


Approved for Release

Kevin E. Mahoney
Director for Human Resources Management and
Chief Human Capital Officer

11/1/13
Date

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

HUMAN RESOURCES (HR) BULLETIN #177, FY14

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 intellectual disabilities, severe physical disabilities, or psychiatric disabilities.*

SUPERSEDES: Supersedes HR Bulletin #119, FY10 “Schedule A Appointing Authority Title 5, Code of Federal Regulations § 213.3102(u) for Persons with Disabilities,” dated July 13, 2010

REVISIONS: This bulletin implements the final regulations under Title 5, CFR § 213.3102(u), effective March 25, 2013. The regulation eliminated the requirement that an applicant supply a “certification of job readiness” when seeking employment under this authority, and modernized terminology used by replacing the phrase “mental retardation” with “intellectual disability.” In addition, sections on Servicing Human Resources Offices (SHROs) Responsibilities and on Office of Human Resources Management (OHRM) Responsibilities were added, including a requirement for OHRM to request that employees update their disability status (annually) as recommended by the Equal Employment Opportunity Commission. SHROs were notified of the changes on March 22, 2013.

BACKGROUND: Executive Order (EO) 13548, “Increasing Federal Employment of Individuals with Disabilities” (July 26, 2010) mandated that the Federal Government become a model employer for individuals with disabilities. Executive departments and agencies were tasked to improve their efforts to employ workers with disabilities through increased recruitment, hiring, and retention of these individuals. The purpose of the EO was to support EO 13163, “Increasing the Opportunity for Individuals with Disabilities to be Employed in the Federal Government” (July 26, 2000) and achieve its goal of increasing the number of individuals with disabilities in the Federal workforce by 2015. Executive departments and agencies were required to develop a plan for promoting appointments for individuals with disabilities.

EO 13078, “Increasing Employment of Adults with Disabilities” (March 13, 1998) established the National Task Force on Employment of Adults with Disabilities (Task Force), which was to

create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment with the Federal Government. It included actions to ensure that the Federal Government be a model employer of adults with disabilities.

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 intellectual disabilities, severe physical disabilities, 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 at least one of the following categories:

- (1) Intellectual disability
- (2) Severe physical disability
- (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/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 must certify that the applicant has a disability that is either long-term or permanent in nature, or both.

TYPES OF APPOINTMENTS:

(1) Time-limited or permanent appointments may be used for applicants who provide proof of disability and the hiring manager determines that the individual is likely to succeed in performing the duties of the position for which he or she is applying. In determining whether the individual is likely to succeed in the position, the hiring manager may rely upon the applicant's

employment, educational, or other relevant experience, including but not limited to service under another type of appointment in the competitive or excepted service.

(2) A temporary appointment:

- a) Is used to observe the applicant on the job to determine whether he or she is able or ready to perform the duties of the position. The individual may be converted to a permanent appointment in the **excepted** service at any time when it is determined the individual can perform the duties of the position; or
- b) The work is of a temporary nature.

If the individual does not demonstrate during the appointing authority time frame 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 his or her initial appointment. Hiring managers 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.

Non-Competitive 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 years of satisfactory service, without a break of more than 30 days, under a permanent or time-limited, or temporary (when used to observe the applicant's ability to perform the duties of the position) appointment under Title 5, CFR 213.3102(u).

SHROs may **not** credit time spent on a temporary appointment under § 213.3102(u)(5)(ii) toward the two years of service requirement.

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>.

SERVICING HUMAN RESOURCES OFFICES RESPONSIBILITIES:

- Provide reasonable accommodations to applicants upon request.
- Review applicants' proof of disability to determine if they are eligible for an appointment under the Schedule A, Title 5, CFR § 213.3102(u), appointing authority.
- Ensure that the Standard Form (SF) -256, Self-Identification of Disability is completed by the applicant, and if not, the HR Practitioner **must** complete the form in order for an individual to be appointed to a position using the Schedule A appointing authority. If information is not provided by the applicant, the HR Practitioner will make a reasonable

determination of the disability code based on the medical documentation. Information obtained from the SF-256 will only be used for data collection purposes.

- 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.

DAO 215-10 can be found at: http://www.osec.doc.gov/opog/dmp/daos/dao215_10.html

OFFICE OF HUMAN RESOURCES MANAGEMENT RESPONSIBILITIES:

- Provide a Department-wide Disability Program Manager to promote the hiring of persons with disabilities.
- Search for, and if available, provide qualified individuals upon request from a SHRO or hiring manager.
- Disseminate an all-employee Broadcast message annually during the month of October that encourages employees to update their disability status through the Employee Personal Page, or SHRO, in order to resurvey the population.

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's Office of Disability Employment Policy, and the Office of Personnel Management.

Workforce Recruitment Program for College Students with Disabilities (WRP):

The WRP is a recruitment and referral program with a searchable nationwide database that is available through the website at www.wrp.gov, to Federal Human Resources Specialists, Equal Employment Opportunity Specialists, and hiring managers. The database includes 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 through summer or permanent jobs.

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
- 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. Supervisors must begin the reasonable accommodation process upon receiving the request, and must provide “reasonable” accommodations.

An individual can request reasonable accommodations either verbally or in writing during the application, interview process, after being offered a position of employment, or at any time during their Federal employment. Individuals needing reasonable accommodations are responsible for making their needs known (either verbally or in writing) to the HR Specialist (if requesting prior to entering-on-duty), their supervisor, or their reasonable accommodation coordinator. The qualifying individual should clarify their functional limitations through an interactive process with the individual responsible for making the final decision (usually the supervisor) and their reasonable accommodation coordinator, so the appropriate reasonable accommodation can be provided.

To enable the Department to maintain data collection and accurate records on 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 requires assistance in completing the CD-575, the SHRO should complete the form for the applicant upon consultation and approval from the individual. Electronic copies of the form should be forwarded immediately to the appropriate Reasonable Accommodations Coordinator (RAC). HR Practitioners or hiring managers should contact their bureau/operating unit RAC for additional information on 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 use 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 comprehensive resource for job accommodations 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 (EO) 13163; EO 13548; EO 13078; DAO 215-10, “Reasonable Accommodation for Employees or Applicants with Disabilities”; 71 *Federal Register* 42241-42246; 78 *Federal Register* 12219-12221; 5 CFR 213.3102(u); 5 CFR 315.709; 5 CFR 315.707; 5 CFR 316.302(b)(4); 5 CFR 316.402(b)(4); 5 U.S.C. 3112; and Presidential Memorandum – “Improving the Federal Recruitment and Hiring Process” (May 11, 2010)

OFFICE OF POLICY AND PROGRAMS: Valerie Smith, Director, vsmith@doc.gov, (202) 482-0272

PROGRAM MANAGER: Sean Lenahan, slenahan@doc.gov, (202) 482-0767