



Approved for Release

William J. Fleming

Acting Deputy Chief Human Capital Officer and
Acting Director for Human Resources Management

7-13-10
Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

HUMAN RESOURCES (HR) BULLETIN #119, FY10

SUBJECT: Schedule A Appointing Authority Title 5, Code of Federal Regulations (CFR) § 213.3102(u) for Persons with Disabilities

EFFECTIVE DATE: Upon release of this HR Bulletin

PURPOSE: This bulletin provides guidance on the Schedule A appointing authority under Title 5, Code of Federal Regulations (CFR) § 213.3102(u), *Appointment of persons with mental retardation, severe physical disabilities, or psychiatric disabilities*. It includes sections on Recruiting Persons with Disabilities, Required Action Codes for Human Resources (HR) Practitioners, and Reasonable Accommodation. The bulletin requires that each individual appointed under this authority have on file a completed Office of Personnel Management Standard Form (SF) 256, Self-Identification of Reportable Handicap. Completion of the SF-256 ensures accurate reporting to the National Finance Center (NFC).

SUPERSEDES: Supersedes HR Bulletin #45, FY06 5 CFR Parts 213 and 315, "Changes in Excepted Service Schedule A Appointment Authority, Appointment of Persons with Disabilities and Career and Career-Conditional Employment Regulation."

BACKGROUND: Executive Order 13078 established the National Task Force on Employment of Adults with Disabilities (now referred to as the Task Force). The purpose of the Task Force was to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment with the Federal Government. The Executive order included actions to ensure that the Federal Government is a model employer of adults with disabilities. In addition, Executive Order 13163, "Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government," promoted an increase in the opportunities for individuals with disabilities to be employed at all levels and occupations of the Federal Government. Servicing Human Resources Offices (SHRO) are to use available hiring authorities; expand outreach efforts; and increase their efforts to accommodate individuals with disabilities. The Department Administrative Order DAO 215-10 "Reasonable Accommodation for Employees or Applicants with Disabilities," establishes Department of Commerce (Department) policies for providing reasonable accommodation for qualified individuals with disabilities. It also designates responsibilities and describes procedures for submitting and responding to requests for reasonable accommodation.

The Department Administrative Order DAO 215–10 can be found at http://www.osec.doc.gov/omo/dmp/daos/dao215_10.html.

APPOINTING AUTHORITY: The Schedule A appointing authority, Title 5, CFR § 213.3102(u), is an excepted service appointing authority that may be used to appoint individuals with severe physical disabilities, mental retardation, and psychiatric disabilities. Under this authority, individuals may be appointed under time-limited, permanent, or temporary appointments in the excepted service.

ELIGIBILITY REQUIREMENTS: An applicant's disability must fall within the following categories:

- (1) Mental retardation,
- (2) Severe physical disability, or
- (3) Psychiatric disability.

Proof of Disability: An individual requesting to be hired under the Schedule A appointing authority, Title 5, CFR § 213.3102(u), must provide proof of eligibility from the following before being appointed:

- A licensed medical practitioner (e.g., a physician or other medical practitioner duly certified by a State, the District of Columbia, or a U.S. territory, to practice medicine);
- A licensed vocational rehabilitation practitioner (i.e., State or private); or
- Any Federal, State, District of Columbia, or U.S. territory agency that issues or provides disability benefits.

The following documents may be accepted as proof of a qualifying disability:

- Statements or letters on a physician's/medical practitioner's letterhead stationery;
- Statements, records, or letters from a Federal Government agency that issues or provides disability benefits;
- Statements, records, or letters from a State Vocational Rehabilitation Agency Counselor; or
- Certification from a private vocational rehabilitation or other counselor that issues or provides disability benefits.

Documentation needs to certify that the applicant has a disability that is either long-term or permanent in nature, or both.

Certification of Job Readiness: Certification of job readiness (a determination that the applicant is likely to succeed in the performance of the duties of the position he or she is seeking) may be accepted from the same entities listed under Proof of Disability. Service under another type of temporary appointment in the competitive or excepted service may be accepted as proof of job readiness at the discretion of the SHRO.

A certification of job readiness is not required under the Schedule A appointing authority, Title 5, CFR § 213.3102(u), but it is preferred. In situations where an individual has the proof of disability documentation, but not the certification of job readiness, hiring agencies have the discretion to place an individual on a temporary appointment under Schedule A, Title 5, CFR § 213.3102(u), to determine an individual's job readiness.

PROCEDURES: HR Practitioners must review the proof of disability and certification of job readiness, if applicable, from applicants to determine if they are eligible for an appointment under the Schedule A, Title 5, CFR § 213.3102(u), appointing authority.

SF-256, Self-Identification of Reportable Handicap, must be completed by the applicant or HR Practitioner for an individual to be appointed to a position using the Schedule A appointing authority. The completed SF-256 ensures accurate reporting to NFC.

TYPES OF APPOINTMENTS:

1) Time-limited or permanent appointments may be used for individuals who either provide proof of disability and a certification of job readiness, **or** proof of disability and demonstration of job readiness through a previous temporary appointment.

2) A temporary appointment may be used for individuals who either have a certification of job readiness and the work is temporary in nature, **or** have provided proof of disability but do not have a certification of job readiness, or have demonstrated job readiness through a previous temporary appointment.

When the individual does not have certification of job readiness, this type of appointment is used to observe the individual's job readiness with respect to performing the duties of the position. The individual may be converted to a time-limited or permanent appointment in the **excepted** service when the supervisor determines the individual is able to perform the duties of the position. If the individual does not gain certification during the appointing authority time frame or does not demonstrate satisfactorily his or her ability to perform the duties of the position, the individual does not have rights to further employment at the end of the not-to-exceed date of their initial appointment. The hiring manager should contact their SHRO for guidance if they wish to terminate individuals under this authority before the not-to-exceed date.

A positive determination that the employee is capable of performing the duties of the position must be documented, signed, and dated by the supervisor, along with the SF-52, Request for Personnel Action, requesting the conversion.

Conversion to Career and Career-Conditional Appointments: At the supervisor's discretion, under Title 5, CFR § 315.709, an employee may be converted non-competitively to a career or career-conditional appointment in the competitive service when he or she completes two or more years of satisfactory service, without a break of more than 30 days, for a non-temporary appointment under Title 5, CFR § 213.3102(u). SHROs may credit time spent on a temporary appointment under § 213.3102(u) towards the two years of service. Although there is no requirement to convert employees to the

competitive service, the intent of the Executive order authorizing these appointments is that employees will gain competitive status after two years of successful performance.

REQUIRED NATURE OF ACTION CODES: SHROs will code the SF-52, Request for Personnel Action, and the SF-50, Notification of Personnel Action, with the appropriate Nature of Action Code (170, 171, 190, 570, 571, or 590). For additional information, “The Guide to Processing Personnel Actions” is available online at <http://www.opm.gov/feddata/gppa/gppa.asp>.

RECRUITING PERSONS WITH DISABILITIES: No public notice or competitive examining is required for Schedule A appointments. Applicants may submit a resume or other form of application to an HR Practitioner or hiring manager for consideration without actually applying to a vacancy announcement.

The Department will conduct outreach efforts to hire persons with disabilities through relationships with universities as well as Federal, State, and local vocational rehabilitation offices. The Department will cultivate continuous interactions with the Department of Labor, Office of Disabilities, and Office of Personnel Management.

Workforce Recruitment Program for College Students with Disabilities (WRP): The WRP is a resource for employers nationwide to identify qualified temporary and permanent employees from a variety of fields. Applicants are highly motivated postsecondary students and recent graduates eager to prove their abilities in the workforce.

The program offers employers:

- Job candidates pre-screened through face-to-face interviews;
- Information about each applicant’s qualifications;
- Referral pools tailored to specific job requirements;
- Access to candidates across the Nation;
- Flexibility in hiring for summer internships or permanent positions;
- Opportunity to evaluate summer interns for permanent staffing needs; and
- Freedom to conduct independent interviews after referrals are made.

Trained recruiters from Federal agencies conduct personal interviews with interested students on college and university campuses. Student information is compiled in a database available to all Federal agencies. Interested HR Practitioners and hiring managers can visit the WRP website, www.wrp.gov for more information.

Thirty Percent or More Disabled Veterans: In addition to possibly being eligible for an appointment under the Schedule A, Title 5, CFR § 213.3102(u), appointing authority, disabled veterans with a compensable service-connected disability of 30 percent or more are eligible under Title 5, United States Code § 3112 for non-competitive appointments leading to conversion to career or career-conditional employment. Under Title 5, CFR § 315.707, SHROs may convert the employment of a 30 percent or more disabled veteran, without a break in service, to a career or career-conditional appointment from a time-limited appointment of more than 60 days. In addition, veterans with a service-connected

disability of 30 percent or more may receive a non-competitive term appointment under Title 5, CFR § 316.302(b)(4), as well as a non-competitive temporary appointment under Title 5, CFR § 316.402(b)(4). However, neither a term nor a temporary appointment confers a right to conversion to a career or career-conditional appointment.

REASONABLE ACCOMMODATIONS: Reasonable accommodations are adjustments or modifications provided by an employer to enable individuals with disabilities to have equal employment opportunities. Hiring managers and supervisors must provide “reasonable” accommodations to employees upon request.

An individual can request reasonable accommodations either verbally or in writing during the interview process, after being offered a position of employment, or once they have entered-on-duty. Individuals needing reasonable accommodations are responsible for making their needs known to their supervisors. The supervisor and the individual should clarify the individual’s needs through an interactive process of communication and identify the appropriate reasonable accommodations required to meet them.

To enable the Department to maintain accurate records regarding requests for accommodations, employees seeking reasonable accommodations are asked to complete and sign the Request for Reasonable Accommodations Form CD-575, Part A: Confirmation of Request. In the case of an applicant seeking a reasonable accommodation who is physically incapable of completing the CD-575, the SHRO should complete the form for the applicant. Electronic copies of the form should be immediately forwarded to the appropriate Reasonable Accommodations Coordinator (RAC). HR Practitioners or hiring managers should contact their operating unit or bureau RAC for additional information regarding reasonable accommodations.

Resources for Providing Reasonable Accommodations:

- Computer/Electronic Accommodation Program (CAP) – This program is housed within the Department of Defense and provides assistive technology and services to people with disabilities throughout the Federal Government free of charge. Hiring managers and supervisors may utilize this resource for assistance in accommodating an employee with a disability. CAP will conduct a needs assessment, buy the needed technology, train the employee on how to use it, and follow up with updates. (Note: Before contacting CAP directly, please check with your RAC, as they may already have a relationship with CAP.) Further information can be found at <http://www.tricare.mil/cap/>.
- Job Accommodation Network (JAN) – This is a comprehensive resource for job accommodations that provides free consulting services designed to increase the employability of people with disabilities. JAN provides individualized worksite accommodation solutions, as well as information on job accommodations and related subjects for employers and people with disabilities. Additional information can be found at <http://www.jan.wvu.edu/>.

REFERENCES: Executive Order 13163; Executive Order 13078; DAO 215-10; 71 *Federal Register* 42241-42246; 5 CFR 213.3102(u); 5 CFR 213.104; 42 U.S.C. Section 12111, et seq.; 42 U.S.C. Sections 12201, 12202, 12203, 12204, and 12210.

OFFICE OF POLICY AND PROGRAMS: Pamela Boyland, Director,
pboyland@doc.gov, (202) 482-1068

PROGRAM MANAGER CONTACT INFORMATION: Sabra Street, Program
Manager, ssstreet@doc.gov, (202) 482-4270