

United States of America DEPARTMENT OF COMMERCE	DEPARTMENT ADMINISTRATIVE ORDER <u>215-10</u>	
<b>DEPARTMENT ADMINISTRATIVE ORDER SERIES</b>	DATE OF ISSUANCE  08/18/2023	EFFECTIVE DATE  08/18/2023
SUBJECT  <b>REASONABLE ACCOMMODATION FOR EMPLOYEES OR APPLICANTS WITH DISABILITIES</b>		

SECTION 1. PURPOSE.

.01 This Order establishes Department of Commerce (the Department) policies and procedures for providing reasonable accommodation to qualified employees or applicants for employment with disabilities in compliance with applicable laws and regulations. It also designates responsibilities and describes procedures for submitting and responding to requests for reasonable accommodation.

.02 Further, this Order establishes procedures for providing Personal Assistance Services (PAS), in accordance with the expanded requirements of Section 501 of the Rehabilitation Act of 1973 (Rehab Act), as amended, and guidance from the U.S. Equal Employment Opportunity Commission (EEOC).

.03 Finally, this revision updates, clarifies, or establishes procedures for requesting reassignment, other-than-coach class (Premium-class) travel, telework, and parking as a reasonable accommodation.

.04 Further, the provision of this Order will apply to persons requesting a reasonable accommodation under the new Pregnant Workers Fairness Act (PWFA). Although, pregnancy is not a disability, a request for reasonable accommodation under PWFA will be processed in the same manner as a request for reasonable accommodation for persons with disabilities. Implementation is subject to minor revision pending future guidance from the U.S. Equal Employment Opportunity Commission. For more information on PWFA see Appendix E.3.

SECTION 2. AUTHORITY/REFERENCES.

The Rehabilitation Act of 1973, as amended; Executive Order (E.O.)13164, Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (RA), dated July 26, 2000; 29 United States Code (U.S.C.) Section 791 et seq.; 29 Code Federal Regulations (CFR) Part 1614.203; Title I (Employment) of the Americans with Disabilities Act (ADA) of 1990, as amended, 42 U.S.C. §§ 12101 et seq.; 29 C.F.R. part 1630; and the Americans with Disabilities Act Amendments Act (ADAAA) of 2008, PL 110-325 (S. 3406); EEOC Revised Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the ADA, dated October 2002; EEOC Policy Guidance on E.O. 13164, dated October 2000; Privacy Act of 1974, as amended, 5 U.S.C. § 552a; and COMMERCE/DEPT-18, Employees Personnel Files Not Covered by Notices of Other Agencies.

SECTION 3. POLICY.

.01 It is the policy of the Department to provide equal opportunity for individuals with disabilities in accordance with the Rehab Act and to fully comply with other legal and regulatory requirements that ensure that all aspects of employment, including the application process, are made fully accessible to all employees and applicants. No qualified employee may be denied the benefits of a program, training, or

activity conducted, sponsored, funded, or promoted by the Department, or otherwise be subjected to discrimination on the basis of disability. The Department is committed to providing reasonable accommodation to applicants and employees with disabilities unless the Department can demonstrate that providing a particular accommodation would impose an undue hardship on the operation of its programs.

.02 The Department will provide reasonable accommodation in a prompt, fair and efficient manner to individuals with disabilities who are: (1) applicants and request an accommodation to participate in the application process, or (2) qualified employees that request an accommodation to enable them to perform the essential functions of the job, gain access to the workplace, or enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.

.03 The Department is not required to excuse conduct that would result in the taking of disciplinary action solely based on the fact that an employee has a disability. An employee with a disability who fails to meet performance standards or whose conduct is inappropriate will receive the same treatment as an employee without a disability. In most cases, documentation of poor performance or misconduct will be collected, and the employee advised that there are issues of concern. Supervisors are cautioned to focus on employees' performance and not their medical condition or disability. As with any employee, an employee with a disability who fails to address identified performance or conduct issues may be subject to counseling, suspension, and even termination. An employee with a disability has the same right to appeal personnel actions, as an employee without a disability. Consult the Bureau's servicing Employee Relations or Human Resources Office for more information.

#### SECTION 4. SCOPE.

The provisions of DAO 215-10 apply to all Department of Commerce employees, in all Bureaus/Operating Units, and applicants seeking employment with the Department. This policy takes precedence over any Bureau/Operating Unit policy or procedures that may conflict with the contents of this DAO.

#### SECTION 5. DEFINITIONS.

.01 Benefits and Privileges of Employment. This includes, but is not limited to, employer sponsored: (1) training, (2) services (e.g., employee assistance programs, credit unions, cafeterias, lounges, gymnasiums, auditoriums, transportation), and (3) parties or other social functions (e.g., parties to celebrate retirements and birthdays, and office outings). If an employee with a disability needs a reasonable accommodation to gain access or to have an equal opportunity to participate in these benefits and privileges, then the Department, must provide a reasonable accommodation unless it can show undue hardship.

.02 Deciding Management Official (DMO). Refers to the person with the authority to grant or deny an employee's request for reasonable accommodation. Usually, the employee's first line supervisor or a management official in the employee's chain of command. For applicants for employment, the Servicing Human Resource Office (SHRO) responsible for the recruitment and/or selection process will serve as the DMO for accommodation requests.

.03 Department. Refers to the Department of Commerce, including all Bureaus and Operating Units.

.04 Disability. With respect to an individual, a disability is (1) a physical or mental impairment that substantially limits one or more major life activities; (2) a record (history) of such impairment; or (3) being regarded as having such an impairment. However, agencies are not required to provide an accommodation to an individual who meets the definition of disability solely on the basis that he or she is “regarded as” disabled. In this policy, all references to “disability” refer to only those impairments that meet the ADA/Rehab Act definition of “disability” as amended by the ADAAA. The expanded definition of “disability” is to be interpreted broadly and does not require an extensive analysis.

.05 Essential Functions.

a. The fundamental (most important or critical elements) job duties that must be performed to achieve the objectives of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the “marginal functions” of the position -- tasks or assignments that are not essential or less important.

b. A job function may be considered “essential” if, among other things, the reason the position exists is to perform that function; or there are a limited number of available employees who could perform the function if it were assigned to them; or the function is specialized, and the incumbent is hired based on his or her expertise or ability to perform it. Therefore, the removal of essential job duties is not a reasonable accommodation.

.06 Extenuating Circumstances. Factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or that are beyond the Department’s ability to control, that will delay the consideration or provision of a reasonable accommodation. This would include limited situations in which unforeseen or unavoidable events prevent prompt processing and delivery of an accommodation. For example, waiting for needed medical information from an individual’s health care provider, waiting for equipment that is on back-order and cannot be otherwise obtained, or other factors outside an agency’s control. Delays in the processing of a reasonable accommodation because a particular staff member is unavailable or delays with respect to reviews of medical documentation by the Department’s medical expert, are not extenuating circumstances.

.07 Interactive Process. Mutual sharing of information and ideas between the requester and the DMO to clarify the specific nature of the disability and identify appropriate reasonable accommodations. The Reasonable Accommodation Coordinator (RAC) generally facilitates this informal communication which may include communicating with the requester to clarify the request, obtaining and exchanging information with the requester regarding needs and alternatives, obtaining additional information from the employee’s physician, searching for solutions, consulting internal and external resources, determining whether the requester is an individual with a disability, evaluating possible accommodations, issuing a decision on the request, and if granted, providing the accommodation.

.08 Major Life Activities. This includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Also, included is the operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory,

cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

.09 Mitigating Measures.

a. Mitigating measures eliminate or reduce the symptoms or impact of an impairment. For example, a person uses medication to eliminate migraines or a cane to help with walking. The ADAAA and final regulations prohibits assessing the positive effects of mitigating measures on an impairment in determining if an individual meets the definition of "disability."

b. The only mitigating measures that may be considered in determining a requester's "disability" status are ordinary eyeglasses or contacts intended to fully correct the vision of an employee or applicant for employment. All other determinations – including the need for a reasonable accommodation and whether an individual poses a direct threat to themselves or others – can take into account both the positive and negative effects of a mitigating measure.

c. If an individual with a disability uses a mitigating measure that results in no negative effects and eliminates the need for a reasonable accommodation, then the agency will have no obligation to provide a reasonable accommodation. An agency cannot require an individual to use a mitigating measure, but failure to use a mitigating measure may affect whether an individual is qualified for a particular job or poses a direct threat.

d. The ADAAA provides a non-exhaustive list of examples of mitigating measures which include medication, medical equipment and devices, hearing aids, mobility devices, use of assistive technology, reasonable accommodations, and learned behavioral or adaptive neurological modifications.

.10 Personal Assistance Services (PAS). PAS allow employees with certain targeted disabilities to fully participate in the workplace by providing assistance with activities of daily living, such as eating, drinking, using the restroom, and putting on and taking off clothing. For many individuals with targeted disabilities, such as paralysis or cerebral palsy, full participation in the workplace is impossible without such services.

.11 Physical or Mental Impairment.

a. A physical impairment is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine.

b. A mental impairment is any mental or psychological disorder, such as an intellectual disability (formerly termed "mental retardation"), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

c. An impairment that is episodic or in remission, is a disability if it would substantially limit a major life activity when active (i.e. epilepsy, cancer).

d. An employee with a temporary impairment that substantially limits a major activity (i.e., broken leg), although not a disability, is entitled to a reasonable accommodation.

e. Pregnancy is not an impairment and therefore cannot be a disability. Certain impairments resulting from pregnancy (e.g., gestational diabetes), however, may be considered a disability if they substantially limit a major life activity, or otherwise meet the definition of disability.

.12 Qualified. With respects to an individual with a disability, “qualified” means that the individual satisfies the requisite skill, experience, education, and other job-related requirements of the employment position he or she holds or desires and, with or without reasonable accommodation, can perform the essential functions of the position. An individual who poses a direct threat to the health and safety of him/herself or others, with or without accommodation, such that the individual poses a significant risk of substantial harm, is not a qualified individual with a disability. Determining whether an individual poses a direct threat requires an individualized assessment based on objective, scientific information. See Section 5.09 for the impact that mitigating measures have on determinations as to whether specific conditions or impairments are covered disabilities.

.13 Reasonable Accommodation. An accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. An accommodation must be effective in meeting the needs of the individual. In the context of job performance, this means that a reasonable accommodation enables the individual to perform the essential functions of the position.

a. There are three categories of reasonable accommodation:

1. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires. For example, appropriate adjustments or modifications of examinations, training materials, or policies that will allow applicants to fully participate in the application process.; or

2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position. For example, job restructuring, part-time or modified work schedules, telework, acquisition or modification of equipment or devices, reassignment to a vacant, funded position, as a last resort.; or

3. Modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities. For example, making existing facilities used by employees readily accessible to and usable by individuals with disabilities, the provision of assistant services to help with job functions, such as qualified readers or interpreters.

b. An employer is not required to provide personal use items such as glasses or hearing aids, nor is the employer required to remove an essential function of the job as a reasonable accommodation.

c. An employer shall hold employees with disabilities to the same standards of performance and conduct as other similarly situated employees without disabilities. An employee with a



disability is expected to meet the same production standards, whether quantitative or qualitative, as a non-disabled employee in the same job. Lowering or changing a production standard because an employee cannot meet it due to a disability is not considered a reasonable accommodation. However, a reasonable accommodation may be required to assist an employee in meeting a specific production standard.

*NOTE: It is advisable to give clear guidance to an employee with a disability (as well as all other employees) regarding the quantity and quality of work that must be produced and the timetables for producing it.*

.14 Reasonable Accommodations Coordinator (RAC). A representative from the Bureau/Operating Unit's servicing Human Resources or EEO office who acts as an impartial advisor, providing assistance and information, and has specific duties and responsibilities regarding the reasonable accommodation process. The RAC is also responsible for administrative tasks such as referring requests to designated deciding officials, collecting and tracking information on RA requests. The RAC will not have a decision-making role in any RA requests.

.15 Requester. An applicant or employee with a disability who requests reasonable accommodations or PAS.

.16 Substantially Limits. To determine whether an individual is "substantially limited" in any major life activity, as compared to most people in the general population, the EEOC provided the following rules of construction:

a. The term "substantially limits" must be construed broadly in favor of expansive coverage to the maximum extent permitted by the ADAAA;

b. An impairment is a disability if it substantially limits (rather than prevents, severely or significantly restricts) a major life activity;

c. Whether an impairment substantially limits a major life activity should not demand extensive analysis

d. The determination of whether an impairment substantially limits a major life activity requires an individualized assessment;

e. The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require the presentation of scientific, medical, or statistical evidence, though the presentation of such evidence is not prohibited;

f. To show a substantial limitation in the major life activity of working, the individual must show that the impairment substantially limits his or her ability to perform a "class of jobs or broad range of jobs in various classes" rather than a "type of work." Demonstrating a substantial limitation in performing the unique aspects of a single specific job is not sufficient to establish that a person is substantially limited in the major life activity of working.

.17 Targeted Disability. A subset of conditions that would be considered disabilities under the Rehab Act and for which qualified individuals with certain disabilities (such as blindness,

deafness, paralysis, convulsive disorders, and certain mental illnesses, among others) have faced significant barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities. (See the Office of Personal Management, Self-Identification of Disability Form (SF 256, Oct 2016), for a complete list of targeted disabilities.)

.18 Tolling. To suspend or freeze the running of a time period. Specifically used when a requester needs time to obtain adequate medical documentation. The RA process may be suspended for a reasonable amount of time to allow the requester time to obtain necessary documentation.

.19 Undue Hardship. Federal agencies do not have to provide accommodations that would impose an undue hardship on their operations. Undue hardship refers to accommodations that are unduly/excessively extensive, costly, substantial, disruptive, or would fundamentally alter the nature or operation of the organization. This determination must be made on a case-by-case basis and considers factor such as, the nature and cost of the accommodation requested; the overall financial resources of the agency; the number of persons employed by the agency; the effect on expenses and resources of the agency; the size, number of employees, type and location of organizations, the difficulty in providing a specific accommodation, as well as the impact on the operations of the agency.

#### SECTION 6. STEP 1: INITIATE A REQUEST FOR REASONABLE ACCOMMODATION

.01 The reasonable accommodation process begins as soon as an individual makes a request for a change to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed due to a medical condition. Requests may be made orally or in writing. The requestor does not need to have a particular accommodation in mind before making the request and need not request a specific accommodation when making an initial request for accommodation. The requester also does not have to use any special words, such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.”

.02 A request for accommodation may be made by a family member, health professional, or other representative on the individual’s behalf with the individual’s consent. Whenever possible the Department will confirm the request with the employee or applicant.

.03 An employee may make a request for reasonable accommodation at any time to his/her supervisor, another supervisor or manager in his/her immediate chain of command, his/her Office or Division Director, the EEO Office, or the Bureau RAC. Applicants may request an accommodation from any Department employee with whom the applicant has come in contact with during the application process (i.e. HR staff, interviewer, hiring official). Accommodations may be provided in recurring situations without requiring a new request from the employee each time, for example, request for sign language interpreting for an employee who is deaf or hard of hearing.

.04 To enable the Department to maintain accurate records and ensure timely processing, employees seeking a reasonable accommodation should confirm their request in writing. The written request should be submitted online *via Entellitrak RA Tracking System (ETK RA)* or using *Form CD 575, Written Confirmation of Request for Reasonable Accommodation* (see Exhibit 1). If using Form CD 575, the completed form must be submitted to the Bureau RAC. If the requester is unable or chooses not to submit their request in writing, the RAC will input the request into ETK RA on behalf of the requester.

.05 *ETK RA* is the Department's official repository for the RA Confidential Case File (CCF). All RA requests will be maintained in *ETK RA*. After submitting a request, employees may utilize *ETK RA* to track their request throughout the RA process. Job applicants should contact the servicing Human Resource Specialist identified in the job announcement or the Bureau HR office to inquire about the status of their RA requests.

.06 All requests for accommodations, whether verbal or written, are required to be addressed promptly. Supervisors must promptly report all requests for reasonable accommodations to the Bureau RAC for processing and tracking purposes. For decision making purposes, the date a written request is received or input into *ETK RA*, will be considered the "RA request receipt date".

## SECTION 7. STEP 2: ENGAGE IN THE INTERACTIVE PROCESS.

.01 If the need for a requested accommodation is obvious and provision of the accommodation is straightforward, the DMO who receives the request and has the authority to grant it, should do so without delay or further processing. Failure to initiate the processing of a written or oral request may result in undue delay in providing reasonable accommodation in violation of the Rehab Act.

.02 However, when the disability and/or the need for accommodation are not obvious or additional information is needed, the DMO must immediately consult the Bureau RAC to engage in the "interactive process." During the interactive process, the RAC will promptly meet with the requester and the DMO to explain the RA process and obtain additional information, if necessary. The RAC will also assist with determining if the requester has a disability, assess his/her needs and the precise functional limitations associated with the impairment, and recommend appropriate reasonable accommodation options.

.03 Further, as a part of the interactive process, the RAC may request, obtain and evaluate medical documentation to support an accommodation request when the disability or need for an accommodation is not obvious or the requester's previously submitted medical documentation is insufficient.

.04 It is equally incumbent on both the requester and DMO to actively participate in the "interactive process" in order to attain results. Ongoing communication is particularly important where the specific disability, limitation, problem, or barrier is unclear; an effective accommodation is not obvious; or the parties are considering different possible reasonable accommodations. Therefore, the RAC should document all interactive discussions with at least the date, time, participants, and key points noted.

.05 The Department is required to provide an effective accommodation, but not necessarily the accommodation desired by the employee or applicant. As a part of the "interactive process", the DMO may offer an alternate reasonable accommodation, but only after discussing its effectiveness with the requester and the RAC. This is especially important, when an employee or applicant requests an accommodation that would not be effective, would pose an undue hardship, or is otherwise not reasonable (e.g., removing an essential job function). The RAC and DMO should engage the "interactive process" with the requester until either a reasonable accommodation is identified, or it is determined that reasonable accommodation is not possible. The interactive process may be utilized at any time throughout the RA process. If more than one accommodation is effective, the preference of the requester should be given primary consideration. However, the Department has the ultimate discretion to choose among effective accommodations.



.06 Interim Accommodations. The supervisor/DMO must provide an interim accommodation, absent undue hardship, when all the facts and circumstances known to the agency make it reasonably likely that the individual will be entitled to an accommodation, but the accommodation cannot be provided immediately. Note: If the employee's disability determination is in process, and an appropriate interim accommodation would not have an adverse impact on the operation of the unit, the employee should be granted the interim accommodation, but informed that this is a temporary action pending final determination of the disability and is not a reasonable accommodation.

## SECTION 8. STEP 3: MAKE THE DECISION.

.01 To avoid unnecessary delays in processing a RA request, the DMO must make a decision on an accommodation request as soon as possible. The DMO must notify the Bureau RAC immediately if for any reason a decision on a RA request cannot be made within the designated timeframe. Failure to provide an accommodation in a prompt manner may result in a violation of the Rehab Act (see Section 10. Timeframes).

a. If the decision is initially communicated orally to the requester, it must be followed up in writing as soon as practicable, but usually not later than 20 business days from receipt of the written request, barring any extenuating circumstances (see Section 10.05.b). A RA Decision Letter template is provided at Exhibit 4 of this DAO. The DMO should consult with the Bureau RAC for assistance in developing the decision memo to ensure it contains all required notifications. The decision notice must be provided in an accessible format. Accessible format is a format that meets an individual's particular need, including braille or large print.

b. A copy of all written RA decisions, and any supporting documentation, must be provided to the Bureau RAC for tracking and record keeping purposes.

c. Employees may direct their questions regarding their RA requests to the Bureau RAC. Contact information for the Bureau's RAC can be found on the Office of Civil Rights Reasonable Accommodation webpage at <https://www.commerce.gov/cr/programs-and-services/reasonable-accommodations-program/reasonable-accommodation-coordinators>. Job applicants should contact the servicing Human Resource Specialist identified in the job announcement or the Bureau HR office.

## .02 GRANTING THE REQUEST.

a. After the decision to grant the accommodation has been made, the accommodation, to the extent possible, must begin or be implemented within 10 business days from the date of the decision and be communicated to the requester.

b. If more than one accommodation is effective, the preference of the individual with a disability should be given primary consideration. However, the DMO has the ultimate discretion to choose between effective accommodation options. If the granted accommodation is something other than what was originally requested, the DMO should explain the reason for the alternate accommodation in the written decision.

c. An individual with a disability is not required to accept the approved accommodation. If the requester feels the approved accommodation does not meet her/his needs, she/he may request reconsideration (see Section 8.05).

However, if the individual rejects a reasonable accommodation that is necessary to enable him/her to perform the essential functions of the position held and, because of that rejection, cannot perform the essential functions of the position, the individual may no longer be qualified to remain in the position.

d. Once an accommodation has been granted, the employee should be allowed to keep the accommodation even after the DMO no longer supervises the employee. In most cases, an approved reasonable accommodation is long-term. However, in the event an accommodation needs to be modified, the DMO should check with the RAC before making any changes that are not requested by the employee.

e. If an employee's job duties change, the RAC should verify with the employee that the current accommodation(s) is still needed and effective. When appropriate, adaptive equipment, electronic technology and/or certain software provided as an accommodation, may "go with" an employee when transferring to a new DOC location.

### .03 DENYING THE REQUEST.

a. Before making a determination to deny an accommodation request, a DMO must consult the Bureau RAC and Office of the General Counsel (OGC) who can provide advice in determining whether the proposed accommodation would in fact be unduly/excessively extensive, costly, substantial, disruptive, or would fundamentally alter the nature or operation of the organization.

b. The DMO must consult with the RAC for assistance to explore all possible options before considering a denial of a request for accommodation, including reassignment.

c. If after consultation with the RAC and OGC, the DMO decides to deny the accommodation request, she/he must provide a written decision notification to the requester as soon as it is made, but no later than **20 business days from receipt of the RA request.**

d. The decision letter must explain in detail the specific reason(s) for the denial to include: 1) why the requested accommodation would not be effective or would cause undue hardship; or 2) why the medical documentation is inadequate to establish that the individual has a disability or needs a reasonable accommodation; or 3) the requested accommodation would require the removal of an essential function; or 4) the requested accommodation requires the lowering of a performance or production standard; or 5) the accommodation would create a direct threat to the employee and/or others. To prevent the DMO from omitting or misstating important information, the denial notification should be written using the sample RA Decision Letter at Exhibit 4. **Denial notifications must be reviewed by the Bureau RAC and OGC prior to issuing to the requester.**

e. The denial notice must also inform the individual of his/her right to seek redress in an appropriate forum which may include the Equal Employment Opportunity (EEO) process, the Merit System Protection Board, or the appropriate grievance procedure, and the mandatory timeframes. See **Appendix A, Avenues of Redress**, for more information. The denial notice and Avenues of Redress must be provided in an accessible format (see Section 8.01a).

.04 Cost of Accommodations. To ensure that individuals with disabilities are not excluded from employment due to the anticipated cost of a reasonable accommodation, requests for reasonable accommodation should not be denied solely on the reasons of cost. Therefore, anyone authorized to grant or deny requests for reasonable accommodation or to make hiring decisions should consider the following:

- a. All resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, are considered when determining whether a denial of reasonable accommodation based on cost is lawful; and,
- b. How to arrange for the use of, agency resources available to provide the accommodation, including any centralized fund the agency may have for that purpose.

.05 RECONSIDERATION OF A DENIAL.

- a. If an accommodation request is denied or an alternate accommodation was provided which the requester feels is not effective, she/he may request reconsideration of the decision within 15 business days of the date of the decision letter. The reconsideration must be submitted in writing to a designated higher level management official within the requester's chain of command. The reconsideration must include a copy of the decision letter and any additional information or arguments the employee wishes to be considered. The requester should also provide a copy of the reconsideration request and additional information to the RAC.
- b. Within 5 business days of receipt of a request for reconsideration, the designated higher level management official must provide to the requester a written acknowledgement of receipt of the reconsideration request. The designated higher level management official may re-engage the interactive process, with the assistance of the Bureau RAC, to identify additional effective accommodations. The final written decision regarding the reconsideration must be issued to the requester within 30 business days from the date the reconsideration request was received.
- c. An employee or applicant who chooses to file an EEO complaint must do so within 45 calendar days of receipt of a denial notification. This mandatory time limit will not be tolled or extended while pursuing reconsideration of a denial or participating in an informal dispute resolution process. For more information, see Exhibit A, Avenues of Redress.

SECTION 9. DECIDING MANAGEMENT OFFICIALS.

.01 If the official who receives the RA request does not have the authority to grant the request, she/he must immediately refer it to the appropriate DMO. The Bureau RAC must also be notified. The following information should be used to determine the appropriate DMO:

- a. Requests for accommodation from applicants will be decided by the Human Resources official responsible for the recruitment and/or selection process after consulting with the RAC.
- b. Requests for accommodation from employees will be decided by their immediate supervisor, whenever possible, or a management official in the employee's chain of command. Denial of an accommodation requires RAC and OGC review.
- c. Requests by employees which involve personnel actions, large expenditures, or other high-level determinations will be decided by the appropriate Office or Division Director after consultation with the RAC and OGC review.

d. Requests for accessible parking will be decided by the employee's supervisor in consultation with the official responsible for managing/authorizing parking within the employee's duty location and the Bureau RAC.

e. Requests for reconsideration of a denial of a request for reasonable accommodation will be decided by a designated higher-level management official at least one level higher than the immediate supervisor.

02. The RAC will be available to provide guidance and assistance to all DMOs in processing requests for reasonable accommodation, including requests for reasonable accommodation involving temporary duty travel (TDY), reassignment, and PAS. DMOs must consult with the designated Bureau RAC and OGC if considering a denial decision (see Section 8.03 of this Order).

03. All DMOs must have designated alternates to continue receiving and processing RA accommodation requests when they are not available. DMOs should ensure that requesters and the RAC are informed of the designated alternate. The mandatory timeframes will not be suspended or extended because of the unavailability of a DMO (see Section 10 of this Order).

#### SECTION 10. TIMEFRAMES.

01. The reasonable accommodation process begins as soon as an individual makes an oral or written request for a change to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed due to a medical condition (see Section 6 of this Order for details on initiating a request). The time necessary to process a request will depend on the nature of the accommodation requested and whether there is a need to obtain supporting information.

.02 The timeframes established will not be suspended or extended because of the unavailability of the DMO. Therefore, the DMO is required to designate a DMO in his or her absence and inform the RAC of the contact information for the designee (see Section 8.01 of this Order). Failure to timely process and respond to a request for reasonable accommodation could provide the basis for a finding that the Department violated the Rehab Act. Therefore, supervisors and managers who serve as DMOs must be made aware that willful or deliberate delays in providing a reasonable accommodation may result in disciplinary action, up to and including, removal from Federal Service, in accordance with DAO 202-751, "Discipline."

.03 Normal Timeframes. If a request can be processed without supporting medical documentation, and no extenuating circumstances apply, the decision to grant or deny it must be completed in no more than 20 business days from the date the employee makes the request. The accommodation, if approved, must be implemented within 10 business days of the date the request was approved, to the extent practicable. When a particular reasonable accommodation can be provided in less than the maximum amount of time permitted, it should be provided immediately. Failure to provide the accommodation in a prompt manner may result in a violation of the Rehab Act.

.04 Expedited Timeframes. In certain circumstances, a request for reasonable accommodation requires an expedited review and decision in a time frame that is shorter than 20 business days. Examples of circumstances requiring expedited processing include provision of accommodations during the job application process or to enable an employee to attend a meeting or event on a

specific date. If a particular reasonable accommodation can be granted in less time than authorized in this Order, it must be provided.

.05 Circumstances for Tolling Timeframes.

a. Medical Documentation. RA requests that require medical documentation may necessitate tolling or freezing the timeframe temporarily. If it has been determined that it is necessary to obtain medical documentation to determine whether the requester is an individual with a disability, or to determine functional limitations, or need for requested accommodation(s), the time period for the decision process may be tolled until appropriate medical documentation is provided. The amount of additional time must be reasonable and will be determined case-by-case. However, timely decision making is critical in the reasonable accommodation process. For example, 3 days after an accommodation is requested, the RAC determines that documentation is needed to substantiate whether the employee has a disability and needs the requested accommodation. If the request for the needed medical documentation is made on that same day, there will be 17 days remaining to process and make a decision on the accommodation request after the employee has provided appropriate documentation. The time frame during which the RAC is waiting to receive the requested documentation from the individual or his/her health care provider, will be excluded from the mandatory 20-day decision making time frame.

b. Extenuating circumstances. Beyond the need for obtaining medical documentation, there may be limited situations which require tolling the timeframes. For example, where prompt processing and delivery of an accommodation is delayed due to events that could not have reasonably been anticipated or avoided. Absence from the office is not an extenuating circumstance (see definition at Section 5.06.). The DMO must notify the requester of any extenuating circumstances or delays and give an approximate date when a decision should be expected. If there is a delay in providing an accommodation which has been approved, the DMO should determine if temporary measures can assist the employee. The following are non-exhaustive examples of extenuating circumstances:

1. The procurement of equipment or services is delayed because of requirements under the Federal Acquisitions Regulations and Departmental procurement policies;
2. The employee with a disability needs to work with the equipment on a trial basis to ensure that it is effective before the actual purchase;
3. The delivery of goods and services is delayed not due to any action of the Department;
4. An accommodation involves the removal of architectural barriers which may require additional time to address historic preservation issues.

c. Reassignment. After it has been determined that an employee with a disability is no longer able to perform the essential functions of his/her current position, with or without an accommodation, the Bureau may begin a search for a vacant funded position for reassignment. The vacant-funded search may be extended to 60 calendar days to allow for a complete and thorough Bureau and/or Department-wide vacancy search. See Appendix D for more information on Reassignments.



SECTION 11. REQUEST FOR MEDICAL INFORMATION.

.01 The Department is entitled to know that an employee or applicant has a covered disability. To evaluate a request for reasonable accommodation, the Department may request medical documentation to identify, (1) the requester's disability and associated functional limitations, and/or (2) the need for accommodation. The Department will not request medical information when the disability and need for accommodation are not known or obvious.

.02 Medical documentation that describes one or more of the following may be requested:

- a. The nature, severity, and duration of the requester's impairment;
- b. The major life activity or activities the impairment limits;
- c. The extent to which the impairment limits the individual's ability to perform the major life activity or activities; and/or
- d. Why the individual requires a reasonable accommodation or a particular reasonable accommodation, as well as how the accommodation will assist the individual in applying for a job, performing the essential functions of the job, or enjoying a benefit of the workplace.

.03 If medical documentation is requested, it may be submitted on the treating physician or other health care professional letterhead. It is the responsibility of the employee or applicant to promptly provide sufficient medical information related to the functional impairment at issue and the requested accommodation. Failure to provide appropriate documentation or to cooperate with the Department's efforts to obtain such documentation could result in denial of the RA request.

.04 The Bureau RAC will determine if medical documentation is necessary to process the accommodation request. The RAC will use this information to determine if the requester has a disability, if the requester needs an accommodation based on that disability, and/or what accommodation(s) would be effective. In making this determination, the RAC may work with various medical consultants, including the requester's physician, medical professionals from Federal Occupational Health (FOH) or the Bureau's health unit, when necessary.

.05 The medical documentation is sufficient if it provides the information described in Section 11.02. Requesters are not required to submit information or documentation unrelated to the request for accommodation. The RAC should not request the requester's complete medical record because it is likely to contain information unrelated to the disability at issue and the need for accommodation.

.06 Once the RAC has received sufficient medical documentation, she/he will advise the DMO on recommended/appropriate reasonable accommodations. The DMO should also be informed that the requester has a disability (the disability should not be disclosed), the functional limitations associated with the disability, and what accommodation(s) would be most effective. The DMO would not ordinarily have a need to know the actual disability or details about the requester's medical condition. The RAC may disclose the requester's medical information, when necessary, to Department officials who have an official need to know, including but not limited to the Department's medical consultants, the Department's Disability/RA Program Manager, Office of the Inspector General (OIG), OGC, Office of Occupation Safety and Health, and Office of Security. (See Section 16. Confidentiality in this Order.)

.07 Supplemental Documentation.

- a. If the medical documentation the requester initially submits does not clearly describe the disability, associated limitations, or the need for accommodation, the RAC may request supplemental documentation. In doing so, the RAC must explain to the requester why the documentation is insufficient, identify the information needed, and allow the requester an opportunity to provide the information. The RAC should also provide information for the requester's health care professional that describes: 1) the nature of the individual's job, 2) the essential functions the individual is expected to perform, and 3) any other information relevant to evaluating the request and the individual's ability to perform the job.
- b. If the requester provides additional medical documentation as requested, but the functional limitations are still not clear, the RAC may ask the requester to sign a limited release allowing the RAC and/or Department's Occupational Health Physician to obtain specific information from the requester's health care provider directly. Such a release must be limited to information related to the disability at issue and the need for accommodation. The RAC must first attempt to obtain the necessary information from the requester's health care provider before making a final determination that the information the requester provided is insufficient.
- c. If the employee has been cooperative, but the medical documentation provided by the employee's health care professional is still insufficient, the requester may be required to go to a health care provider of the Bureau's choice and at the Bureau's expense. Any such medical examination must be limited to determining the existence of a disability and/or the need for reasonable accommodations. The RAC will work with the employee and health care professional to coordinate this examination.
- d. If there is disagreement between the employee's physician and the Department's medical professional who reviews the requester's medical documentation (e.g. Occupational Health Physician), the employee's personal physician's written diagnosis and/or professional opinion will take precedence. The only exception is if there is an overriding safety or security matter involved.
- e. If the employee refuses to be evaluated, the RAC should explain to the requester that refusal to provide the necessary medical documentation may result in denial of their reasonable accommodation request. The RAC should also inform the DMO that the employee has not provided documentation to show that she/he has a disability as defined by the Rehab Act or need the requested accommodation.

.08 Genetic Information Nondiscrimination Act of 2008 (GINA). To ensure compliance with GINA, all requests for medical information should include the following statement in accordance with 29 C.F.R. §1635.8(b)(1)(i)(B):

“The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information,” as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”

SECTION 12. SPECIAL REQUESTS..01 Telework.

a. Allowing an employee to work from home may be a reasonable accommodation where the person's disability prevents successfully performing the job on-site and the job, or parts of the job, can be performed at home without causing significant difficulty or expense. Further, an employee with a disability may also be permitted to telework when other staff members are not. The Rehab Act's reasonable accommodation obligation, which includes modifying workplace policies, might require an employer to waive certain eligibility requirements or otherwise modify its telework policy for an employee with a disability who needs to work at home. As Federal law, the Rehab Act takes precedence over any office, Bureau/OU, or Department policy on telework.

b. When telework is provided as an accommodation, there may be more flexibility in the number of days and the frequency of telework. For example, an employee who has a disability that does not hinder productivity but makes it difficult for the employee to come to the office on a daily basis, would be allowed to telework as many days as needed, even if that is outside of the normal office/organization's policy. Alternatively, an employee may have a disability that is aggravated by extreme temperatures or poor air quality and may need a telework agreement permitting telework on days when these situations occur. As with all accommodation requests, decisions regarding telework as a reasonable accommodation will be made on a case-by-case basis considering the needs of the employee and the organization.

c. If an employee is approved for telework at least 3 days per week and needs the same adaptive equipment/assistive technology to work from home as he/she does at work, it should be provided. Examples are screen readers or screen reader software, ergonomic desk, ergonomic chairs, etc. Requests for other items, will be decided on a case-by-case basis. If the employee has the necessary equipment in the office, but will be teleworking full time, the equipment should be moved to the employee's home. When the need for telework ends or the employee separates from the Department, the requester must return all adaptive equipment, assistive technology or other items belonging to the Department. To determine the correct procedures for turning in office property, the employee should contact their supervisor or Property Accountability Manager. Failure to turn in government property could result in a delay in the certification of the employee's time and attendance record or loss of final salary payment, lump-sum leave payment, or any other payments. For more information, see DAO 202-299, Clearance of Separating Employees.

.02 Parking.

a. When there are a limited number of employee parking spaces, employees with mobility impairments or a disability that precludes them from using public transportation have priority over all other groups. If a facility does not have enough parking spaces for the number of employees with mobility impairments who require parking as a reasonable accommodation, alternate accommodations must be considered including creating additional accessible parking spaces, telework, flexible work schedules, and/or paid parking.

b. When an employee requires a space near the building as a reasonable accommodation, that employee must be provided an assigned space with the shortest route to their workspace.

c. Every facility that provides any parking spaces to employees MUST have a standardized method for ensuring that employees with mobility impairments receive the parking spaces that are

method for ensuring that employees with mobility impairments receive the parking spaces that are closest to the building, if required, or spaces large enough for egress. RACs should consult with HR on any relevant Collective Bargaining Agreement provisions or bargaining obligations. For more information, see DAO 217-8, "Employee Parking, Ridesharing, and Mass Transit Benefit Programs."

.03 Other Than Coach-Class (Premium-Class) Travel. Employees may request to use other than coach-class travel to accommodate a medical disability or other special need. The Federal Travel Regulation (FTR) requires the requester to obtain a medical certification for use of other than coach-class travel. Once approved/authorized, travelers must use the lowest other than coach-class travel (including Premium Economy). To ensure there is enough time to get the required medical certification before the date of travel, requesters should submit their request and supporting medical documentation, to their Bureau RAC at least 30 calendar days prior to the actual travel date. See **Appendix B** for requirements and procedures.

.04 Personal Assistance Services (PAS). On January 3, 2017, the EEOC amended the implementing regulations for Section 501 of the Rehab Act, the law that prohibits the Federal government from discriminating in employment on the basis of disability and requires it to engage in affirmative action for people with disabilities. As a result, federal agencies are now required to provide PAS, in addition to reasonable accommodations, to employees who need them because of certain targeted disabilities. Medical conditions that are more likely to result in the need for PAS include, for example, missing limbs or paralysis due to spinal cord injury. PAS are services that help individuals who require assistance to perform basic activities of daily living, i.e. eating and using the restroom, to fully participate in the workplace. The obligation to provide PAS is separate from, and in addition to, any obligation to provide a reasonable accommodation for individuals with targeted disabilities. See **Appendix C** for PAS requirements and procedures.

### SECTION 13. REASSIGNMENT.

.01 Reassignment is 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 his/her current position, with or without reasonable accommodation. Reassignment is the reasonable accommodation of "last resort." Therefore, the Department must consider reassignment when it determines there are no effective accommodations available that will permit the employee to perform the essential functions of his/her current position or that would not cause undue hardship.

.02 Reassignment is available only to employees, not to applicants. It must be considered as an accommodation prior to terminating an employee with a disability who cannot be accommodated in his or her current position. In this situation, reassignment should be considered even if not specifically requested. See **Appendix D** for reassignment procedures.

### SECTION 14. TRACKING AND REPORTING REQUIREMENTS.

.01 The Department is required to keep accurate records of all RA requests to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501 and to make such records available to EEOC upon their request. Additionally, the Department's Office of Civil Rights (OCR) is responsible for compiling and analyzing RA data for submission to EEOC annually in the Department's EEOC Management Directive 715 (MD 715) Report.

.02 The Bureau RAC is responsible for maintaining these records in a Confidential Case File (CCF) in compliance with the Rehab Act, EEOC Regulations and this Order. The CCF is the Department's official record of RA requests. All documentation contained in the CCF must be secured whether electronic or hardcopy in accordance the Department's Records Management policy. The *Entellitrak RA Tracking System (ETK RA)* is the designated repository for all DOC RA requests. After submitting a request, employees may utilize ETK RA to track their requests throughout the RA process. Job applicants should contact the servicing Human Resource Specialist identified in the job announcement or the Bureau HR office to inquire about the status of their RA requests.

.03 The CCF must be maintained for the duration of the employee's tenure with the Department, and for an additional three years after the date the employee separates from the Department or all appeals conclude, whichever of the two is later. For all applicants for employment, the CCF must be maintained for three years after the date of the request or all appeals conclude, whichever is later.

.04 The CCF must include, at a minimum, the following:

- a. A written confirmation of the RA request (online ETK RA or Form CD 575);
- b. Supporting medical documentation (if required);
- c. Any pertinent emails or communication between the applicant or employee and Department officials (i.e. supervisor, RAC, HR, OGC, etc.); and
- d. The written RA decision (granting or denial).

Additionally, the Bureau RAC should ensure the CCF contains the following information:

- e. Specific reasonable accommodation requested;
- f. The job (occupational series, grade level, bureau, and operating unit) sought by the requesting applicant or held by the requesting employee;
- g. Whether the accommodation was needed to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of employment;
- h. Whether the request was granted (which may include an accommodation different from the one requested) or denied;
- i. The identity of the deciding management official;
- j. If denied, the basis for such denial;
- k. The number of days taken to process the request; and
- l. Sources of technical assistance consulted to identify possible reasonable accommodations.



## SECTION 15. EXCLUSIONS TO THE POLICY.

For the purposes of the definition of "disability", as stated in Section 5.02 of this DAO, the conditions below are not included. These exclusions are consistent with the statutory requirements found in Appendix E.9.

.01 Certain conditions:

- a. Transvestism, transsexualism, or gender identity disorders not resulting from physical impairments; or
- b. Pedophilia, exhibitionism, voyeurism, or other sexual behavior disorders; or
- c. Compulsive gambling, kleptomania, or pyromania; or
- d. Psychoactive substance use disorders resulting from current illegal use of drugs.

*NOTE: A person who currently uses illegal drugs does not qualify as a "qualified person" with a disability. However, a person who is in or has completed drug rehabilitation and is no longer using illegal drugs is covered under this policy. (Drug means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. § 812)).*

.02 Homosexuality and bisexuality are not impairments, and so are not disabilities.

.03 Pregnancy is not a disability. However, impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia, a condition characterized by pregnancy-induced hypertension and protein in the urine) may be disabilities requiring reasonable accommodation (such as leave, telework or modifications that enable an employee to perform her job).

## SECTION 16. CONFIDENTIALITY REQUIREMENTS.

.01 Under the Rehab Act and Privacy Act, all medical documentation and other information regarding the reasonable accommodation process must be treated as a confidential medical record. This means that all medical information including information about functional limitations and reasonable accommodations, obtained in connection with a request for reasonable accommodation must be kept secure in files separate from the individual's Official Personnel File. All medical information, the written confirmation of RA request or completed Form CD 575, and the final written decision notification, will be maintained by the Bureau RAC in the CCF for tracking and recordkeeping purposes (see Section 14).

.02 The confidentiality requirements under this section apply to any medical information obtained from a disability-related inquiry or medical examination, as well as any medical information voluntarily disclosed by an employee or applicant. Confidential medical information is not limited to a diagnosis or prognosis. The fact that someone has requested an accommodation, or that something is being provided as an accommodation, also constitutes confidential medical information.

.03 Confidential medical records stored electronically must be maintained in a Federal Information Security Modernization Act (FISMA) compliant system with an approved Privacy Impact Assessment contemplating the storage and protection of this type of sensitive personally identifiable information (PII). Any medical information or other information regarding the reasonable accommodation request transmitted electronically must be handled as sensitive PII in

reasonable accommodation request transmitted electronically must be handled as sensitive PII in accordance with Departmental policy. Under current policy, this means that the information can only be transmitted using FIPS 140-2 or higher encryption methodology consistent with the Department's Electronic Transmission of PII Policy. Any Department employee who obtains or receives such information is strictly bound by the confidentiality requirements that apply for these records.

.04 Access to confidential medical records is on a strict need-to-know basis. Whenever medical information is disclosed, the individual disclosing must inform the recipients about the confidentiality requirements. All records will be maintained in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), COMMERCE/DEPT-18, EEOC regulations, and Departmental requirements. Any information regarding these records or any aspect of the accommodation process may be disclosed only in accordance with applicable laws, regulations, and policies and for authorized purposes consistent with the Privacy Act Statement on form CD-575. Disclosure to the following is specifically authorized:

- a. Supervisors, managers, DMOs, RACs, and individuals who have a need to know about (1) the eligibility of an individual to receive reasonable accommodation; (2) the necessary restrictions on the work or duties of the employee; and (3) any recommended accommodations, excluding medical information which should only be disclosed in extremely limited circumstances.
- b. First aid and safety personnel may be provided relevant information, when appropriate, if the medical condition might require emergency treatment. Information about the type of assistance an individual might need in the event of an evacuation may be shared with medical professionals, emergency coordinators, floor captains, colleagues who have volunteered to act as "buddies," building security officers who need to confirm that everyone has been evacuated, and other non-medical personnel who are responsible for ensuring safe evacuation under an applicable emergency evacuation plan.
- c. Office of Civil Rights, EEO Office, Office of Human Resources Management, and OGC officials, if necessary to investigate the Department's compliance with the Rehab Act;
- d. Workers' compensation officials may receive medical information in order to process or evaluate claims;
- e. Departmental Occupational Health officials when consulting with them regarding the interpretation of medical documentation; and
- f. Office of the Inspector General, if needed to carry out its duties under the Inspector General Act of 1978, as amended.

#### SECTION 17. RESPONSIBILITIES.

.01 Under Secretaries, Deputy Under Secretaries, Assistant Secretaries, Deputy Assistant Secretaries, Bureau Directors, Head of Operating Units, and other key officials, within their respective organizations, will:

- a. Ensure that the Bureau is serviced by at least one full-time Reasonable Accommodation Coordinator and an alternate RAC, as needed. If a new RAC or alternate RAC is appointed, provide his/her contact information to the Department's Disability Program Manager located in the OCR.

- b. Ensure that employees and supervisors know how to contact their designated RAC. Contact information is available on the OCR website at <http://www.osec.doc.gov/ocr/CivilRights/Disability/ReasonableAccommodation.html>.
- c. Provide sufficient resources to ensure effective implementation and management of the reasonable accommodation program.
- d. Ensure RA training is available for all managers, supervisors, team leaders, RACs and alternates, regarding their roles and obligations in reasonable accommodations and PAS.
- e. Ensure the Bureau is following the Department's procedures for providing reasonable accommodations as outlined in this Order. If a Bureau chooses to supplement these procedures in any way, the changes must be submitted to and approved by OCR and must not conflict with this DAO.
- f. Promptly address any deficiencies identified in their reasonable accommodation program.
- g. Refrain from being the designated DMO, except for employees who report directly to him or her, so that he or she can be part of the reconsideration process when an employee requests reconsideration of a denial decision.
- h. Ensure that each Bureau/Operating Unit designates a higher-level management official(s) to review requests for reconsideration of denial decisions made concerning accommodation requests.
- i. Ensure that all contracts for the use of external facilities and services reflect the obligation that such facilities and services be fully accessible to individuals with disabilities; and
- j. Foster an environment that supports reasonable accommodation, inclusion and respect for individuals with disabilities.

.02 Chief Financial Officer and Assistant Secretary for Administration will:

- a. Provide sufficient resources to ensure effective implementation and management of a process for responding to requests for reasonable accommodations.
- b. Approve policies, directives, and other materials outlining the Department's reasonable accommodation procedures and responsibilities.
- c. Fulfill, on behalf of the Secretary, the responsibilities as head of an operating unit, i.e., the Office of the Secretary. These duties are outlined in paragraph .01 above.
- d. Ensure training is available for all managers, supervisors, and team leaders regarding their roles in processing requests for reasonable accommodations, including how to acquire assistive technology, adaptive equipment, or various accommodation services.
- e. Periodically evaluate the effectiveness of the process for responding to requests for reasonable accommodations. Monitor the timeliness of accommodation request processing.
- f. Maintain oversight for Department-wide reasonable accommodation policy and process.

.03 Office of the General Counsel will:

- a. Serve as a legal expert and advisor on reasonable accommodation matters.
- b. Serve as a consultant regarding proposed denial of reasonable accommodation requests.
- c. Provide legal guidance for reasonable accommodation training.
- d. For reasonable accommodation requests within the Office of Inspector General, the Counsel to the Inspector General shall perform these duties rather than OGC.

.04 Director for Civil Rights will:

- a. Develop Department-wide reasonable accommodation and PAS policy and procedures.
- b. Advise Department officials regarding laws, regulations and Department policies pertaining to reasonable accommodation and complaints of discrimination.
- c. Designate the Department's Disability Program Manager/Reasonable Accommodation Program Manager.
- d. Maintain a Commerce-wide automated tracking system to monitor the RA process and timeliness in responding to requests for accommodation at the Department, Bureau/Operating Unit levels in compliance with EEOC regulations.

.05 Department Disability Program/Reasonable Accommodation Program Manager will:

- a. Serve as the Department's subject matter expert on reasonable accommodation policy and procedures and provide guidance, advice and training, as required, to RACs, HR, and other staff involved in processing request for accommodations.
- b. Receive and compile summary RA data from Bureaus for annual reporting purposes. Develop and submit required reports to EEOC.
- c. Serve as a consultant with regard to proposed denial of RA requests.
- d. Serve as the Department's liaison to the U.S. Access Board, the President's Committee for People with Intellectual Disabilities (PCPID), and other disability related groups.
- e. Assist RACs with developing and conducting RA training for managers, supervisors and employees.
- f. Maintain and update roster of designated Bureau RACs and alternate RACs on the OCR webpage.

.06 Principal Human Resources Manager (PHRM) will:

- a. Be knowledgeable about RA policy and procedures.

- b. Respond promptly when working with Bureau RACs and DMOs on RA requests to ensure accommodations are provided in a timely manner.
- c. When reassignment is required as a reasonable accommodation, ensure vacant funded searches are conducted for positions in which the requester may qualify, in accordance with the procedures outlined in Appendix D of this Order. If no suitable vacant funded positions are identified to which the employee can be reassigned, or the employee declines a job placement offer, provide prompt notification to the RAC and the requester's DMO.
- d. Serve as the DMO for requests for accommodation from applicants for employment during the application and interview phase.
- e. If an employment physical is required and the candidate does not pass the physical because of a disability, the PHRM will ensure that the candidate is aware of the reasonable accommodation process. If the candidate requests an accommodation that appears to effectively address the functional limitations posed by the disability, the PHRM will ensure that the offer is not rescinded because of the results from the physical. The normal accommodation procedures will then be followed.

.07 Reasonable Accommodations Coordinators (RACs) will:

- a. Serve as a resource and impartial advisor in the reasonable accommodations process. At no time may a RAC serve in a decision-making role for RA requests.
- b. Provide training on laws and regulations regarding reasonable accommodation and roles and responsibilities to managers, supervisors, DMO, Human Resources Managers, and employees.
- c. As part of the reasonable accommodation interactive process, the RAC may request, obtain and evaluate medical documentation to support an accommodation request. The request for medical documentation is necessary when the requester's disability or need for an accommodation is not obvious or the requester's previously submitted medical documentation is insufficient.
- d. Provide guidance to employees in completing a written confirmation of their RA request or Form CD 575 (Exhibit 1). Maintain a record of the written RA request as a part of the confidential case file for tracking and reporting purposes as outlined in Section 14 of this DAO.
- e. Maintain the confidentiality of RA requests and related documentation, for example, keeping medical records separate from personnel records and maintaining RA records in a secured electronic file or locked file cabinet.
- f. Securely maintain and update RA request data in electronic format or using the Department's automated tracking system; produce reports as required by the Department, law, or regulation.
- g. Request and/or review medical documentation to determine if a requester has met the established criteria of an "individual with a disability" as defined by law. The RAC will inform the DMO whether the individual has met the criteria for disability, the functional limitations caused by the disability, and the needed or recommended accommodations.
- h. Ensure an alternate RAC is available to provide reasonable accommodation advice when needed or in the absence of the designated Bureau RAC.



Ensure supervisors, managers, DMOs, HR, OGC, OCR and Bureau employees are made aware of the designated alternate RAC. The mandatory timeframes will not be suspended or extended because of the unavailability of a RAC.

- i. Ensure that all requests are properly and expeditiously processed within timeframes established with this Order, as well as properly documented.
- j. Consult with OGC representatives when processing RA requests when complex issues arise, and the Department is not able to immediately grant an accommodation or prior to denying a request for accommodation.
- k. Serve as an impartial liaison when advising employees and managers while processing requests for reasonable accommodations.
- l. Engage in effective communication with employees, HR staff, managers/supervisors, OGC, other Bureau RACs, and internal/external stakeholders to ensure the RA process is properly implemented.
- m. At no time may a RAC function as an advocate, employee relations specialist or technical representative in any adverse personnel action, grievance, or other type of complaint relating to an acceptance or a denial of a reasonable accommodation.
- n. Ensure that all requests outside the authority of the normal DMO, such as parking, facility renovations, information technology, etc. are routed to the appropriate individual and are processed timely manner.
- o. Assist requesters and supervisors with finding resources/vendors for adaptive equipment and/or assistive technology.
- p. Consult with OCR/Disability Program Manager, OIT, the Job Accommodation Network (JAN), or other external/internal resources to identify effective reasonable accommodation options, if needed.
- q. Provide accommodation information to employees and applicants for employment and answer questions about the reasonable accommodation process.
- r. Ensure DMOs are aware of all available resources for reasonable accommodations (i.e. local vocational rehabilitation services)
- s. Routinely, but at a minimum annually, attend training sufficient to carry out their responsibilities. Training should provide RACs with the knowledge needed to:
  1. determine whether the requester is an “individual with a disability” as defined by law;
  2. engage in the interactive process; and
  3. process requests for reasonable accommodations needed by employees and job applicants during the application and placement processes, ensuring that the agency provides such accommodations when required to do so.

.08 Supervisors, Managers, and/or Deciding Management Officials will:

- a. Be knowledgeable about RA policy and procedures, including at a minimum, that all resources available to the agency as a whole, excluding those designated by statute for a specific purpose that does not include reasonable accommodation, are considered when determining whether a denial of reasonable accommodation based on cost is lawful; and how to arrange for the use of, agency resources available to provide the accommodation, including any centralized fund the agency may have for that purpose.
- b. Actively participate in the interactive process with the requester. Explain the Department's process for handling accommodation requests and who will make the decision on a RA request.
- c. Understand the need to be flexible when considering accommodation requests. Be aware that as Federal law, the Rehab Act supersedes office, operating unit, facility, Bureau, or DOC policy regarding telework, hours of duty, parking, etc.
- d. Make timely decisions regarding requests for reasonable accommodation in consultation with the RAC and OGC, and in accordance with the guidance provided in this Order and all applicable laws and regulations. Consult with OGC and the RAC before denying an accommodation.
- e. Ensure accommodation decisions are made as expeditiously as possible, usually within 20 business days from the date of the request, and that all approved accommodations are implemented in a timely manner.
- f. After the final decision is made regarding a RA request, provide the decision in writing to the requester in accordance with Section 8.01.a of this DAO and ensure a copy of the signed decision letter, along with any other pertinent RA information, is immediately provided to the Bureau RAC for tracking and recordkeeping purposes.
- g. Adhere to confidentiality requirements and maintain records consistent with the guidance in this Order.
- h. Designate an alternate to process RA requests in the absence of the DMO.
- i. Ensure the essential functions of a position are identified and properly documented when requested.
- j. Budget for equipment and/or services associated with reasonable accommodations, when necessary, to ensure employees with disabilities are provided needed accommodations.
- k. Fully cooperate and consult with the RAC, OGC, HR and others as necessary, throughout the RA process to ensure proper and timely processing of RA requests.

.09 Human Resources Staff will:

- a. Ensure that all vacancy announcements include a reasonable accommodation statement. Per 5 C.F.R. § 330.104(18), an agency may use wording of its choice in its statement that conveys the availability of reasonable accommodation, but it may not list types of medical conditions or impairments appropriate for accommodation.

- b. Ensure that all HR staff, involved in the application process, are properly trained on how to recognize an applicant's request for reasonable accommodation and respond appropriately within required timeframes.
- c. Execute responsibilities of the supervisor/DMO as they apply to applicants with disabilities.
- d. Identify vacant funded positions that are available for reassignment and are suitable to the requester's qualifications; consult with the affected employee to determine limits of search scope, job qualification and reasonable accommodation needs; and determine whether the employee is qualified for a particular job.
- e. Oversee the processing of approved reassignments as a reasonable accommodation within their respective Bureaus; ensure that reassignments are properly and expeditiously completed.
- f. When needed, assist DMOs with identifying the essential functions of a requester's position.

.10 Employees with disabilities who desire accommodation will:

- a. Initiate and cooperate in the reasonable accommodation process.
- b. Provide sufficient information, medical or other documentation as requested.
- c. Provide accurate contact information and promptly communicate any changes to the designated Bureau RAC.
- d. Actively participate in the interactive process to identify effective accommodation options.

.11 Applicants with disabilities who desire accommodations will:

- a. Initiate and cooperate with HR staff in the reasonable accommodations process.
- b. Upon request, provide sufficient information and medical documentation.

.12 Facility Managers will:

- a. Receive and promptly address requests for removal of architectural barriers, including reconfigured workspaces, to make the workplace accessible to individuals with disabilities.
- b. Ensure sufficient parking is available for employees with disabilities who require parking as a reasonable accommodation.

SECTION 18. ASSISTANCE.

A copy of this Order will be made available to job applicants and employees in written and accessible formats, including braille or large print, upon request. Questions concerning this Order or requests for accessible formats may be directed to OCR at (202) 482-8201 (V).

SECTION 19. EFFECT ON OTHER ORDERS.

This Order supersedes Department Administrative Order 215-10, dated April 24, 2013.

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Director for Office of Civil Rights

APPROVED:

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Deputy Assistant Secretary for Administration  
Performing the non-exclusive functions and  
duties of the Chief Financial Officer and  
Assistant Secretary for Administration

Office of Primary Interest: Office of Civil Rights

## APPENDIX A

### AVENUES OF REDRESS FOR DENIAL DECISIONS

Individuals with disabilities are encouraged to use any voluntary informal dispute resolution process available, to obtain prompt reconsideration of denials of reasonable accommodation requests. If an employee or applicant's request for reasonable accommodation is denied, he or she has the following options:

- (1) Reconsideration. Upon receipt of the denial decision from the Deciding Management Official (DMO), the requester has 15 business days from the date of the denial letter to submit a written request for reconsideration to the designated higher-level management official within the employee's chain of command. The request for reconsideration must include a copy of the decision letter and any additional information or arguments the employee wishes to be considered. Within 5 business days of receipt of a request for reconsideration, the designated higher-level management official must provide written acknowledgement of receipt of the request to the requester. The designated higher-level management official must issue a final written decision regarding the reconsideration to the requester within 30 business days from the date the request was received. It is recommended that the designated higher-level management official consult with the RAC to ensure that any concerns are heard before a final decision is made. Contact your Bureau RAC for more information.
- (2) Equal Employment Opportunity (EEO) Complaint. To file an EEO complaint, the requester must contact the Bureau's EEO office within 45 calendar days of receiving the decision, pursuant to 29 C.F.R. Part 1614. Pursuing reconsideration of a denial will not toll or extend the 45-calendar daytime limit for initiating an EEO complaint. For more information or to initiate an EEO complaint, contact your Bureau EEO Office.
- (3) Union Grievance. Bargaining unit employees may file grievances in accordance with applicable collective bargaining agreements. The union's negotiated grievance procedure will apply. Contact your local union representative for more information.
- (4) Administrative Grievance. Non-bargaining unit employees may challenge a denial decision by filing an Administrative Grievance. The employee must submit his/her grievance in writing to his/her supervisor or next higher-level management official within 15 calendar days of receipt of the written denial decision (see DAO 202-771). The employee must also inform Human Resources that an administrative grievance has been filed. Contact your servicing Human Resources Office for more information.
- (5) Alternative Dispute Resolution (ADR). ADR is offered as an alternate method for resolving workplace disputes instead of the traditional EEO counseling or formal complaint process. The Department has chosen mediation as the primary ADR method in resolving EEO disputes because it empowers the parties to reach an acceptable resolution of the conflict. The ADR process is outlined in the Department's EEO Mediation Guide available on the Office of Civil Rights website. Contact your Bureau EEO Office for more information.

## APPENDIX B

### PROCEDURES FOR OTHER THAN COACH-CLASS (PREMIUM-CLASS) ACCOMMODATIONS

#### .01 REFERENCE AUTHORITY.

- a. Federal Travel Regulations (FTR). 5 U.S.C. 5707, 40 U.S.C. 121(c); 49 U.S.C. 40118.
- b. Office of Management and Budget Circular No. A-126, "Improving the Management and Use of Government Aircraft." Revised May 22, 1992.
- c. Federal Travel Regulation, Chapter 301 – Temp Duty (TDY) Allowances, Part 301-10.123; Glossary of Terms, Part 300-3.
- d. Department of Commerce Travel Policy Handbook, October 2016

#### .02 PURPOSE.

The Federal Travel Regulations requires government travelers when making official travel arrangements to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. Therefore, the traveler is required to use the least expensive class of accommodations necessary to meet their needs and accomplish the agency's mission. This section describes the procedures for authorization and approval of other than coach-class (Premium-Class) accommodations for official travel when requested by an employee with a disability or special need.

#### .03 AIRLINE ACCOMMODATIONS.

- a. **Coach-class.** The basic class of accommodation by airlines that is normally the lowest fare offered regardless of airline terminology used. For reference purposes only, coach-class may also be referred to by airlines as “tourist class,” “economy class,” or as “single class” when the airline offers only one class of accommodations to all travelers.
- b. **Other than coach-class.** Any class of airline accommodations above coach-class, e.g., first-class, business-class, or premium economy-class.
  1. First-class. The highest class of accommodation offered by the airlines in terms of cost and amenities. This is generally termed “first-class” by airlines and reservation systems.
  2. Business-class. A class of accommodation offered by airlines that is higher than coach and lower than first-class, in both cost and amenities. This class of accommodation is generally referred to as “business, business elite, business first, world business, connoisseur, or envoy” depending on the airline.
  3. Premium economy-class. A class of airline accommodation that is lower than both first-class and business-class, but higher than coach-class in terms of cost and amenities. Premium economy-class is considered a separate, higher class of accommodation from coach-class and is not considered a coach-class seating upgrade.



#### **.04 TRAIN ACCOMMODATIONS.**

a. **Coach-class.** The basic class of accommodations offered by a rail carrier to passengers that includes a level of service available to all passengers regardless of the fare paid. Coach-class includes reserved coach accommodations as well as slumber coach accommodations when overnight train travel is involved.

b. **Slumber coach.** Includes slumber coach accommodations on trains offering such accommodations, or the lowest level of sleeping accommodations available on a train that does not offer slumber coach accommodations.

c. **Other than coach-class.** Any class of accommodations above coach, e.g., first-class or business-class.

1. First-class. Includes bedrooms, roomettes, club service, parlor car accommodations or other premium accommodations.

2. Business-class. A class of extra fare train service that is offered above coach-class, but is lower than first-class, as described above.

#### **.05 RENTAL CAR ACCOMMODATIONS.**

For rental cars, the traveler must use the least expensive compact car available unless an exception for another class of vehicle is approved to accommodate a medical disability or other special need.

#### **.06 MEDICAL CERTIFICATION.**

a. The FTR requires the requester to obtain a medical certification when the use of other than coach-class (Premium-Class) travel is necessary to accommodate a medical disability or other special need. In addition, when requesting other than coach-class travel as a reasonable accommodation, the requester must follow the procedures outlined in Section 6 of this DAO.

b. Disability. The need for other than coach-class travel for a disability must be certified annually in a written statement by a competent medical authority. However, if the disability is a lifelong (permanent) condition, then a one-time certification statement of the disability is required. In order to comply with this regulatory requirement for medical certification, the requester must provide the Bureau RAC the following medical documentation in support of the request:

1. A written statement by a competent medical authority stating that a special accommodation is necessary (must state the requester's medical condition/impairment, associated functional limitations, and explain the need for the requested accommodation);

2. An approximate duration of the special accommodation; and

3. A recommendation as to the suitable class of transportation accommodation based on the disability.

c. Other special needs. The FTR defines special needs as a physical characteristic of a traveler not necessarily defined under disability. Such physical characteristics could include, but are not limited to, the weight or height of the traveler. If the special need is obvious and not a disability, the requester's supervisor/manager may approve the request, without the assistance of the RAC. However, if the requester's need is not obvious and supporting documentation is needed,

the requester should submit the documentation to the Bureau RAC who will review it and confirm the need for the request. Special needs must be certified annually in writing. However, if the special need is a lifelong (permanent) condition, then a one-time certification statement is required. Consult your Bureau RAC for assistance.

d. If the disability is not obvious, the requester does not have a record of a permanent disability, and the medical documentation does not explicitly state the period of time the premium-class accommodation is required, then the requester is required to submit a certification annually. This re-submission is necessary to ensure that there is a continued need for the requested accommodation and to maintain up-to-date authorization records. Authorizations that have exceeded the expiration date should not be considered valid and must be recertified.

e. Written Certification Statement. After the RAC has reviewed the requester's medical documentation and confirmed the person has a covered disability or other special needs, and requires the requested accommodation, the RAC must provide a written statement to the requester and his/her supervisor. The statement will certify that the requester meets the requirements for other than coach-class travel in accordance with the FTR and DAO 215-10, and which class of accommodation is needed. The written statement should also specify if the disability or special need is life-long (permanent), and therefore, does not require annual certification. The requester must submit this statement, when requesting authorization for government travel. For more information on travel authorization requirements, refer to the DOC Travel Policy Handbook, your Bureau's Travel guidance, or your Bureau's Travel POC.

#### **.07 ADDITIONAL TRAVEL EXPENSES.**

The Department may also authorize payment for other travel related expenses deemed necessary to accommodate an employee with a disability or special need, but not limited to, the following:

- a. Specialized transportation to, from, and/or at the TDY duty location;
- b. Specialized services provided by a common carrier to accommodate your special need;
- c. Costs for handling your baggage that are a direct result of your special need; and
- d. Renting and/or transporting a wheelchair.

Any additional travel expenses deemed necessary accommodations for the traveler with a disability should be identified in the medical certification statement provided by the RAC.

#### **.08 SERVICES OF AN ATTENDANT.**

If the requester is approved for other than coach-class (Premium-Class) travel and requires the services of an attendant (i.e. PAS Provider) enroute to accommodate their special need, the attendant may also use other than coach-class (Premium-Class) travel. The requester must include the request for premium-class travel for their attendant with their initial request for premium-class travel accommodations. For details on PAS providers, see Appendix B.

#### **.09 TIMEFRAME.**

Authorization for the use of other than coach-class (Premium-Class) travel and other travel expenses, must be made in advance of the actual travel date, unless extenuating circumstances or emergency situations make advance authorization impossible. The requester should submit a request for other than coach-class (Premium) travel as a reasonable accommodation to their supervisor and RAC at least 30 calendar days prior to the actual travel date. This will allow the RAC sufficient time to prepare the medical certification statement. If advance certification cannot

be obtained, the employee must obtain written approval from the deciding official at the earliest possible time. Without specific approval, travelers will be held responsible for all additional costs resulting from the use of other than coach-class (Premium-Class) travel accommodations minus the difference of the cost of coach-class accommodations.

**.10 APPROVAL/DENIAL DECISIONS.**

Procedures for approval or denial of a request for other than coach-class (Premium-Class) travel to accommodate a disability are the same as for other reasonable accommodation requests. Deciding officials must consult with the RAC and OGC prior to denying a request for reasonable accommodations. See Section 8 of this Order.

**.11 RECORDKEEPING.**

For tracking and record keeping purposes, the Bureau RAC will maintain a copy of the employee's written request for other than coach-class travel (Premium-Class), supporting medical documentation, certification statement, and the authorization/approval for other than coach-class (Premium-Class) travel accommodations.

## APPENDIX C

### PROCEDURES FOR PROVIDING PERSONAL ASSISTANCE SERVICES (PAS)

#### **SECTION 1. BACKGROUND.**

01. On January 3, 2017, the Equal Employment Opportunity Commission (EEOC) amended the regulations implementing Section 501 of the Rehabilitation Act of 1973 (Section 501), the law that prohibits the Federal government from discriminating in employment on the basis of disability and requires it to engage in affirmative action for people with disabilities.

02. As part of the Agencies' obligation to engage in affirmative action, Federal agencies are required by the new regulations to provide Personal Assistance Services (PAS), in addition to reasonable accommodations, to employees who need them because of certain disabilities. See 29 C.F.R. § 1614.203(d)(5). PAS are services that help individuals who, because of certain targeted disabilities, require assistance to perform basic activities of daily living, like eating and using the restroom, to fully participate in the workplace.

03. As of January 3, 2018, Federal agencies are now required to provide PAS to both existing and new employees with targeted disabilities regardless of when the employee was hired. Even if an existing employee who is entitled to PAS under the regulations has arranged for his or her own PAS in the past, the Agency will be responsible for providing PAS beginning on January 3, 2018, provided the employee meets the criteria for PAS (see Section 3. Eligibility).

04. The process for requesting PAS, the process for determining whether such services are required, and the Agency's right to deny such requests when provision of the services would pose an undue hardship, are the same as those for reasonable accommodations. Therefore, procedures for PAS will be incorporated into the Departmental Administrative Order 215-10, Reasonable Accommodation for Employees or Applicants with Disabilities.

05. Each Agency is also required to prepare and submit annually to EEOC an affirmative action plan for individuals with disabilities that includes a copy of these procedures and information on its efforts to implement them.

#### **SECTION 2. DEFINITIONS.**

01. Personal Assistance Services allow employees with targeted disabilities to fully participate in the workplace by providing assistance with activities of daily living, such as eating, drinking, using the restroom, and putting on and taking off clothing. For many individuals with targeted disabilities, such as paralysis or cerebral palsy, full participation in the workplace is impossible without such services.

The provision of PAS for activities of daily living is not considered a reasonable accommodation, but rather a part of the Agency's affirmative action obligations under Section 501. Under this same provision, Federal agencies are prohibited from taking adverse actions against job applicants and employees based on their need for, or perceived need for, PAS.

02. Targeted disabilities are a subset of conditions that would be considered disabilities under the Rehab Act and for which qualified individuals with certain disabilities (i.e. such as blindness, deafness, paralysis, convulsive disorders, and certain mental illnesses, among others) have faced significant

barriers to employment that are above and beyond the barriers faced by people with the broader range of disabilities. (See the Office of Personal Management, Self-Identification of Disability Form (SF 256, Oct 2016), for a complete list of targeted disabilities.)

03. Department refers to the Department of Commerce, all of its Bureaus and operating units.

04. Agency refers to Federal agencies including the Department of Commerce.

### **SECTION 3. ELIGIBILITY.**

01. An employee may be entitled to PAS, during work hours and when on work-related travel, if the follow conditions apply:

- a. The individual is a new or existing employee of the Department and has a targeted disability (see Section 2. Definitions);
- b. The employee requires such services because of his/her targeted disability (certain disabilities such as missing extremities and paralysis, require assistance with basic activities of daily living like eating and using the restroom);
- c. The provision of such services would, together with any reasonable accommodation required under the Rehab Act, enable the employee to perform the essential functions of his/her position, without posing a direct threat to safety; and
- d. Providing PAS will not impose an undue hardship on the Department.

02. Not all employees with a targeted disability are entitled to PAS. Generally, such assistance is only necessary when it is obvious that an employee has a targeted disability (i.e. paralysis or missing limbs) and requires assistance with basic activities, like eating and using the restroom. In these situations, the Department may not require the individual to provide medical documentation in support of their request. However, to determine whether a requesting individual is entitled to PAS, and, if so, the nature of the required services, the Bureau Reasonable Accommodation Coordinator (RAC), should ask the employee what types of PAS he or she needs using the same type of informal, interactive process used for reasonable accommodation.

03. PAS do not help individuals with disabilities perform their specific job functions, such as services required as a reasonable accommodation to help an individual perform job-related tasks. For example, services provided as a reasonable accommodation, but not PAS, are sign language interpreters who enable individuals who are deaf to communicate with coworkers, and readers who enable individuals who are blind or have learning disabilities to read printed text. An Agency's obligation to provide reasonable accommodations is unaffected by the new regulations.

04. Telework. The Department is required to provide PAS for employees who telework, if the employees meet the eligibility requirements in Section 3.01. and are entitled to telework under the Department's telework policy or as a reasonable accommodation. An employee's permission to telework must not be revoked because he or she is entitled to PAS under the new regulations.

05. Federal agencies must, as a matter of affirmative action, provide PAS for employees to participate in employer-sponsored events, to the same extent as they must provide reasonable accommodations.

06. The Department is not required to provide PAS to help employees commute to and from work.

#### **SECTION 4. PROCEDURES FOR REQUESTING PAS.**

01. As with reasonable accommodation, an individual may request PAS by informing a supervisor, human resources professional, Reasonable Accommodation Coordinator, or other suitable individual, that he or she needs assistance with daily life activities because of a medical condition. The request may be made orally or in writing. The individual does not need to mention Section 501 or the EEOC's regulations explicitly or use terms such as "PAS" or "affirmative action" to trigger the Agency's obligation to consider the request.

02. A request for PAS may be made by a family member, health professional, or other representative on the individual's behalf with the individual's consent. Whenever possible the Bureau RAC will confirm the request with the person with the disability.

03. As with reasonable accommodations, to enable the Department to maintain accurate records of requests for PAS, the requester is asked to confirm their request in writing by completing the *Form CD 575, Written Confirmation of Request for Reasonable Accommodation*, (see Appendix 1) or online via ETK RA. If using the Form CD 575, it should be submitted to the designated Bureau RAC. Requests for PAS must be addressed promptly even if the requester does not complete a written request.

#### **SECTION 5. PAS DURING WORK-RELATED TRAVEL.**

The Department is only required to provide PAS when the employee is working, unless he or she is on work-related travel. When an assignment of work-related travel results in an employee's inability to rely on his or her usual source of PAS during both work and off-work hours, the Department is required to provide PAS at all times during that work-related travel, independent of the new regulations, as a reasonable accommodation (absent undue hardship). Additionally, even if an employee's usual PAS provider is available during work-related travel, the Bureau is required to pay any additional costs related to providing PAS while on travel, such as transportation costs for the PAS provider, as a reasonable accommodation.

#### **SECTION 6. PAS PROVIDERS.**

01. PAS must be performed by a personal assistance service provider. Bureaus have the discretion to decide if they want to use Federal employees, independent contractors, or a combination of employees and contractors. For services performed by Federal employees, the Office of Human Resources will consult with the appropriate point of contact (e.g., employee's supervisor, Bureau RAC) prior to determining the terms and conditions of employment. PAS may also be provided by an employee's family member who is hired as a professional PAS provider, either as a contractor or Federal employee.

02. If a Bureau is hiring a PAS provider who will be assigned to a single individual, and if that individual prefers a particular provider (e.g., because the provider has worked with him or her in the past or is of the same gender as the employee), the Bureau must give primary consideration to the employee's choice to the extent permitted by law. However, it may not be possible to honor the individual's preferences in all cases. A different provider may be chosen if, for example, the individual's preferred provider is not qualified or less qualified than another applicant, if the agency decides to utilize a pool of shared providers instead of dedicated providers, for reasons of cost or convenience, or if the Bureau decides to have appropriate existing employees provide PAS, again, for reasons of cost or convenience.



3. PAS providers may also perform non-PAS work-related tasks, but only to the extent that doing so does not result in failure to provide required PAS in a timely manner. Sometimes these work-related tasks are those that are required as a reasonable accommodation, such as readers who enable employees who are blind or have learning disabilities to read printed text (see Section 3.03). Other times, the work-related tasks are the type that any assistant would provide. However, if additional duties are assigned to the Bureau's PAS providers, it should ensure that those duties do not interfere with provision of PAS, and that all individuals who are entitled to PAS continue to receive them in a timely manner. Consult with Human Resources or Contracting prior to adding any non-PAS work-related duties.

4. PAS providers may provide services to more than one individual. Bureaus may utilize a pool of PAS providers, rather than assign one PAS provider to each employee who needs one, as long as each individual who is entitled to PAS receives them in a timely manner. If utilizing a pool of providers would foreseeably result in some individuals not receiving services when they are needed, the Bureau should increase the number of available providers or arrange for dedicated PAS providers.

5. An individual may request permission to bring his or her own PAS provider to work as a reasonable accommodation if the individual does not request that the Bureau assume the cost of providing the services. However, if the individual wants the Bureau to assume the cost of providing the services, the Bureau may have reasons to choose a different provider (see Section 6.02.).

6. Bureaus may assign the responsibility to perform personal assistance services to an existing employee only if the employee already performs PAS or a similar service as part of his/her regular job. However, Bureaus that utilize this strategy should ensure that the resulting number of providers is sufficient to provide PAS in a timely manner to any employee who is entitled to them.

7. If the position sought by or held by an individual with a targeted disability requires a security clearance and the individual's PAS provider would have access to classified information, the Bureau should find a provider who has, or who likely could get, the appropriate security clearance. Under some circumstances, finding such a provider may be sufficiently difficult as to constitute an undue hardship. If an individual with a targeted disability is unable to perform essential job functions because an appropriate provider cannot be found, an Agency may consider the individual to be unqualified for the position.

8. If an individual that provides PAS is unavailable, the PAS providers must notify the Bureau POC of any absences as soon as possible, so that they can make alternative arrangements. Such arrangements could include, for example, contracting with different providers on a short-term basis, adjusting the schedules of shared PAS providers if the Bureau utilizes any, or allowing the individual to telework if the employee can work at home without the need for PAS provided by the Bureau.

9. Locating a PAS Provider. Resources for PAS providers include local vocational rehabilitation offices, American Job Centers, centers for independent living, home care agencies, and the individual who requested PAS. Additionally, some contractors are available through GSA Advantage. If a Bureau decides to hire a full-time/part-time PAS provider, applicants for PAS provider positions may be found in the same way that applicants for other positions are located -by advertising the opening on USAJOBS and other job posting boards.

## **SECTION 7. PAS FUNDING.**

01. The cost of PAS will vary depending on the location as well as how much assistance an employee needs. The resources available to the Department as a whole are to be considered when determining if PAS can be provided without undue hardship.

02. When arranging for PAS, Bureaus must consider all available resources, including outside sources that are already providing PAS or are willing to provide PAS at their own expense, such as a state or veterans' rehabilitation agency. However, the Bureau is ultimately responsible for ensuring that the services are provided in a timely manner and cannot rely on the fact that an outside source has promised to, or is otherwise obligated to, provide PAS as a reason for denying an employee's request.

03. Payment to Family Member Providers of PAS. If an employee's family member provides PAS at work, but also performs PAS off the job without compensation, the Bureau is required to pay the family member for PAS provided at work. However, prior to payment, the family member must be hired as a professional PAS provider and compensated as either a contractor or Federal employee in accordance with the terms and conditions of employment (see also Section 6.01.).

## **SECTION 8. GRANTING REQUESTS FOR PAS.**

As with reasonable accommodations, the RAC has the responsibility for advising on and processing requests for PAS. As soon as a decision has been made to provide PAS to an employee, the RAC will assist the deciding official in arranging the service. As a part of the interactive process, and in consultation with Human Resources and/or Contracting, the RAC will assist the deciding official in determining the most appropriate source for PAS based on the employees' needs and available resources. (See Section 6. PAS Providers). The deciding official is responsible for providing the decision in writing to the requester. The Bureau must maintain a copy of the decision in the same way records are maintained for requests for reasonable accommodations.

## **SECTION 9. DENIAL OF REQUESTS FOR PAS.**

01. Procedures for denying a request for PAS are the same as for reasonable accommodations (see DAO 215-10).

02. The Department is only required to provide PAS if the requesting employee is entitled to them under the regulations. (See Section 3. Eligibility) Therefore, a request for PAS may be denied if:

- a. The requester is not an employee of the Department;
- b. The requester does not have a targeted disability;
- c. The targeted disability does not create a need for PAS;
- d. The requester is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
- e. The requester would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or

f. Providing PAS would impose undue hardship on the Department.

03. Undue Hardship. Under the new regulations, the term "undue hardship" has the same meaning that it has in the reasonable accommodation context. Granting a request for PAS will impose undue hardship on an Agency if it would result in "significant difficulty or expense." The regulations emphasize that, as with reasonable accommodation, the determination of whether granting an individual's request for PAS would impose "significant" difficulty or expense must take into account all resources available to the Department as a whole.

04. The number of individuals with the types of disabilities that require assistance in activities of daily living and who will apply for federal employment is very low. However, in the unlikely event that the resources available to the Department as a whole are insufficient to grant a particular individual's request for PAS, the Department may deny the request on the grounds that it would impose an undue hardship.

#### **SECTION 10. CONFIDENTIALITY.**

01. As with reasonable accommodations, the Rehab Act prohibits the disclosure of medical information except in certain limited situations. Generally, information that is otherwise confidential under the Rehab Act may be shared only with individuals involved in the PAS process who need to know the information to consider PAS for a specific individual.

02. When submitting a request for PAS, the RAC should encourage employees to voluntarily self-identify their disability status by completing OPM's "Self-Identification of Disability" form (SF-256, Oct 2016) or update their disability status in the Employee Personal Portal (EPP). This information will be kept confidential and only used in the aggregate for statistical reporting purposes. However, an employee is not required to submit this information nor can the Department make completion of the form a condition of receiving PAS. The Department may still be able to count an individual who is receiving PAS in its annual disability workforce analysis, even if the individual does not self-identify as having a disability.

## APPENDIX D

### REASSIGNMENT PROCEDURES

#### **.01 OVERVIEW.**

- a. Reassignment is a form of reasonable accommodation that is provided to an employee who, because of a disability, can no longer perform the essential functions of his/her current position, with or without reasonable accommodations. Reassignment is not available to applicants.
- b. Reassignment is the reasonable accommodation of last resort. Therefore, the Department must consider reassignment as an accommodation prior to terminating an employee who because of a disability cannot be accommodated in his/her current position. Reassignment is required only after it has been determined 1) there are no effective accommodations that will enable the employee to perform the essential functions of his/her current position or 2) all other reasonable accommodations would impose an undue hardship.
- c. Reassignment may not be used to limit, segregate, or otherwise discriminate against employees with disabilities by forcing reassignments to undesirable positions or to designated offices or facilities.
- d. An employee can choose not to pursue reassignment as an accommodation. If that is the case, the employee is required to indicate in writing that she/he declines the reassignment.

#### **.02 CONSIDERATIONS.**

- a. After a determination has been made that an employee with a disability cannot be accommodated in his/her current position, the Reasonable Accommodation Coordinator (RAC) should identify and document what limitations, if any, the employee has with respect to the reassignment. The RAC, in collaboration with Human Resources (HR), should discuss the reassignment option with the employee and inquire about:
  1. What types of work the employee is willing and qualified to perform, and what medical restrictions or limitations s/he has;
  2. Whether the employee is willing to be reassigned outside the facility or outside the commuting area, and if so, to what locations;
  3. Whether the employee is willing to be reassigned to a different type of position for which he or she may be qualified, and if so to what type(s);
  4. Whether the employee is willing to be reassigned to a different sub-component of the department, and if so, to which one(s); and
  5. Whether the employee is willing, if no position is available at his or her current grade level, to be reassigned to a lower-graded position, and if so, down to what grade.
- b. Before a vacancy search commences, the requester should complete the “*Declaration of Availability for Reassignment within the Department of Commerce*” form (Exhibit 2) and submit to the RAC and HR. The HR office will use this information to conduct the vacancy search within the parameters the employee has set. This method considers the employee's preferences while minimizing the scope of the vacancy search. If the agency conducts a search within the parameters

developed with the employee and no appropriate position is found, the RAC or HR Specialist should ask if the employee wants to expand the scope of the search.

c. An employee must be “qualified” for the new position. An employee is “qualified” for the position if s/he:

1. Satisfies the requisite skills, experience, education, and other job-related requirements of the position; and

2. Can perform the essential functions of the new position with or without a reasonable accommodation. The employee does not need to be the “best” qualified individual for the position in order to obtain it as a reassignment.

d. There is no obligation for the Department to assist the employee to become qualified. Therefore, the Department does not have to provide training so that the employee acquires necessary skills to take a job. The Department, however, would have to provide the same training that is normally provided to a person hired or transferred to the position, to the employee with a disability who is being reassigned.

### **.03 VACANCY SEARCH PROCESS.**

a. The Department is required to reassign an employee to a “vacant funded” position that is equal in pay and status to the one held, or as close as possible, if an equivalent position is not available. The position must also be within the commuting area or any geographic area to which the employee indicates he or she is willing to move and for which the employee is qualified. In the event there is more than one vacancy for which the employee is qualified, the employee must be placed in the position that comes closest to his/her current position in terms of pay, status, benefits, and geographic location. If it is unclear which position comes closest, the RAC and/or HR should consult with the employee about his/her preference before determining the position to which the employee will be reassigned.

b. “Vacant funded” means that the position is funded and available when the employee asks for reasonable accommodation, or that it will become available within a reasonable amount of time. A position is considered vacant even if a notice or announcement has been posted seeking applications for that position. The Department is not required to “bump” an employee from a job in order to create a vacancy; nor create a new position to accommodate an employee with a disability.

c. The Bureau RAC will collaborate with the Bureau’s HR office to identify: (1) vacant funded positions within the Bureau for which the employee may be qualified, with or without reasonable accommodation; and/or (2) positions which HR has reason to believe will become vacant within 60 calendar days from the date the search is initiated and for which the employee may be qualified.

d. After a position is identified, the assigned HR Specialist will consult with the hiring official to confirm the skills sets, essential functions of the position, duties, etc. that are required, in order to make a qualifications determination. The HR Specialist should ask whether there are any qualifications or requirements that were not mentioned in the announcement. **At this point, the HR Specialist must not mention the reasonable accommodation reassignment to the hiring official.**

e. Once the HR Specialist has ascertained all of the requirements for the position, the HR Specialist will compare them to the employee’s skills, experience and knowledge. If the employee meets the minimum qualifications for the position and can perform the essential functions of the position, with or without accommodation, the assigned HR Specialist will inform the hiring official

that the position must be held for a reassignment. The gaining supervisor should not receive the name or contact information for the employee at this point. The placement/reassignment must be non-competitive, thus, there is no ranking process or interview.

f. The assigned HR Specialist will then contact the employee to offer the job and complete the necessary paperwork for the reassignment. The employee will have 14 calendar days from receipt of the offer to accept the reassignment. The identified vacancy must be held open during this time. The HR Specialist must also notify the Bureau PHRM and the RAC of the offer. The gaining servicing HR Office will complete the necessary reassignment paperwork.

g. When a suitable, vacant funded position has been identified, the HR staff in the gaining Bureau must inform the gaining hiring official about the reassignment. The Staffing Specialist should inform the hiring official that the job description was reviewed and compared to the employee's resume, and s/he was found to be qualified. The HR Specialist may also provide the gaining hiring official with a sanitized copy of the employee's resume (all identifying information, such as employee name, previous supervisor names, and contact information must be removed).

h. The HR Staff Specialist may use the following statement to explain to the supervisor for the identified vacancy the reason for the placement: "Your vacancy was identified as a suitable position for an employee who needs a reassignment as an accommodation. DOC is required to follow EEOC guidance in this matter, which provides that this type of reassignment is non-competitive. The HR Staffing Specialist reviewed the job description, compared it to the employee's resume, and s/he was found to be qualified. If you wish to meet the employee before she/he begins working in the new position, you may do so, but we must stress that this is not an interview. It has already been decided that this employee will be reassigned to this position. Please note that an individual's disability status is private information and may not be shared with anyone not having a bona fide, business related need to know. I want to thank you for your support of DOC's efforts to comply with EEOC regulations."

i. If after 30 calendar days, a vacant funded position within the employee's Bureau, has not been identified, the HR specialist must notify the Bureau's PHRM, or designee, and submit a request for a Department-wide vacancy search. The HR Specialist will also provide the PHRM, or designee, and the Bureau RAC a consolidated list of the Bureau-wide vacancy search results. Concurrently, the search must continue within the employee's assigned Bureau.

j. Reassignment does not include giving an employee a promotion. An employee must compete for any vacant funded positions that would constitute a promotion.

k. If there are no vacant funded equivalent positions, the employee may be assigned to a vacant funded lower-level position for which the individual is qualified. If the employee accepts a reassignment to a lower graded position or position carrying less seniority due to the absence of an equivalent vacancy, the Department is not required to maintain the employee's salary or seniority from the higher graded position, unless it does so for other reassigned employees without disabilities.

l. Reassignment must first be attempted within the employee's assigned Bureau before the Department offers reassignment to a vacant funded position that is outside of an employee's office, branch, division, bureau, department, facility, personnel system (if the employer has more than a single personnel system), or geographical area.



m. Reassignments may also be made to a vacant funded position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, the Department will not pay for the employee's relocation costs, unless it pays the costs for other employees without disabilities.

n. The Department-wide vacancy search may be extended up to 60 calendar days from the date it is requested. There will be no further extension beyond the additional 60 calendar days unless there are extenuating circumstances (see Section 10.04b of this DAO). Department-wide vacant funded searches should be processed through the Bureau's Principal Human Resources Manager (PHRM) or designee.

#### **.04 FINAL DISPOSITION OF REQUEST**

a. After the Department has completed its vacancy search, identified whether there are any vacant funded positions available (including any positions that will become vacant in a reasonable amount of time), notified the employee of the results, and either offered an appropriate vacancy to the employee or informed him/her that no appropriate vacancies are available, the Department will have fulfilled its obligation.

b. If an employee is reassigned as a reasonable accommodation and is not able to perform the essential functions of the reassignment position, with or without reasonable accommodation, the reassignment has not been an effective accommodation. Subsequent reassignments will be considered on a case-by-case basis. If the employee is not able to perform the essential functions of the position due to performance issues unrelated to the need for accommodation, Departmental procedures for addressing performance issues will be followed.

c. If the employee declines the job placement offer, the assigned HR Specialist will notify the Bureau PHRM and RAC. The Bureau PHRM, or designee, will issue a written notification to the employee informing him/her that there will be no further vacancy searches conducted based on his/her decision to decline the offer of reassignment.

d. If after 60 calendar days from receipt of the request for reassignment, no suitable vacant funded positions have been identified to which the employee can be reassigned, or the employee declines a job placement offer, the PHRM must notify the RAC and the employee's DMO. The DMO will then issue a written notification of denial with specific reasons for the denial, to the requester within 14 business days of notification from the PHRM. Before denying a request for reasonable accommodation, the DMO must consult with the RAC and OGC to ensure all efforts have been made to provide reasonable accommodations to the employee, including reassignment. See Section 8.03 of this DAO for information on Denials.

#### **.05 PROBATIONARY EMPLOYEES**

An employee with a disability is eligible for reassignment to a new position, regardless of whether she/he is considered "probationary," as long as the employee adequately performed the essential functions of the position, with or without reasonable accommodation, before the need for a reassignment arose. If, however, the probationary employee has never adequately performed the essential functions, with or without reasonable accommodation, then she/he is not entitled to reassignment because she/he was never "qualified" for the original position. However, the employee may request consideration for a change to lower grade as a reasonable accommodation.

## **.06 RESPONSIBILITIES**

### **a. Reasonable Accommodation Coordinator (RAC)**

1. The RAC will provide guidance to the Deciding Management Official (DMO) in making the determination that an employee with a disability cannot be accommodated in his/her current position due to the disability or undue hardship. The RAC will document all efforts the Bureau has taken to accommodate the employee. The RAC should also identify any functional limitations the employee has with respect to reassignment.
2. The RAC, in collaboration with HR, will discuss the reassignment option with the employee and have the employee complete and submit the “Declaration of Availability for Reassignment within the Department of Commerce.”
3. If an employee accepts a job in another Bureau, the RAC in the employee’s current Bureau must immediately notify the RAC in the gaining Bureau. The gaining RAC will assist the employee with acquiring all needed accommodations in the newly assigned position.

### **b. Servicing Human Resource Office**

1. The employee’s servicing HR office will work with the RAC in the manner described above in order to meet the requirements to accommodate employees with disabilities who have been deemed eligible for reassignment.
2. The employee’s servicing HR office must collaborate with the RAC and communicate with the employee to ensure all pertinent information (i.e. employee’s knowledge, skills, abilities, grade level, geographic preference, etc.) is considered when attempting to reassign him/her.
3. The servicing HR Specialist must ensure s/he does not divulge the employee’s disability status or condition to the DMO or any potential hiring officials.

### **c. Principal Human Resource Manager (PHRM)**

1. The requester’s servicing PHRM, or designee, must send required requests and decisions, within 14 calendar days to the appropriate offices/persons, as described in the process above. PHRMs, or designees, must certify that a thorough and impartial search of the Bureau’s vacant funded positions was conducted. The RAC may also provide to the PHRM any functional limitations the employee has expressed.
2. The servicing PHRM, or designee, will serve as the DMO for all final reassignment determinations. The PHRM, or designee, issues the final written denial decision, when it has been determined that there are no suitable positions in which the employee can be reassigned.

### **d. Employee Responsibility**

1. The employee requesting the reasonable accommodation must cooperate with their Bureau RAC and HR officials by completing and submitting the “Declaration of Availability for Reassignment Within Department of Commerce (DOC)” form (Exhibit 2), along with a current resume, to the RAC within seven (7) calendar days of receiving notification of reassignment eligibility.

2. If the employee does not submit the requested documents within the seven (7) calendar days, the employee's qualifications for current vacancies will be based only on available information. The employee may continue to work in the current unit during the vacancy search and must be provided appropriate reasonable accommodations.

3. Once the job offer is made, the employee's Bureau HR Office will give the employee a written notification of Offer of Reassignment. The employee will have 14 calendar days from his or her receipt of the offer to decide whether to accept the offered reassignment. If the employee turns down the offer or does not respond within the 14 days, the employee is no longer considered eligible for reassignment.

e. **Hiring Official**

1. The hiring official is allowed to meet with the reassigned employee before they begin working in the new position, but only after the job offer has been extended and accepted by the employee. The hiring official may not interview the employee and is prohibited from asking about disability status or specific information regarding the employee's medical condition. The HR or the RAC should not disclose the employee's disability status. However, in the event additional accommodations are required after the employee begins working in the new position, the hiring official may be provided information regarding the employee's limitations in order to make a decision on a subsequent RA request.

2. If the hiring official of the gaining organization, after reviewing the employee's resume, believes the employee is not qualified for the position, he/she must submit a written justification of his/her rationale for review by the PHRM, OGC and the RAC. The PHRM will make the final determination on whether a person is qualified for the position.

### ADDITIONAL RESOURCES

1. **U.S. Equal Employment Opportunity Commission** - provides resource information and policy guidance for processing reasonable accommodation requests and frequently asked questions.
  - EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (July 27, 2000) <https://www.eeoc.gov/policy/docs/guidance-inquiries.html>
  - EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (revised October 17, 2002). <https://www.eeoc.gov/policy/docs/accommodation.html>
  - Q&A on the Final Rule Implementing the Americans with Disabilities Act Amendments Act (ADAAA) of 2008 - provides answers to questions on changes made to the Americans with Disability Act, how the changes are to be interpreted, and the expanded definition of “disability”. [https://www.eeoc.gov/laws/regulations/ada\\_qa\\_final\\_rule.cfm](https://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm)
  - ADAAA Fact Sheet -[https://www.eeoc.gov/laws/regulations/adaaa\\_fact\\_sheet.cfm](https://www.eeoc.gov/laws/regulations/adaaa_fact_sheet.cfm)
2. **Q&A: Federal Agencies' Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act** - <https://www.eeoc.gov/federal/directives/personal-assistance-services.cfm>
3. **Section508.gov** - provides guidance to Federal agency staff who play a role in IT accessibility. - <https://www.section508.gov/>

This site addresses several key topics, including:

- Program Management - provides best practices on how to manage an effective IT Accessibility program;
- Procurement - helps agencies understand how to clearly define accessibility requirements for ICT procurements, and helps ICT vendors understand the need to demonstrate the accessibility of their IT products and services for potential federal buyers;
- Tools & Training - conducts and facilitates training for IT Accessibility program managers and agency procurement officials, and offers tools to automate common accessibility-related management tasks and;
- Policy Compliance -helps Federal agencies understand and meet their responsibilities under Section 508 and related laws and policies.
- Pregnant Workers Fairness Act (PWFA) – a new law that requires covered employers to provide “reasonable accommodations” to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.” For more information on this new law visit the EEOC website: [What You Should Know About the Pregnant Workers Fairness Act.](#)

4. **U.S. Access Board** - promotes equality for people with disabilities through leadership in accessible design and the development of accessibility guidelines and standards for the built environment, transportation, communication, medical diagnostic equipment, and information technology. Accessibility guidelines and standards issued under the American with Disability Act (ADA), the Architectural Barriers Act (ABA), and Section 508 of the Rehab Act, can be found on the Boards website - <https://www.access-board.gov/guidelines-and-standards>.
5. **Job Accommodation Network (JAN)** - is funded by the U.S. Department of Labor's Office of Disability Employment (ODEP) Policy and provides information on the (ADA) and a wide range of reasonable accommodations options for many different types of disabilities. <http://askjan.org>
6. **Office of Disability Employment Policy (ODEP)** – ODEP is a sub-agency of the Department of Labor. Its mission is to develop and influence policies and practices that increase the number and quality of employment opportunities for people with disabilities. It is the only non-regulatory federal agency that promotes policies and coordinates with employers and all levels of government to increase workplace success for people with disabilities. <https://www.dol.gov/odep/>
7. **Employer Assistance and Resource Network (EARN) on Disability Inclusion** – provides support to employers in their efforts to recruit, hire, retain and advance qualified individuals with disabilities. <http://www.askearn.org/>
8. **Partnership on Employment & Accessible Technology (PEAT)** - is a multi-faceted initiative to foster collaboration and action around accessible technology in the workplace. Guided by a consortium of policy and technology leaders, PEAT works to help employers, IT companies, and others to understand why it pays to build and buy accessible technology, and how to do so. PEAT is funded by the U.S. Department of Labor's Office of Disability Employment Policy (ODEP) and is managed by the Rehabilitation Engineering and Assistive Technology Society of North America (RESNA). <http://www.peatworks.org/>
9. Title 42, Chapter 126-Equal Opportunity for Individuals with Disabilities, Subchapter IV-Miscellaneous Provisions §12211, Definitions. <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section12211&num=0&edition=prelim>

WRITTEN CONFIRMATION OF REQUEST FOR REASONABLE ACCOMMODATION

Please submit this form as soon as possible to your servicing Reasonable Accommodations Coordinator (RAC)

This form is used for record-keeping and reporting purposes. It is an option for providing a written confirmation of your request for reasonable accommodation. The information provided may be used to determine whether reasonable accommodation is needed and, if so, what accommodation will be effective and appropriate. This form is subject to confidentiality requirements and will be maintained in files, hardcopy or electronic, separate from your personnel file.

**PART A: EMPLOYEE REQUEST**

Instructions: This section is to confirm your request for reasonable accommodation. If more space is needed, please attach a separate sheet. The RAC may complete this section for the requestor if the requestor requires assistance or otherwise cannot complete the form. Completion of this form is voluntary. Requests for accommodation will be addressed promptly even if the requestor does not complete this form.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. Genetic information, as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

1. Requestor's name: \_\_\_\_\_

2. Requestor's telephone number and e-mail address: \_\_\_\_\_

3. If the requestor is a current employee of the Department:

3.a. Requestor's title, series, and grade: \_\_\_\_\_

\_\_\_\_\_

3.b. Requestor's bureau (or O/S) and division: \_\_\_\_\_

\_\_\_\_\_

3.c. Name and title of requestor's immediate supervisor: \_\_\_\_\_

\_\_\_\_\_

3.d. Telephone number and e-mail address of Requestor's immediate supervisor: \_\_\_\_\_

\_\_\_\_\_



4. a. Name of the person the Requestor contacted initially about this request for reasonable accommodation:

\_\_\_\_\_

4. b. Role of that person (check all that apply):

- Immediate supervisor;
- Another supervisor in the requestor's chain of command;
- Reasonable Accommodation Coordinator (RAC);
- HR Specialist;
- EEO Specialist; and/or
- Other: \_\_\_\_\_

5. Date of initial reasonable accommodation request: \_\_\_\_\_

6. Functional limitations and/or workplace barriers for which accommodation is needed. (Note: The response to this item need not identify the requestor's medical impairment or condition.) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. Specific accommodation(s) the requestor is seeking. (Note: An employee must be able to perform the essential functions of the employee's position, either with or without accommodation.) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

8. Check any of the below categories that apply to the request. (Note: These categories provide examples of frequently-requested accommodations. This is not an exhaustive list.)

- Reconfigured work space;
- Removal of an architectural barrier;
- Acquisition or modification of equipment, furniture, or devices;
  - Assistive Technology;
  - Adaptive Equipment;
  - Ergonomic office furniture;
- Materials in alternative formats;
- Adjustment or modification of examinations, training materials, or policies;
- Readers, interpreters (such as Sign Language interpreters), or captioning;
- Job restructuring;
- Part-time or modified work schedules (such as an Alternate Work Schedule);
- Telework;
- Parking;
- Scooter;
- Reassignment to a vacant, funded position; and/or
- Other: \_\_\_\_\_

9. Reasonable accommodation is needed to (*check all that apply*):

- Participate in the application process;
- Perform the essential functions of the requestor's job;
- Gain access to the workplace; and/or
- Enjoy equal benefits and privileges of employment as are enjoyed by similarly-situated employees without disabilities (e.g., training, employee assistance programs, credit unions, cafeterias, lounges, gymnasiums, auditoriums, parties or other social functions).

10. Length of time the required accommodation(s) will be needed: \_\_\_\_\_

11. Explain any time-sensitive issues related to the request. \_\_\_\_\_

NOTE: If a disability and/or need for reasonable accommodation is not obvious and not already on file with the Department, the RAC may request medical documentation to substantiate the disability and/or the need for the requested accommodation. The RAC will use the medical documentation submitted to: 1) determine if the requestor has a covered disability, 2) identify functional limitations and how the limitations effect the employee's ability to perform their essential job duties, 3) determine if the requestor needs an accommodation based on their disability and which accommodation(s) would be effective and appropriate. In making this determination, the RAC may consult various medical professionals, including the requestor's physician, medical professionals from Federal Occupational Health (FOH), or the Bureau's health unit, when necessary. (DAO 215-10, Section 11)

Ordinarily, the deciding management official (DMO) does not need to know the requestor's underlying medical condition or impairment. The RAC will provide the DMO with the information needed to understand the requestor's functional limitations and what accommodation(s) are recommended and effective. The RAC is an advisor and does not have authority to approve or deny a request. In compliance with the Privacy Act and confidentiality requirements, the RAC will not share the requestor's medical documentation with anyone who does not have an official need to know. (DAO 215-10, Section 16)

\_\_\_\_\_  
Signature of Requestor

\_\_\_\_\_  
Date

**PART B: ACCOMMODATION REPORT**

**Items 1 through 3 are to be completed by the RAC and provided to the deciding official.**

1. Name individual requesting reasonable accommodation (requestor): \_\_\_\_\_  
\_\_\_\_\_

2. Title, bureau, and division of Requestor (if the Requestor is a current employee of the Department): \_\_\_\_\_  
\_\_\_\_\_

3. Accommodation(s) requested: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Items 4 through 12 are to be completed by the deciding management official (i.e., Supervisor, Office or Division Director, HR Specialist). The deciding management official must complete and submit this form to the RAC as soon as possible after a final decision has been made on the reasonable accommodation request.**

4. Name and title of deciding official: \_\_\_\_\_  
\_\_\_\_\_

5. Date reasonable accommodation request was referred to deciding official: \_\_\_\_\_  
\_\_\_\_\_

6. Interim measures provided, if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Date reasonable accommodation approved or denied: \_\_\_\_\_  
\_\_\_\_\_

8. If time frames outlined in DAO 215-10, Reasonable Accommodation for Employees or Applicants with Disabilities were not met, explain reason(s):  
\_\_\_\_\_  
\_\_\_\_\_

9. Decision on reasonable accommodation request:  
 Approved  Denied

10. If approved, identify the accommodation(s) granted: \_\_\_\_\_

\_\_\_\_\_

11. If denied, attach a copy of the written denial letter or memorandum that identifies the reason (see Section 8 of DAO 215-10).

12. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Federal Occupational Health (FOH), Job Accommodation Network (JAN), disability organization). (Note: The response to this item should not identify legal advice provided by the Office of the General Counsel.) \_\_\_\_\_

\_\_\_\_\_



\_\_\_\_\_  
**Deciding Official's signature**                      **Date**                      **Daytime telephone number and e-mail Address**

For more information on how to contact the servicing RAC, please see the Office of Civil Rights website: <http://www.osec.doc.gov/ocr/CivilRights/Disability/ReasonableAccommodation.html> or contact:

Disability Program Manager/Policy Advisor  
Office of Civil Rights, U.S. Department of Commerce  
14th Street and Constitution Avenue, NW, Room 6012  
Washington, D.C. 20230  
Attention: [202-482-8201]

If the request is denied or does not meet the needs of the requestor, the requestor may request reconsideration from a higher-level supervisor in the requestor's chain of command. Any request for reconsideration must be received no later than 15 business days from the date the requestor received the decision. Any requestor seeking reconsideration must follow the process outlined in DAO 215-10, including submitting with there consideration request, a copy of the decision issued to the requestor and any additional information or arguments the requestor wishes to submit.

To initiate an EEO complaint, the requestor must bring the matter to the attention of an EEO counselor within 45 calendar days of the requestor's receipt of the decision. Pursuing reconsideration of a denial will not toll or extend mandatory time limits for initiating EEO complaints or other grievance procedures. To initiate an EEO compliant or for additional information, contact your Bureau's EEO Office.

## Privacy Act Statement

**Authority:** The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires that you be given certain information about this form. The authority for this Request for Reasonable Accommodation form is derived from the Rehabilitation Act of 1973, as amended, which stipulates that Federal agencies must provide reasonable accommodations to qualified individuals with disabilities. *See* 29 U.S.C. 791; 29 C.F.R. Part 1614; *see also* 20 C.F.R. Part 1630. Further, Executive Order 13164 mandates that Federal agencies have written procedures for providing reasonable accommodation and maintain records in order to monitor the effectiveness of the procedures.

**Purposes/Routine Uses:** The Bureau Reasonable Accommodation Coordinators will maintain a record of all accommodation requests, including this form, which will be utilized to determine the efficacy and consistency of the reasonable accommodation process and be compiled for reports to the Equal Employment Opportunity Commission (EEOC); these records are subject to periodic review by the EEOC, or the Director, Office of Civil Rights, at their request, to ensure compliance. The information collected on this form must be kept in files separate from the individual's personnel file and treated as a confidential medical record, except that:

- 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 or evacuation assistance;
- government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act or other applicable laws;
- the information may in certain circumstances be disclosed to workers' compensation offices; 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* 29 C.F.R. 1630.14(c) and EEOC *Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation* (Policy Guidance), EEOC No. 915.003 (October 20, 2000), Sec. II(D), Q. 20, available online at <https://www.eeoc.gov/laws/guidance/policy-guidance-executive-order-13164-establishing-procedures-facilitate-provision>. In addition, the information collected on this form may be used for Routine Uses set forth in System of Records Notice COMMERCE/DEPT-18, Employees

Personnel Files Not Covered by Notices of Other Agencies, available at <https://www.osec.doc.gov/opog/PrivacyAct/SORNs/DEPT-18.html>, except as prohibited by the Rehabilitation Act of 1973 or as otherwise prohibited by law.

**Disclosure:** Completion of this form is voluntary. However, without this information you may not be provided an appropriate and effective accommodation.

**EXHIBIT 2**

**DECLARATION OF AVAILABILITY FOR REASSIGNMENT WITHIN  
DEPARTMENT OF COMMERCE (DOC)**

**1. EMPLOYEE INFORMATION**

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Home Address: \_\_\_\_\_

Bureau/Office/Division: \_\_\_\_\_

Work Address: \_\_\_\_\_

Job Title: \_\_\_\_\_ Series/Grade: \_\_\_\_\_

2. It has been determined that you are no longer able to perform the essential functions of your current position due to the functional limitations associated with your disability. However, DOC would like to retain you as an employee. Therefore, we are offering to search for a suitable position within the Department to which you can be reassigned. With the information you provide below, we will perform a search to identify vacant, funded positions for which you may be qualified. Please review the options listed below and select those you are willing to consider. Please complete and return this form to **(INSERT RAC NAME AND EMAIL OR OFFICE LOCATION)** by **(DATE)**.

3. Please submit a response to each item below:

a. I am willing to consider reassignment to work in the following geographic area(s) **(please check one or more)**:

- Anywhere within my current Bureau or local commuting area (see definition below) \*
- Anywhere within the 48 contiguous United States (excludes Hawaii and Alaska)
- Anywhere within the 50 United States (includes Hawaii and Alaska)
- Outside the United States (if applicable, please indicate the location(s) outside the United States for which you would be available to work):  
\_\_\_\_\_

b. I am willing to accept a position at a lower grade and/or seniority if there are no vacant equivalent positions available.

- Yes
- No

Lowest Grade or salary willing to accept: \_\_\_\_\_

c. I am willing to accept a different type of position (e.g., different occupational series) for which I am qualified.

- Yes
- No

d. I am willing to accept a part-time position.

- Yes
- No

**\*Commuting area** means the geographic area surrounding a work site that encompasses the localities



where people live and reasonably can be expected to travel back and forth daily to work, as established by the Department of Commerce based on the generally held expectations of the local community.

- I understand that this is a statement of my geographic/position availability only and does not guarantee placement in a position or an offer of reassignment to a particular location.
- I understand that placement depends on the availability of a vacant funded position and a determination by DOC Human Resources staff that I am fully qualified and eligible for the position. I understand that this determination may include input from the hiring official.
- I understand that as with other transfers not required by management, the Department will not pay my relocation costs/expenses.
- I understand that the Department must consider reassignment when it determines there are no effective accommodations available that will permit me to perform the essential functions of my current position or that would not cause undue hardship. Further, if DOC cannot find a suitable position for me within the designated timeframe, the agency has no further obligation to seek reassignment for me and I will be advised of other options.

---

Employee's Signature

---

Date

For more information on Reassignment as a Reasonable Accommodation see DAO 215-10, Appendix D, [http://www.osec.doc.gov/opog/dmp/daos/dao215\\_10.html](http://www.osec.doc.gov/opog/dmp/daos/dao215_10.html)

### EXHIBIT 3

#### Sample Request to Bureau PHRM for Vacant Funded Search

*SUBJECT: Search for Vacant Funded Positions*

**(Insert Name of Requesting Bureau)** has an employee that has been approved for reassignment as a reasonable accommodation. Due to the employee's limitations, he/she can no longer perform the essential functions of their current position. There are no effective reasonable accommodations available that will permit the employee to perform the essential functions of his/her current position or that would not cause undue hardship.

In accordance with Federal law and *DAO 215-10, Reasonable Accommodation for Employees or Applicants with Disabilities*, reassignment is the accommodation of last resort and must be considered as an accommodation prior to terminating an employee with a disability. **(Insert Name of Requesting Bureau)** needs your assistance with identifying all current and/or anticipated (within next 60 days), vacant-funded positions within your Bureau to which we could possibly reassign this employee. The employee understands s/he must be qualified for the position. The employee has completed the *Declaration of Availability for Reassignment Within the Department of Commerce* (DOC) indicating her/his geographic and position availability preferences (see attached).

**(If there is a specific reasonable accommodation needed for the reassigned position it should be stated here. For example, due to the employee's medical condition s/he would also need a position which allows telework 3 days a week.)**

The employee is currently employed as a (i.e., **Management Analyst, ZA-0343-03**). Attached is a sanitized copy of the employee's resume.

Please reply to this email within **10 days or NLT COB (Insert MONTH, DAY, and YEAR)** and provide a listing of the search results for current/anticipated vacant positions in your organization. Even if you are not able to identify any vacant positions for which the employee qualifies, you are required to send a negative response so we are able to document our search.

Should you have any questions, please contact **(Insert Name, email, and phone number of Bureau RAC)**.

**EXHIBIT 4**

**SAMPLE DECISION LETTER**

DATE: (Month, Day, Year)

MEMORANDUM FOR: (Requestor's Name)  
(Position Title)  
(Bureau/Organization)

FROM: (Supervisor/Deciding Management Official)  
(Position Title)  
(Bureau/Organization)

SUBJECT: Decision – Reasonable Accommodation Request

This is in response to your request for reasonable accommodations under the provisions of the Rehabilitation Act of 1973, as amended, and Department Administrative Order (DAO) 215-10. Your request was made to enable you to: 1) apply/interview for a job, 2) perform the essential functions of your position, or 3) access a benefit or privilege of employment.) **(Select which one(s) apply.)**

On (Date), you submitted a written request for the following accommodation(s) **(briefly describe):**

- I.E. :Parking space at HCHB or RRB because of physical limitations associated with your medical condition that prevent your use of mass/public transportation to commute to work. The use of mass/public transportation is too lengthy and is causing aggravation of your existing medical condition.
- I.E.: Flexible work schedule and flexible telework for short periods in the mornings or evenings, potentially on multiple days a week depending on symptoms, and to better management conditions when symptoms flare up.

**1. If the original request is GRANTED/APPROVED, as requested, include the following.**

Your request is approved and will begin on \_\_\_\_\_. **(Include any information about implementation of the RA that the requestor needs to know.)**

**2. If GRANTING an alternate accommodation, include the following.**

Although I am not providing the specific accommodation you requested, I am offering an alternate accommodation which I have determined to be reasonable and effective. **(Briefly describe the alternate accommodation and the reason why it was chosen instead of what was requested).**

**3. If the accommodation is DENIED, provide the following.**

Your original request was not approved because (select which one(s) apply):

- The accommodation would require removal of an essential function of the job
- You do not have a disability covered by the Rehabilitation Act
- Medical documentation provided did not support the request
- The accommodation requested would not be effective
- Accommodation would require lowering of a performance or production standard
- Accommodation would cause an undue hardship to the operation of the unit
- Allowing you to work would create a direct threat or safety issue for you and/or others

**4. Provide a detailed reason for the denial of the original request:**

**5. The following information must be included on all decisions notifications.**

Pursuant to DAO 215-10, the Department shall provide a reasonable accommodation for a qualified employee with a disability unless to do so would impose an undue hardship on the agency. A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy equal benefits and privileges of employment. The Department is required to provide an effective accommodation that enables you to perform the essential functions of your job and enjoy the benefits and privileges of employment, but not necessarily the accommodation of your choosing. **(Include the following sentence ONLY when the accommodation has been GRANTED)**. The accommodation provided by the agency is considered to be the most effective and appropriate in consideration of your medical condition, functional limitations, the essential functions of your position, and the operational needs of the office.

If your request has been denied or you feel the accommodation provided does not meet your needs, you may request reconsideration from a higher-level management official in your official chain of command. Any request for reconsideration must be received within 15 business days from the date you receive this decision. You must follow the processes outlined in DAO 215-10, including submitting with your reconsideration request, a copy of the decision, and any additional information or arguments you wish to submit.

You also have the right to seek redress in an appropriate forum as outline below.

To initiate an EEO complaint, you must bring the matter to the attention of an EEO counselor within 45 calendar days of receipt of this decision notice. To do so, or for additional information, contact the [insert EEO Office information] or the Office of Civil Rights at 202-482-8121.

For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement. Contact your local union representative for information.

Pursuing reconsideration of a denial will not toll or extend mandatory time limits for initiating EEO complaints or other grievance procedures.

If the accommodations provided for herein are not meeting your needs, are no longer required, or additional accommodations are necessary, immediately notify me or **(insert Bureau RAC name, telephone number, and email)**. If you have any questions about this decision or the reasonable accommodation process, please do not hesitate to contact me or **(Bureau RAC name)**.

**Receipt Acknowledgment**

Please sign and date to acknowledge receipt of this memorandum.

\_\_\_\_\_  
Requestor Signature

\_\_\_\_\_  
Date

cc: **Name of RAC**, Reasonable Accommodation Coordinator