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10th Anniversary ADA [Americans with Disabilities Act] Deliverables [4]

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MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Strategy for the Development and Transfer
Of Assistive Technology and Universal Design

It is the policy of this Administration to accelerate the development and deployment of assistive technology and technology that enables universal design. Assistive technology is used to maintain or improve the functional capabilities of people with disabilities. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The development of assistive technologies and products that incorporate universal design principles can significantly improve the quality of life for people with disabilities, and increase their ability to participate in the workplace.

Therefore, to improve the quality of life for people with disabilities, I direct as follows:
(a) The Interagency Committee on Disability Research shall, within 6 months, publish a report identifying priority areas for the advancement of assistive technologies and universal design capabilities. This report should be prepared in cooperation with the disabilities community and the research community. The report should cover technologies needed for:

- Sensory functioning, such as digital technologies to enhance speech intelligibility;
- Mobility enhancement, such as advanced prosthetic devices;
- Improvements in manipulation ability;
- Enhancements in cognitive function;
- Increased accessibility of information and communications technology, such as text-to-speech and speech recognition systems; and
- Improvements in access to the built environment.

(b) Following the issuance of this report, major federal research agencies (defined here as those agencies that participate in the Small Business Innovation Research program) shall, consistent with current law, develop a strategy for enhancing the transfer of technology that can contribute to the needs and requirements identified by the Committee on Disability Research. This strategy must address both intramural and extramural research and development. Agencies shall publish their strategies six months following the issuance of the Committee on Disability Research report. Agency strategies should include, but not be limited to, the development of focused solicitations under the Small Business Innovation Research program.

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

THE WHITE HOUSE,

● J. Eric Gould

07/23/2000 06:36:04 PM

Record Type: Record

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

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

Subject: ADA q&a for comment

This is a draft of the ADA Q&A - please take a look and provide me with edits or additional Q&A tomorrow morning by 11:00. We are trying to get these cleared by tomorrow afternoon. Sorry that it's not shorter - we've done a lot.

Also, if you have worked with OMB on initiatives - you should also send the Q&A to them so they can also provide comment.

Ann/Vicky - please fill in the blanks for FL Q&A (see guidance I emailed you Friday afternoon).

Thanks



Q&ADAevent2.do

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Q&A: ADA EVENT
July 26, 2000
[Draft - July 23, 2000]

PRESIDENTIAL ANNOUNCEMENTS

Q: What did the President announce today to commemorate the 10th Anniversary of the Americans with Disabilities Act (ADA)?

A: In the decade after its enactment, the ADA has begun to transform our nation. It has brought the principle of disability civil rights into the mainstream of public policy. Ensuring that the provisions of the ADA are fully implemented has been a priority of this Administration. To further the goals of the ADA, which include equality and opportunity, the President is taking a number of actions that would increase federal employment opportunities for people with disabilities and proposing important changes that will reduce the barriers that Social Security beneficiaries face when they return to work. In addition, the President took executive actions to ensure that federal agencies establish written procedure for addressing reasonable accommodation requests, to ensure that Federal programs are free from disability-based discrimination and to accelerate the development of assistive technology and technology that enables universal design (which the Vice-President announced). The President also announced the Access America for People with Disabilities website (www.disability.gov) created to provide quick access to services and other resources for people with disabilities and their families. These are all important steps that build on this Administration's commitment to advancing the rights of people with disabilities as full participants in all of society and preserving the spirit and intent of the ADA.

Social Security Disability Initiatives (The First Lady is announcing one of the SSI initiatives for students)

Q: What did the President announce regarding assistance for SSI and SSDI disability recipients who are working or want to go to work?

A: The President announced two proposals (and the First Lady announced one) to assist Social Security Disability (SSDI) beneficiaries and Supplemental Security Income (SSI) disability recipients who are working or wish to enter the workforce.

1. Automatically adjust the Substantial gainful Activity (SGA) level for individuals with impairments other than blindness, based on any annual increases in the national average wage index. Since the beginning of the Social Security disability program in 1956, there

Subject

have been no regularly scheduled increases in SGA.

- This will ensure that persons with disabilities who return to work will be able to count on having a limit that accurately reflects increases in wages.
2. Increase from \$200 to \$530 the minimum amount of monthly earnings for a month to count during a trial work period for individuals who are Social Security beneficiaries and work. The President is also proposing to automatically adjust the amount thereafter based on any annual increases in the national average wage index.
 - Many beneficiaries are leery of attempting to work for fear of inadvertently earning too much and losing critically important cash and medical benefits. This increase will encourage beneficiaries with disabilities to contribute their talent and energy to the workforce.
 3. [First Lady is announcing] Increase the maximum monthly earned income exclusion for students who receive SSI from \$400 to \$1,290 and the yearly exclusion from \$1,620 to \$5,200. The President is also proposing to automatically adjust these amounts thereafter based on any annual increases in the cost-of-living index.
 - Young people with disabilities face enormous challenges when attempting to enter the workplace. We must find ways to bridge the transition from education to employment. The Administration is proposing to increase the amount that students who receive SSI can earn while continuing to receive the important protection SSI provides.

Q: What's the purpose for the changes?

A: We expect that these changes will encourage people with disabilities to test their ability to work and to keep working. These changes should provide these people with greater incentives to work, or, if working, more security to continue working.

Q: How many people on SSI and SSDI will these changes help?

A: [Holding for numbers from SSA]

Q: Why index the SGA level?

A: Indexing allows the SGA level for persons with impairments other than blindness to be automatically increased each year to coincide with an increase in average wages, rather than having to wait for the Commissioner of Social Security to issue regulations to

increase the SGA level.

Q: What is SGA?

A: The Social Security Administration (SSA) uses a technical term called “substantial gainful activity” (SGA) to determine if work is substantial enough to make a person ineligible for benefits. Currently, monthly earnings of \$700 or more are considered SGA and will make a person ineligible for benefits. SSA has special rules for blind persons.

Q: What is the current SGA level?

A: Last July, the President announced an increase in the amount that Social Security disability beneficiaries can earn and continue to receive their benefits from \$500 to \$700. Since July 1999, earnings by persons with impairments other than blindness that average more than \$700 a month reflect an ability to perform SGA. Before the President announced the earnings increase last year, there had not been an increase in the SGA level since January 1990.

Q: Why is SGA important?

A: The Social Security Act defines disability as the inability to do any substantial gainful activity because of any medically determinable physical or mental impairment that is expected to last for a continuous period of 12 months. A person must not be able to perform SGA in order to receive benefits under the SSDI or SSI programs.

Q: What is the Trial Work Period (TWP)?

A: The TWP is a work period of time during which the beneficiaries who receive SSDI, child, widows, or surviving divorced spouse benefits due to an impairment, can try to work without any worry of losing benefits because of the work. The beneficiary is given 9 months, which do not have to be consecutive, during a rolling 60-month period, to try to work. SSA only counts those months in which a person has performed services as a TWP month.

Q: Why index the revised TWP service amount?

A: As with the SGA level, indexing would allow the monthly amount to increase automatically when the nation’s average wages increase rather than wait for the Commissioner of SSA to issue revised regulations.

Q: What is the current exclusion for students who receive SSI?

A: If a person receiving SSI is under age 22, not married or head of household, and regularly attending school, SSA does not count up to \$400 of earned income per month when figuring that person's SSI payment amount. The maximum yearly exclusion is \$1,620.

Q: When was the Student Earned Income Exclusion (SEIEC) last increased?

A: The SEIEC has never been increased. The amounts for this exclusion have remained unchanged since the regulations to implement the SSI program were issued. The SSI program began January 1974.

Executive Order on Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government (100,000 hires)

Q: What does the Executive Order do?

A: It directs Federal agencies to hire 100,000 people with disabilities over a five year period.

Q: Is this a realistic number?

A: Yes. If current hiring trends continue without change, Federal agencies would hire approximately 62,500 people with disabilities over the next five years. Approximately 8,000 of those people would have severe disabilities.

The new number is more than 60% higher than current trends, and reflects this Administration's strong commitment to making the Federal Government a model employer by recruiting a diverse and well-qualified workforce. The President recognizes the significance of the increased number and believes that the Federal government is ready to meet this challenge.

Q: Why is the President doing this?

A: Despite their qualifications for employment, persons with disabilities, and most notably persons with severe disabilities, are not sought after by potential employers. This is often because employers fail to understand the many ways that disabilities can be accommodated on the job. Therefore, President Clinton and Vice President Gore have made a commitment that the Federal government will take the lead in demonstrating that individuals with disabilities can successfully compete and perform in a wide range of

jobs. With this Executive Order, the Administration is directing agencies to adjust their recruitment efforts to tap into the talented pool of individuals with disabilities.

Q: How are agencies going to do this?

A: Agencies will begin by reviewing their current and future mission needs to identify those areas where recruitment will be necessary during the next five years. Recruitment efforts will then be increased to reach out to the largely untapped pool of individuals with disabilities who have the skills needed to advance the agency's mission. A variety of hiring authorities exist that will facilitate agency efforts.

Q: How was this number determined?

A: A group of human resource managers reviewed current Federal hiring patterns, information about the future pool of disabled job applicants, and Administration policy objectives. Based on this information, and the anticipated increases from expanded outreach efforts and use of appropriate accommodations, the group determined that the Federal government will be able to hire 100,000 individuals with disabilities over a five year period.

Q: Why is this a five year number?

A: This is a significant increase (60% over five years) in current hiring trends. Agencies will need time to develop and implement new initiatives to effectively recruit and hire people with disabilities. OPM and the Human Resources Management Council will also need time to coordinate recruiting efforts so that key educational and vocational organizations that assist people with disabilities in finding jobs are not overwhelmed.

Q: Are there related activities the Administration will carry out to support this effort?

A: Yes. The President has also issued an Executive Order requiring Federal agencies to establish systems for facilitating accommodations for individuals with disabilities. Creating a structure that allows agencies to provide appropriate reasonable accommodations to employees with disabilities is a crucial aspect of this recruitment initiative. Additionally, a Presidential Memorandum has been issued directing agencies to examine the feasibility of relocating certain jobs to home-based or other off-site facilities. Because certain disabilities may prevent employees from working in, or traveling to, traditional office settings, this initiative will open up many new employment opportunities.

Q: How will progress be tracked?

A: OPM will track progress using data from the Central Personnel Data File beginning with hires of employees with disabilities on October 1, 2000.

Q: How is disability defined for the purpose of these Federal employment statistics?

A: An employee is considered disabled if he/she has a physical or mental impairment which substantially limits one or more major life activities. Examples are speech, vision, hearing and orthopedic impairments, missing extremities, paralysis, mental illness, diabetes, and heart disease.

Q: How many current Federal employees have a disability?

A: Over 122,000 Federal employees (7.2% of the workforce) have self-identified as having a disabling impairment. Over 20,000 of those employees (1.2% of the workforce) have severe disabilities. These statistics have held relatively steady in recent years. It is highly likely that these counts are low because employees either fail to, or choose not to, self-identify as having a disabling condition.

Q: What types of positions will be filled by people with disabilities?

A: The Executive Order specifically calls on agencies to recruit individuals with disabilities for positions in the full range of levels and occupations in the Federal government.

Q: Are individuals with disabilities required to notify a Federal agency of their disability at the time they are hired?

A: No. An applicant is not expected to notify a prospective employer about a disability. In some cases, an applicant may choose to notify an agency of a disability in order to request reasonable accommodation. Additionally, if an applicant wants to be considered for appointment under special authorities for individuals with disabilities, he or she should make that clear in an application for employment. *counted*

The Federal government will update the self-identification form for disabilities to be given to all new employees. When approved, OPM will undertake a government-wide information campaign to inform employees of the importance of self-identifying and that such information will be confidential.

Q: How will this initiative impact other Administration efforts to create a more diverse and representational Federal workforce?

A: The initiative to increase the employment of people with disabilities complements, and does not compete with, the Administration's other efforts to increase the employment of

underrepresented groups, such as Hispanic individuals. Disabilities do not respect racial, gender, ethnic or religious boundaries. By committing to increase its efforts at recruiting individuals with disabilities, the Federal government will continue to adhere to the overarching goal of creating a diverse workforce that more accurately reflects the American population.

Executive Order on Reasonable Accommodations

Q: What does the Executive Order on reasonable accommodation require?

A: This Executive Order requires that all Federal agencies establish effective procedures for processing requests for reasonable accommodation by employees with disabilities and applicants for employment with disabilities.

Q: What is meant by reasonable accommodation?

A: A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with a disability to enjoy equal employment opportunities.

Q: Why are reasonable accommodations important?

A: Although many individuals with disabilities can apply for and perform jobs without any reasonable accommodations, workplace barriers may keep others from performing jobs which they could do with some form of accommodation. These barriers may be physical obstacles (such as inaccessible buildings or computer equipment), or they may be procedural obstacles (such as rules concerning when work is performed, when breaks are taken, or how job tasks are performed). Reasonable accommodation removes workplace barriers for individuals with disabilities.

Q: Why is it important to require that Federal agencies establish procedures for processing requests for reasonable accommodation?

A: If an individual with a disability needs a reasonable accommodation in order to perform his or her job, it is essential Federal agencies handle the request in a prompt, fair and efficient manner.

Q: Doesn't the law already require that Federal agencies provide reasonable accommodations to employees and applicants?

A: The Rehabilitation Act of 1973 does require that Federal agencies provide reasonable accommodations to their employees and job applicants. This Executive Order gives the

agencies more specific guidance on how to develop procedures governing the reasonable accommodation process.

Q: What are some of the specific provisions of the Executive Order?

didn't we have one?

A: The Executive Order provides that agencies must explain in their reasonable accommodation policies that ~~employees or applicants~~ may initiate the reasonable accommodation process either orally or in writing, and that time limits for decision-making should be as short as reasonably possible. It requires that agencies explain how they will process requests and from whom the employee or applicant will receive a final written decision. It emphasizes that reassignment is a form of reasonable accommodation.

draft

Q: Can agencies request medical information to support requests for reasonable accommodation?

A: Agencies may require the employee or applicant to provide appropriate medical documentation if the disability and/or need for accommodation is not obvious. Agencies may request supplemental medical information if the information initially submitted is insufficient. Agencies may also have the medical information reviewed by a medical expert of the agency's choosing, at the agency's expense.

OK

Q: What rights does an employee or applicant have to challenge an agency's failure to comply with the Executive Order requirements?

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A: The Executive Order does not create any legally enforceable rights. However, it encourages agencies to use their informal dispute resolution processes to allow individuals to seek reconsideration of denials of reasonable accommodation. It also explains that individuals may pursue the rights that they already have under the Rehabilitation Act through the federal sector equal employment opportunity (EEO) process.

Q: When are the agencies' reasonable accommodation procedures due?

A: Agencies must submit their reasonable accommodation procedures to the Equal Employment Opportunity Commission within one year of the date of the Executive Order.

Q: Will further guidance be provided regarding the Executive Order?

A: Yes. The Equal Employment Opportunity Commission is responsible for issuing guidance to implement the provisions of the Executive Order within ninety (90) days of

the Executive Order.

Executive Memorandum: Renewing the Federal Government's Commitment to Ensuring that Federal Programs are Free from Disability-Based Discrimination

Q: What will this Presidential Directive accomplish?

A: The Directive's core requirement is that all agencies engage in a plan to ensure that today's federal programs are free from disability-based discrimination. It contains specific steps designed to reach this goal, including:

- requiring the EEOC and the Department of Justice to set specific priorities and an implementation schedule for a multi-year plan to eliminate disability-based discrimination throughout the federal government;
- encouraging the Presidential Task Force on the Employment of Adults with Disabilities and the Interagency Disability Coordinating Council to provide input to ensure that diverse viewpoints are considered during the development of the Strategic Plan;
- directing agencies to take some initial specific steps as part of the Strategic Plan, as discussed below.

Q: Does it change any of the primary responsibilities of the EEOC or the Department of Justice?

A: No. While it establishes a mechanism for the EEOC and the Department of Justice to consult with each other and with the Presidential Task Force and the IDCC, the EEOC remains the agency with coordination, policy-setting, and enforcement authority for the employment opportunity requirements of title V of the Rehabilitation Act. Likewise, the Department of Justice remains the agency with coordination authority over the other nondiscrimination requirements of the Rehabilitation Act. The Directive clarifies that EEOC and the Department of Justice are the lead agencies, while the Presidential Task Force and the IDCC are to play important consultative roles.

Q: Why is the Directive necessary at this time?

A: Title V of the Rehabilitation Act of 1973 provided the foundation upon which the Americans with Disabilities Act (ADA) was built. Title V prohibits discrimination against — and affirmative action for — people with disabilities in Federal employment and prohibits discrimination against people with disabilities in all other Federal

requires

programs, among other things.

As we celebrate the 10th anniversary of the ADA, we should take this opportunity to renew our commitment to ensure that people with disabilities have equal employment opportunities within the Federal government and are fully able to participate in all Federal government programs.

Over the last twenty years — while the regulations implementing Title V have been in place — the federal government has seen dramatic changes. Agencies have been created. Others no longer exist. Programs and functions have changed. Many of the actions designed to comply with Section 504 Title V may no longer be effective. For example:

Employment discrimination. The nature of the workplace has changed. Agencies thrive on a teamwork approach, using collaborative efforts to achieve agency missions. Diversity among team members is essential to achieving customer-friendly solutions. Government is better able to provide the services Americans need if it reflects the diversity of our society. By ensuring the promise of equal opportunity for government employees with disabilities, the Administration will set an example for the rest of the country to follow.

Technology accessibility. More than any other factor, technology has changed the federal workplace and the way government serves the American public. As our society grows more technologically advanced, we must ensure that the technology upon which the federal government relies does not create new barriers for people with disabilities.

Q: Why not just require agencies to thoroughly update their self-evaluations and transition plans?

A: While there is a clear need to reevaluate the tools we use to implement Title V in light of today's federal programs, agencies should not be overburdened with unnecessary paperwork exercises. Instead of requiring agencies to engage in a wholesale self-evaluation of all programs for compliance with the Rehabilitation Act, the Directive requires agencies to engage in a "Strategic Plan" to take specific actions and focus on particular priorities. These priorities include ensuring that agency programs offered on the Internet are accessible to people with disabilities and that current employment practices remain free from discrimination.

Q: What are the kinds of things that will be included in the Strategic Plan?

A: The first two steps under the Strategic Plan will be for agencies to:

- ensure that agency programs on federal Internet and Intranet sites are accessible to people with disabilities; 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 the Rehabilitation Act.

Other targeted priorities to be determined by the Department of Justice and the EEOC may include taking specific steps to:

- eliminate disability-based discrimination in employment;
- remove barriers in buildings and outdoor environments;
- ensure accessible transportation arrangements and vehicles;
- provide effective communication;
- ensure nondiscrimination in credentialing and licensing programs; and
- make reasonable policy modifications to allow participation by qualified people with disabilities.

Q: What is the IDCC? How is it different from the Presidential Task Force on Employment of Adults with Disabilities?

A: The Interagency Disability Coordinating Council (IDCC) was established under the Rehabilitation Act, 29 U.S.C. § 794c, as a mechanism to provide consistent implementation of Title V. The Attorney General is Chair of the IDCC, pursuant to Executive Order 12250.

In comparison, the Presidential Task Force on Employment of Adults with Disabilities was created in 1998 by Executive Order 13078 to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general population. Many of the IDCC member agencies are also represented on the Task Force, but the IDCC has a broader statutory mandate that makes it the appropriate entity to address the broad range of issues identified by the Task Force.

Executive Memorandum: Employing People with Significant Disabilities to Fill Federal Agency Jobs that can be Performed at Alternative Worksites

Q: What does the Executive Memorandum on promoting telecommuting opportunities for people who are disabled do?

A: 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's 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. To harness the power of new technologies to promote employment of people with significant disabilities, the Executive Memorandum calls on the head of each Federal Agency that already operates customer service centers to identify positions that could be relocated to home-based or off-site facilities and be filled with people who have significant disabilities. If the head of the Agency determines that it is feasible and appropriate to establish home-based positions, they are then required to develop a plan and guidelines that encourages the recruitment and employment of individuals with disabilities for such positions.

Q: How many qualified individuals with disabilities do we estimate would want to work from home in these “high tech” type jobs? _

A: Vocational rehabilitation counselors estimate that approximately 12% of the individuals with disabilities in their caseload could, and would, succeed if enabled to work from home, but would NOT succeed in the same jobs if required to travel to distant and central locations on a daily basis.

Q: What is the “growth potential” prognosis for “high tech” jobs that are performed at off-site locations?

A: More than three million Americans worked as “inbound call center” customer service agents in 1999. These workers accepted telephone catalog orders; processed car, hotel, and plane reservations; and provided insurance, banking or software support. The Gartner Group has predicted that 25 - 40% of these customer service agents will be working from their homes within the next three to five years.

Access America for People with Disabilities Website

Q: What is the *Access America for People with Disabilities* website?

A: The *Access America for People with Disabilities* website was created to provide quick access to Federal government services, publications and other resources for people with disabilities and their families. Access America is a program initiated by Vice President Gore and, like the Access America for Seniors and the Access America for Students websites, this new website will serve as “one-stop” electronic link to an enormous range of useful information.

Q: Specifically, what information will be offered on the *Access America for People with Disabilities* website?

A: The website will offer information and resources identified as being important to people with disabilities and their families. The website will contain information relating to children and youth; employment, self employment, and entrepreneurship; transportation; health care and long term services and supports; choice and self-determination; recreation and travel; civil rights and protections; college, adult and vocational education; housing; technology; income supports; tax credits and deductions; disability statistics; and emergency preparedness. There will also be special features, including “success stories” of individuals with disabilities; a “hot topics” corner discussing the newest disability

issues and employment trends; and direct links to the White House, Congress and Federal agencies.

Q: When will *Access America for People with Disabilities* be up and running?

A: [Hold – we are still trying to figure out if it will online in time] A prototype of the website will be unveiled on July 26, 2000, during the celebration of the 10th anniversary of the signing of the Americans with Disabilities Act. The website address is **www.disAbility.gov**. As people begin to use the website and we start receiving comments and suggestions, we'll make appropriate additions and adjustments. We want to continually update and tailor the information on the website to best meet the needs of people with disabilities and their families.

Q: Why was there a need to develop *Access America for People with Disabilities*?

A: In keeping with the President's and Vice President's vision of using information technology to increase and improve customer service, we wanted to build a website that would make it easier for individuals with disabilities and their families to get needed resources. We felt it was important to have all federal services and programs relevant to people with disabilities in one on-line location that was accurate, reliable and, most importantly, *fully accessible*. While a number of websites currently exist which provide information on disability or disability-related issues, *Access America for People with Disabilities* is the only totally accessible website specifically dedicated to Federal government services, programs, information and resources relevant to people with disabilities.

FIRST LADY'S ANNOUNCEMENTS

Q: What did the First Lady announce today?

A: [Ann/Victoria]

Social Security Disability Initiative: Increasing the SSI Income Exclusion for Students

Q: What does the Student Income Exclusion for Students who receive SSI do?

A: It increases the maximum monthly earned income exclusion for students who receive SSI from \$400 to \$1,290 and the yearly exclusion from \$1,620 to \$5,200. The First Lady announced that the Administration is also proposing to automatically adjust these amounts thereafter based on any annual increases in the cost-of-living index.

Q: Why is this proposal important?

A: Young people with disabilities face enormous challenges when attempting to enter the workplace. We must find ways to bridge the transition from education to employment. The First Lady is announcing that the Administration is taking action to address this issue by proposing to increase the amount that students who receive SSI can earn while continuing to receive the important protection SSI provides.

Q: What is the current exclusion for students who receive SSI?

A: If a person receiving SSI is under age 22, not married or head of household, and regularly attending school, SSA does not count up to \$400 of earned income per month when figuring that person's SSI payment amount. The maximum yearly exclusion is \$1,620.

Q: When was the Student Earned Income Exclusion (SEIEC) last increased?

A: The SEIEC has never been increased. The amounts for this exclusion have remained unchanged since the regulations to implement the SSI program were issued. The SSI program began January 1974.

Youth to Work Initiative

[Hold for Q&A]

VICE PRESIDENTIAL ANNOUNCEMENTS

Q: What did the Vice President announce yesterday?

A: Yesterday the Vice President announced a number of steps that will help individuals with disabilities live and work in the community. The Vice President strongly believes that no one should have to live in an institution or nursing home if they can live in the community with the proper support. The Vice President's announcements build on the principle that everyone in our society, regardless of a disability, should have the opportunity to make the most of their abilities and contribute to our communities.

Specifically, the Vice President announced:

- **Grants to States to engage in system change activities designed to build and enhance their capacity to provide personal assistance services and supports to people with**

disabilities in the most integrated setting appropriate. This \$50 million grant initiative is drawn from Section 4 of the Medicaid Community Attendant Services and Supports Act of 1999 (MiCASSA) and will help states develop the comprehensive, effectively working plans endorsed by the U.S. Supreme Court in Olmstead v. L.C.

- **New Policy Guidance to States to clarify Medicaid benefits available to persons in the community and additional flexibility to provide home and community based care services.**
- **Access Housing 2000** – The Departments of Housing and Urban Development and Health and Human Services, in conjunction with the Robert Wood Johnson Foundation are launching a unique private/public partnership, called Access Housing 2000, to assist individuals with disabilities in making the transition from nursing home and other institutional settings into community living.
- **Guidance on increasing home ownership for persons with disabilities** – A letter entitled “Single Family Loan Production – Increasing Home Ownership Rates for Persons with Disabilities” will be sent to all approved FHA mortgagees, re-emphasizing the Administration’s commitment to promoting home ownership for persons with disabilities. The letter encourages HUD’s lender partners to make home ownership possible for individuals with disabilities through increased but prudent flexibility when underwriting their loan applications.
- **Extension of Income Disregards for HUD Programs** – The Administration will take action to extend employment incentives for persons with disabilities to almost all of HUD’s housing assistance programs. The Vice President announced a new rule extending earned income disregards currently applicable only to public housing to other HUD programs.
- **National Mental Health Coalition to Promote Community-Based Care for Individuals with Mental Illnesses and Substance Abuse Disorders** – The Center for Mental Health Services at the Substance Abuse and Mental health Services Administration (SAMSHA) will work with a broad-based group of public and private organizations, constituencies and consumers to create state and local coalitions to assist persons with disabilities in accessing the services they need to live in their communities.
- **Executive Memorandum on Development Deployment of Assistive Technology and Technology that Enables Universal Design** – An Executive Memorandum requiring that the Interagency Committee on Disability Research (ICDR) publish a report identifying priority areas for the development and advancement of assistive technologies and universal design capabilities, and that Federal agencies then develop a strategy for

transferring such technology for the benefit of people with disabilities. The development and transfer of assistive technologies will facilitate the development of products that will enable people with disabilities to work and participate in society.

Health Care / Olmstead

Q: What does the Supreme Court's decision in Olmstead v. LC have to do with the Americans with Disabilities Act?

A: On June 22, 1999, the U.S. Supreme Court ruled in Olmstead v. L.C. that under the Americans With Disabilities Act (ADA) institutionalizing a person with a disability who can benefit from and wants to live in the community is discrimination. The case was brought by two Georgia women whose disabilities include mental retardation and mental illness. At the time the suit was filed, both plaintiffs were receiving mental health services in state institutions, despite the fact that State treatment professionals believed they could be appropriately served in the community. In its ruling, the Court said that institutionalization severely limits the person's ability to interact with family and friends, to work and to make a life for him or herself.

The ruling helps define the meaning of a provision in the ADA which requires State and local governments to administer their services "in the most integrated setting appropriate to the needs of qualified individuals with disabilities." The Court found that when a professional determines that a disabled individual can live in the community -- and can be served there effectively -- the person must be given the choice of doing so. A choice that all of us would want if we or a member of our family or a friend were disabled.

At the same time, the Court acknowledged states have limited resources and its decision doesn't require any state to incur excessive new costs. Instead, it require states to move at a reasonable pace to provide community-based alternatives. And the Court also said states can meet their obligations by having comprehensive plans.

Q: What is the purpose of the \$50 million Real Choice Systems Change Initiatives Grants?

A: The system change grants will provide States with flexible resources to work with people with disabilities, families and others to identify and pursue affordable strategies for expanding the availability and quality of personal assistance and supports. This \$50 million grant initiative is drawn from Section 4 of the Medicaid Community Attendant Services and Supports Act of 1999 (MiCASSA) proposed by Senators Harkin and Specter. It will help states develop the comprehensive, effectively working plans

endorsed by the U.S. Supreme Court in Olmstead v. L.C.. Each State could use the funds for a variety of system change, capacity building and outreach activities designed to enable people with disabilities to have a real choice in where they want to live and carry services, i.e., in their own homes and communities or in an institutional setting.

Q: Why is this grant program important?

↓ they don't want to

A: The President and Vice President strongly believe that no one should have to live in an institution or nursing home if they can live in the community with the proper supports. States could use these funds for a variety of system change, capacity building and outreach activities designed to enable people with disabilities to have a real choice in where they want to live and receive services, whether in their own homes and communities or in an institutional setting.

Q: What is the role and composition of the consumer task force?

A: Every State that is awarded a system change grant will set up a consumer task force to assist it in the development, implementation, and evaluation of real choice systems change initiatives. Each task force will be made up of a broad range of individuals with disabilities from diverse backgrounds. It will include representatives from Developmental Disabilities Councils, State Independent Living Councils, Commissions on Aging, organizations that provide services to individuals with disabilities and consumers of long-term services and supports. A majority of its members will consist of individuals with disabilities or their representatives.

Consumers will provide vital input to the State on “what really works” from the perspective of those that the Medicaid program is designed to serve and support the State’s efforts to shift from a service delivery model that delivers care to one that provides services. The task force will also be instrumental in helping States identify and evaluate possible innovative practices that promote consumer empowerment or self-direction.

Q: What types of activities can the grants fund?

A: A State may use the funds for:

- needs assessment and data gathering;
- reducing institutional bias;
- reducing the over medicalization of services;
- interagency coordination and single point of entry activities;
- training and technical assistance;

- public awareness programs that provide information on the choices available to individuals with disabilities for receiving long-term services and support in the most integrated setting appropriate;
- downsizing of large institutions to support the per capita increased fixed costs in institutions directly related to the movement of individuals with disabilities out of specific facilities and into the community;
- transitional costs of assisting people with disabilities to move out of institutions and into the community;
- support the operation of the Consumer Task Force;
- time-limited demonstrations of new approaches;
- and other systems change activities necessary for developing, implementing, or evaluating the comprehensive statewide system of long term services and supports.

Q: What is the National Mental Health Coalition to Promote Community Based Care?

A: The Center for Mental Health Services at the Substance Abuse and Mental Health Services Administration is establishing a national coalition to promote community-based care for individuals with mental illnesses and substance abuse disorders. This critical and exciting initiative will serve as an impetus to marshal collective expertise of a number of public and private organizations to address the serious issues raised by the Olmstead decision. The major responsibility of the national coalition will be to promote development of local coalitions to focus on specific content areas such as employment, housing, case management, and crisis services, which are necessary for the enhancement of community support systems that will enable the transition of individuals from institutions into their communities. These local coalitions will be responsible for ensuring that model practices, policies, and guidelines are available at the local level. These model practices will focus on content areas of importance to providing the necessary services and supports in the communities, and will target specific, measurable goals.

Q: What organizations will be involved in the national coalition?

A: The partners comprising the national coalition will include both traditional partners in the mental health and substance abuse treatment fields, such as professional organizations representing State mental health and substance abuse directors and protection and advocacy organizations, as well as non-traditional partners such as private industry councils, civil rights groups, housing and employment organizations and agencies, hospital administrators, and others. This will be a national coalition of broad based organizations with local chapters through which State and local coalitions can be developed.

Q: What is the benefit of developing a national coalition and local coalitions?

A: With appropriate services, millions of people with disabilities can lead full, productive lives in their communities. But to live in the community, people need to be able to access not only the medical and mental health services they need in their communities, but also the very important supportive services such as housing, vocational rehabilitation, and employment services that will enable them to support themselves in the community. SAMHSA's intent in developing a broad based coalition is to bring together all of the service delivery providers needed to empower individuals with disabilities to return to their communities. SAMHSA intends to demonstrate that this national level effort can serve as a model for State, County, and local governments in improving the quality of life for persons with mental health and substance abuse disorders. National and local coalitions serve as focal points for a call to action under the Olmstead Supreme Court decision to enable individuals to live quality lives in the community.

Q: How will SAMHSA carry out this project?

A: A three-year contract is being developed, with \$1 million provided each year, beginning with FY 2000. The contractor will assist SAMHSA in forming the national coalition. The national coalition will develop guidelines to be used for the application of resources to develop local coalitions, and will act as a resource as needed to assist the local coalitions in developing linkages between systems serving individuals with mental health and substance abuse problems to receive treatment in their communities.

Housing/HUD

Q: What is the Access Housing 2000 Project?

A: The Vice President announced that the Departments of Housing and Urban Development and Health and Human Services, in conjunction with the National Program Office on Self-Determination, a Project of the Robert Wood Johnson Foundation, are launching a unique public/private partnership, entitled Access Housing 2000, to assist individuals with disabilities make the transition from nursing homes and other institutional settings into community living.

This public/private partnership is intended to create a coordinated response to the Supreme Court's recent decision in *Olmstead v. L.C.*. The partnership will emphasize expanding the availability of accessible, affordable housing, supporting the use of Individual Development Accounts, and assuring that individuals with disabilities receive the personal assistance and support they need to make a smooth and successful transition out of institutional care. At the heart of the partnership is a proposed national demonstration project, bringing together Section 8 housing vouchers, Nursing Home

Transition Grants, Ticket to Work and Work Incentive Improvement Act grants, and other resources, in a targeted manner to create a new model for helping individuals with disabilities make this transition. Access Housing 2000 will also serve as the centerpiece of national, regional, and local partnerships, reaching out to other potential public and private partners to encourage them to bring additional resources to this effort. Through these various avenues, Access Housing 2000 will help individuals with disabilities living in institutional settings reach the goal of independence and, ideally, join the American dream of home ownership.

Q: What are the income disregards for persons with disabilities in HUD's housing assistance programs?

A: The Vice President announced that for individuals with disabilities, the Department of Housing and Urban Development is proposing to extend important incentives for employment, primarily an income disregard, currently available in a limited number of programs to almost all of HUD housing assistance programs.

[**Background:** In implementing the Quality Housing and Work Responsibility Act of 1998, HUD put in place a grace period during which individuals who begin working after having been unemployed or receiving certain public benefits do not have their new income counted in the calculation of their benefits. For the first year, this important incentive for employment is a full disregard of income, phasing down to a fifty-percent disregard in the second year. Currently, this incentive only applies to HUD's public housing program, but this new initiative extends the incentive, as it applies to individuals with disabilities, to almost all of HUD housing assistance, primarily through a proposed regulation, (OMB is reviewing legislative options that would cover the few HUD programs that can't be addressed through regulation). Additionally, HUD currently offers certain targeted adjustments to annual income for individuals with disabilities, and the regulation HUD is now proposing will clarify that these adjustments apply to the entire range of HUD housing assistance.

Q: What's the letter about that the Vice President mentioned having to do with increasing home ownership for persons with disabilities? Who was it sent to?

A: The Vice President announced that the Department of Housing and Urban Development is sending a letter to all approved Federal Housing Administration mortgagees that encourages HUD's lender partners to help individuals with disabilities have the opportunity to own a home.

Department of Housing and Urban Development Assistant Secretary for Housing and Federal Housing Administration Commissioner William Apgar is sending a letter entitled "Single Family Loan Production - Increasing Home Ownership Rates for Persons with

Disabilities” to all approved FHA mortgagees that re-emphasizes the Department’s commitment to promoting home ownership for persons with disabilities. The letter encourages HUD’s lender partners to make the opportunity of home ownership possible for individuals with disabilities through increased, but prudent flexibility when underwriting their loan applications.

Q: Why is HHS sending additional letters to the States regarding the Olmstead decision?

A: In its January letter to States on the Olmstead decision, HHS pledged to begin to review and modify, where necessary, relevant federal Medicaid regulations, policies and previous guidance to assure that they are compatible with requirements of the ADA and facilitate States' efforts to comply with the law.

Toward this end, HHS is issuing two additional letters and related guidance to State Medicaid Directors which provide needed policy clarifications and in some instances, reflect significant changes in policy to support community integration. These letters are responsive to specific issues that have been identified as barriers by both States and the disability community. The letters will support States' efforts to:

- Assist people with disabilities make a successful transition from nursing homes and other institutions into the community;
- Expand access to home and community based services; and,
- ensure comparability in Medicaid services.

Q: What specific concerns related to the Medicaid program are addressed?

A: People with disabilities who want to and are able to move out of nursing homes and other institutions often face tremendous barriers to making such a transition. State Medicaid programs face similar barriers of their own. The guidance and policy clarifications HHS just issued to State Medicaid Director will help eliminate many of these barriers. Specifically, the clarifications and policy changes will support States in:

- **Assisting People With Disabilities Make A Successful Transition From Nursing Homes And Other Institutions Into The Community:**

➤ ***Accessing Waiver Services:*** The new guidance explains the quickest way a State can begin using Medicaid waiver funds to help a person move out of a nursing home or institution back into their community;

thus cutting down on undue delays. The letter makes clear that HCFA will accept a provisional plan of care for the first 60 days of service in the community.

➤ ***Community Transition Expenses:*** The new guidance details how Medicaid can be used to pay for services and one-time expenses related to assisting a person to move from institution to the community. This can include paying for up to 6 months of case management to identify and obtain needed services for the person by the time he or she leaves the facility, as well as accessibility assessments and modifications to the home or apartment the person is moving into.

➤ ***Avoiding Reinstitutionalization:*** The new guidance indicates that HCFA will now allow States to use Medicaid to continue to pay for personal care for a period up to 30 days while a person with a disability is hospitalized or absent from his or her home. This will enable a State to help individuals avoid losing their attendants and risk unnecessary institutionalization. Doing this extends the policy of making similar payments to retain the bed of a Medicaid nursing home resident who is hospitalized or otherwise absent to those receiving community services.

• **Expanding The Availability And Quality Of Home And Community Based Services:** The new guidance HCFA sent to State Medicaid Directors also addresses some of the fiscal and programmatic challenges State face in increasing the availability and quality of home and community based services for people with disabilities of all ages. HHS has identified and made the following changes in existing guidance or HCFA's interpretation of the Medicaid statute that States and the disability community will find helpful:

➤ ***Habilitation:*** The new guidance makes clear that habilitation services can be provided to individuals with the full range of developmental, physical and mental disabilities under a HCBS waiver. This is important because habilitation services focus on assisting individuals to acquire, retain and improve skills important for living in the community. In many States, however, only people with developmental disabilities have been seen to be eligible for these very flexible and individualized services. This important clarification, therefore, enables people – regardless of “label” – to benefit from such services.

➤ ***Out of State Services:*** The new guidance explains how a Medicaid program can pay for services provided to one of its beneficiary in another state when it is in the person's best interest to do so. Examples of situations when a Medicaid program should consider paying for such services would include the need to access services in rural or other underserved areas, situations when an individual

needs to be near their family, and young people with disabilities attending college out of State.

- **Assuring Comparability In Medicaid Services:** HCFA's new guidance to State Medicaid Directors addresses barriers to independence and community participation in two key areas:

- **Home Health:** The new guidance informs States that they may not require that people be "homebound" in order to receive Medicaid home health services. Some States have applied Medicare homebound requirement in their Medicaid program. HCFA points out, however, that there is nothing in the Medicaid law itself that can be construed to permit this. State policies that impose the requirement that one must be homebound to receive Medicaid home health services can create barriers to community participation. Specifically, HCFA indicates that such a State-imposed limit violates Medicaid's requirement that home health services be made available on a comparable basis to anyone on Medicaid who would qualify based on their needs.
- States may set reasonable limits that do not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of a person's diagnosis, type of illness, or condition. However, the guidance will ensure that no one loses access to home health services simply by leaving their homes and spending time in their communities.
- **Nurse Delegation:** The new guidance makes clear that States may use Medicaid to pay for services provided by qualified individuals under the supervision of a nurse or its nurse delegation law. In other words, States are not required to use nurses to perform health related tasks (e.g., catheter care) which others can be trained to do just as well. The guidance codifies what HCFA has permitted many States to do for years. HCFA hopes that this can help other States to eliminate a layer of the unnecessary medicalization of people's lives (which many find extremely intrusive) as well as conserve taxpayer dollars.

Executive Memorandum On Strategy For The Development And Transfer Of Assistive Technology And Universal Design

Q: What does the Executive Memorandum on development and transfer of assistive technology and universal design require?

A: This Executive Memorandum (EM) requires two things. First, the EM requires that the Interagency Committee on Disability Research (ICDR) publish a report identify priority areas for the advancement of assistive technologies and universal design capabilities. Next, the EM requires that all Federal agencies develop a strategy for enhancing the transfer of technology that can contribute to the needs and requirements of people with disabilities identified in the ICDR report.

Q: What is assistive technology?

A: Assistive technology consists of products and devices that are used to maintain or improve function and capabilities of people with disabilities.

Q: What is universal design?

A: Universal design is the concept of designing products and environments that can be used by all people, to the greatest extent possible, without the need for adaptation or specialized design.

Q: What is meant by technology transfer?

A: Technology transfer refers to the process of where technology is developed by one organization or entity for a specific purpose, but is then adopted and used by another entity for another purpose.

Q: Why are technology transfers important?

A: Technology transfers are important because they stimulate economic growth and a better quality of life for all Americans. It is not uncommon to find that many consumer products that Americans use in their homes everyday were not originally designed for home use. For example, cordless tools were developed by NASA for astronauts to use in space. These same cordless tools are now being used by millions of Americans for everyday tasks around the home.

Q: Can technology transfers specifically help people with disabilities?

A: Yes. The best of many examples of how technology transfers have helped people with disabilities is the cold suit, also known as liquid-cooled garments. The cold suit was originally developed by NASA to regulate the body temperature of astronauts in space. Through research and development it has been found to also effectively protect people who are prone to overheating due to conditions such as multiple sclerosis and cystic fibrosis. Another example is the group of materials known as Shape Memory Alloys developed for use in micro-gravity experiments. The knowledge gained from these experiments has proven to be useful in treatment of human bone-repair. Yet another example, are the composite materials developed for space exploration which are now being used to make lightweight wheelchairs, making mobility for people in wheelchairs easier.

Similarly, technology created for use and to meet the needs of people with disabilities has also had cross-over appeal to people without disabilities. For example, laptop computers were developed for use by people in wheelchairs or with limited mobility. Curb-cuts and ramps, also created for people who use wheelchairs, are also used by individuals using baby strollers or luggage on wheels. Closed caption television, which was developed for people with hearing impairments, is often utilized by individuals in situations where sound would be a distraction to the environment. The list is lengthy but these are just a few examples of how technology transfers benefit all Americans.

Q: Why is it important to require Federal agencies to develop strategies for enhancing technology transfers?

A: The emerging economic trend of increasing "globalization" of the marketplace mandates that Federal agencies address the barriers that impede the full participation of people with disabilities in all aspects of society. Technology transfers and universal design concepts are essential to meeting this challenge.

Q: What are the current barriers to technology transfers?

A: The greatest barrier to technology transfers is the lack of collaborative research efforts. Development in this area is done, mostly in isolation, without the benefit of the exchange of information **and** efficient funding. As a result, progress in the technology transfer arena is erratic. For people with disabilities, who can most benefit from technology transfers, this translates into a loss of employment and other opportunities.

Q: What is the ultimate goal of the Executive Memorandum?

A: The ultimate goal of the EM is to tap into the potential and exciting benefit of cooperation between Federal agencies regarding technology transfers and universal design. The end result will be the significant improvement of the quality of life for people with disabilities and increasing their ability to participate in the workplace and other facets of society.

ADA ENFORCEMENT

Q: What has the Clinton-Gore Administration done to promote the Americans with Disabilities Act?

A: Since the law took effect the combined efforts of Department of Justice, the Equal Employment Opportunity Commission, the Department of Transportation and the Federal Communications Commission has resulted in hundreds of settlements improving access across the country. and each has engaged in extensive efforts to educate the public about the law.

Q: Is this Administration just about suing covered entities under the ADA?

A: No. The Department of Justice and the EEOC each have instituted voluntary national mediation programs that have resulted in many cases reaching satisfactory resolutions. Additionally, the Departments of Justice, EEOC, FCC and DOT provide education, outreach, and technical assistance to the private sector, public sector and individuals with disabilities in order to promote understanding and voluntary compliance with the Act.

Q: Have these activities resulted in systemic changes to the exclusion and isolation that plagued people with disabilities?

A: Yes, for example the **Department of Justice has done the following:**

- Established architect liability. This insures that designers of new buildings are responsible for insuring they comply with the ADA.
- Established franchiser liability for new hotel construction.
- Established the principle of "line of sight over standing spectators." In new stadiums, wheelchair users can now see the playing field along with everyone else.
- Established the principle of "comparable sight lines" in stadium-style movie theaters.

- Insuring that 9-1-1 emergency centers are accessible to individuals who are deaf, hard-of-hearing or who have speech impairments.
- Established the principle that professional courses must provide sign-language interpreters.
- Established that unjustified isolation of people in institutions is discrimination under the ADA. In 1999, the U.S. Supreme Court endorsed this position in *Olmstead v. L.C.*
- Established the principle that overly broad questions about an individual's mental health history violates the ADA

The EEOC for example has done the following:

- Obtained over \$300 million on behalf of more than 20,000 charging parties
- Obtained non-monetary benefits for over 10,000 individuals under Title I
- Resolved over 130,000 ADA charges since Title I was implemented in July 1992
- Launched voluntary national mediation program that has mediated about 2,000 ADA charges with a success rate of over 60%
- Development and issuance of policy guidance that plays a central role in EEOC's efforts to promote understanding and voluntary compliance with the ADA

The Department of Transportation has done the following:

- Issued the final rule on over-the-road buses
- Eliminated the \$2,500 cap on the liability of airlines to passengers for loss or damage to their wheelchairs.
- Issued policy guidance stressing access for persons with disabilities to all modes of transportation and calling accessibility in transit an important civil right.
- Required priority seating for travelers with disabilities

The Federal Communications Commission has done the following:

- Issued a Memorandum Opinion & Order denying Home Shopping Club's petition for Waiver of Closed Captioning Requirements
- Passed Section 255 of the Telecommunications Act
- Issued a public notice on an implementation deadline for TTY access to digital wireless systems for 9-1-1 calls
- Issued Public Notice of Proposed Rulemaking on compatibility of Digital Television receivers and cable systems
- Overhauled Telecommunications Relay Service (TRS) rules to improve access to telephone service for people with hearing and speech disabilities.

Other Administration Actions Related to the 10th Anniversary of the ADA

Q: What other actions have Federal Agencies taken to commemorate the 10th anniversary of the ADA?

A: [Hold]

Presidential Task Force on Employment of Adults with Disabilities (PTFEAD)

Q: Since signing the Executive Order to create the Presidential Task Force on Employment of Adults with Disabilities, what has occurred to increase the employment for people with disabilities?

A: The Task Force, chaired by Secretary of Labor Alexis M. Herman has provided the President and the Vice President with two reports outlining their policy and program reviews and making recommendations on ways to eliminate the barriers that were found.

Q: What are the results of the Task Force recommendations to date?

A: They are as follows:

- Work to pass and fully fund the Ticket to Work and Work Incentives Improvement Act and on December 17, 1999, I signed this legislation into law;
- provided \$20 million in FY 1999 budget for the Work Incentives Grants;
- Held a White House Mental Health Summit;
- Published final rules that raise, from \$500 to \$700, the monthly earnings guideline used to determine whether work done by persons with disabilities (other than blindness) is "substantial gainful activity" in SSA;
- Released a letter from the Health Care Financing Administration to all State Medicaid Directors clarifying the ADA with respect to states offering appropriate community-based services;
- In national radio address, released the plan, "Accessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government;
- Signed Executive Order 13124, amending civil service rules relating to Federal employees with "psychiatric disabilities";
- Increased entrepreneurial opportunities for people with disabilities through action of SBA and SSA;

In 1999 the Task Force recommended that the Administration:

- Proposed in FY 2000 budget funding for the establishment of an Office of Disability Policy to be headed by an Assistant Secretary at the Department of Labor;

- Strengthening enforcement of Section 503 of the Rehabilitation Act of 1973, as amended and this notice of proposed rulemaking has been completed;
- Developed a Youth-to-Work Initiative by amending the Executive Order that created the Task Force to specifically focus on youth with disabilities;
- Established an earned income disregard for tenants with disabilities living in other-than-public housing authority who return to work and exempted any disability related expenses incurred when a tenant goes to work from the “countable” income used to determine rents;
- Included a \$1,000 tax credit for individuals with disabilities to defray work related expenses in FY 2000 budget;
- Included increased funding to accelerate the development and adoption of information and communication technologies and expand state loan assistive technology program in FY 2000 budget;
- Continued to fight for a strong Patients Bill of Rights;
- Created “Access America for People with Disabilities” a one-stop shop web-site dedicated to the employment of people with disabilities;
- Developed a comprehensive strategy related to transportation for people with disabilities;
- Directed all federal agencies to explore ways to encourage hiring of people with disabilities in the area of telecommuting; and
- Raised the Earned Income Exclusion in the SSI program for both adults and students, in order to encourage work efforts.

Deliverables for the ADA Events July 25 & 26

President

Theme: Employment Opportunities and Equality

SUBJECT	DESCRIPTION	FORMAT	STATUS	ANNOUNCE
Increase the number of individuals with disabilities employed in the federal government.	The Federal Government shall hire 100,000 qualified individuals with disabilities over 5 years into all levels and occupations of the Government, to the maximum extent feasible.	Executive Order	DPC	July 26, 2000
Requiring Federal agencies to establish effective written procedures for processing requests for reasonable accommodation.	Federal agencies shall establish effective written procedures for processing requests for reasonable accommodations for people with disabilities.	Executive Order	DPC	July 26, 2000
Section 504 Enforcement	Federal agencies will work with the Department of Justice and EEOC to develop plans to evaluate agency programs, activities and facilities for compliance with sections 501 and 504 of the Rehabilitation Act, which prohibits discrimination on the basis of disability in federal programs and activities.	Executive Memo	DPC	July 26, 2000

Encourage Federal Agencies with Customer Service Call Centers to Explore Ways to Hire People with Disabilities (TF '99)	Agencies operating customer service centers shall examine the feasibility and appropriateness of using home-based employees as customer service representatives. If it is appropriate to establish home-based positions, agencies shall implement procedures that encourage the recruitment and employment of people with significant disabilities for such positions.	Executive Memo	DPC	July 26, 2000
Adjust the Substantial Gainful Activity Levels to Encourage Work Efforts (Note: These proposals do not address the "SSI Earned Income Exclusion." One of the proposals on the First Lady's list deals with the student version. We are not addressing the adult recipients at this time.)	SSA is proposing significant changes to the amounts that disabled adults can earn and be eligible for DI or SSI benefits. Under these proposals, the amounts would be adjusted annually based on the national average wage index. <u>Indexing the Substantial Gainful Activity Level.</u> Annually adjust per the average wage index, the earnings level used to determine whether work done by persons with impairments other than blindness is substantial gainful activity. Currently, the SGA level is changed on an ad hoc basis through regulation. (SSI and DI) <u>Increase (from \$200 to \$530) the Monthly Trial Work Period (TWP) Service Level.</u> During the TWP DI beneficiaries can test their ability to work without fear of losing benefits. Any month's earnings that exceed the TWP service amount counts as a TWP month. In addition, the TWP service amount would be annually adjusted based on the national average wage. (DI Only)	Regulatory Change	OMB	July 26, 2000

Create "Access America for People with Disabilities" Web Site – SSA/DOL (TF'99)	Provide information and services offered by virtually every major federal government agency, by linking to an abundance of helpful Federal agency sites, programs and services.	Announcement of Website	Done	July 26, 2000
Strong, Enforceable Patient's Bill of Rights (TF '99)		Legislation	In Congress	Pending
Tax Credit to Assist Adults with Disabilities with Expenses Related to Work (TF '99)	Provide flexible ways to assist people with disabilities in defraying the costs of personal attendant services, technologies and other services required for employment.	Budget Proposal	In Congress	Pending

Vice President

Theme: Integration and Technology

SUBJECT	DESCRIPTION	FORMAT	STATUS	ANNOUNCE
Technology: - Development/ Adoption of Information and Communication Technologies Used by People with Disabilities (TF '99) - Reiterate the \$35 million in our 2001 budget for assistive technology.	This would accelerate the development and deployment of assistive technology and technology that enables universal design. Assistive technology is used to maintain or improve the functional capabilities of people with disabilities. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The development of assistive technologies and products that incorporate universal design principles can significantly improve the quality of life for people with disabilities, and increase their ability to participate in the workplace.	Executive Order	Pending	? July 25, 2000 July 25, 2000

• Systems Change Capacity Building Grants	This initiative would fund states to engage in system change activities designed to build and enhance their capacity to provide personal assistance services and supports to people with disabilities of all ages.	Grant - \$50 million over 5 years	Pending (OMB searching for funding)	July 25, 2000
• SMD letters clarifying Olmstead decision	These letters would provide guidance to states clarifying additional flexibility that exists for providing home and community based care services and reiterates current policy on eligibility for benefits.	None	Close to resolution.	
• Medicaid Technical Assistance Consortia		Partnership – TF, Educ, SAMHSA, HHS/HCFA		
• Support for Kennedy/Grassley Bill	Kids version of the Jeffords – Kennedy Bill	Pending		
Incentives for Employment	Issuing regulatory change to extend incentives for persons with disabilities to all of HUD's housing assistance, including Section 8, 811, 202, the Rental Supplement program, and the Rental Assistance program.			

Access Housing 2000	This initiative through cooperative agreement between HHS/HUD and Robert W. Johnson would expand accessible, affordable housing to enable individuals currently residing in a nursing home or institution to move into the community.	Bob Williams/ Henry Claypool/ Nestor Davidson and Becky Ogle	Discussion: OMB/HCFA	July 25, 2000
Homeownership	HUD will send a letter from Assistant Secretary for Housing William Apgar to all approved FHA mortgagees entitled "Single Family Loan Production – Increasing Home Ownership Rates for Persons with Disabilities". This Mortgagee Letter will re-emphasize the Department's commitment to make home ownership a reality for persons with disabilities and encourage its lender partners to make this dream possible through increased, but prudent flexibility when underwriting their loan applications.			

Creating of a National Mental Health Coalition to Promote Community-Based Care	SAMHSA will support the creation of this coalition. Key organizations and constituencies will come together to work in partnership with the States to develop a plan for the coalition, working with consumers. This technical assistance effort will link with the Private Industry Councils looking at employability, housing authorities, case managers, professional organizations, social security services and Access Housing 2000 Initiative.			
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First Lady
Theme: Youth

SUBJECT	DESCRIPTION	FORMAT	STATUS	ANNOUNCE
Develop Youth to Work Initiative – DOL, Education, HHS, SSA, OPM, TF and Others (TF '99)	To ensure improvement in the education, transition, employment, health and independent living outcomes of young people with disabilities, all Federal agencies will coordinate and cooperate with the Task Force to: (1) strengthen interagency research, demonstration, and training activities; (2) create a public awareness campaign focused on young people with disabilities; (3) ensure that young people with disabilities are included in all youth programs mandated under the Workforce Investment Act; (4) increase access to health care and resources through an Interagency Council on Health and Ready to Work; (5) increase participation in postsecondary education and training; and (6) create a Youth Advisory Council to assist the Task Force in conducting these and other appropriate activities.	Amend Task Force Executive Order		July 26, 2000
Partnership between Task Force and Able to Work Consortium	This initiative would be a public/private partnership to ensure that youth with disabilities are afforded the opportunity to have meaningful internships that lead to real careers	Task Force and Able to Work Consortium talks		

SSI Regulation – Student Earned Income Exclusion (TF '99)	Increase the Student Earned Income Exclusion maximum monthly (from \$400 to \$1,290) and yearly (from \$1,620 to \$5,200) amounts used in determining SSI eligibility and payment amounts, and then annually adjust these amounts per the CPI.			
Youth Councils	The Department of Labor will issue guidance to the Workforce Investment partners on the creation of newly authorized Youth Councils under the Workforce Investment Act. This guidance, among other things, will encourage the inclusion of young people and other parties representing the interests of youth with disabilities on these councils. (August)	DOL Guidance		
Significant Disability	The Department of Labor will issue guidance to the Workforce Investment partners on the following: • Emphasizing need for states to be aggressive in ensuring that WIA structures address the concerns of people with disabilities in their programs; and • Encouraging outreach to and inclusion of state MR/DD Directors and state Medicaid Directors on state Workforce Investment Boards.			
Guidance on Non-Harassment of Students with Disabilities – Education	The Department of Education will issue a “Dear Colleague Letter” to offer schools guidance to address student harassment based on disability.	Dear Colleague Letter from Education	Done	July 26, 2000
Improving Education: The Promise of Inclusive Schooling	The Department of Education has just published through one of its grantees the National Institute on Urban School Improvement, a pamphlet designed to facilitate the unification of current general and special education.			

Youth Leadership Development Project	The Department of Education will publish a grant announcement in late August to establish a Youth with Disabilities Leadership Development project. This project, which will help identify barriers to economic independence for youth with disabilities and identify strategies for reducing or removing these barriers. This project, to be awarded in October, is jointly funded with the Department of Labor, the Department of Health and Human Services, the Social Security Administration, the President's Committee on Employment of People with Disabilities, and the National Council on Disability.			
High Stakes Testing Guide and Guidance on District Assessments of Students with Disabilities	The Department of Education recently published for public comment a guide to high stakes assessment which includes a small section that discusses the "Testing of Students with Disabilities: (Final version-September). In addition, the Department of Education will issue guidance in the form of commonly asked questions and answers around the inclusion of students with disabilities in statewide and district assessment. (Late July or early August)			

HUD

SUBJECT	DESCRIPTION
Consolidated Planning For Community Development	HUD is requiring all states and localities that have already developed a Consolidated Plan during the year 2000. To encourage recipients to specifically address assisting adults and families with disabilities in this plan, the Office of Community and Planning Development (CPD) will distribute a publication entitled "Piecing it All Together in Our Community: Learning to Use HUD's Consolidated Plan to Expand Housing Opportunities for People with Disabilities."
Tax Credits	HUD is entering into a Memorandum of Understanding (MOU) with the Department of the Internal Revenue Service (IRS) and Justice that sets forth the reporting and other responsibilities of each Department when a multifamily project constructed and operated using Low-Income Housing Tax Credits (LIHTC) is found to be possibly or actually in violation of the Fair Housing Act.
Data Collection	HUD is modifying its Tenant Rental Assistance Certification System (TRACS) to identify which units of the 30,000 assisted projects in the Department's multifamily inventory are accessible to persons with disabilities.
Outreach and Information on Regulatory Enforcement	HUD will issue a notice to reemphasize the responsibility of Community Development recipients to further affirmatively fair housing and to assess compliance with the requirements of the Fair Housing Act (the Act) concerning accessible multifamily design and construction.
Neighborhood Network Centers	Over the next year, HUD will review and modify the current Neighborhood Network form to include questions regarding the Centers' accessibility and what needs there might be to make the Centers accessible.

1790
Bulley
[Handwritten signature and scribbles]

HHS/ SAMHSA/ HCFA

SUBJECT	DESCRIPTION
Improving Employability	• <u>Providing Employers with the Tools and Kno</u> conduct a “National Summit on Employment of People with Psychiatric Disabilities.” This summit will provide businesses with the tools and knowledge they need to make informed decisions in increasing efforts to hire people with psychiatric disabilities and implement workplace policies to support such hiring.

TRANSPORTATION

SUBJECT	DESCRIPTION
Comprehensive Plan of Action	DOT has conducted the initial interagency coordination, and has completed its "Comprehensive Plan of Action," addressing the lack of transportation services and systems for persons with disabilities, as directed by the President and recommended by the President's Task Force on Employment of Adults with Disabilities. The Plan, designed specifically to address barriers to "finding and keeping jobs," will issue shortly.
New Regulations	We expect to announce the issuance of two new regulations: one on DOT's adoption of Access Board's Updated Accessibility Guidelines and one extensive supplemental rule on safety standards for platform lifts and for motor vehicles using platform lifts.
Report on "Designing Sidewalks and Trails for Access: A Best Practices Guide"	We will announce the impending issuance of volume Two of "Designing Sidewalks and Trails for Access: A Best Practices Guide." This highly-anticipated guidance will provide much-needed technical advice on creating and adapting sidewalks and trails for use by all, including persons with mobility impairments, visual impairments, and other disabilities.
Report to Congress on Commercial Drivers Licenses for Insulin-dependent Diabetics	We are working to complete a number of other deliverables, including issuance of a Report to Congress on Commercial Drivers Licenses for insulin-dependent diabetics; completion of an interagency Air Carrier Access Act outreach plan for travelers with a disability; issuance of a new Departmental policy statement and plan on Section 501 and Affirmative Action for Persons with a Disability; and the announcement of a biennial "Secretary's Excellence in Accessibility Award."

Plan of Action to Address Transportation Services and Systems for People wit Disabilities (TF '99)	This comprehensive plan would be to concentrate federal efforts on developing an interagency action plan that addresses the lack of public transportation as a major employment barrier for people with disabilities.
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DOL

SUBJECT	DESCRIPTION
Create Office of Disability Policy Headed by Assistant Secretary – DOL (TF'99)	This office headed by an Assistant Secretary would bring a permanent and heightened focus on disability employment issues at the DOL [Note: Included in FY 2001 Budget request. The Senate supported the effort; the House did not. Pending in Conference.]
Strengthen Enforcement of Employment – related Nondiscrimination Provisions of ADA and Rehabilitation Act – DOJ, Labor, EEOC (TF '99)	Supplements the comprehensive compliance reviews with a variety of different means for assessing a contractor's compliance with Section 503 and its implementing regulations. Section 503 of the Rehabilitation Act of 1973 requires government contractors and subcontractors to take affirmative action to employ and advance in employment individuals with disabilities. [Note: Pending at OMB. Will not be cleared by July 26.]

FCC

SUBJECT	DESCRIPTION
The Use of N11 Codes and Other Abbreviated Dialing Arrangements (CC Docket No. 92-105)	The Commission will consider a Second Report and Order concerning the nationwide implementation of 711 access to telecommunications relay services (TRS).
The Implementation of Video Description of Video Programming (MM Docket No. 99-339)	The Commission will consider a Report and Order concerning rules requiring certain broadcast stations and multi-channel video programming distributors to provide programming with video description.
Closed Captioning Requirements for Digital Television Receivers (ET Docket No. 99-254); and Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility (MM Docket No. 95-176)	The Commission will consider a Report and Order concerning technical standards for the display of closed captions on digital television (DTV) receivers.

- The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, July 21, 2000, they are all expected to pass 5 – 0.

- **EEOC**

SUBJECT	DESCRIPTION
Issuance of guidance on “Employers’ access to medical information about their employees.”	This guidance will help to ensure that qualified workers are not discriminated against because of medical conditions they have or medications they are taking that are unrelated to job performance, or because an employer thinks the worker may acquire some condition in the future.
Issuance of guidance to explain Executive Order prohibition on genetic discrimination in federal employment.	The EO protects the federal civilian workforce; it prohibits discrimination based on genetic test results of the employee, family medical history, and genetic test results of family members.

- * EEOC will hold a full Commission meeting on July 27, 2000 on the Americans with Disabilities Act.
- * EEOC published on their website the Accomplishment and Highlights of EEOC actions.

DOJ

SUBJECT	DESCRIPTION
AG will announce initiative to ensure that local government programs are accessible to people with disabilities.	
Release "Enforcing the ADA: Looking Back On a Decade of Access."	Report highlighting the enforcement and technical assistance activities, will be posted on the DOJ website and will be mailed to the 8,000 disability rights activists on the mailing list.
Pictogram Project	The pictogram project was initiated as part of the consent decree in United States v. Middlesex Hospital, et al. (D.Conn.), in which the court deaf, hard of hearing, or have other problems communicating to get assistance in hospital emergency rooms and elsewhere while awaiting a sign language interpreter. The Department has compiled a loose-leaf notebook of common phrases used in emergency rooms to assist personnel who do not use sign language to communicate with deaf patients. Also included are scales to illustrate degrees of pain or discomfort, body drawings to show where the pain is located, and other tools to aid in communication. The Department is distributing the pictograms to the Connecticut Hospital Association pursuant to the consent decree, and is working with HHS to identify hospital associations in each state for distribution.

OPM

SUBJECT	DESCRIPTION
Showcase success stories of the Federal government as a model employer.	Last October, the President released “Assessing Opportunity: The Plan for Employment of People with Disabilities in the Federal Government, which the VP asked OPM to develop. OPM is compiling success stories from federal agencies and departments, which showcase stories of the Federal Government as a model employer.
Announce final regulation to make it easier for agencies to hire people with psychiatric disabilities.	This regulation will level the playing field for those with psychiatric disabilities by giving them the same hiring opportunities as other people with disabilities.
IEP Guide	In early July, ED published an easy-to-understand guide for teachers and parents on the requirements for a student’s Individualized Education Program (IEP), according to the Individuals With Disabilities Education Act.
Charter Schools and Students with Disabilities	In late summer/ early fall, ED will release its final report on charter schools and students with disabilities, which examined, in part, the reasons parents enroll students with disabilities in charter schools, the nature of the services provided, and the outcome goals for students with disabilities.

Mitchell, 7-24-60
2:50

Attached are drafts
sent out at 1:15 today.

I know to add "qualified"
at appropriate places in
~~the~~ the communications memo.

any other changes?

Thank you very much for your
help. Mac.

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

FACSIMILE TRANSMISSION SHEET

DATE: JULY 24, 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: 14 (PLUS COVER SHEET)

Mac and Michelle: Minor comments on the final drafts of the "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**



THE DIRECTOR

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

DRAFT

7-24-2000

1:15 p.m.

MEMORANDUM FOR THE PRESIDENT

FROM: Jacob J. Lew
Director

SUBJECT: Two Proposed Executive Orders Entitled, Respectively, "Increasing the Opportunity for Individuals with Disabilities to be 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 Disabilities to Fill Federal Agency Jobs that can be performed at Alternate Work Sites, including the Home" and "Renewing the Commitment to Ensure that Federal Programs are Free from Disability-Based Discrimination"

SUMMARY: This memorandum forwards for your consideration two proposed Executive orders and two proposed memoranda that were prepared by the White House Domestic Policy Council. The proposed orders would, respectively, increase the opportunities for individuals with disabilities to be employed in the Federal Government ("opportunity order") and require Federal agencies to establish procedures for reasonable accommodation for their disabled employees ("accommodation order"). The proposed memoranda would, respectively, direct Federal agencies to take actions to help people with significant disabilities fill Federal jobs that can be performed at alternate work sites, including homes ("alternate work sites memorandum") and direct Federal agencies to renew their commitment to ensure that their programs are free from disability-based discrimination ("renewed commitment memorandum").

BACKGROUND: Wednesday, July 26, 2000, is the 10th Anniversary of the Americans with Disabilities Act ("Act"). The White House Domestic Policy Council requests that you issue the proposed orders and memoranda to further promote the goals of the Act.

The opportunity order would direct the agencies, based on expanded outreach and accommodation efforts, to try to hire 100,000 qualified individuals with disabilities over five years into the full range of levels and occupations of the Federal Government. It would not require the agencies to create new or additional positions or to change existing qualification standards, but as part of their normal hiring and replacement processes to make a concerted effort to hire individuals with disabilities. The Office of Personnel Management would develop guidelines for the implementation of the order.

See memo

The accommodation order would direct the agencies to take certain actions to promote reasonable accommodations for individuals with disabilities: (a) in the application process for Federal employment; (b) to perform essential functions of federal positions; and (c) to enjoy benefits and privileges of employment equal to those enjoyed by Federal employees without disabilities. The order would require the agencies to submit their procedures, within one year, to the Equal Employment Opportunity Commission ("EEOC"). The order would direct the EEOC to issue guidance for the implementation of the order within 90 days.

The alternate work sites memorandum would direct agencies that operate customer service call/contact centers to identify positions that could be relocated to off-site or home-based facilities and be filled by qualified individuals with significant disabilities. It would direct the agencies to identify the appropriateness of using off-site and home-based positions to carry out other specific work activities, such as the processing of insurance claims and financial transactions. If the agencies determined that it was appropriate to establish offsite or home-based positions, it would direct the agencies to develop plans of action to recruit and employ people with significant disabilities for such positions. Such plans of action would be submitted to the President's National Task Force on Employment of Adults with Disabilities. ✓

The renewed commitment memorandum would direct the agencies to ensure that their programs are free from disability-based discrimination. It would also direct the agencies to make their programs offered on the Internet and Intranet sites accessible to people with disabilities by July 27, 2001, and direct the Interagency Disability Coordinating Council to coordinate the agencies' efforts to make information technology accessible to persons with disabilities.

None of the affected agencies objects to the proposed orders and memoranda.

RECOMMENDATION: I recommend that you sign the proposed orders and memoranda.

Attachments

Executive Order

DRAFT
7-24-2000
1:15 p.m.

**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. 701 et seq.), 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 five 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 non-traditional 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 be authorized to 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 ~~is not intended to, nor does it~~ ^{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.

THE WHITE HOUSE,

DRAFT

7-24-2000

1:15 PM.

Executive Order

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, 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, as required by the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), 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. 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 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 record keeping 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 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, 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 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; 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 EEO Equal Employment Opportunity ^{process} and other statutory processes if their requests for reasonable accommodations are denied.

~~SEC. 2. Submission of Agency Reasonable Accommodation Procedures to the Equal~~

Employment Opportunity Commission (EEOC). Within one 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 representative⁵ 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.

(b) This order is intended only to improve the internal management of the executive branch and ~~is not intended to, 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.

THE WHITE HOUSE,

DRAFT
7-24-2000
1:15 p.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 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 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, as defined in the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), 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 can be filled by individuals 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 individuals with significant disabilities.

qualified
(c) If the head of a department or agency determines it is feasible and appropriate to establish home-based positions pursuant to its actions under paragraphs (a) and (b) of this memorandum, such head shall develop a Plan of Action that encourages ~~of~~ the recruitment and employment of individuals with significant disabilities for such positions ✓

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

required
(e) The Task Force, in consultation with the Office of Personnel Management, shall be authorized to review and approve agency Plans of Action and shall be responsible for implementing 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 ~~permitted~~ 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.

THE WHITE HOUSE,

DRAFT

7-24-2000

1:15 p.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 ^{to} the tenth 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, the Equal Employment Opportunity Commission (EEOC), the Interagency Disability Coordinating Council (IDCC), and the President's National Task Force on Employment of Adults with Disabilities 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 Department of Justice and the EEOC, in close consultation with the IDCC and the President's National 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 in accordance with the requirements of sections 501, 504, and 508 of the Act. 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.

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 the General Services Administration 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 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,

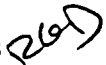


EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

GENERAL COUNSEL

July 18, 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 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:	Jack Lew	Michael Deich	Jeanne Lambrew	Barbara Chow
	Sylvia Mathews	Wesley Warren	Dick Emery	Kenneth Oscar
	Josh Gotbaum	Joe Minarik	Michael Barr	Vikki Wachino
	Sally Katzen	John Spotila	Anil Kakani	
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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

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,

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.

The EEOC is authorized to require modifications to an agency's procedures as necessary to ensure compliance with the Reg. of this order.

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,

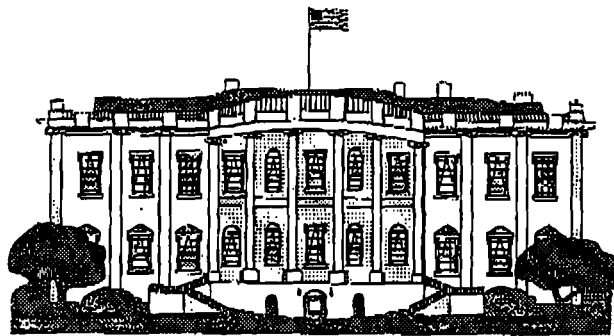
*** TX REPORT ***

TRANSMISSION OK

TX/RX NO	0460	
CONNECTION TEL		96637176
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EXECUTIVE OFFICE OF THE PRESIDENT

Office of the Counsel to the President
Washington, DC 20502



FACSIMILE MESSAGE

TO: *Carmen Smythe / Jocelyn Samuels*

FAX: *663-7176*

DATE: *9-19-00* PAGES: *23*

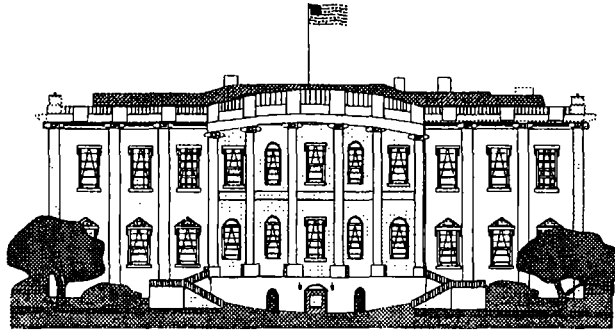
FROM: Michelle Aronowitz
Associate Counsel to the President

FAX NUMBER: (202) 456-2256

OFFICE NO: (202) 456-2024

EXECUTIVE OFFICE OF THE PRESIDENT

Office of the Counsel to the President
Washington, DC 20502



FACSIMILE MESSAGE

TO: *Carmen Smythe / Jocelyn Samuels*

FAX: *663-7176*

DATE: *9-19-00* PAGES: *23*

FROM: Michelle Aronowitz
Associate Counsel to the President

FAX NUMBER: (202) 456-2256

OFFICE NO: (202) 456-2024

COMMENTS: *Comments on Reasonable Accommodation Guidelines*

The documents accompanying this facsimile transmittal sheet are intended only for the use of the individual or entity to whom it is addressed. This message contains information, which may be privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any disclosure, dissemination, copying or distribution, or the taking of any action in reliance on the contents of this communication is strictly prohibited. If you have received the information in error, please immediately notify the sender at the telephone number above.



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

Michelle - A few Daughters. Lisa
FAX TRANSMITTAL COVER SHEET

DATE: September 6, 2000

TIME: 11:45am

DELIVER TO: Lisa Brown

AGENCY/OFFICE/DEPT: Office of the Vice President

FAX#: 456-6429

TELEPHONE#: 456-9089

SENT BY: Carmen Smythe for Jocelyn Samuels

TELEPHONE#: 202/663-4503

SENT FROM FAX#: 202-663-7176

COVER SHEET PLUS 22 **PAGES**

SUBJECT/REMARKS:

"Draft Guidance for Federal Agencies on Establishing Procedures to
Facilitate the Provision of Reasonable Accommodation"

CALL 202/663-4503 IF THERE IS A PROBLEM WITH THIS TRANSMISSION.



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

MEMORANDUM

FROM: Jocelyn Samuels, Senior Attorney Advisor *JS*

SUBJECT: Draft Guidance for Federal Agencies on Establishing Procedures to Facilitate the Provision of Reasonable Accommodation

DATE: September 6, 2000

Attached is a draft of the Guidance for Executive Order 13164. If you would, please review the document and provide us with any comments by **COB Friday, September 15, 2000**. Note that this request constitutes a request for an informal review of the draft Guidance and not a request for formal clearance.

If you have any questions, please call me at (202) 663-4624 or Chris Kuczynski at (202) 663-4665. If you prefer to fax your comments, the number is (202) 663-4639.

We look forward to hearing from you shortly.

Attachment

~~DRAFT/CONFIDENTIAL~~

September 6, 2000

GUIDANCE FOR FEDERAL AGENCIES ON ESTABLISHING PROCEDURES TO FACILITATE THE PROVISION OF REASONABLE ACCOMMODATION**INTRODUCTION**

On July 26, 2000, President Clinton signed Executive Order 13164 (Order), which requires each federal agency to establish effective written procedures for processing requests for reasonable accommodation by employees and applicants with disabilities. The Order helps to implement the requirement of the Rehabilitation Act of 1973 that agencies provide reasonable accommodation to qualified employees and applicants with disabilities. It is an important part of the government's national policy to create additional employment opportunities for people with disabilities.

A reasonable accommodation is any change involving the workplace that enables a person with a disability to enjoy equal employment opportunities. Many individuals with disabilities can apply for and perform jobs without the need for any reasonable accommodation. Where workplace barriers exist, however – for example, physical obstacles or rules about how a job is to be performed – reasonable accommodation serves two fundamental purposes. First, reasonable accommodations assist persons with disabilities by removing barriers that prevent them from applying for, or performing, jobs for which they are qualified. Second, reasonable accommodations help employers by expanding the pool of qualified workers, thus allowing them to benefit from the talents of people who might otherwise be arbitrarily barred from employment. } overstatement?

Procedures for processing reasonable accommodation requests will advance both these goals. The procedures will enable agencies to handle requests in a prompt, fair, and efficient manner. They will assure that individuals with disabilities understand how to approach the system and know what to expect. They will be a resource both for individuals with disabilities and for agency officials, so that all parties can understand the legal requirements of the Rehabilitation Act.

The U.S. Equal Employment Opportunity Commission (EEOC or Commission) is responsible for issuing guidance to implement the Order. This Guidance explains the requirements for agency reasonable accommodation procedures. It first sets forth some background information on the obligation to provide reasonable accommodation and the requirements of the Rehabilitation Act. It then addresses each of the requirements of the Order.

DETERMINED TO BE AN ADMINISTRATIVE**MARKING INITIALS:** DB **DATE:** 9/15/07

I. BACKGROUND

A. Definition of Reasonable Accommodation

The Rehabilitation Act of 1973¹ requires federal agencies to provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause undue hardship. "In general, an accommodation is any change in the work environment or in the way things are customarily done that would enable an individual with a disability to enjoy equal employment opportunities."² There are three categories of reasonable accommodations:

- **modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job;**
- **modifications or adjustments necessary to enable a qualified individual with a disability to perform the essential functions of the job; and**
- **modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.**

Agency procedures must address how to handle requests for all of these types of accommodation.

For further guidance on their obligation to provide reasonable accommodation, agencies should consult the EEOC's "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" (EEOC Guidance).³ The EEOC Guidance addresses the types of accommodations that employers may be required to make; the ways in which individuals may request reasonable accommodation; the "interactive process" between the agency and the individual following a request for reasonable accommodation; and the definition of undue hardship. All agency procedures must, at a minimum, conform to the legal standards set forth in the EEOC Guidance.

This sounds duplicative of this guidance

B. General Guidelines for Agency Reasonable Accommodation Procedures

Reasonable accommodation procedures should be designed to expand employment opportunities for people with disabilities, not to create new bureaucratic requirements. Agency

¹ 29 U.S.C. § 791.

² 29 C.F.R. pt. 1630 app. § 1630.2(o).

³ Number 915.002 (3/01/99). The EEOC Guidance is available on the EEOC's web site at www.eeoc.gov. The standards of the Americans with Disabilities Act apply to the Rehabilitation Act as well. 29 U.S.C. § 791(g).

making and
procedures must permit flexibility in the processing of requests and assure that agency officials act expeditiously in providing reasonable accommodations.

Agency procedures must also serve to notify individuals with disabilities and agency decision makers about their rights and responsibilities under the Rehabilitation Act. They must be written in plain language so that they can be understood by those not familiar with the law. They must also describe the agency's legal obligation to provide reasonable accommodation and explain relevant terms (e.g., qualified individual with a disability, undue hardship, etc.).

Different components of an agency may adopt different reasonable accommodation procedures. However, all procedures must comply with the requirements of the Order and the standards set forth in this Guidance. Moreover, agency components may modify agency-wide procedures as necessary to expedite the processing of reasonable accommodation requests. *should there be general Agency procedures with modifications as necessary by dept?*

C. Dissemination of Agency Reasonable Accommodation Procedures

readily Each agency must make copies of the agency's reasonable accommodation procedures available to all agency personnel. The procedures can, among other things, be posted on the agency's web site or intranet service and included in employee handbooks. They should also be available in designated locations such as agency libraries, EEO offices, and/or personnel offices. The procedures should be made available to individuals with disabilities in alternative formats on request.

Each agency should also educate its employees about the procedures and about their rights and responsibilities under the Rehabilitation Act. Agencies may tailor training to suit the needs of their workforce, but must ensure that all agency personnel who will be making decisions on reasonable accommodations fully understand their role and their obligations.

D. Relationship of the Order and the Rehabilitation Act

This Order does not create any new rights for Executive branch applicants or employees; nor does it limit the rights of individuals with disabilities under the Rehabilitation Act. As a result, if an individual believes that a violation of this Order also constitutes a violation of the Rehabilitation Act, that person may pursue his/her remedies under the Act without limitation.

II. COMPONENTS OF AGENCY REASONABLE ACCOMMODATION PROCEDURES

A. Initiating the Reasonable Accommodation Process

As the Executive Order states, each agency's procedures must:

I think the general statements should include more of the points drawn out in the Q & A's. This applies to each gen'l statement

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 record keeping purposes, the form must be provided as an attachment to the agency's written procedures. (Section 1(b)(1)) *in addition to an oral request,*

1. ***May an agency wait to begin processing a request for reasonable accommodation until after an individual has submitted a written request?***

No. Although an agency can, for record-keeping purposes, require an applicant or employee to fill out a form, an individual's oral request will start the reasonable accommodation process. The time limits set by the agency's procedures (see Section C below) must run from the date of the oral request *as well*. Of course, a request can be initiated in writing if the individual so prefers.

EXAMPLE - Elizabeth, whose left leg is amputated, orally requests that her office be moved closer to the ladies' restroom because of the fatigue and pain caused by using crutches. Agency Z's reasonable accommodation procedures provide that all individuals requesting accommodation complete a written form for agency records. Elizabeth submits the form to the head of her office one week following her oral request.

Agency Z's procedures properly require the head of Elizabeth's office to begin processing her request for reasonable accommodation **on the date of her oral request.**

Where an agency requires those requesting reasonable accommodation to complete a written form, the form must be attached to the agency's procedures. Like the procedures, the form must be written in plain language and must conform to Rehabilitation Act limits on requests for medical or disability-related information. (See Section D below.) Where an individual with a disability requires assistance to complete the form, an agency must provide that assistance **[as a reasonable accommodation]** *?*

2. ***When someone requires a reasonable accommodation on a repeated basis, may an agency require the individual to submit a written request for record-keeping purposes each time the accommodation is needed?***

No. Where an employee has requested a type of reasonable accommodation that s/he is likely to need on a repeated basis – for example, the assistance of sign language interpreters or readers – an agency may not require that the individual submit a written request for record-keeping purposes each time the accommodation is needed. Agency procedures should provide that once the reasonable accommodation is approved the first time, the employee may obtain the accommodation by notice to an appropriate individual or office (e.g., his/her supervisor or a centralized accommodation office).

3. *May an agency require that individuals with disabilities use particular words to request a reasonable accommodation?*

No. A request for accommodation is a statement that an individual needs an adjustment or a change at work for a reason related to a medical condition. Agencies may not require, for example, that individuals mention the Rehabilitation Act or use the phrase "reasonable accommodation." The agency's procedures should make this point clear.

EXAMPLE - Michelle tells her supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm undergoing." This is a request for reasonable accommodation and will trigger the agency's obligations under its procedures.

EXAMPLE - A new employee, who uses a wheelchair, informs the employer that her wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation.

4. *May an agency require that a request for reasonable accommodation be made at a certain time?*

No. Under the Rehabilitation Act, an individual with a disability must be permitted to request a reasonable accommodation whenever s/he chooses.

EXAMPLE - An agency's reasonable accommodation procedures may not require that all requests for reasonable accommodation be made within ten days of the date that an applicant is offered a job or that a current employee is offered a different position within the agency.

5. *Must an agency consider requests made by others on behalf of an individual with a disability?*

Yes. A family member, friend, health professional, or other representative may request a reasonable accommodation on behalf of an individual with a disability.

EXAMPLE - An employee has been out of work for six months with a serious injury. The employee's doctor sends the agency a letter, stating that the employee is released to return to work, but with certain work restrictions. The letter constitutes a request for reasonable accommodation.

B. *Processing Requests for Reasonable Accommodation*

As the Executive Order states, each agency's procedures must:

Again, this statement should include points from Q&A --
 explain how the agency will process a request for reasonable
 accommodation, and from whom the individual will receive a final decision.
 (Section 1(b)(2))

6. Which agency offices or employees should be involved in processing a request?

Each agency is free to identify the agency office or employees it wishes to have process requests for reasonable accommodation. In general, the nature of the required accommodation will influence the agency offices that should be involved in considering the request. The office that approves requests for specialized computer equipment might not, for example, be the same as the office that approves alternate work schedules. Whatever the agency's process, the procedures must clearly explain the role of each office or employee that will be involved in consideration of reasonable accommodation requests.

7. Should agency procedures be flexible?

Yes. Agencies should not adopt a "one size fits all" approach to processing requests for reasonable accommodation. Instead, agency procedures should direct decision makers to process requests in a manner that imposes the fewest burdens on individuals with disabilities and permits the most expeditious consideration and delivery of the reasonable accommodation.

8. May first-line supervisors be authorized to approve requests for reasonable accommodations?

Yes. To eliminate unnecessary levels of review, agencies should authorize first-line supervisors to approve requests for reasonable accommodation wherever possible.

EXAMPLE - Cameron has a disability that causes extreme fatigue at the end of each day. Cameron is an accountant, and one of his essential functions is attending biweekly meetings to review the latest budget estimates. These meetings are scheduled for 3:00. He asks his supervisor whether the meeting can be changed to the morning so that he can perform this essential function when he does not feel tired, while saving the marginal functions of his job for late afternoon. The agency's procedures should authorize Cameron's supervisor to approve this request, absent undue hardship.

EXAMPLE - Melissa, who is blind, requests her supervisor to provide equipment that will read information on her computer screen to her. Because the requested accommodation involves the purchase of equipment, Melissa's supervisor may not be able to immediately approve and implement the request on her own. The agency's procedures should identify the office that considers requests for computer equipment, and should provide for prompt processing by that office.

9. *Should agency procedures encourage a discussion between the individual requesting the accommodation and the agency decision maker?*

Yes. To ensure that all effective accommodations have been considered, agency procedures should require that decision makers talk to the individual requesting the reasonable accommodation where the specific limitation, problem, or barrier is unclear; where the nature of an effective accommodation is not obvious; or where the parties are choosing between different possible reasonable accommodations. Such discussions may not be necessary where both the disability and the need for accommodation are clear.

10. *Should agency procedures specify resources that agency decision makers could consult to identify and evaluate possible accommodations?*

Yes. The Appendix to this Guidance provides a list of relevant resources. This list, as well as any other sources that agencies can identify, should be attached to each agency's procedures.

Agencies should also develop internal resources to provide technical assistance to agency personnel. These internal resources could, for example, demonstrate and evaluate equipment and assistive devices; expeditiously purchase or lease equipment needed for reasonable accommodation; provide referrals for additional information; and promptly prepare agency printed and audiovisual materials in alternative formats on request.⁴

11. *How should agencies fund requested reasonable accommodations?*

Agencies should anticipate the expenses of reasonable accommodation and should include those expenses in their budget planning and requests for each fiscal year. In addition, each agency is strongly encouraged to implement practices that will facilitate the agency's ability to fund reasonable accommodations. Possible practices include:

- establishing a central pool of staff assistant slots, that would not be included in a requesting office's personnel ceiling, to provide readers, interpreters, and other assistants throughout the agency; and
- implementing funding mechanisms that will avoid charging individual offices for the cost of accommodation.

⁴ Where an agency lacks the resources to create such offices, it should consider working with other agencies – such as the Department of Defense or the Department of Agriculture's Target Center – that have established programs to provide these types of assistance. See *Re-charting the Course: First Report of the Presidential Task Force on Employment of Adults with Disabilities* App. A at 6 (November 1998) (describing practices of these agencies).

Such mechanisms will avoid bureaucratic barriers that could make it difficult for individual offices to provide effective accommodations. These mechanisms will also help agencies to meet the requirements of the Rehabilitation Act, which considers the resources of the agency, rather than those of any individual office, for the purpose of determining whether a particular accommodation would result in an undue hardship.

C. Time Limits

As the Executive Order states, each agency's procedures must:

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. (Section 1(b)(3))

12. How should agencies set applicable time limits?

Time limits for processing requests for reasonable accommodation should be as short as reasonably possible. The time necessary to respond to any particular request for accommodation will depend largely on the nature of that accommodation. A reassignment is likely, for example, to take longer to review and implement than a request that a desk be put on blocks. Where the requested accommodation is simple and straightforward, the agency should provide it immediately, absent undue hardship. Furthermore, the time frame should be cut down considerably where a supervisor is authorized to grant an accommodation.

Agencies may wish to identify the *maximum* amount of time that the process can take. But, procedures should make clear that where a particular reasonable accommodation can be provided in less time than is authorized under agency procedures, the failure to respond promptly to the request may result in a violation of the Rehabilitation Act.

EXAMPLE - Ruth's agency has a policy prohibiting employees from eating or drinking at their workstations. Ruth has insulin-dependent diabetes, and asks her supervisor to permit her to eat a candy bar or drink fruit juice at her desk if necessary to avoid going into insulin shock. The agency's reasonable accommodation procedures state that responses to most requests for reasonable accommodation should be made within 15 days of the date of the request. In this case, however, a decision on the proposed accommodation should take no more than a day or two. The agency should not wait the full 15 days before responding to Ruth's request. ?? or hour or two ?'

EXAMPLE - Marcus works for the same agency as Ruth. He has a psychiatric disability that causes him to be easily distracted, and requests that he be given a private office on a quiet corridor. Because the agency must investigate the availability of office space and is entitled to consider other effective accommodations, the agency may need to take the full 15 days allotted by its procedures to make a decision on his request.

Add
to
geni
principle

Agency procedures should also establish expedited time limits for decision making in appropriate cases. Expedited decisions might be necessary, for example, where:

- the reasonable accommodation is needed to enable an individual to apply for a job; or
- the reasonable accommodation is needed for a specific agency activity that is scheduled to occur shortly.

EXAMPLE - James, who is hearing-impaired, requests that his agency provide an interpreter for a meeting that has just been scheduled for the following morning. The agency typically requires that employees give their supervisors 48 hours notice of the need for interpreters. The agency's procedures should provide for expedited processing of James' request in circumstances like these.

13. *What are "extenuating circumstances" that would justify an agency not making a final decision about reasonable accommodation during the designated time period?*

"Extenuating circumstances" are factors that could not reasonably have been anticipated or avoided in advance of the request for the accommodation.

not a
helpful
definition

Where there is a delay in either processing a request for reasonable accommodation or delivering the accommodation, the agency should notify the individual of the reasons for the delay and of the date on which the agency expects to complete the process.

The agency should also investigate whether there are temporary measures that may be taken to assist the individual with a disability. An agency could consider, for example, a temporary job restructuring, the use of equipment that might permit an individual to perform some of the functions of his/her job, or, if necessary and as a last resort, putting the individual on paid administrative leave.

EXAMPLE - To perform the essential functions of her job, Brooke, who has a vision-related disability, needs a sophisticated piece of equipment that is not readily available from the agency's suppliers. The agency has asked its suppliers to check further, and is also independently pursuing other avenues to obtain the necessary equipment. Because of this delay, the agency is not able to meet the time limit set in its procedures for a response to Brooke's request.

The agency should notify Brooke about the delay and tell her when it expects to be able to respond to her request. Whether or not it ultimately grants Brooke's request, the agency should also investigate alternative accommodations, such as a qualified reader, that it

could provide on an interim basis to remove at least some of the barriers that limit Brooke's use of her computer.

14. *Are there any steps an agency can take prior to receiving a request for reasonable accommodation that will avoid unnecessary delays in responding if a request is made?*

Yes. To anticipate and limit impediments that may cause unnecessary delay in providing reasonable accommodation, agencies should review and modify, in advance of a specific request, policies that might affect the agency's ability to respond promptly to requests for reasonable accommodation. Among the policies that agencies should review are those that affect:

- the purchase or lease of equipment;
- the hiring of, or contracting for, readers, interpreters, or other assistants; and
- the flexibility to approve leave or to restructure work schedules.

Agencies should also ensure that all contracts for use of external facilities reflect the obligation to make such facilities accessible to people with disabilities. Agencies also may want to survey their own facilities to ensure that they are accessible.

should.

D. Medical Information

As the Executive Order states, each agency's procedures must:

Begin by saying that they cannot request the info if disability + need are obvious (from p. 11)

- 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;
- 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; and
- Explain the agency's right to have medical information reviewed by a medical expert of the agency's choosing at the agency's expense. (Section 1(b)(4-6))

15. When may an agency request medical information in connection with a request for reasonable accommodation?

When the disability and/or need for accommodation is not obvious, the agency may require that the individual provide reasonable documentation about the disability and his/her functional limitations. An agency is entitled to know that an employee or applicant has a covered disability that requires a reasonable accommodation. The procedures should explain that failure to provide the requested documentation could result in a denial of reasonable accommodation.

Make this the first point
An agency may *not* request medical information where (a) both the disability and the need for reasonable accommodation are obvious; or (b) the individual has already provided the agency with sufficient information.⁵

While an agency has the authority to request information showing that an individual has a disability when it is not obvious or the individual has not provided such information, the agency is **not** obligated to do so.

16. What types of medical information or documentation can an agency request?

When the standards set forth above are met, an agency may request information or documentation regarding:

- the nature, severity, and duration of the individual's impairment;
- the activity or activities that the impairment limits;
- the extent to which the impairment limits the individual's ability to perform the activity or activities; and/or
- why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workplace.

⁵ For a full discussion of those limits, see "ADA Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations" (October 1995); "Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act" (July 2000); and "EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act" (March 1999). These documents can be found on the EEOC's website at www.eeoc.gov.

This should be highlighted ★ The agency may request only the information that is relevant to making a decision about reasonable accommodation. In most situations, this means that the agency may **not** request access to a person's complete medical records because they are likely to contain information unrelated to the disability at issue and the need for accommodation. The agency may share the medical information it obtains, as necessary, with those individuals involved in determining whether to grant a reasonable accommodation.

The information is confidential

① Limit distribution - Is this consistent with #19?

An agency may require that documentation about the disability or functional limitations come from an appropriate professional, such as a doctor or a rehabilitation counselor. An agency may also ask an individual who has requested an accommodation to sign a limited release allowing the agency to submit a list of specific questions to the health care or rehabilitation professional.

EXAMPLE - Richard, who has a severe learning disability, attends numerous meetings. Due to his disability, he finds it extremely difficult to write notes during these meetings, yet his work depends on remembering the details discussed. Richard asks his supervisor to provide him with a laptop computer to use in these meetings. Since neither the disability nor the need for accommodation are obvious, the supervisor may ask Richard for reasonable documentation about his impairment; the nature, severity, and duration of the impairment; the activity or activities that the impairment limits; and the extent to which the impairment limits his ability to perform the activity or activities. The supervisor also may ask why the disability necessitates use of a laptop computer (or any other type of reasonable accommodation, such as a tape recorder) to help Richard retain the information from the meetings.

Shouldn't we encourage this? Documentation may contain sensitive information about a person's medical condition, which may make some employees uncomfortable about sharing it with supervisors. Therefore, agencies may want to designate an individual, such as a disability or reasonable accommodation coordinator or a medical officer, to receive and review the documentation. This individual then may tell the supervisor that the employee has a disability rather than sharing all of the details about the medical condition.

17. May the agency have medical information reviewed by its own medical expert?

Yes. Where an agency is entitled to request medical information under the standards set forth above, the agency may have that information reviewed by its own medical expert at its own expense.

18. May the agency request that an individual who has asked for reasonable accommodation be examined by its own physician?

Yes, if the individual has provided insufficient documentation from his/her own health care or other appropriate professional to substantiate the existence of a disability and the need for

- Whose decision is it that the documentation is insufficient? What if employee wants to object? This could be used to create artificial barriers...

reasonable accommodation.⁶ In such circumstances, however, the agency should first explain why the submitted documentation is insufficient, and allow the individual an opportunity to provide the necessary information. In addition, the agency's medical examination must be limited to determining the existence of a disability and/or the functional limitations that require a reasonable accommodation. Finally, the agency should explain that failure to undergo the medical examination could result in a denial of reasonable accommodation.

19. *Are there restrictions on handling medical information after it is obtained by the agency?*

Yes. The Rehabilitation Act requires that all medical information be kept confidential. This means that all medical information that an agency obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. In addition, the information may not be disclosed except as follows:

- **supervisors and managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);**
- **first aid and safety personnel may be told *if* the disability might require emergency treatment;**
- **government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;**
- **the information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers; and**
- **agency EEO officials may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests. (See Section G below on recordkeeping systems.)**

Where medical information is disclosed to any of the foregoing officials, the agency must inform those individuals about the confidentiality requirements that attach to the information.

⁶ The Office of Personnel Management (OPM) also regulates when a department or agency may request or require medical examinations of applicants and employees. See 5 U.S.C. § 3301 & 3302; 5 C.F.R. Part 339 (Medical Qualification Determination). These regulations do not prohibit an agency from *requesting* an employee who has asked for reasonable accommodation to be examined by an agency's own health care or other appropriate professional where the individual has failed to submit sufficient documentation to support the request. See 5 CFR § 339.302. See also *id.* § 339.103 (OPM regulations must be consistent with regulations governing disability discrimination).

E. Reassignment⁷

As the Executive Order states, each agency's procedures must:

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. (Section 1(b)(7))

20. *When is reassignment required under the Rehabilitation Act?*

Reassignment is a form of reasonable accommodation that must be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position s/he holds, with or without reasonable accommodation. Reassignment is a "last resort" accommodation that must be considered if there are no effective accommodations that would enable the employee to perform the essential functions of his/her current job, or if all other possible accommodations would impose undue hardship.

Reassignment is available only to employees, not to applicants.

The Rehabilitation Act requires that agencies reassign an employee with a disability to a vacant position; the law does not require that agencies create new positions or bump employees from their jobs in order to create a vacancy.

but reassignment must not impose undue burden

21. *Must the employee with a disability be qualified for the new position?*

Yes. An employee will be qualified if s/he (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the position with or without reasonable accommodation.

If the employee is qualified for the position, s/he gets the job as a reassignment and does not have to compete for it.

as a RA

22. *What should an agency's reasonable accommodation procedures provide with regard to reassignment?*

Agency procedures must explain the circumstances in which reassignment is required. They must also clearly notify supervisors and other relevant agency officials about how and where they are required to conduct a search for available vacancies. Agency procedures should identify the agency personnel who are responsible for conducting the search and require these

⁷ For further information on reassignment, see *EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act* (March 1999), on the EEOC's website at www.eeoc.gov.

individuals to consult with the affected employee as necessary to determine whether there are limits on the search the employee would like the agency to conduct; whether the employee is qualified for a particular job; or whether the employee would need a reasonable accommodation to perform the essential functions of a new position.

F. Denials of Reasonable Accommodation

As the Executive Order states, an agency's procedures must:

Provide that reasonable accommodation denials be in writing and specify the reasons for denial. (Section 1(b)(8))

Where an agency denies an individual's request for a reasonable accommodation, it must notify the individual in writing of the denial and the reasons for it. The denial should be written in plain language with as much specificity as possible, and should identify the employee or office that made the decision.

EXAMPLE - Steven, who has AIDS, requests that he be allowed to work at home three days a week due to the serious side effects he experiences from his medications. The agency denies the request with a one line statement noting that the "reasonable accommodation requested would pose an undue hardship for the agency."

This is an inadequate explanation. The agency must identify the basis for its finding of undue hardship -- that is, it must explain how allowing Steven to work at home three days a week would create significant difficulty or expense for the agency.

Where an agency has denied a specific requested reasonable accommodation but offered to make a different one in its place, the agency's notice should explain both the reasons for the denial of the requested accommodation and the reasons that it believes that the chosen accommodation will be effective. Each denial should also notify the individual with a disability about any agency procedures that are available for informal dispute resolution -- see Section H below -- and about his/her right to file EEO or other complaints.

Where the agency grants an individual's request for reasonable accommodation, there is no requirement that the decision be in writing or that reasons for the decision be provided to the individual. Because the agency is required to keep adequate records of its processing of such requests, see Section G, however, the agency should create a means of tracking its disposition of each request.

G. Recordkeeping

As the Executive Order states, an agency's procedures must:

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. (Section 1(b)(9))

23. *What records is an agency required to keep?*

The Order does not require that agencies maintain particular documents or databases, and agencies may design their own recordkeeping systems. Nonetheless, all agency recordkeeping systems must enable agencies to identify at least the following:

- the jobs (occupational series, grade level, and agency component) for which reasonable accommodations have been requested;
- the types of reasonable accommodations that have been requested for each of those jobs;
- the number and types of reasonable accommodations for each job, by agency component, that have been approved, and the number and types that have been denied;
C + why?
- the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

24. *How long must agencies keep these records?*

Agencies are subject to two different requirements with regard to the maintenance of records relating to reasonable accommodation. Agencies must maintain the tracking records that they themselves create under this Guidance. Where there are underlying documents -- where, for example, an agency has requested that an individual submit a written record of his/her request for reasonable accommodation, or has requested additional medical documentation in connection with the request -- the agency must maintain these underlying materials for one year from the date of the making of the record or the personnel action involved, whichever occurs later. If a charge is filed, these underlying records must be preserved until the charge is resolved. 29 C.F.R. § 1602.14.

25. *Are these records subject to the confidentiality restrictions of the Rehabilitation Act?*

Yes. Records that contain medical information about a particular individual with a disability are fully subject to the confidentiality restrictions discussed above in Section D. Thus, the agency's record-keeping systems must contain safeguards to ensure that those restrictions are fully observed. The agency's procedures should detail how the agency will ensure that medical

records are segregated from official personnel files, and to whom and under what circumstances medical information may be disclosed. Agency procedures should make clear that the EEOC has the right to review all relevant records upon request to evaluate the efficacy of the agency's reasonable accommodation procedures.

If the tracking records created by an individual agency contain merely aggregate information that does not identify any particular individual with a disability, the records will not be subject to the confidentiality restrictions of the Rehabilitation Act. Records that identify, for example, the number and types of requests for reasonable accommodation made by job category, will likely not contain medical information about specific employees or applicants with disabilities.

Are
there
Privacy
Act
Issues
too?

26. How should agencies use these records?

Each agency's EEO personnel should regularly review the agency's tracking records to evaluate the agency's performance in responding to requests for reasonable accommodation. Among other things, the agency should determine whether there are impediments that are needlessly delaying or preventing the prompt provision of reasonable accommodations, or whether there are systemic changes that the agency can make to improve its efficiency or ability to grant reasonable accommodations.

27. Are there any reporting requirements under the Executive Order?

Yes. The Order requires that each agency submit its reasonable accommodation procedures to the EEOC no later than July 26, 2001. Each agency must also submit to the EEOC any modifications to its reasonable accommodation procedures at the time they are adopted. The Order imposes no other formal reporting requirements.

Procedures and modifications to procedures should be submitted to:

Equal Employment Opportunity Commission
Office of Federal Operations
1801 L Street, N.W.
Washington, D.C. 20507

H. Informal Dispute Resolution and EEO Complaints

As the Executive Order states, each agency's procedures must:

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.
(Section 1(b)(10))**

28. *What is an informal dispute resolution process?*

An informal dispute resolution process is any mechanism which can be accessed outside of the formal EEO process and through which individuals can request reconsideration of agency denials of reasonable accommodation. The Order does not set specific requirements for informal dispute resolution processes, and agencies are free to customize procedures that will best serve their own workplace. However, informal dispute resolution should begin by encouraging individuals to ask the decision maker to reconsider his/her decision. Procedures also could allow individuals to appeal the denial to others in the decision maker's chain of command.

Agencies can create a dispute resolution program used only to review denial of reasonable accommodation, or they may use existing mechanisms already set up to address workplace disputes, such as alternative dispute resolution (ADR) programs. The objective is to permit quick and thoughtful reconsideration of a denial, and not to establish cumbersome new procedures.

29. *What is the relationship between an informal dispute resolution process and the EEO or other federal sector complaint processes?*

The informal dispute resolution process envisioned in the Order **supplements** the EEO complaint process governed by EEOC regulations, *see* 29 C.F.R. part 1614, and MSPB and union grievance procedures available to federal sector applicants or employees. Nothing in the agency's reasonable accommodation procedures, or in any informal dispute resolution process it uses for handling reasonable accommodation requests, will affect an individual's right to file an EEO complaint under the Rehabilitation Act, even at the same time. No individual with a disability may be forced to use an agency's informal dispute resolution procedure, and an agency may not take any steps to prevent an individual who wants to file an EEO complaint, or MSPB or union grievance, from doing so.

Pursuing a claim in an informal dispute resolution process **does not satisfy** the procedural requirements for bringing a claim under the EEO, MSPB or union grievance procedures.

30. *What is the procedure for alleging a violation of section 501 of the Rehabilitation Act?*

The procedure for alleging a violation of section 501 of the Rehabilitation Act is set forth in the Commission's federal sector EEO process regulations. Briefly stated, the federal sector process requires the following:

→ This is confusing. Need to clarify that an Agency can set up an ¹⁸alternative procedure -- distinct from consultation/mediation that must be exhausted. If they just use the existing procedures, then exhaustion may be required.

- the individual alleging discrimination must contact an EEO Counselor within 45 days of the date of the discriminatory act or within 45 days of when the individual became aware or should have become aware of the allegedly illegal conduct;
- the agency may conduct EEO counseling or offer mediation or other form of alternative dispute resolution;
- if the matter is not resolved informally, the agency will give the individual a notice of final interview, and the individual will have 15 days to file a formal complaint;
- once a formal complaint is filed, the matter will be investigated, and may proceed either to an agency decision or a hearing before a Commission Administrative Judge; and
- after either the agency or the Administrative Judge issues a decision, the matter may be appealed to the EEOC, which will then render a decision.

APPENDIX

RESOURCES FOR LOCATING REASONABLE ACCOMMODATIONS

U.S. Equal Employment Opportunity Commission

1-800-669-3362 (Voice)

1-800-800-3302 (TT)

The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. § 12101 et seq. (1994), and the regulations, 29 C.F.R. § 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. §§ 1630.2(o), (p), 1630.9 (1997), and (2) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

The EEOC also has discussed issues involving reasonable accommodation in the following guidances and documents: (1) Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations at 5, 6-8, 20, 21-22, 8 FEP Manual (BNA) 405:7191, 7192-94, 7201 (1995); (2) Enforcement Guidance: Workers' Compensation and the ADA at 15-20, 8 FEP Manual (BNA) 405:7391, 7398-7401 (1996); (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities at 19-28, 8 FEP Manual (BNA) 405:7461, 7470-76 (1997); (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964 at 6-9, 8 FEP Manual (BNA) 405:7371, 7374-76 (1996); and (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act at 20, 22, 23, 24-5, 8 FEP Manual (BNA) 405:7701, 7711, 7712-14, 7715-16 (2000).

Finally, the EEOC has a poster that employers and labor unions may use to fulfill the ADA's posting requirement.

All of the above-listed documents, with the exception of the ADA Technical Assistance Manual and Resource Directory and the poster, are also available through the Internet at <http://www.eeoc.gov>.

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TT)

<http://janweb.icdi.wvu.edu/>

A service of the President's Committee on Employment of People with Disabilities. JAN can provide information, free-of-charge, about many types of reasonable accommodations.

ADA Disability and Business Technical Assistance Centers (DBTACs)

1-800-949-4232 (Voice/TT)

The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

Registry of Interpreters for the Deaf

(301) 608-0050 (Voice/TT)

The Registry offers information on locating and using interpreters and transliteration services.

RESNA Technical Assistance Project

(703) 524-6686 (Voice)

(703) 524-6639 (TT)

<http://www.resna.org/hometel.htm>

RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

- * information and referral centers to help determine what devices may assist a person with a disability (including access to large data bases containing information on thousands of commercially available assistive technology products),
- * centers where individuals can try out devices and equipment,
- * assistance in obtaining funding for and repairing devices, and
- * equipment exchange and recycling programs.

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Executive Order 13164 of July 26, 2000

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;

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(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.

(Presidential Sig.)

THE WHITE HOUSE,

July 26, 2000.

[FR Doc. 00-19323

Filed 7-27-00; 8:45 am]

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