Machines Corp. and Sun Microsystems Inc. already design and market disabled-friendly versions of their products. But the new government rules will provide a huge incentive for other businesses to follow suit.

Suddenly, the once lonely province of disabled-rights advocates who work on technology issues is growing more crowded.

Take Optavia Corp., a Madison, Wis., company that provides advice on how to make Web sites more accessible to general audiences. Disability-related business will account for one-quarter of the firm's activity this year—compared with none last year, said Shawn Lawton Henry, director of research and development. Henry attributes the uptick to increased awareness of the new federal requirements and the recent 10th anniversary of the Americans With Disabilities Act (ADA).

"People are beginning to realize that this is going to be a competitive advantage," Henry said. "We've talked with people who have already lost contracts because their technology wasn't accessible."

Under new rules expected to go into effect by May, all federal agencies will have to make their new information technology accessible to both their employees and outside users of public information. This means they will have to make all new Web sites and systems accessible, as well as any products they change—for instance, a software program that is updated. Because much electronic information is constantly updated, the rules are expected to have broad impact throughout government.

Crafting a disabled-friendly Web site doesn't take much additional time or expense, said Denise Koschmann, a usability specialist at QRC in Bethesda. Mostly, she said, it just means remembering that not everyone can see the computer screen, hear the voices coming from the speakers or reach the keyboard with their fingers.

At the simplest level, Web designers need to include alternative descriptions of graphics—called "alt text"—that can be read by screen readers, devices that sit atop the computers of blind users and repeat aloud the written words on the monitor. Some of these devices can't understand columns and charts, so designers will need to offer alternatives to communicate statistical information.

Web sites that use streaming video interviews of government officials, for instance, would need to provide written transcripts or captions at the bottom of the computer screen for deaf users.

Marion Summerville said she knew back in 1996 that someday there would be a clamor to make the Web more open to people with different needs. After all, she thought, it was a "big duh," a common-sense way to reach a wider audience. One in 10 Americans report having some kind of disability, according to 1995 U.S. Census Bureau figures—a largely untapped online consumer market.

But it's taken four years for Summerville to feel comfortable enough to leave her day job designing Web sites to start her own accessibility company. Along with two business partners, Summerville is setting up D.C.-based Archeidos Corp., to train designers to pay more attention to how disabled people and others use technology.

"I've just been waiting for the market to catch up," Summerville said. "As Web services exploded in the late 1990s, access issues were just a matter of time."

Sarah Presley, a blind computer programmer, said she steams over cumbersome links to other Web pages, which are difficult to remember as her screen reader speaks them. And the long online forms that feature menus with "pull-down" answers—common when you're signing up with a new Internet service provider, for example—really irritate her.

"I get frustrated because it's really not that hard to make sites accessible," said Presley. Researchers have developed technology to alert Web designers to problems disabled users might have with their sites, including a site called Bobby that's operated by the Center for Applied Special Technology (www.cast.org/bobby). Just type in a Web address, and the program will report, line by line, which parts of the site are confusing or faulty.

Mike Paciello, founder of the Boston company WebAble Inc., recently signed a deal with the center to offer his disability consulting services to people who check their Web sites using Bobby. Paciello said technology that opens the door to disabled users can have applications that benefit other users. For instance, such technology tends to present information in both a graphics version and a non-graphics version, which would enable a Web site to be easily accessed over cellular phones, on personal digital assistants or through computers in cars. Voice-operated computing systems that help the blind also come in handy when a sighted person breaks his arm or tries to do several things at the same time.

The government has not ordered companies to make their technology accessible to the disabled, but the Justice Department, in a 1996 opinion, said the ADA applied to the Internet, perhaps paving the way for more legal action against privately operated Web sites. The National Federation of the Blind sued America Online Inc. earlier this year, arguing that some of the company's technology violated the ADA. The federation agreed to drop the suit after AOL promised to improve its technology, but the sentiment behind the suit remains strong.

"We're starting to get a taste of freedom of information," said Debbie Brown, a blind disability-rights advocate who works at the Library of Congress. "We're starting to get more militant about it because we know it can happen."

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 26, 2000

EXECUTIVE ORDER

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

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), as amended, and in order to promote a model Federal workplace that provides reasonable accommodation for (1) individuals with disabilities in the application process for Federal employment; (2) Federal employees with disabilities to perform the essential functions of a position; and (3) Federal employees with disabilities to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities, it is hereby ordered as follows:

Section 1. Establishment of Effective Written Procedures to Facilitate the Provision of Reasonable Accommodation. (a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. The written procedures may allow different components of an agency to tailor their procedures as necessary to ensure the expeditious processing of requests.

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

- (1) Explain that an employee or job applicant may initiate a request for reasonable accommodation orally or in writing. If the agency requires an applicant or employee to complete a reasonable accommodation request form for recordkeeping purposes, the form must be provided as an attachment to the agency's written procedures;
- (2) Explain how the agency will process a request for reasonable accommodation, and from whom the individual will receive a final decision;
- (3) Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. Time limits for decision making should be as short as reasonably possible;
- (4) Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation where the disability and/or need for accommodation is not obvious;
- (5) Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, or the need for the reasonable accommodation, or does not otherwise

clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace;

(6) Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense;

(7) Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position;

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

(9) Ensure that agencies' systems of recordkeeping track the processing of requests for reasonable accommodation and maintain the confidentiality of medical information received in accordance with applicable law and regulations; and

(10) Encourage the use of informal dispute resolution processes to allow individuals with disabilities to obtain prompt reconsideration of denials of reasonable accommodation. Agencies must also inform individuals with disabilities that they have the right to file complaints in the Equal Employment Opportunity process and other statutory processes, as appropriate, if their requests for reasonable accommodation are denied.

Sec. 2. Submission of Agency Reasonable Accommodation Procedures to the Equal Employment Opportunity Commission (EEOC). Within 1 year from the date of this order, each agency shall submit its procedures to the EEOC. Each agency shall also submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted.

Sec. 3. Collective Bargaining Obligations. In adopting their reasonable accommodation procedures, agencies must honor their obligations to notify their collective bargaining representatives and bargain over such procedures to the extent required by law.

Sec. 4. Implementation. The EEOC shall issue guidance for the implementation of this order within 90 days from the date of this order.

Sec. 5. Construction and Judicial Review. (a) Nothing in this order limits the rights that individuals with disabilities may have under the Rehabilitation Act of 1973, as amended.

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

WILLIAM J. CLINTON

THE WHITE HOUSE,
July 26, 2000.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 26, 2000

July 26, 2000

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Employing People with Significant Disabilities to Fill
Federal Agency Jobs that can be Performed at Alternate
Work Sites, Including the Home

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

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

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

To harness the power of new technologies to promote Federal sector employment of qualified people with significant disabilities, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), as amended, and to improve Federal customer service representation, I direct executive departments and agencies as follows:

(a) Each head of an executive department or agency operating customer service call/contact centers shall identify positions that can be relocated to home-based or other off-site facilities, and that can be filled by qualified individuals, including those with significant disabilities.

(b) Each head of an executive department or agency shall identify the appropriateness of using home-based and other off-site positions to carry out other specific work activities, such as the processing of insurance claims and financial transactions, that could be accomplished by qualified individuals, including those with significant disabilities.

(c) If the head of a department or agency determines it is feasible and appropriate to use home-based and other off-site locations pursuant to its actions under paragraphs (a) and (b) of this

memorandum, such head shall develop a Plan of Action that encourages the recruitment and employment of qualified individuals with significant disabilities.

(d) The Plan of Action developed pursuant to paragraph (c) of this memorandum shall be submitted to the National Task Force on Employment of Adults with Disabilities (Task Force) (established by Executive Order 13078 of March 13, 1998) within 120 days from the date of this memorandum.

(e) The Task Force shall review and approve agency Plans of Action and shall be responsible for developing guidance for the implementation of the plans and the provisions of this memorandum.

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

(g) This memorandum shall be implemented consistent with merit system principles under law.

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

WILLIAM J. CLINTON

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 26, 2000

EXECUTIVE ORDER

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

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote an increase in the opportunities for individuals with disabilities to be employed at all levels and occupations of the Federal Government, and to support the goals articulated in section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), it is hereby ordered as follows:

Section 1. Increasing the Federal Employment Opportunities for Individuals with Disabilities. (a) Recent evidence demonstrates that, throughout the United States, qualified persons with disabilities have been refused employment despite their availability and qualifications, and many qualified persons with disabilities are never made aware of available employment opportunities. Evidence also suggests that increased efforts at outreach, and increased understanding of the reasonable accommodations available for persons with disabilities, will permit persons with disabilities to compete for employment on a more level playing field.

(b) Based on current hiring patterns and anticipated increases from expanded outreach efforts and appropriate accommodations, the Federal Government, over the next 5 years, will be able to hire 100,000 qualified individuals with disabilities. In furtherance of such efforts, Federal agencies shall:

(1) Use available hiring authorities, consistent with statutes, regulations, and prior Executive orders and Presidential Memoranda;

(2) Expand their outreach efforts, using both traditional and nontraditional methods; and

(3) Increase their efforts to accommodate individuals with disabilities.

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

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

Sec. 2. Implementation. Each Federal agency shall prepare a plan to increase the opportunities for individuals with disabilities to be employed in the agency. Each agency shall submit that plan to the Office of Personnel Management within 60 days from the date of this order.

Sec. 3. Authority to Develop Guidance. The Office of Personnel Management shall develop guidance on the provisions of this order to increase the opportunities for individuals with disabilities employed in

the Federal Government.

Sec. 4. Judicial Review. This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
July 26, 2000.

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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

July 26, 2000

July 26, 2000

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

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

On the 10th anniversary of the Americans with Disabilities Act (ADA), we have much to celebrate. This landmark civil rights law has increased opportunities for employment, education, and leisure for millions of Americans. Our country is stronger as a result.

As we celebrate the ADA, we cannot forget that it was built on the solid foundation of the Rehabilitation Act of 1973 (Act) (29 U.S.C. 701 et seq.), as amended, which prohibits discrimination on the basis of disability in Federal programs and activities. One important goal of the Act for the Federal Government is to set an example for the rest of the country by being a model employer and providing exemplary service to its customers with disabilities. While this goal remains constant, the nature and structure of government have changed in the decades since the inception of the Act. New agencies have been formed, while others no longer exist. Government is more efficient and doing more with less.

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

I call upon the Department of Justice (DOJ), the Equal Employment Opportunity Commission (EEOC), the Interagency Disability Coordinating Council (IDCC), and the National Task Force on Employment of Adults with Disabilities (Task Force) to provide leadership to Federal agencies in meeting their common goal: to ensure that today's Federal programs, including programs of employment, continue to be readily accessible to and usable by persons with disabilities.

To meet this goal, I hereby direct the DOJ and the EEOC, in close consultation with the IDCC and the Task Force, to develop priorities under which agencies will focus on specific programs or types of programs to ensure that they are readily accessible to persons with disabilities in accordance with the requirements of sections 501, 504, and 508 of the Act (29 U.S.C. 791, 794, 794d). As the initial steps, agencies are directed to do the following:

- (a) Make all programs offered on their Internet and Intranet sites accessible to people with disabilities by July 27, 2001, consistent with the requirements of the Act and subject to the availability of appropriations and technology; and
- (b) Publish by various means, including by incorporation on all agency Internet home pages, the name and contact information for the office(s) responsible for coordinating the agency's compliance with sections 501 and 504 of the Act (29 U.S.C. 791, 794).

I direct the IDCC to coordinate executive agencies' efforts to make the Federal Government's electronic and information technology accessible to

persons with disabilities.

I designate the Administrator of General Services and the Secretary of Defense to participate in the IDCC, in addition to those members set out by statute (29 U.S.C. 794c).

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

Nothing in this memorandum is intended in any way to limit the effect or mandate of Executive Order 12250 of November 2, 1980, which conveys certain authorities upon the Attorney General, or Executive Order 12067 of June 30, 1978, which conveys certain authorities upon the Chair of the EEOC.

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

WILLIAM J. CLINTON

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J. Eric Gould

07/21/2000 09:18:23 AM

Record Type: Record

To: Andrea Kane/OPD/EOP

cc:

Subject: Guidance needed--EEOC enforcement of Federal procedures regarding reasonable accommodations for individuals with disabilities

----- Forwarded by J. Eric Gould/OPD/EOP on 07/21/2000 09:18 AM -----

Melissa N. Benton 07/20/2000 09:35:21 PM

Record Type: Record

To: Barbara Chow/OMB/EOP@EOP

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

Subject: Guidance needed--EEOC enforcement of Federal procedures regarding reasonable accommodations for individuals with disabilities

We need your guidance on an issue that came up today during an interagency meeting, chaired by OMB GC (Mac Reed), to finalize a number of Executive Orders and Memoranda being developed as part of the Administration's events to commemorate the 10th anniversary of the Americans with Disabilities Act. The plan is to release these on Wednesday, July 26th, as part of a Presidential event.

The E.O. in question sets forth requirements for agencies to establish procedures to provide "reasonable accommodations" to individuals with disabilities, as required under the ADA and the Rehabilitation Act. The draft E.O. sets forth a number of general requirements for agencies, and makes the Equal Employment Opportunity Commission responsible for issuing guidance to implement the Order.

In addition, the E.O. in its current form would require agencies to submit their reasonable accommodation procedures to the EEOC. EEOC would like to add language granting the EEOC authority to "require modifications to an agency's procedures" in order to ensure compliance with the E.O. This amounts to a significant expansion of the EEOC's authority--without this language, the Commission is not authorized to compel action on the part of Federal agencies. EEOC argues it needs this authority in order to give the E.O. "teeth."

Alex Ceja and I recommend against expanding the EEOC's enforcement authority in this manner. (Eric Gould, who was also present at this meeting, agrees with this recommendation. In addition, we expect that a number of agencies would object to this expansion.) Arguments against expansion follow.

- We question the fairness and feasibility of having the EEOC "police" the manner in which Federal agencies have chosen to accommodate individuals with disabilities. We don't believe other enforcement agencies have such authority (e.g., OSHA in the context of Federal workplace safety).
- In cases where an employee or applicant believes reasonable accommodation has not been provided,

he or she has the right to file a complaint alleging discrimination.

- It is not clear how disputes between EEOC and agencies--regarding appropriate procedures to achieve reasonable accommodations--would be resolved.
- The EEOC has insufficient Federal enforcement resources to assume this new responsibility.
- This E.O., which is being cleared on an expedited basis, is an inappropriate vehicle for a change of this significance. Agencies will have had less than one day to respond to this specific change (which was proposed today by EEOC).

We've been asked to provide our comments by tomorrow afternoon. Please advise as to how you would like us to proceed on this issue.

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

GENERAL COUNSEL

July 18, 2000

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus *RGD*
General Counsel

SUBJECT: Two Proposed Executive Orders Entitled, Respectively, "Increasing the Number of Individuals with Disabilities Employed in the Federal Government" and "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation," and Two Proposed Memoranda Entitled, Respectively, "Employing People with Significant Disabilities to Fill Federal Agency Jobs that can be performed at Alternate Worksites, including the Home" and "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination"

Attached are two proposed Executive orders entitled, respectively, "Increasing the Number of Individuals with Disabilities Employed in the Federal Government" and "Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation" and two proposed memoranda entitled, respectively, "Employment of People with Significant Disabilities to Fill Federal Agency Jobs that can be performed at Alternate Worksites, including the Home" and "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination," that were prepared by the White House Office of Domestic Policy.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning these proposals. If you have any comments or objections, they should be received no later than close of business Wednesday, July 19, 2000. Please be advised that agencies that do not respond by the deadline will be recorded as not objecting to the proposals.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed (202-395-3563) of this office or fax to 202-395-7294.

Thank you.

Attachments - Distribution List

Two Proposed Executive Orders and
Two Proposed Memoranda

cc:

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**Honorable Charles Burson
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to the Vice President**

**Honorable Lisel Loy
Staff Secretary to the President**

**Honorable Bob Nash
Director of Presidential Personnel**

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

Executive Order

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

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

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

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

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

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

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

Sec. 2. Implementation.

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

Sec. 3. Authority to Develop Guidance.

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

Sec. 4. Judicial Review.

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

THE WHITE HOUSE,

Executive Order

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

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

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

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

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

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

1. Explain how an employee or job applicant initiates a request for reasonable accommodation. If the agency requires an applicant or employee to complete a

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

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

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

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

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

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

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

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

Within one year, each agency shall submit its procedures to the EEOC for comment. Each agency shall further submit to the EEOC any modifications to its reasonable accommodation procedures at the time that those modifications are adopted.

Sec. 3. Collective Bargaining Obligations.

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

Sec. 4. Judicial Review.

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

Sec. 5. Implementation.

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

THE WHITE HOUSE,

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

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE,

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

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE,



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

GENERAL COUNSEL

July 14, 2000

MEMORANDUM FOR DESIGNATED AGENCY HEADS
(SEE ATTACHED DISTRIBUTION LIST)

FROM: Robert G. Damus 
General Counsel

SUBJECT: Two Proposed Executive Orders Entitled, Respectively, "Increasing the Number of Qualified Individuals with Disabilities Employed in the Federal Government" and "Requiring Federal Agencies to Establish Effective Written Procedures for Processing Requests for Reasonable Accommodation," and Two Proposed Memoranda entitled, respectively, "Employment of People with Significant Disabilities by Federal Agencies to Serve as Home-Based Customer Service Representatives and in Other Remote Off-Site Work Stations" and "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination"

Attached are two proposed Executive orders entitled, respectively, "Increasing the Number of Qualified Individuals with Disabilities Employed in the Federal Government" and "Requiring Federal Agencies to Establish Effective Written Procedures for Processing Requests for Reasonable Accommodation" and two proposed memoranda entitled, respectively, "Employment of People with Significant Disabilities by Federal Agencies to Serve as Home-Based Customer Service Representatives and in Other Remote Off-Site Work Stations" and "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination," that were prepared by the White House Office of Domestic Policy.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments you may have concerning these proposals. If you have any comments or objections, they should be received no later than close of business Tuesday, July 18, 2000. Please be advised that agencies that do not respond by the deadline will be recorded as not objecting to the proposals.

Comments or inquiries may be submitted by telephone to Mr. Mac Reed (202-395-3563) of this office or fax to 202-395-7294.

Thank you.

Attachments - Distribution List
Two Proposed Executive Orders and
Two Proposed Memoranda

cc:	Jack Lew	Michael Deich	Jeanne Lambrew	Barbara Chow
	Sylvia Mathews	Wesley Warren	Dick Emery	Kenneth Oscar
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Administrator
National Aeronautics and Space Administration

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Office of Personnel Management

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Assistant to the President for
Domestic Policy Council

Honorable Janet Yellen
Chair
Council of Economic Advisers

Honorable Neal Lane
Assistant to the President and Director
Office of Science and Technology Policy

Honorable Michael Lyle
Director
Office of Administration

**Honorable Samuel Berger
Assistant to the President for
National Security Affairs**

**Honorable Beth Nolan
Counsel to the President**

**Honorable Charles Burson
Chief of Staff and Counselor
to the Vice President**

**Honorable Lisel Loy
Staff Secretary to the President**

**Honorable Bob Nash
Director of Presidential Personnel**

Executive Order

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

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote an increase in the representation of qualified individuals with disabilities employed at all levels and occupations of the Federal Government, and to support the goals articulated in § 501 of the Rehabilitation Act of 1973 as amended and the Americans with Disabilities Act of 1990, it is hereby ordered as follows:

Section 1. Increasing the Number of Hires of Qualified Individuals with Disabilities. (a)

The Federal Government shall hire 100,000 qualified individuals with disabilities over 5 years into all levels and occupations of the Federal Government, to the maximum extent feasible. To achieve this goal, federal agencies shall:

(1) use all available hiring authorities, consistent with statute, regulation, and prior executive memoranda;

(2) expand their outreach efforts, using both traditional and non-traditional methods; and

(3) increase their efforts to accommodate individuals with disabilities

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

(c) This Order does not impose upon agencies a duty to create new positions for individuals with disabilities. It directs the agencies, within their normal and usual hiring processes and procedures and within their existing authorities, to make concerted efforts to hire

qualified individuals with disabilities for positions in their agencies. This order does not change the merit standards of any Federal agency.

Sec. 2. Implementation. Each Federal agency shall prepare a plan to increase the number of qualified individuals with disabilities employed in the agency. Each agency shall submit that plan to OPM within 90 days from the date of this order.

Sec. 3. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any person.

THE WHITE HOUSE,

Executive Order

REQUIRING FEDERAL AGENCIES TO ESTABLISH EFFECTIVE WRITTEN PROCEDURES FOR PROCESSING REQUESTS FOR REASONABLE ACCOMMODATION

By the authority invested in me as President by the Constitution and the laws of the United States of America, and in order to promote a model Federal workplace that grants: (1) reasonable accommodations for qualified individuals with disabilities in the Federal application process; (2) reasonable accommodations that enable qualified disabled Federal employees to perform the essential functions of the position in question; and (3) reasonable accommodations that enable the qualified disabled Federal employee to enjoy equal benefits and privileges of employment as are enjoyed by employees without disabilities, as required by the Rehabilitation Act of 1973 as amended and the Americans with Disabilities Act of 1990, it is hereby ordered as follows:

Section 1. Establishment of Effective Written Procedures For Processing Requests for Reasonable Accommodation.

(a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation. The procedures are applicable to all disabled employees within the agency who request a reasonable accommodation. The agency is not required to institute a single agency-wide procedure but may, in their discretion, establish different procedures for different components of their agency.

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

1. Explain how an employee or job applicant initiates a request for reasonable

accommodation. If the agency requires an applicant or employee to complete a reasonable accommodation request form, the form must be provided as an attachment to the written procedures.

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

3. Designate a time period during which reasonable accommodation requests will be granted or denied, absent extenuating circumstances. If designated time deadlines are not met, responsible agency officials should explain the delay to the employee.

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reasonable accommodation decisions should be in writing and specify the reasons for denial, when applicable.

8. Provide a "plain English" explanation of certain key legal terms used in the policy (e.g., reasonable accommodations, disability, qualified person with a disability, and undue hardship), and reference applicable statutes and regulations as a source of the actual wording of the terms.

9. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee to perform the essential functions of his or her current position. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

10. Designate a system of record keeping that tracks the processing of requests for reasonable accommodation and maintains the confidentiality of medical information received in accordance with applicable law and regulations.

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

Sec. 2. Submission of agency reasonable accommodation procedures for approval to the EEOC. Each agency shall submit their procedures to the EEOC for comment. All agencies must have reasonable accommodation procedures within two years of the effective date of this Executive Order. Agencies must honor their obligations to notify their collective bargaining representative(s) and bargain over such procedures to the extent required by law.

Sec. 3. Information and training regarding the procedures.

All employees in an agency will receive a copy of the reasonable accommodation procedures. At a minimum all supervisors will receive training on these procedures within one year of the establishment of the reasonable accommodation procedures.

Sec. 4. Judicial Review.

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

person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, its employees, or any other person with this order.

THE WHITE HOUSE,

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Employment of People with Significant Disabilities by Federal Agencies to Serve as Home-based Customer Service Representatives and in Other Remote Off-site Work Stations

Cutting edge telecommunications technology has recently made it possible for customer service call /contact centers to transmit voice and data to home-based customer service representatives, who work just as if they were in the call /contact center. Technology also allows other work activities, such as the processing of insurance claims and financial transactions, to be carried out in remote work stations, including the home. Many Federal agencies operate or outsource significant customer service centers and conduct other work activities that may appropriately be carried out by home-based employees.

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

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

To promote the employment of people with significant disabilities by Federal agencies to serve as home-based customer service representatives and in other home-based and off-site positions, including expanded federal call/contact center activity, I direct Executive departments and agencies as follows: (a) Each head of executive departments and agencies operating or outsourcing customer service call /contact centers shall examine the feasibility and appropriateness of using home-based employees as customer service representatives, taking into account the potential economic independence and social integration benefits of such employment opportunities for individuals with significant disabilities.

(b) Each head of executive departments and agencies shall also examine the feasibility and appropriateness of using home-based employees to carry out other work activities, such as the processing of insurance claims and financial transactions, similarly taking into account the potential benefits of such employment opportunities for people with significant disabilities.

(c) If the head of a department or agency determines it is appropriate to establish home-based positions pursuant to the examination conducted under paragraphs (a) and (b), such head shall develop and implement procedures that encourage the recruitment and employment of individuals with significant disabilities for such positions.

(d) Each Federal agency shall report back to the Secretary of Labor and the Director of the Office of Personnel Management within 90 days from the date of this order on whether it is appropriate to establish home-based positions pursuant to the examination conducted under paragraphs (a) and (b), and what procedures will be implemented to encourage the recruitment and employment of individuals with significant disabilities for such positions.

(e) The examinations conducted and procedures established pursuant to this section shall be coordinated through the Secretary of Labor and the Director of the Office of Personnel Management.

THE WHITE HOUSE,

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE,

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

FACSIMILE TRANSMISSION SHEET

DATE: JULY 19, 2000

FROM: *RH* ROSEMARY HART
SENIOR COUNSEL

OFFICE PHONE: 202/514-2027

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

MICHELLE ARONOWITZ
OFFICE OF THE COUNSEL TO THE PRESIDENT
FAX:

NUMBER OF PAGES: 3 (PLUS COVER SHEET)

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

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

R.

①

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

Sechan

(b)

In
efforts
of more
efforts

Time or extend feasible

Executive Order

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

(1)

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

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

follows:

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

See insert A,
attached.

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

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

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

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

Sec. 2. Implementation.

l.c.

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

Sec. 3. Authority to Develop Guidance.

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

Sec. 4. Judicial Review.

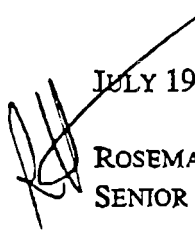
1.c- This Order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any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

THE WHITE HOUSE,

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

FACSIMILE TRANSMISSION SHEET

DATE: JULY 19, 2000

FROM:  ROSEMARY HART
SENIOR COUNSEL

OFFICE PHONE: 202/514-2027

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

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

NUMBER OF PAGES: 8 (PLUS COVER SHEET)

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

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

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

(2)

Executive Order

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

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

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

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

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

- (1) Explain how an employee or job applicant initiates a request for reasonable accommodation, ^{an provide any required} ~~If the agency requires an applicant or employee to complete a~~

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

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

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

(4) Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation;

(5) Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, ^{or and (or?)} the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace;

(6) Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense;

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

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

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

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

Equal Employment
Opportunity Commission
(EEOC)

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

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

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

Sec. 3. Collective Bargaining Obligations.

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

Sec. 4. Judicial Review.

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

Sec. 5. Implementation.

^{President's National}
The ~~President's~~ Task Force on the Employment of Adults with Disabilities shall be responsible for developing and implementing guidance to effectuate the provisions of this order.

THE WHITE HOUSE,

MODEL

DRAFT
7-18-2000

15:00 - 3

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

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

enables (2) refer all cases
Cutting edge telecommunications technology has recently made it possible for customer service "call/contact" centers to transmit voice and data to employees who are located at work sites other than the call/contact centers, employers' headquarters, or other centralized locations. Individuals employed as customer service representatives can work from their homes or any other accessible off-site location just as if they were working in the call/contact centers themselves. Technology also allows other types of work activities, such as the processing of insurance claims and financial transactions, to be carried out from such alternate work stations. Because of this technology, many of these customer service center and other work activities may operate more efficiently at off-site work stations.

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE,

Which
Section?
Do you mean
Section
or this memorandum?
Paragraph (c)?

(4)

DRAFT
7-18-2000
11:50 a.m.

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

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

(ADA)

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

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

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

upper case

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

President National

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

Federal in meeting their

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE,

MODEC

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE



EEOC fax

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

DATE: 7/19/00 TIME: _____
TO: MAC REED
FAX NUMBER: 395 - 7294
SENDER: Bill White
SENDER'S TELEPHONE NUMBER: (202) 663 - 4911
DOCUMENT: _____
NUMBER OF PAGES TRANSMITTED (INCLUDING COVER): 13
SPECIAL INSTRUCTIONS: _____

PLEASE TELEPHONE SENDER IF YOU DO NOT RECEIVE ALL DOCUMENTS.



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

July 19, 2000

MEMORANDUM

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

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

SUBJECT: Draft Executive Orders and Memoranda

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

First, we suggest that the proposed Executive Order to Increase the Number of Individuals with Disabilities Employed in the Federal Government add, after the first sentence in Section 1 (a): "The Federal Government shall strive to achieve the goal that at least 25% of the individuals hired should be qualified individuals who have severe disabilities." *no*

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

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

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

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

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

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

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

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

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

Use as model

EXECUTIVE ORDER

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

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

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

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

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

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

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

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

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation where the disability and/or need for accommodation is not obvious.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. Reassignment should be made to a position at the same pay grade level, if available. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

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

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

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

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

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

Section 3. Collective Bargaining Obligations.

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

Section 4. Construction.

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

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

Section 5. Implementation.

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

MODEL

(2)

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

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

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

(a) Each Federal agency shall establish effective written procedures for processing requests for reasonable accommodation. ~~The procedures are applicable to all by employees and applicants with disabilities within the agency who request a reasonable accommodation. The agency may, in its discretion, establish different procedures for different.~~ The procedures should be clearly drafted in plain language and should permit flexibility in processing each accommodation request so that ~~unnecessary burdens are not imposed on individuals with disabilities.~~ Different components of an agency may tailor their procedures as necessary to ensure the expeditious processing of requests. ✓ NO

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

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

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

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

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation where the disability and/or need for accommodation is not obvious.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. Reassignment should be made to a position at the same pay grade level, if available. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

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

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

~~10. State that employees~~

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

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

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

Section 3. Collective Bargaining Obligations.

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

Section 4. Judicial Review.

—Construction.

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

Section 5. Implementation.

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

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE

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

FACSIMILE TRANSMISSION SHEET

DATE: JULY 19, 2000

FROM: *RH* ROSEMARY HART
SENIOR COUNSEL

OFFICE PHONE: 202/514-2027

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

MICHELLE ARONOWITZ
OFFICE OF THE COUNSEL TO THE PRESIDENT
FAX:

NUMBER OF PAGES: 3 (PLUS COVER SHEET)

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

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

R.

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

Evidence
not in
separate
file
7

Executive Order

DRAFT
7-18-2000

11:00am

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

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

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

See insert A,
attached.

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

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

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

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

Sec. 2. Implementation.

opportunities for

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

Sec. 3. Authority to Develop Guidance.

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

Sec. 4. Judicial Review.

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

THE WHITE HOUSE,

Office of General Counsel

U.S. Department of Transportation

400 Seventh Street, S.W.

C-40, Room 10100

Washington, D.C. 20590

Telephone: (202)366-4687

Telefax: (202)366-7153

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

FAX #:

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

Remarks:

DOT comments on ADA
Executive Orders

DeCell, Jane

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

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

Department of Transportation Comments

Re: Draft E.O. - Increasing the Number of Individuals with Disabilities Employed in the Federal Government

Draft E.O. - Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation

Draft Memorandum - Employing People with Significant Disabilities to Fill Federal Agency Jobs That can Be Performed at Alternate Work Sites, Including the Home

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

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

The Department has the following comments. The proposed EO "Increasing the Number of Individuals With Disabilities Employees in the Federal Government" contains a provision in Section 2 that "Agencies must honor their obligations to notify their collective bargaining representative(s) and bargain over such procedures to the extent required by law." We support adding similar language concerning labor relations obligations in the proposed memo "Employment of People with Significant Disabilities by Federal Agencies to Serve as Home-based Customer Service Representatives and in Other Remote Off-site Work Stations." Setting up remote work stations can impact conditions of employment for bargaining unit positions and it is appropriate to note union obligations in the draft memorandum. (1) (3)

With regard to the draft Executive Order "Increasing the Number of Individuals with Disabilities Employed in the Federal Government," while DOT did not participate in developing the 100,000 target figure, we note that agency allocations take into consideration that agencies such as DOT, Justice, and Treasury have large numbers of positions with stringent medical qualifications that are not viable opportunities for disabled candidates. We further note that if we use welfare to work hiring percentages as a guide (i.e. DOT hires about 4% of the government-wide commitment) and our hiring patterns remain relatively constant, one out of every three DOT's hires over the next five years (excluding positions with medical requirements - i.e. air traffic controllers, law enforcement officers, etc.) might be disabled. While we are not opposing this potential impact, we did want to bring it to your attention. (1)

The Department also notes that the time frame for submitting an agency plan to increase the number of qualified individuals with disabilities to OPM has been reduced from 90 days in the previous version to 60 days. While the Department would commit itself to meeting the deadline, it notes that this is a very tight time frame for developing and vetting a plan in an organization the size of DOT. (1) NO

Following are our specific recommendations: why?

1. Sec. 2 of Hiring EO. "Each Federal agency shall prepare a plan to increase the number of individuals with targeted disabilities employed in the agency." Sec. 3: "to increase the number of individuals with targeted disabilities employed..." (1) NO

2. Sec. 1 (a) (4) "improve their efforts to retain, promote, and advance the career opportunities of employees with disabilities." — in guidance & plans include in memorandums (2)

3. Reas Accommo EO, Sec. 1 (b) 10, add to end of sentence, "and that retaliation for

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

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

5. Renewing Commitment Memo, para. 5, new first sentence: "To meet this goal, I hereby direct all agencies to complete the activities required in the Memorandum within five years of its date." Delete all mentions of the phrase "Five Year Plan" and substitute, "Plan." (4)
agree

We also note the following technical items:

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

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



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

Office of Congressional Relations
Legislative Analysis Staff

Fax: (202) 606-2526

Office: (202) 606-1424

TELECOPIER TRANSMITTAL SHEET

FROM: C.C. Christensen

TO: Mac Reed

Receiving Telecopier Number: 395-7294

Pages sent (including transmittal sheet): 11

Mac,

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

cc

DRAFT
7-18-2000
11:00 PM

Executive Order

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

(1)

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

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

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

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

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

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

spell
out
Sec 2. Implementation.

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

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

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

spell
out (Sec. 4. Judicial Review.

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

THE WHITE HOUSE.

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

Executive Order

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

(2)

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

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

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

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

1. Explain how an employee or job applicant initiates a request for reasonable accommodation. If the agency requires an applicant or employee to complete a

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

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

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

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause Remove.

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

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

10. State that ^{individuals} ~~employees~~ have the right to file a complaint in the event that their requests for reasonable accommodation are denied.

^{spell out} Sec. 2. Submission of agency reasonable accommodation procedures to the EEOC.

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

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

^{spell out} Sec. 3. Collective Bargaining Obligations.

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

^{spell out 5} Sec. 4. Judicial Review.

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

^{spell out 4} Sec. 5. Implementation.

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

07/19/00 WED 15:48 FAX
JUL-18-2000 15:25

umw uc

→→→ OGC-OMB 007
202 333 7283 F.11/15

THE WHITE HOUSE,

DRAFT
7-18-2000
11:00 AM

3

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE,

DRAFT

7-18-2000

(11:00 a.m.)

MEMORANDUM FOR THE HEADS OF ALL EXECUTIVE DEPARTMENTS AND AGENCIES

4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE WHITE HOUSE,

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

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

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

4. Explain the responsibility of the employee or applicant to provide appropriate medical information related to the functional impairment at issue and the requested accommodation.

5. Explain the agency's right to request relevant supplemental medical information if the information submitted does not clearly explain the nature of the disability, the need for the reasonable accommodation, or does not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace.

6. Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense.

7. Provide that reassignment will be considered as a reasonable accommodation if the agency determines that no other reasonable accommodation will permit the employee with a disability to perform the essential functions of his or her current position. In the case of reassignment to a lower graded position, the agency has the option of providing pay retention because the action is not for personal cause.

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

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

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

facsimile transmittal

To: Mac Reed (OMB) Fax: 395-7294
From: Doris Wojniarski (NSA) Date: 7/19/00
Re: E.O. American Disability Act Pages: ((3) include cover sheet)
CC: _____

☒ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle



Please forward. Thank you.

Office of the General Counsel



National Aeronautics and
Space Administration

Headquarters
Washington, DC 20546-0001



Reply to Attn of:

GG

July 19, 2000

By Facsimile

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

Dear Mr. Reed:

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

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

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

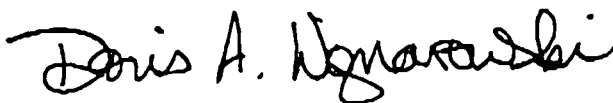
The memorandum on "Employing People with Significant Disabilities to Fill Federal Agency Jobs That Can Be Performed at Alternate Work Sites, Including the Home" is somewhat confusing. The memorandum requires two feasibility studies. The first, a Basic Feasibility Study, shall be conducted only by agencies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

*Seems valid
can we fix*

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

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

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



Doris A. Wojnarowski
Associate General Counsel (General Law)

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

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

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

Pages: 4 (including this cover sheet)

Date: 7/19/2000

Mac - 20
8:30am



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

Craig Annear

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



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

JUL 20 2000

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

cc: Mac Reed



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240



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

JUL 19 2000

Dear Mr. Reed:

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

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

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

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

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

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

Sincerely,

Hazel A. Wilson



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

FACSIMILE TRANSMISSION
JUSTICE / GSA BRANCH

Deliver to: MAC REED
Recipient's Fax: 395-7294 Number of pages, including this sheet: 1
Recipient's Phone: 395-3563 Sender's Phone: 5-4818

Date: 17 JULY 2000

____ David Haun, Chief

____ Edward Chase (Justice)
____ Jill Gibbons Crann (Justice)
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____ Steve Mertens (Justice)
____ Kim Newman (Justice)
____ Doug Pitkin (Justice)

____ Julie Haas (GSA)
____ Jack Kelly (GSA)
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Comments: JUSTICE / GSA BRANCH IS STAKE WITH BOTH EXEC.
ORDERS ON PERSONS WITH DISABILITIES IN THE FEDERAL GOVT.

If you believe you received this transmission in error, please return the document to the number below.

JUSTICE / GSA BRANCH MAIN TELEPHONE: 202/395-5090

FAX NUMBER: 202/395-0850



United States Department of Energy
Office of General Counsel
for General Law

FACSIMILE TRANSMISSION FORM

Facsimile from:

Jim Benjilan
Forrestal Building
GC-80, Room 6A-211
1000 Independence Avenue, SW
Washington, DC 20585

Phone: 202-586-8618/1522

Facsimile: 202-586-8685

To:

Mac Reed

Facsimile number(s):

202-395-7294

Date:

7/20/2000

Pages:

2 (including cover page)

Message:

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Comments on Executive Orders

1. Increasing the Number of Individuals with Disabilities Employed in the Federal Government

Response -

On page 2, line 3, from the bottom insert a comma (,) after "it."

2. Requiring Federal Agencies to Establish Effective Written Procedures for Processing Requests for Reasonable Accommodations

Response -

On page 3, Section 2, line 2, substitute "its" for "their" and in Section 4, insert a comma (,) after "it" in line 2 from the bottom.

Comments on Memoranda

1. Renewing the Commitment to Ensure that Federal Programs are Free from Disability-based Discrimination

Response -

One commenter points out that agencies are directed to "make all programs offered on their Internet and Intranet sites accessible to people with disabilities by July 27, 2001." He/she goes on to state that it is not clear what this means. Accessible in what respect? How would agencies make such programs accessible to persons with severe vision impairment, for example?

2. Employment of People with Significant Disabilities by Federal Agencies to Serve as Home-based Customer Service Representatives and in Other Remote Off-site Work Stations

Response -

One commenter suggests that a definition of "significant disability" be included in the memorandum for purpose of clarity. It should be made clear that the memorandum does not refer to an impairment which would disqualify a person from doing the type of work contemplated.



Lisa B. Fairhall

07/20/2000 12:31:24 PM

Record Type: Record

To: McGavock D. Reed/OMB/EOP@EOP
cc: Larry R. Matlack/OMB/EOP@EOP, Meredith G. Benson/OMB/EOP@EOP, Katherine Massey/OMB/EOP@EOP, Bruce D. Long/OMB/EOP@EOP
Subject: PPE branch comments on draft disability EOs and EMs.

Here are our preliminary comments on the draft EOs and EM's. We are happy to discuss, and are available to attend your meeting this afternoon. (Where will it be?) Thanks.

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

- "Individuals with disabilities" is not defined. Is this a problem? Should the EO either include the language or reference statute.
- In Section 1 (a) (2), what are "traditional and non-traditional methods" of outreach? Will these be defined in the guidance? As drafted, the EO requires agencies to use them both.
- Section 1 (b): "...the federal government will take the lead in educating the public about employment opportunities available for individuals." Does the EO intend for this to cover employment opportunities outside the Federal government? To help clarify, we recommend that the sentence be revised to read: "...the federal government will take the lead in educating the public about employment opportunities available within the Federal Government for individuals with disabilities."
- Section 2: It is unclear what OPM's role is in regards to the plan. Are they reviewing and approving the plans or serving as a collection site?
- Section 3: OPM has emphasized their role to assist agencies in recruitment, retention and advancement of individuals with disabilities. This section only specifies that OPM is "...develop[ing] guidance on the provisions of this Order to increase the number of individuals with disabilities in the Federal Government". An alternative would be to substitute language from the preamble paragraph, to state that OPM is to develop guidance to "promote an increase in the representation. . ."
- Section 3: There is no deadline specified for OPM to provide the agencies with the guidance. It might be useful to set a deadline for promulgating the guidance, maybe at two weeks after the EO is issued.
-
-

Executive Order : Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation

- In the first paragraph, the executive order mentions reasonable accommodations when

describing the ways to promote a model Federal workplace. Should a definition of reasonable accommodation be included?

- We suggest that the word "grants" at the end of the second line be replaced with "offers."
- In the first paragraph, both applicants and Federal employees have access to reasonable accommodations. However, in Section 1(a), an agency's procedures for processing requests are available to employees. Should the definition be expanded to include both populations?
- Section 1(b) includes ten components that should be included in the written procedures for processing reasonable accommodation requests. As the EO explains, these instructions are listed in *Re-charting the Course: The First Report of the Presidential Task Force on Employment of Adults with Disabilities*. Does all this specific material need to be included in the EO or could agencies be directed to *Re-charting the Course*?
- Section 1(b)7 does not clearly state why an individual would be reassigned. Are we talking about employees who incur a disability during their tenure as an employee which affects their ability to perform their job? Or an employee with a disability who is hired into a particular position but is unable to perform all of the functions? What does the last sentence of this section mean?
- There are some typos in (b)9.
- Section 1(b)10 does not indicate the entity with which employees should file complaints. We recommend that this section also require the agency to identify the appropriate recipient of the complaints.
- Section 2 states "...each agency shall submit its procedures to the EEOC for comment." However, the specific role of the EEOC is not defined. Does EEOC function in an advisory capacity? Will its comments be binding?
- Section 3 specifies that agencies must bargain with collective bargaining representatives "...to the extent required by law." In light of recent efforts to expand scope of bargaining under 5 U.S.C. 7106(b)(1) through executive order, should the sentence read "...to the extent *permitted* by law?"
- In Section 5, the Presidential Task Force on the Employment of Adults with Disabilities is named as the lead organization for developing and implementing guidance. However, the executive order will outlive the tenure of the task force. Should another agency be named in place of the task force?

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

- In first bullet, we recommend that the EO also reference compliance with Sec. 508 of the Rehabilitation Act.
- Page 2, first complete paragraph. Strike the word "for" to clarify. "...Presidential Task Force on Employment of Adults with Disabilities, to develop priorities and establish ~~for~~ the Five-Year Plan..."

Memorandum: Employing People with Significant Disabilities to Fill Agency Jobs that Can Be Performed at Alternate Work Sites, Including Home.

- It appears that this Memorandum is substantially redundant of the first Executive Order (Increasing the Number of Individuals with Disabilities Employed in the Federal Government)
- Possibly insert a definition of "call/contact centers" in the first paragraph after the second sentence.
- The second paragraph makes very broad statements. Do we have data to support?
- The memorandum does not specify what types of "federal agency jobs" are targeted. Do they include vacant, new, existing, etc.
- In the fourth paragraph on the first page, insert a comma instead of a period after "and improve federal customer service representation, I direct executive departments and agencies as follows:"
- Items (a) and (b) will be administratively difficult to do, since the directives make presumptions about the kinds of work individuals with disabilities can do. We recommend instead striking those subsections, and replacing them with a general directive that the head of each executive department or agency consider the extent to which work performed by that agency could be carried out from alternative work stations.
-
- It would also be nice if the efforts under this memorandum could be linked in some way to the plans agencies have to develop under the hiring target EO.

-



Randolph M. Lyon

07/18/2000 05:43:44 PM

Record Type: Record

To: McGavock D. Reed/OMB/EOP@EOP

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

Subject: Proposed E.O. on Hiring Disabled Americans

Mac, I asked Kim Luczynski in our office to review the draft E.O. She has some concerns about the proposal and whether it is consistent with the Adarand decision (as well as whether that decision applies). Are other folks raising similar concerns?

If you could get back to her, that would be great. Thanks.

Message Copied To:

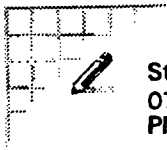
Michael Deich/OMB/EOP@EOP

Kenneth L. Schwartz/OMB/EOP@EOP

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Sherron Duncan/OMB/EOP@EOP

Kimberley S. Luczynski/OMB/EOP@EOP



Stuart Shapiro
07/18/2000 05:58:47
PM

Record Type: Record

To: McGavock D. Reed/OMB/EOP@EOP

cc: John F. Morrall III/OMB/EOP@EOP, Wendy A. Taylor/OMB/EOP@EOP, Lisa B. Fairhall/OMB/EOP@EOP

Subject: Disability EO's

Two comments from OIRA:

On Section 2 of the Reasonable Accommodation EO: Why do agencies have to submit their plans to EEOC for comment? Are the EEOC comments binding? If not then we have less of a concern with this.

In the Executive Memorandum on Alternate Worksites: The schedules seem unreasonably ambitious. How will a large agency evaluate all of its myriad jobs in a feasibility study within 90 days and then develop a Plan of Action and Implementation Guidelines within an additional 30 days?

Here are proposed comments on the Executive Order:

I Have 3 comments regarding the Executive Order on Reasonable Accommodation:

1. The latest draft eliminates any requirement for supervisory training. This is unacceptable. Procedures for processing accommodation requests are useless if the managers are not aware of them. Accordingly, the old paragraph 3 of the Executive Order should be reinstated:

all agree

"All employees in an agency will receive a copy of the reasonable accommodation procedures. At a minimum all supervisors and managers will receive training on these procedures within one year [I can live with 2 years] of the establishment of the reasonable accommodation procedures."

Put in
Bundles

It will not ramp Ellen Vargos of EEO

2. The timing of the Executive Order is off. Section 2 of the EO requires that within one year each agency submit to the EEOC for comment its draft accommodation procedures. Section 5 of the EO provides that the Task Force (or the EEOC?) shall be responsible for developing and implementing guidance to effectuate this EO. What if it takes the Task Force or the EEOC 6 months to draft appropriate guidance? Further, while the Order requires that an agency submit its draft plan to the EEOC within one year what then happens? What prevents the agency from dragging its feet indefinitely to implement the final plan? Thus, I have proposed that final procedures must be initiated within one and a half years after issuance of the EEOC guidance. In addition the Executive Order has no apparent teeth if an agency does not comply with it. Accordingly I propose a provision which would require the EEOC to report to the President those agencies that have and have not complied with the Order.

Thus Section 2 of the EO should be changed as follows:

2. The Equal Employment Opportunity Commission (EEOC) shall be responsible for developing and implementing guidance to effectuate the provisions of this Order. Within one year after the issuance of EEOC's guidance, each agency shall submit its reasonable accommodation procedures to the EEOC for comment. Each agency shall further submit to the EEOC any modifications to its reasonable accommodation procedures at the time those accommodations are adopted. The agency shall implement its final procedures within one and a half years of the issuance of the EEOC's guidance. The EEOC shall report to the President those agencies who have and have not complied with this Order and who have not issued final agency reasonable accommodation procedures within one and a half years of the date of the EEOC's guidance.

Section 5 would be eliminated as it is incorporated in section 2

TO: Jack Lew
Director, Office of Management and Budget

FROM: Bruce Reed
Assistant to the President for Domestic Policy & Director, DPC

DATE: July 12, 2000

SUBJECT: Presidential Actions Regarding Individuals with Disabilities

We would like to include the attached Executive Orders and Presidential Memorandum that would assist individuals with disabilities. The following directives would be released in conjunction with the 10th Anniversary of the Americans With Disabilities Act (ADA) and would serve to further promote the goals of the ADA. The following actions consist of:

Executive Order Requiring Federal Agencies to Establish Effective Written Procedures for Processing Requests for Reasonable Accommodation

Executive Order Increasing the Number of Qualified Individuals With Disabilities Employed in the Federal Government

Executive Memorandum on Employment of People with Significant Disabilities by Federal Agencies to Serve as Home-Based Customer Service Representatives and in Other Remote Off-Site Work Stations.

Executive Memorandum for the Heads of all Executive Departments and Agencies on Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination. The Directive's core requirement is that all agencies engage in a plan to ensure that federal programs are free from disability-based discrimination.

CC: Mac Reed, OMB General Counsel