



March 14, 2005

Mark Doboga  
Deputy Associate Director for Talent and Capacity Policy  
U.S. Office of Personnel Management  
Room 6551,  
1900 E Street, NW  
Washington, DC 20415-9700

Or email:  
[employ@opm.gov](mailto:employ@opm.gov). include "RIN 3206-AK58" in subject line

Dear Mr. Doboga,

The Consortium for Citizens with Disabilities (CCD) Employment and Training Task Force appreciates the opportunity to comment on the proposed changes to the existing regulations regarding the excepted appointments of people with mental retardation, severe physical and psychiatric disabilities. CCD is a coalition of national disability organizations that advocates for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD Employment and Training Task Force focuses on disability policy issues related to the employment of people with disabilities.

The federal government has a unique role to play in promoting the employment of individuals with disabilities both as a model employer and in implementing federal programs that support the employment of people with disabilities. CCD supports OPM's desire to revise and simplify the current regulations regarding the federal appointing authority. We expect that this consolidation will allow OPM to clarify that people with disabilities including persons with epilepsy, learning disabilities, brain injury, and other physical, sensory, cognitive, or behavioral disabilities are included in this policy. While expediting the hiring process for individuals with disabilities is an important policy goal, we have some concerns about the proposed changes to the regulations.

The preamble to the regulation seems to suggest that the agencies may make the certification of disability and the determination that the person is likely to succeed in the job based on the evidence supplied by the individual and only if that is unsatisfactory would the individual need to proceed to the state vocational

rehabilitation agency for the certification. This process would indeed streamline current policy. Current OPM guidance on certification states that it is a two step process and two letters of certification may be required, one initially and one once the individuals has been tentatively selected. However, the proposed language at 213.3102(u)(ii) seems to suggest that certification by an outside agency that a person is likely to succeed in the performance of the duties is still required, independent of what the individual submits. The final regulation should clarify this issue.

CCD also recommends that the proposed language at 213.3102(u)(ii) be consistent with Section 501 and 504 of the Rehabilitation Act and be amended to read “who are certified as likely to be able to perform the essential functions of the job with or without reasonable accommodation” instead of the proposed language “are likely to succeed in the performance of the duties of the position”. It is important to note that the existing regulations at 213.3102(gg) contains the CCD recommended language.

It is our belief that the determination of the presence of a disability, particularly when considering conditions such as mental retardation, mental illness and severe physical disabilities, has often been well established in earlier school years, prior hospitalizations or through the federal or state financial and or health care support services. The need for such a determination to be redone by a VA employee or a rehabilitation counselor will slow down both the hiring process or inhibit the overall job seeker’s interest in pursuing a federal position.

While a strong case can be made that the determination of the capacity of the individual to perform the essential functions of a job is more effectively made by those most familiar with the tasks of the job including supervisors and others who have performed these tasks in the past, it does raise concerns. Changing the policy from relying on an agency like the public rehabilitation agency with specialized expertise and knowledge about disability and employment to individual agencies may inadvertently create more discrimination. Individual agencies are not as likely as rehabilitation or disability agencies to be up to date on the technology, supported employment, and the myriad of other services and supports that enable people with significant disability to find and maintain employment. Individuals with disabilities may be subject to more myths and stereotypes about their abilities.

To avoid this result, OPM must provide additional clarification and guidance in the regulation. In addition to the CCD recommendations described above, OPM should provide more guidance on what is acceptable documentation and who can provide it. For example if a private rehabilitation agency has been working with an individual they should be able to assist in certifying the person with a disability. There should also be some consistency in what agencies might require to document disability.

OPM must also accompany this regulatory change with an enhanced training and awareness effort to dispel myths about people with disabilities and to connect agencies to resources to help them successfully hire more people with disabilities. Resources such as JAN (Job Accommodation Network) and the local assistive technology centers in individual states as well as supported employment providers and other private rehabilitation agencies can assist the federal agencies in hiring more people with disabilities.

Incorporating our recommendations into the proposed regulation will reaffirm to job seekers with disabilities the commitment of this administration to support increased economic independence for our citizens with disabilities.

On behalf of the CCD Employment and Training Co-chairs, we appreciate the opportunity to comment and look forward to working with OPM on implement this important change. We thank you for your work in this area think this is a step in the right direction.

Sincerely,

Cheryl Bates-Harris, National Association of Protection and Advocacy Systems,  
202-408-9514

Alan Dinsmore, American Foundation for the Blind, 202-408-0200

Charles Harles, Inter-national Association of Business, Industry, and  
Rehabilitation (I-NABIR), 202-543-6356

Celane McWhorter, APSE: the Employment Network, 703-683-1166

Brad Turner-Little, Easter Seals, 202-347-3066