



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

JAN 10 2018

PERSONNEL BULLETIN NO. 17-18

SUBJECT: Personal Assistance Services

1. PURPOSE. This Personnel Bulletin outlines the Department of the Interior's procedures for the administration and management of Personal Assistance Services (PAS) as directed by the Final Rule for Equal Employment Opportunity Commission (EEOC) 29 CFR Part 1614, Affirmative Action for Individuals with Disabilities in Federal Employment.

2. AUTHORITIES/REFERENCES.

- a. 29 CFR Part 1614, Affirmative Action for Individuals with Disabilities in Federal Employment

3. SCOPE. This Personnel Bulletin directs Bureaus to provide PAS to employees who, because of targeted disabilities, require such assistance during work hours or in order to participate in work-related travel.

4. DEFINITIONS.

4.1. Personal Assistance Services. Services that assist a person with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example assistance with removing and putting on clothing, eating, and using the restroom. These services differ from services that help the individual perform job-related tasks (e.g., sign language interpreters for individuals who are deaf, or readers for individuals who are blind or have learning disabilities) or specific job functions (e.g., reviewing documents).

4.2. Personal assistance provider. An employee or independent contractor whose primary job functions include provision of PAS.

4.3. Targeted disability. A disability that is designated as a "targeted disability or health condition" on the U.S. Office of Personnel Management's Standard Form 256 or that falls under one of the first 12 categories of disability listed in Part A of question 5 of the EEOC's Demographic Information on Applicants form.

4.4. Reasonable accommodation. A modification or adjustment to a job or worksite that makes it possible for qualified employees with disabilities to perform the essential functions of the position in question.

4.5 Undue hardship. A specific type of accommodation that causes significant difficulty or expense to accomplish. Accommodations that are extensive, substantial or disruptive may fall within the realm of undue hardship.

5. POLICY.

5.1. PAS shall be provided to employees who, because of targeted disabilities, require such assistance during work hours or in order to participate in work-related travel—unless doing so would pose an undue hardship. Supervisors may also provide PAS to other employees with disabilities that do not meet the definition of “targeted” disability if they so choose. The Department’s obligation to provide reasonable accommodation to qualified individuals with disabilities is unaffected by this requirement.

5.2. PAS differ from medical services and services that are typically performed by someone who often has the job title of "personal assistant." PAS are non-medical services such as helping an individual take off and put on a coat, eat, and use the restroom. These services are needed by individuals whose specific disabilities make it difficult for them to perform such daily living activities on their own. PAS providers may perform tasks unrelated to PAS, but only to the extent that doing so does not result in failure to provide PAS required in a timely manner.

5.3 Requesting PAS: Employees interested in requesting PAS should follow the procedures outlined in Personnel Bulletin 14-01, Reasonable Accommodation for Individuals with Disabilities.

5.4. Choosing a PAS Provider: The supervisor ultimately chooses the PAS provider; however, when selecting someone who will provide PAS to a single individual, primary consideration must be given to the individual's preferences to the extent permitted by law. Several options exist for employing a PAS provider. For example, Bureaus may use an independent contractor or a federal employee. Supervisors should coordinate with their servicing Human Resources Office (HRO) to explore these and other options.

5.5. Undue Hardship Determinations: Undue hardship occurs if providing PAS causes significant difficulty or expense incurred by the Department. In such a case, the requested PAS does not have to be provided. Determination of undue hardship is always made on a case-by-case basis, considering such factors as:

5.5.1. Nature and cost of the accommodation;

5.5.2. Overall size of the program with respect to the number of employees, number and type of facilities, and size of budget;

5.5.3. Type of operation, including composition and structure of the workforce; and

5.5.4. Impact of the accommodation on the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

5.5. When assessing whether a request for PAS presents an undue hardship, the resources of the Department, not just those of the Bureau or Office, should be considered. If the supervisor

believes an undue hardship exists, he/she will notify their servicing HRO who, in turn, shall coordinate with the Department's Reasonable Accommodation Program Manager who is responsible for providing guidance on PAS.

6 POINT OF CONTACT. The Department's Office of Human Resources, Workforce Relations Division serves as the point of contact for this policy.



Raymond A. Limon
Director, Office of Human Resources

Attachments:

EEOC Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act

Personnel Bulletin 14-01, Reasonable Accommodation for Individuals with Disabilities



Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation Act

September 18, 2017

On January 3, 2017, the Equal Employment Opportunity Commission (EEOC or Commission) 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.

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) to individuals 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 targeted disabilities, require assistance to perform basic activities of daily living, like eating and using the restroom. This document answers some of the most common questions about this new regulatory requirement.

Background

1. What do the new regulations say about PAS?

The regulations require federal agencies to provide PAS, in addition to reasonable accommodations, to certain employees who have targeted disabilities unless doing so would impose an undue hardship on the agency. They also state that an agency cannot discriminate against an individual based on the need for PAS.

2. Why do the regulations include the requirement to provide PAS?

Some individuals with targeted disabilities cannot work unless PAS are provided to them in the workplace. The services will allow such individuals to enjoy the opportunity and independence offered by paid employment. They also will reduce the amount of taxpayer funds spent on public disability benefits by allowing such individuals to receive paid jobs in the competitive workplace.

3. When must agencies start complying with the new PAS requirement?

Agencies will be required to provide PAS beginning on January 3, 2018, one year after the regulations were issued. This is called the "applicability date." The delayed applicability date will allow agencies to modify their existing practices. EEOC will provide agencies with training and technical assistance during the time leading up to the applicability date.

4. Are there any reporting requirements regarding the agency's implementation of the PAS procedures?

Yes. Each agency will be required to prepare annually, and submit to EEOC for approval, an affirmative action plan that includes a copy of its PAS procedures and information on its efforts to implement them.

Do the New Regulations Apply to My Organization?

5. Do the new regulations apply to all federal agencies?

Yes. All federal agencies, including federal agencies with fewer than 1000 employees, are subject to the new regulations, including the sections that require PAS. There are no waiver provisions for small agencies or blanket exclusions; all agencies are expected to budget for PAS just as they would for reasonable accommodations under the Rehabilitation Act.

6. Does the PAS requirement apply to private businesses?

No. These regulations apply only to the federal government and do not apply to private businesses.

7. Does the PAS requirement apply to federal contractors, recipients of federal funds, or state and local government employers?

No. Note, though, that federal contractors are subject to a different set of affirmative action requirements under Section 503 of the Rehabilitation Act. The new Section 501 regulations do not affect those requirements.

What Are PAS?

8. Do the new regulations define PAS?

Yes. The regulations state that "PAS" means "assistance with performing activities of daily living that an individual would typically perform if he or she did not have a disability, and that is not otherwise required as a reasonable accommodation, including, for example, assistance with removing and putting on clothing, eating, and using the restroom." The regulations do not attempt to list every activity that might constitute PAS. For example, someone providing PAS might push a wheelchair or assist someone with getting into or out of a vehicle at the worksite.

9. Do PAS include medical services?

No. PAS do not include, for example, performing medical procedures (e.g., administering shots) or medical monitoring (e.g., monitoring blood pressure).

10. Do PAS include helping an individual with a targeted disability to perform his or her own job functions?

No. PAS allow individuals to perform activities of daily living that an individual would typically perform if he or she did not have a disability. PAS do not help individuals with disabilities perform their specific job functions, such as reviewing documents or answering questions that come through a call-in center. PAS differ from services that help an individual to perform job-related tasks, such as 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. Those services are required as reasonable accommodations, if the individual needs them because of a disability and providing them does not impose undue hardship on the agency. An agency's obligation to provide reasonable accommodations is unaffected by the new regulations.

When Must an Agency Provide PAS?

11. Do the new regulations place limits on an agency's obligation to provide PAS?

Yes. Agencies are only required to provide PAS to an individual if-

- o the individual is an employee of the agency;
- o the individual has a targeted disability;
- o the individual requires the services because of his or her targeted disability;
- o the individual will be able to perform the essential functions of the job, without posing a direct threat to safety, once PAS and any required reasonable accommodations have been provided; and
- o providing PAS will not impose undue hardship on the agency.

12. What are "targeted disabilities"?

Targeted disabilities are a subset of conditions that would be considered disabilities under the Rehabilitation Act. The federal government has recognized that qualified individuals with certain disabilities face significant barriers to employment, which for some people may include lack of access to PAS in the workplace, that are above and beyond the barriers faced by people with the broader range of disabilities. The federal government calls these "targeted disabilities."

A list of targeted disabilities can be found here: https://www.opm.gov/Forms/pdf_fill/sf256.pdf. Note, however, that not everyone with a targeted disability will be entitled to PAS under the new regulations, because only some individuals with targeted disabilities require assistance with basic activities like eating and using the restroom. 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.

13. Does the requirement apply to both existing employees and to new employees?

Yes. Agencies must provide PAS to an employee if the conditions listed in the answer to Question 11 have been met, 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 the regulations' applicability date, provided that the conditions listed in the answer to Question 11 have been met.

14. Are agencies required to provide PAS during work-related travel?

When an agency's 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, agencies are 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, agencies are 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.

15. Are agencies required to provide PAS to help employees commute to work?

No. Agencies are only required to provide PAS when the individual is working, unless he or she is on work-related travel (see answer to Question 14).

16. Are agencies required to provide PAS during telework?

Yes, if the conditions listed in the answer to Question 11 have been met and the individual is entitled to telework under the agency's telework policy or as a reasonable accommodation. Agencies are cautioned not to revoke an individual's permission to telework because he or she is entitled to PAS under the new regulations.

17. Are agencies required to provide PAS during employer-sponsored events such as holiday parties?

Yes. Under the new regulations, 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. The Rehabilitation Act requires reasonable accommodations that enable employees with disabilities to enjoy "benefits and

privileges of employment," equal to those enjoyed by similarly situated employees without disabilities. Benefits and privileges of employment include physical access to spaces available to all employees (such as cafeterias or break rooms), employer-sponsored training, and employer-sponsored social events.

Who Will Perform the Services?

18. Are PAS providers federal employees or contractors?

Agencies may use federal employees, independent contractors, or a combination of employees and contractors. Agencies also have discretion as to how to classify their PAS providers concerning pay grade, benefits, and leave.

19. May agencies ask existing employees to provide PAS?

It depends on the situation. It is not appropriate to require someone who does not provide PAS or similar services as part of his or her job to assist another employee with tasks such as eating and using the restroom.

However, the regulations do not prohibit agencies from assigning the responsibility to perform a personal assistance service to an existing employee who already performs a similar service as part of his or her regular job. Agencies that utilize this strategy should ensure that the resulting number of providers is sufficient to provide PAS in a timely manner to any agency employee who is entitled to them.

20. Are agencies permitted to utilize a pool of PAS providers, rather than assign one PAS provider to each employee who needs one?

Yes, as long as each individual who is entitled to PAS under the regulations 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 agency should increase the number of available providers or arrange for dedicated PAS providers.

21. Must an agency consider an employee's choice of a particular PAS provider?

If an agency 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), the agency 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. An agency may choose a different provider 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 (see answer to Question 20), or if the agency decides to have appropriate existing employees provide PAS, again, for reasons of cost or convenience (see answer to Question 19).

22. Is the agency required to find a PAS provider of the same gender as the employee?

Although PAS include assistance with activities that may be considered personal, PAS providers render this assistance in a professional capacity. The central question is whether the individual can provide the necessary services. Generally, providers of one gender are no more qualified than those of another to provide such services. However, as noted in the answer to Question 21, when hiring a PAS provider who will be assigned to a single individual, the agency must give primary consideration to the employee's preferences to the extent permitted by law.

23. Is an employee permitted to bring his or her own PAS provider to work instead of having the agency provide one?

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 agency assume the cost of providing the services. However, if the individual wants the agency to assume the cost of providing the services, the agency may have reasons to choose a different provider (see answer to Question 21).

24. What if the position held or sought by the individual with a targeted disability requires a security clearance?

If an individual's PAS provider would have access to classified information, the agency should find a provider who has, or who likely could get, the appropriate security clearance. The Commission acknowledges that, 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, the agency may consider the individual to be unqualified for the position.

25. What happens if the person who provides PAS for an employee is unavailable?

An agency should instruct PAS providers to notify it of any absences as soon as possible, so that it 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 agency utilizes any, or allowing the individual to telework if the employee can work at home without the need for PAS provided by the agency.

26. Are agencies permitted to assign non-PAS job functions to PAS providers?

Yes. Many agencies that currently provide PAS employ individuals who also do other work-related tasks. Sometimes these work-related tasks are those that are required as a reasonable accommodation (see the answer to Question 10). Other times, the work-related tasks are the type that any assistant would provide. However, if an agency does assign additional duties to its 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.

27. Where can an agency find PAS providers?

12/14/2017 Questions and Answers: Federal Agencies' Obligation to Provide Personal Assistance Services (PAS) under Section 501 of the Rehabilitation ...

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. Additional resources 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.

What Is the Process for Getting PAS?

28. How does an employee request PAS?

As with reasonable accommodation, an individual may request PAS by informing a supervisor, human resources professional, or other suitable individual that he or she needs assistance with daily life activities because of a medical condition. 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.

29. Is providing PAS an HR/OCHCO function or an EEO/OCR function?

Each agency may determine whether to assign the responsibility of processing requests for PAS and arranging for PAS to HR/OCHCO or EEO/OCR staff, provided that they are given sufficient resources and training to comply with the new regulations. However, the regulations provide that 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 for reasonable accommodations. See 29 C.F.R. § 1614.203(d)(5)(v). Agencies therefore may find it most effective to assign responsibility for providing PAS to a Disability Program Manager, if the agency has one, or to the individual(s) responsible for processing requests for reasonable accommodation.

30. Are agencies required to have written procedures for processing requests for PAS?

Yes. Many federal employees will be unfamiliar with the new PAS requirement, so it is important to have written procedures in place by the time the regulations come into effect. An agency may create separate PAS procedures or, alternatively, state in its reasonable accommodation procedures that 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 for reasonable accommodations.

31. When may an agency deny a request for PAS?

The agency is only required to provide PAS if the requesting employee is entitled to them under the regulations. Therefore, an agency may deny a request for PAS if-

- o the requestor is not an employee of the agency;
- o the requestor does not have a targeted disability;
- o the targeted disability does not create a need for PAS;
- o the requester is not able to perform the essential functions of the job, even with PAS and any reasonable accommodations;
- o the requester would create a direct threat to safety on the job, even with PAS and any reasonable accommodations; or
- o providing PAS would impose undue hardship on the agency.

32. How does an agency determine whether an individual has a targeted disability that creates a need for PAS?

To determine whether a requesting individual is entitled to PAS, and, if so, the nature of the required services, an agency should ask the employee what types of PAS he or she needs using the same type of informal, interactive process used for reasonable accommodation. The agency should expect the process to be brief in most cases. An employee is not likely to request assistance with activities such as eating or using the restroom unless it is truly necessary, and, in general, such assistance is only necessary for individuals who have obvious targeted disabilities like paralysis and missing limbs. Where it is obvious that an employee has a targeted disability and needs the requested services, the agency may not require the individual to provide medical documentation in support of the request.

For further information on the interactive process, see the EEOC's [Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act](#).

33. How does an agency determine whether providing PAS would impose undue hardship on the agency?

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 agency as a whole.

34. Are there enforcement provisions in the event that an agency denies a request for PAS?

Agencies that fail to meet any of the regulation's requirements risk having their affirmative action plans disapproved. EEOC will work with agencies to achieve compliance with all such requirements. However, where such efforts are not successful, the Chair of the EEOC may issue a notice to the head of any such noncompliant agency and publicly identify the agency. See 29 CFR § 1614.102 (e). As set forth in the preamble, the regulation takes no position on the availability of a private remedy for affirmative action obligations. The EEOC believes that its procedural regulations governing complaints of discrimination in the federal sector, found at 29 CFR §1614, subpart A, are the most appropriate place to address this question.

35. Are there confidentiality requirements and/or privacy considerations involved in providing PAS?

Yes. The Rehabilitation Act prohibits the disclosure of medical information except in certain limited situations. Generally, information that is otherwise confidential under the Rehabilitation 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.

36. May an employer require an individual requesting PAS to self-identify as a person with a targeted disability on a form, such as OPM's SF 256?

No. An agency cannot require an employee to complete a self-identification form regarding whether he or she is an individual with a disability, such as OPM's voluntary "Self-Identification of Disability" form (SF-256) or any other self-identification form. The agency also cannot make completion of the form a condition of receiving PAS. Note, however, that the agency still may 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. See 29 C.F.R. § 1614.203(d)(6)(ii).

How are PAS Funded?

37. Which part of the agency's budget pays for PAS?

Agencies may structure their own budgets as they see fit. However, the resources available to the agency as a whole are considered when determining whether an agency can provide PAS without undue hardship. In the Commission's experience, it is easier for individuals within an agency to determine whether the agency as a whole has sufficient resources to cover a disability-related expense, such as the cost of a reasonable accommodation, if such funds are drawn from a centralized account. The EEOC has produced several resources explaining the undue hardship standard. See, e.g., EEOC, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act* (2002), <https://www.eeoc.gov/policy/docs/accommodation.html>.

38. Is an agency required to provide PAS if the individual can rely on outside sources to provide them at no cost or a reduced cost?

Agencies are entitled to consider all available resources when arranging for PAS, 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, agencies are 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.

39. Is an agency required to pay an employee's family member who provides PAS at work, but who also performs PAS off the job without compensation?

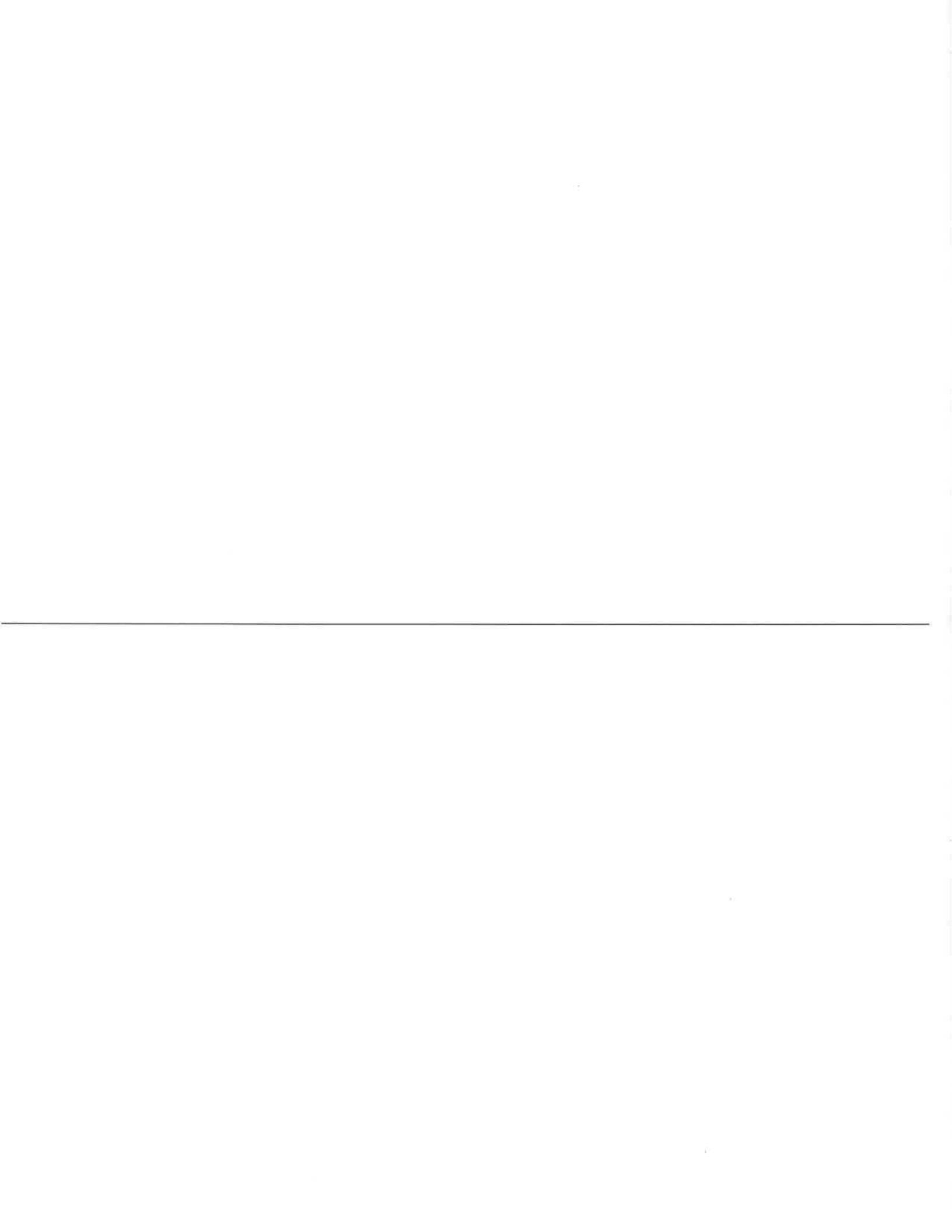
Yes. If that family member is hired as a professional PAS provider at a federal agency, the agency must compensate the family member as either a contractor or federal employee.

40. Are there legal prohibitions against using agency funds to purchase some kinds of personal services that may be needed by an individual with a targeted disability?

No. Although federal agencies are generally not permitted to expend appropriated funds on personal expenses for employees, see 3 Comp. Gen. 433 (1924), those restrictions do not apply to services that agencies are legally required to provide in order to comply with Section 501. (See 4 GAO-RB pt. C, s. 13 (2015) (explaining that "agencies may expend appropriated funds to accomplish the purposes of the Rehabilitation Act when acting under the Act's authority and the regulatory standards that govern its application")).

41. Won't PAS be too expensive?

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 agency as a whole are insufficient to grant a particular individual's request for PAS, the agency may deny the request on the grounds that it would impose an undue hardship. The process of determining whether providing PAS is an undue hardship is the same as the agency uses to determine whether a reasonable accommodation poses an undue hardship.





United States Department of the Interior

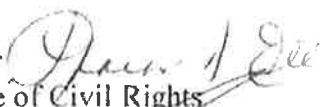
OFFICE OF THE SECRETARY
Washington, DC 20240


FEB 20 2014

CIVIL RIGHTS DIRECTIVE 2014-02

PERSONNEL BULLETIN 14-01

To: Bureau Equal Employment Opportunity Officers
Bureau Human Resources Officers

From: Sharon D. Eller 
Director, Office of Civil Rights

Thomas Mulhern 
Director, Office of Human Resources

Subject: U.S. Department of the Interior Policy and Procedures on Reasonable
Accommodation for Individuals with Disabilities

The attached U.S. Department of the Interior Policy and Procedures on Reasonable Accommodation for Individuals with Disabilities are effective immediately. In accordance with the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act Amendment Act of 2008; 29 Code of Federal Regulations, Part 1630; Code of Federal Regulations, Part 1614.203(b); and the Genetic Information Non-discrimination Act of 2008, the Department will provide reasonable accommodation for the known physical and intellectual limitations of qualified employees and applicants with a disability unless the accommodation imposes an undue hardship on the Department. The policy and procedures described in this document apply to all employees of the Department and applicants for employment with the Department who have a disability as defined by law. This document remains in effect until either rescinded or superseded by the new Departmental Manual Chapter 15 (DM 373 15). The reasonable accommodation procedures, previously released on September 7, 2005, are rescinded.

The policy and procedures on reasonable accommodation are on the Office of Civil Rights website <http://www.doi.gov/eo> and the Office of Human Resources ACCESS Center website <http://www.doi.gov/accesscenter/index.cfm>. For more information on Departmental policy and procedures on reasonable accommodation, contact the Office of Civil Rights, (202) 208-5693 and the Office of Human Resources, (202) 208-5694.

Attachments

cc: Bureau/Office Heads
Office of the Solicitor
Human Capital Officers
Office of Emergency Management
Office of Occupational Health and Safety



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



CIVIL RIGHTS DIRECTIVE NO. 2014-02

FEB 20 2014

PERSONNEL BULLETIN NO. 14-01

SUBJECT: Reasonable Accommodation for Individuals with Disabilities

1. Purpose.

In compliance with the authorities listed below, the Department of the Interior has established policy and procedures for processing reasonable accommodation requests. This Civil Rights Directive (CRD) 2014-02 and Personnel Bulletin (PB) 14-01 supersede Departmental Manual, Part 373, Chapter 15 (373 DM 15), Reasonable Accommodation for Individuals with Disabilities, dated September 7, 2005. This document outlines the requirements and instructions by which Departmental employees will act on requests for reasonable accommodation from employees and applicants for employment. This document remains in effect until either rescinded or superseded by the new Departmental Manual Chapter 15.

2. Authority.

- A. Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791)
- B. Americans with Disabilities Act Amendments Act of 2008 (42 U.S.C. 12101)
- C. 29 CFR Part 1630 (Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act); 29 CFR 1614.203(b) (applying ADA regulations to Rehabilitation Act)
- D. Genetic Information Non-discrimination Act of 2008
- E. Equal Employment Opportunity Commission Management Directive 715

3. Policy.

The Department of the Interior (DOI) will provide reasonable accommodation for the known physical or intellectual limitations of qualified employees and applicants with a disability unless the accommodation would impose an undue hardship on the DOI.

4. Scope.

The policy and procedures in this document apply to all employees of the DOI and applicants for employment with DOI who have a disability as defined by law (see Appendix: Reasonable Accommodation Policy and Procedures).

5. Responsibilities.

- A. *The Director, Office of Civil Rights* is designated as the DOI management official responsible for ensuring there is DOI-wide policy on reasonable accommodation and

that reasonable accommodations are made for qualified employees or applicants with a disability in accordance with applicable laws, regulations, and bargaining unit agreements.

- B. ***The Disability Program Manager (DPM)*** is responsible for the development, implementation, and operation of the bureau/office's disability program— including providing guidance on reasonable accommodation matters related to employees and applicants. The DPM is responsible for promoting equal opportunity and equal access for individuals with disabilities.
- C. The servicing ***Human Resources Officer (HRO)*** is responsible for providing operational human resources services to the bureau/office. The HRO, or designated staff, is responsible for assisting deciding officials in processing reasonable accommodation requests; determining essential functions of the job; identifying effective accommodations; conducting job analyses on vacant positions, in case of reassignment as a last resort; and removing barriers from the hiring process. The HRO is responsible for training human resources specialists who are involved in the application process to recognize requests for reasonable accommodation and handle them in accordance with DOI Reasonable Accommodation Policy and Procedures.
- D. ***Supervisors, managers, and office directors, or designated staff***, shall serve as deciding officials on requests for reasonable accommodations. Deciding officials should consult with appropriate officials, such as the servicing Human Resources Office, Departmental or bureau Disability Program Manager (DPM), facilities managers, information resource management specialists, employment attorneys in the Solicitor's (SOL) Office, or other individuals that can assist in determining appropriate and effective accommodations.
- E. ***SOL employment attorneys*** are responsible for providing legal advice regarding: the Rehabilitation Act, including its prohibitions and requirements; EEOC regulations and enforcement guidance applicable to the Rehabilitation Act and to reasonable accommodation; what constitutes a qualified individual with a disability; requests for reasonable accommodation; and reasonable accommodation assessments and decisions.
- F. ***Employees and applicants for employment*** are responsible for bringing their requests for reasonable accommodation to the attention of the appropriate agency official, for timely providing appropriate supporting medical and/or other documentation upon request, and for participating in the interactive process. Employees and applicants may use an alternate dispute resolution approach to working through their requests with deciding officials. The DOI Office of Collaborative Action and Dispute Resolution is available to provide assistance throughout the reasonable accommodation process, including the reconsideration and appeal phases.

- G. Each *bureau/office* will designate a DPM who has the responsibilities outlined in paragraph 5.B above.
- H. **Management** is responsible for timely decisions once a reasonable accommodation request is received. The deciding official may solicit subject matter experts – such as a medical officer, human resources officer, civil rights officer, or DPM – either individually or by committee, for guidance, information, and assistance in identifying appropriate and effective reasonable accommodation solutions. Conferring with appropriate subject matter experts does not relinquish the deciding official’s responsibility to render a decision, notify the employee or applicant, or provide the accommodation solution within established timelines. Timelines are specified in the Reasonable Accommodation Policy and Procedures. Notwithstanding the timeframes prescribed in the procedures, some accommodations can be provided in less time. In instances where reasonable accommodations can be provided in less time than prescribed in the procedures, bureaus must make every effort to do so. Care must be taken to ensure preservation of confidentiality in processing requests for reasonable accommodation.

6. Information Tracking and Reporting.

- A. **Decision Maker:** The deciding official must complete the Decision Documentation (See Appendix, Reasonable Accommodation Policy and Procedures, Attachment 2) and submit it to the bureau/office Servicing Human Resources Office within **10 business days** of the decision.
- (1) The deciding official must attach to the form copies of all information received as part of processing the request.
 - (2) Medical documents must be protected as required by the Privacy Act (PA) and the Health Insurance Portability and Accountability Act (HIPAA). ***Medical documents received as part of the reasonable accommodation request must be separated from other documents, placed in a sealed envelope marked “HIPAA/PA Documents,” and maintained by the servicing Human Resources Office in secure storage separate from official personnel files.***
 - (3) The bureau/office servicing Human Resources Office must maintain these records for the length of the employee’s tenure with DOI or for five (5) years, whichever is longer.
- B. **The bureau/office EEO Office** will prepare an annual report, to be made available to the DOI, Office of Civil Rights. The report will contain the following information, presented in aggregate:
- (1) the number of reasonable accommodations, by type, that was requested in the application process and whether those requests were granted or denied;


- (2) the jobs (occupational series, grade level, and office) for which reasonable accommodations were requested;
- (3) the types of reasonable accommodations that were requested for each of those jobs;
- (4) the number of reasonable accommodations, by type, for each job that was granted, and the number of accommodations, by type, that was denied;
- (5) the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests were granted or denied;
- (6) the reasons for denial of requests for reasonable accommodation;
- (7) the amount of time taken to process each request for reasonable accommodation;
- (8) the sources of technical assistance that were consulted to identify possible reasonable accommodations; and
- (9) a qualitative assessment of the bureau/office's reasonable accommodation program, including any recommendations for program improvement or changes in the reasonable accommodation practices and procedures.

C. The DOI, Office of Civil Rights shall prepare an aggregate report making such information available to all bureau/office EEO Offices and Human Resources Offices. The report shall be retained for at least three (3) years. Upon request from EEOC, the report will be used to provide information that tracks DOI's performance with regards to the provision of reasonable accommodation to individuals with disabilities.

7. **Point-of-Contact(s).** The Departmental point of contacts for this policy matter are the Department of the Interior, Office of Civil Rights, (202) 208-5693 and the Department of the Interior, Office of Human Resources, (202) 208-5694.


Sharon D. Eller, Director
Office of Civil Rights

2/20/2014
Date


Thomas Mulhern, Director
Office of Human Resources

2/20/2014
Date

Attachment: Appendix: Reasonable Accommodation Policy and Procedures

APPENDIX: Reasonable Accommodation Policy and Procedures

1. Purpose:

- 1.1. The Department of the Interior (DOI) Reasonable Accommodation Policy and Procedures, Appendix, with Attachments 1-9, supplements the Civil Rights Directive (CRD) 2014-02 and Personnel Bulletin (PB) 14-01, Reasonable Accommodation for Individuals with Disabilities and sets policy for DOI bureaus and offices (collectively referred to as Bureaus throughout this appendix).
- 1.2. Bureau supplements shall be consistent with the policy and intent of CRD 2014-02 and PB 14-01, including this appendix in its entirety.

2. Goals: The goals of the Department's Reasonable Accommodation (RA) program are to ensure:

- 2.1. DOI complies with federal law and regulation
- 2.2. Eligible employees are assured an effective accommodation to the greatest extent possible preserving their expertise and contribution to the Department's mission
- 2.3. Eligible employees are treated fairly throughout the RA process
- 2.4. DOI's RA program is fully transparent.

3. Definitions:

- 3.1. **Essential functions of a job:** job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be "essential" if, among other things, the position exists specifically to perform that function, there are a limited number of other 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/her ability to perform it. Determination of the essential functions of a position must be conducted on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic position description. The term "essential functions" does not include the marginal functions of the position.
- 3.2. **Genetic Monitoring:** the periodic medical examination of employees to determine whether any of their genes have been affected by the toxic substances they use or are exposed to in performing their jobs.
- 3.3. **Genetic Test:** the "analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations."
- 3.4. **Genetic Service:** a health service, including genetic tests, provided to obtain or interpret genetic information for diagnostic or therapeutic purposes, or for purposes of genetic education or counseling.

3.5. **Individual with a disability:** is a person who has a physical or intellectual impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Individuals must fit either the "actual" or "record of" definition to be eligible for a reasonable accommodation. Individuals who only meet "regarded as" are not entitled to a reasonable accommodation. Mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability.

3.6. **Physical or intellectual impairment:**

3.6.1. is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as, but not limited to, neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory (including speech organs), genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine, or any intellectual or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

3.6.2. An impairment that is episodic or in remission is a disability if it substantially limits a major life activity when active.

3.7. **Reasonable accommodation:** a modification or adjustment to a job or worksite that makes it possible for qualified employees with disabilities to perform the essential functions of the position in question. There are two other categories of reasonable accommodation.

Modifications or adjustments:

3.7.1. to a job application process that enable a qualified applicant with a disability to be considered for a job.

3.7.2. that enable employees with disabilities to enjoy equal benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.

3.8. **Major life activities:** are functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sleeping, speaking, breathing, learning, working, sitting, standing, lifting, bending, and mental processes such as thinking, concentrating, and interacting with others and incorporates major bodily functions (e.g. functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).

3.9. **Qualified individual with a disability:** is a person who satisfies the skill, experience, education and other job-related requirements of a position that the individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

3.10. **Record of such an impairment:** having a history of, or being classified (or misclassified) as having an intellectual or physical disability that substantially limits one or more major life activities.

3.11. **Regarded as having such impairment:** having an actual or perceived physical or intellectual impairment, whether or not that impairment substantially limits major life activities.

3.12. **Undue hardship:** a specific type of accommodation which causes significant difficulty or expense at the Department level (not bureau or staff office) to accomplish. Accommodations that are extensive, substantial or disruptive may fall within the realm of undue hardship. Alternatives will be explored to determine if there are other effective accommodations.

3.13. **Protected Genetic Information:** information about:

3.13.1. An individual genetic test

3.13.2. The genetic tests of an individual's family members

3.13.3. The occurrence of a disease, or medical condition or disorder in family members of the individual (family medical history).

4. Decision Making Authority:

4.1. Supervisors, managers, and office directors, or designated staff, shall serve as deciding officials on requests for reasonable accommodations. Deciding officials should consult with appropriate officials, such as the servicing human resources office, Departmental or bureau Disability Program Manager (DPM), facilities managers, information resource management specialists, employment attorneys in the Solicitor's (SOL) Office, or other individuals that can assist in determining appropriate and effective accommodations.

4.2. Deciding officials must engage in the interactive process with the individual requesting the accommodation. A request for reasonable accommodation is the first step in an informal, interactive process between the individual and the supervisor. Resources, such as the DPM and the Office of Collaborative Action and Dispute Resolution, are available to help ensure a productive communication process.

4.3. Deciding officials are encouraged to contact SOL employment attorneys with questions and requests for legal advice regarding the Rehabilitation Act, including its prohibitions and requirements, and the EEOC's regulations and enforcement guidance. SOL employment attorneys are available to provide legal advice and guidance regarding, among other things, what constitutes a "qualified individual with a disability," and request for reasonable accommodation.

5. Responsibilities: Refer to Civil Rights Directive 2014-02 and Personnel Bulletin 14-01.

6. Process Description: There are five possible phases of the RA process: initiation of request, consideration, decision, reconsideration, and appeal. Attachment 4 is a flow chart of the RA process and Table 1 summarizes the time limits associated with reasonable accommodation processing. The remainder of this section is an accompanying narrative.

6.1. Initiation of Request Phase:

6.1.1. In this phase, the employee or applicant, or someone on his/her behalf, submits a request for an accommodation. If, on behalf of an employee or applicant, an accommodation is requested by a family member, health professional, or other representative, a signed statement should be provided by the employee or applicant

stating the name of the representative and authorizing him/her to speak with agency officials and engage in the interactive process.

6.1.2. An individual with a disability may submit his/her request for accommodation to any of the following: his/her supervisor; a supervisor or manager in his/her immediate chain of command; the Equal Employment Opportunity Officer, the Human Resources Officer, or the Disability Program Manager. An applicant with a disability may submit his/her request to any agency employee with whom he/she has contact or the Human Resources Officer. Additional information, as appropriate, may be obtained through the interactive process which follows the request. Communication is a priority throughout the entire process; particularly when the specific effective accommodation is not obvious or the parties are considering different forms of reasonable accommodation. Alternative dispute resolution (ADR) can be utilized throughout the reasonable accommodation process, to include the reconsideration and appeal phases. In the event an employee opts for ADR, the timeframes specified in this appendix are suspended until the ADR process has concluded for the following:

6.1.2.1. Responding to requests for accommodation.

6.1.2.2. Processing requests for reconsideration of Reasonable Accommodation decisions.

6.1.2.3. Processing Reasonable Accommodation appeals.

6.1.3. A verbal request for accommodation is deemed accepted when made. The recipient of the verbal request must not wait until it is in writing to action the request.

6.1.4. If medical information is required and the employee or applicant is unable to provide sufficient information in support of the request, the deciding official may request that the individual be examined by a healthcare professional of the organization's choice and at the organization's expense. Any such medical examination must be limited to determining the existence of a disability and/or the functional limitations that require an accommodation. Where a medical examination is warranted, the deciding official must explain to the individual that failure to agree to take the medical examination could result in a denial of the accommodation.

6.1.5. If the employee fails to provide required documentation (medical or other) in a timely manner, the request for accommodation is returned to the employee with the explanation that the request could not be considered due to the lack of requested documentation.

6.2. **Consideration Phase:** In this phase, management determines whether or not to provide the accommodation or whether to present an alternative accommodation. After a request from a qualified individual with a disability is received, the request is reviewed to determine if it is reasonable and effective. In the context of job performance, this means that the reasonable accommodation enables the individual to perform the essential functions of the position.

6.3. **Decision Phase:** In this phase, management notifies the employee/applicant of the decision to provide the requested accommodation, not provide an accommodation or present an alternative accommodation. The decision memorandum shall be emailed, mailed or presented to the individual within 15 business days or sooner. If medical documentation is required by the

deciding official, the deciding official will issue a decision within 15 business days from the date the official received the required medical documentation.

6.3.1. If there is a delay in processing the request for reasonable accommodation, the deciding official must investigate whether there are temporary measures that can be taken to assist the individual. Additionally, the deciding official must notify the individual of the reason for the delay. To the extent possible, the individual must be kept informed of the expected completion date.

6.3.2. In instances that may require expedited processing of reasonable accommodation requests (i.e., enable an individual to apply for a job or to participate in a specific agency activity that is scheduled to occur shortly), the deciding official must make every effort to complete the process quickly.

6.3.3 If the employee has requested a type of reasonable accommodation that he/she is likely to need on a repeated basis (i.e., sign language interpreting), he/she cannot be required to submit a formal written request each time the accommodation is needed. Once a reasonable accommodation is approved the first time, subsequently, the employee may obtain the accommodation by verbal notice to the appropriate official.

6.3.4. Denials of requests for reasonable accommodation must be in writing and specifically explain the reasons the request was denied (i.e., why the medical documentation is inadequate to establish that the individual has a disability or needs an accommodation; why the requested accommodation would not be effective; or why the accommodation would pose an undue hardship). Denials must include information about the individual's right to file an EEO complaint and to invoke other statutory processes as well as information about the availability of ADR.

6.4. **Reconsideration Phase:** In this phase, the employee/applicant who disagrees with the decision made may ask the deciding official to reconsider the decision. The employee/applicant may provide additional information/documents in support of the request for reconsideration. Response to the request for reconsideration should be provided in no more than ten business days from receipt of the request or receipt of additional information, if provided.

6.5. **Appeal Phase:** In this phase, if reconsideration did not result in a reversal of the initial decision, the employee/applicant may appeal the decision to the next level of management. The employee/applicant may provide additional information in support of the appeal. Response to the appeal should be provided in no more than ten business days from receipt of the appeal or receipt of additional information, if provided. There is no higher level of appeal after this phase.

TABLE 1 - TIME LIMITS

Action	Business Day Limit
Forwarding RA requests to the supervisor if received by any other employee	10
Decision memo provided to requestor when no medical documents are required	15
Providing an approved accommodation	20
Decision memo provided to requestor when medical documents are required	10 from date medical information received
Notification of Delayed Implementation of an RA	Every 10 until fully implemented
Decision of a Request for Reconsideration	10
Decision of an Appeal of a Reconsideration Decision	10

Notwithstanding the timeframes prescribed by these procedures, some accommodations can be provided in less time. In instances where reasonable accommodations can be provided in less time than prescribed in these procedures, bureaus should make every effort to do so.

7. Documentation:

7.1. Requests for RA must include (Initiation Phase):

7.1.1. When the disability is clear and apparent: a written (email or memo) or verbal request from the applicant or employee asking for the RA and how the requestor would like to be advised of the outcome of the request (mail, email, in-person - may not be by phone).

7.1.2. When the disability is not obvious, not already known or the employee has not already provided sufficient information to establish the existence of the disability, the employee/applicant must provide:

7.1.2.1. A written (email or memo) or verbal request specifying the reason for the RA and the specific form of RA desired, how the employee/applicant would like to be advised of the outcome of the request (mail, email, in-person - may not be by phone) and if there is an urgency associated with the request (and if so, what it is).

7.1.2.2. A signed statement from a medical professional (physician or an occupational health specialist such as an occupational health nurse or occupational nurse practitioner or occupational physician assistant). The statement must be on the provider's letterhead and must include the following elements:

7.1.2.2.1. Requestor's name.

7.1.2.2.2. The nature, severity, and duration of individual's impairment;

7.1.2.2.3. The activities that the impairment limits;

7.1.2.2.4. The extent to which the impairment limits the individual's ability to perform the activities; and

7.1.2.2.5. Why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how the reasonable accommodation will assist the employee to perform the essential functions of his/her job or enjoy a benefit of the workforce, or, in the case of an applicant, assist him/her with the application process.

7.2. The deciding official may request medical documentation if it is not provided by the employee/applicant only when the disability is not known, when the disability is not apparent, or when the deciding official does not understand how the requested accommodation will enable the requestor to perform the essential functions of his/her job or, in the case of an applicant, assist in the job application process. Attachment 9 provides a sample "Request for Medical Information."

7.3. Documentation during the Consideration and Decision Phases:

7.3.1. Includes a decision memorandum signed by the deciding official.

7.3.2. The decision memorandum shall consider all the criteria in Attachment 2, and shall be in the format outlined in Attachment 3. Each item in paragraph A2.7 must be addressed in the decision memorandum.

7.4. Documentation during the Reconsideration and Appeal Phases:

7.4.1. Reconsideration requests and appeals must include all previously submitted documents and decision memorandum.

7.4.2. Requests for reconsideration and appeals must include the reason for the request/appeal, any new information, and the specific form of RA requested.

7.4.3. A decision memorandum by the reconsideration decision authority is required using the format in Attachment 3.

7.4.4. A decision memorandum by the appeal authority is required using the format in Attachment 3.

7.5. Special Considerations for Medical Documents.

7.5.1. Medical documents must be protected as required by the Privacy Act and the Health Insurance Portability and Accountability Act. It is expected that the immediate supervisor and human resources, will have access to medical documents necessary to consider the reasonable accommodation request. At the request of the deciding official, other individuals, such as the DPM and SOL, may be granted access to medical information if those individuals need access to the information to provide guidance or consultative services to the deciding official.

7.5.2. Where medical information is disclosed, the disclosing official shall inform those individuals to whom the information was released that the information is confidential and covered by various federal laws and executive orders. Medical information is not disclosed except:

7.5.2.1. With consent of the individual, first aid and safety personnel may be told if the disability might require emergency treatment;

7.5.2.2. Government officials may be given information necessary to investigate DOI compliance with the Rehabilitation Act;

7.5.2.3. To workers' compensation offices or insurance carriers when part of a workers' compensation claim;

7.5.2.4. To EEO officials to maintain records, evaluate, and report on bureau's performance; or

7.5.2.5. To comply with a federal court order.

7.5.2.6. Protected genetic information and information about an employee's request for or receipt of genetic services may be provided in limited circumstances to:

7.5.2.6.1. The employee;

7.5.2.6.2. A person conducting research that complies with 45 C.F.R. Part 46, which concerns research, involving human subjects;

7.5.2.6.3. Individuals or organizations if required by federal law;

7.5.2.6.4. The United States Congress or US Federal Court in response to a congressional subpoena or an order from a court with competent jurisdiction; or

7.5.2.6.5. Executive branch officials investigating compliance with Executive Order 13145.

7.5.3. While medical documents, when necessary, are expected to be part of the process, once received, they must be separated from other documents, placed in a sealed envelope marked "HIPAA/PA Documents," and maintained in secure storage separate from official personnel files by the servicing human resource office.

7.5.4. After the reasonable accommodation process is complete, medical documents are sealed in a separate envelope from other case documents and filed in a secure location, separate from official personnel files by the servicing human resource office.

7.6. All requests for, and provision of, reasonable accommodations and associated documents are confidential and must be appropriately protected from disclosure. For example, a manager or employee involved in the process must not disclose that an employee is receiving a reasonable accommodation.

7.7. Organizations are required to maintain information and provide reports as outlined in CRD 2014-02 and PB 14-01.

8. Conditions Associated With, and Types of Reasonable Accommodation:

8.1. Conditions Associated with Reasonable Accommodation.

8.1.1. Accommodations shall not include changing the essential functions of a job.

8.1.2. The need for accommodation can be reduced if organizations implement practices that will reduce barriers to effective workplace practices and job design.

8.1.3. Organizations (bureaus and staff offices) should consider establishing a central pool of readers and interpreters, and implementing funding mechanisms that will avoid charging individual offices for the cost of accommodations.

8.1.4. Organizations are expected to limit impediments that may cause unnecessary delay in providing reasonable accommodation, by reviewing and modifying, in advance of a specific request, policies that might affect the bureau's ability to respond promptly to requests for reasonable accommodation. For example: the purchasing or leasing of equipment; the hiring of, or contracting for, readers, interpreters, or other assistants; and the flexibility to approve leave or to restructure work schedules.

8.2. Accommodations are individualized to meet the needs of the requestor. The deciding official will consider a broad range of options to appropriately accommodate the requestor.

8.2.1. Expense may be a factor when considering reasonableness. For example, if both a special piece of hardware and a specialized software program can provide an appropriate and effective accommodation, the less expensive alternative may fall within the realms of being a reasonable accommodation and therefore should normally be provided. Employees/applicants are entitled to effective and reasonable accommodations, but not necessarily entitled to the accommodation of his/her choice.

8.2.2. Examples of the kinds of actions that may constitute reasonable accommodation are (not an exhaustive list):

8.2.2.1. Making facilities readily accessible to and usable by a person with a disability.

8.2.2.2. Job restructuring (does not include changing the essential duties of the position), including part-time or modified work schedules.

8.2.2.3. Acquisition or modification of equipment or devices.

8.2.2.4. Appropriate adjustment or modification of examinations (does not include changing examination questions).

8.2.2.5. Provision of readers and interpreters.

8.2.2.6. Accommodations for meetings, conferences, training and seminars (e.g. interpreters, specific seating arrangements, tables that accommodate wheel chairs).

8.2.2.7. As a last resort, reassignment which may include reassignment out of the home bureau if the Department has an appropriate placement. Reassignment is not available to job applicants - only current employees.

8.2.2.7.1. When no other form of accommodation is appropriate, reassignment must be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position he/she holds, with or without reasonable accommodation.

8.2.2.7.2. Reassignments may be made only to a vacant position. The law does not require that agencies create new positions or move employees from their jobs in order to create a vacancy.

8.2.2.7.3. Detailed guidance for implementing this accommodation is included in Personnel Bulletin 08-09, May 2008. The deciding official should be aware of several key policies associated with a reassignment which include:

8.2.2.7.4. If the deciding official determines that no reasonable accommodation will enable the employee to perform the essential functions of his/her position, the deciding official must, in consultation with the employee, consider reassignment of the employee to a vacant funded position for which he/she is qualified. The determination on qualifications will be made by the deciding official, in consultation with the Servicing Human Resources Officer and DPM. If any such position(s) is identified, a determination will be made as to whether the employee would need an accommodation to perform in any such position.

8.2.2.7.5. Reassignment to a vacant funded position may occur first within the bureau and geographical area where the employee is already employed. In the event a position cannot be found in the employee's current bureau and geographical area, a suitable position may be identified in a different bureau within the employee's current geographical area. In the event a position cannot be found within the employee's current geographical area, a suitable position may be identified in a different geographical area, regardless of bureau. This may constitute a last resort accommodation.

8.2.2.7.6. If the employee is willing to be reassigned to a different geographical area, the Office Director, or designee, shall confer with the Servicing Human Resources Officer for that geographical area to determine whether the employee is qualified for any particular position(s) available in that area. If any such position(s) is identified, a determination will be made as to whether the employee would need an accommodation to perform in any such position. If a needed accommodation is found to be reasonable, such position must be offered to the employee.

8.2.2.7.7. If an employee is reassigned to a different geographical area, the employee must pay for any relocation expenses unless the transferring bureau routinely pays such expenses when granting voluntary transfers to other employees.

8.3. When considering whether an accommodation presents an undue hardship, the hardship must exist at the Department level, not bureau level, for the deciding official to deny providing

the accommodation. If the deciding official believes an undue hardship exists at the Department level, the bureau shall coordinate with the Department's DPM who is responsible for providing guidance on reasonable accommodation, including alternative accommodations.

8.4. Undue hardship occurs if a specific type of accommodation causes significant difficulty or expense by the Department to accomplish. In such a case, that particular accommodation does not have to be provided. Determination of undue hardship is always made on a case-by-case basis, considering such factors:

8.4.1. Nature and cost of the accommodation;

8.4.2. Overall size of the program with respect to the number of employees, number and type of facilities, and size of budget; and

8.4.3. Type of operation, including composition and structure of the workforce.

8.5 Every attempt must be made to implement approved reasonable accommodations in as short of a time as possible. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. These may include, but are not limited to, situations in which equipment is on back order, the vendor typically used by the organization has unexpectedly gone out of business, or the accommodation requires restructuring facilities.

8.6. An important part of the process is monitoring accommodations after they are in place. Because changes occur, supervisors may need to periodically check the effectiveness of implemented accommodations. For example, an accommodation may stop being effective if there are changes in the employee's limitations, workplace equipment, or the work itself. The most effective way for supervisors to monitor accommodations is to maintain interactive communication with the employee.

Attachment 1

References

- A1.1. Section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791).** Prohibits discrimination in employment within federal executive branch agencies in the hiring, placing, and advancing of individuals with disabilities.
- A1.2. Americans with Disabilities Act (ADA) Amendments Act, 2008.** Re-emphasizes the prohibition of discrimination against individuals with disabilities and further defines disability and other terms used in Section 501 of the Rehabilitation Act of 1973.
- A1.3. U.S. Equal Employment Opportunity Commission (EEOC) Regulations at 29 CFR Part 1614 (Federal Sector Equal Employment Opportunity).** Establishes the rules and procedures for federal executive branch agencies to create and maintain equal employment opportunity complaint processing procedures and affirmative employment programs.
- A1.4. EEOC Management Directive 715.** Provides policy guidance and standards for establishing and maintaining effective affirmative programs of equal employment opportunity and equal access for all employees.
- A1.5. Genetic Information Non-discrimination Act (GINA), 2008.** Prohibits employers and other entities covered by GINA from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law.
- A1.6. Executive Order 13145, To Prohibit Discrimination in Federal Employment Based on Genetic Information.** Prohibits federal executive branch agencies from discriminating against applicants and employees on the basis of genetic information.
- A1.7. DOI Personnel Bulletin 08-09, Procedures for Conducting a Department-wide Search and Position Reassignment for Cases Involving Reasonable Accommodation.** This PB, issued May 5, 2008, provides detailed guidance on when an employee must be reassigned as a reasonable accommodation. Reassignment is not available to applicants - only current employees.
- A1.8. Privacy Act of 1974.** Addresses confidentiality of medical documentation, to include collection and storage.

Attachment 2

Decision Making Guidelines

- A2.1.** Accommodations are determined on a case-by-case basis, taking into consideration the needs of the applicant or employee, his/her specific disability, the essential duties of the position in question, the work environment, and the reasonableness and effectiveness of the proposed accommodation. In all cases where the requested accommodation is not approved, the employee/applicant must be consulted before an alternative is provided.
- A2.2.** An accommodation must be work-related. DOI does not provide personal use items needed in accomplishing daily activities both on and off the job as a reasonable accommodation. For example, DOI does not provide an employee with a prosthetic limb, a wheelchair, eyeglasses, hearing aids, or similar devices if they are also needed off the job. Furthermore, DOI does not provide personal use amenities, such as a coffee maker or refrigerator, if those items are not provided to employees without disabilities. However, items that might otherwise be ~~considered personal may be required as reasonable accommodations where they are specifically~~ designed or required to meet job-related requirements.
- A2.3.** Accommodation must be considered in training, merit staffing processes, and all aspects of employment that would be adversely affected if the bureau failed to provide reasonable accommodation.
- A2.4.** When providing auxiliary aids (e.g., assistive technology, ergonomic equipment, TTY, interpreter), preference should be given to what was requested by the individual with the disability, unless the item requested is ineffective or unreasonable.
- A2.5.** Accommodations must be made to known physical and intellectual limitations. DOI bureaus/ shall not make an accommodation for a job interview, or for an existing job, until the applicant or employee has communicated his/her needs.
- A2.6.** Human Resource officials shall ensure that vacancy announcements explain how applicants may apply for a reasonable accommodation if needed during the application process.
- A2.7.** Deciding officials shall consider the following criteria when deciding whether to approve a reasonable accommodation request:
- A2.7.1. Is the accommodation necessary for the performance of essential duties?
 - A2.7.2. What effect will the accommodation have on the bureau's operation and the employee's job performance?
 - A2.7.3. To what extent does the accommodation compensate for the abilities of an employee with a disability?
 - A2.7.4. Will the accommodation give the employee the opportunity to function, participate, or compete on an equal basis with co-workers?
 - A2.7.5. Are there alternatives that would accomplish the same purpose?

A2.7.6. The employee's or applicant's specific disability and existing abilities.

A2.7.7. The essential duties of the particular job.

A2.7.8. The work environment.

A2.7.9. Whether the requested accommodation would result in undue hardship for the organization (see paragraph 8.3.).

Attachment 3

Decision Documentation Template

1. Name of individual requesting reasonable accommodation:

2. Office of requesting individual:

3. Date reasonable accommodation request received: _____
4. Who received request: _____
5. Job held or desired by individual requesting reasonable accommodation (including occupational series, grade level, and office):

6. Reasonable accommodation needed for: (check one)
 - _____ Application process
 - _____ Performing job functions or accessing the work environment
 - _____ Accessing benefit or privilege of employment (e.g., attending a training program or office event outside of the workplace)
7. Type(s) of reasonable accommodation requested (e.g., adaptive equipment, staff Assistant and removal of architectural barrier):

8. Date reasonable accommodation request sent to Deciding Official: _____
9. Name of Deciding Official: _____
10. Reasonable accommodation: (check one)
 - _____ Approved
 - _____ Denied (If denied, attach a copy of the written denial)
 - _____ Offered an alternative accommodation (attach a detailed explanation)

11. Date reasonable accommodation approved or denied: _____

12. Describe the reasonable accommodation provided:

13. Date reasonable accommodation provided: _____

14. If time frames outlined in the Reasonable Accommodation Procedures were not met, explain why.

15. Was medical information required to process this request? If yes, explain why. List the documents submitted on behalf of the individual.

16. Sources of technical assistance, if any, consulted in trying to identify possible reasonable accommodations (e.g., Job Accommodation Network, disability organization, Disability Program Manager):

17. Comments:

Deciding Official's Signature: _____

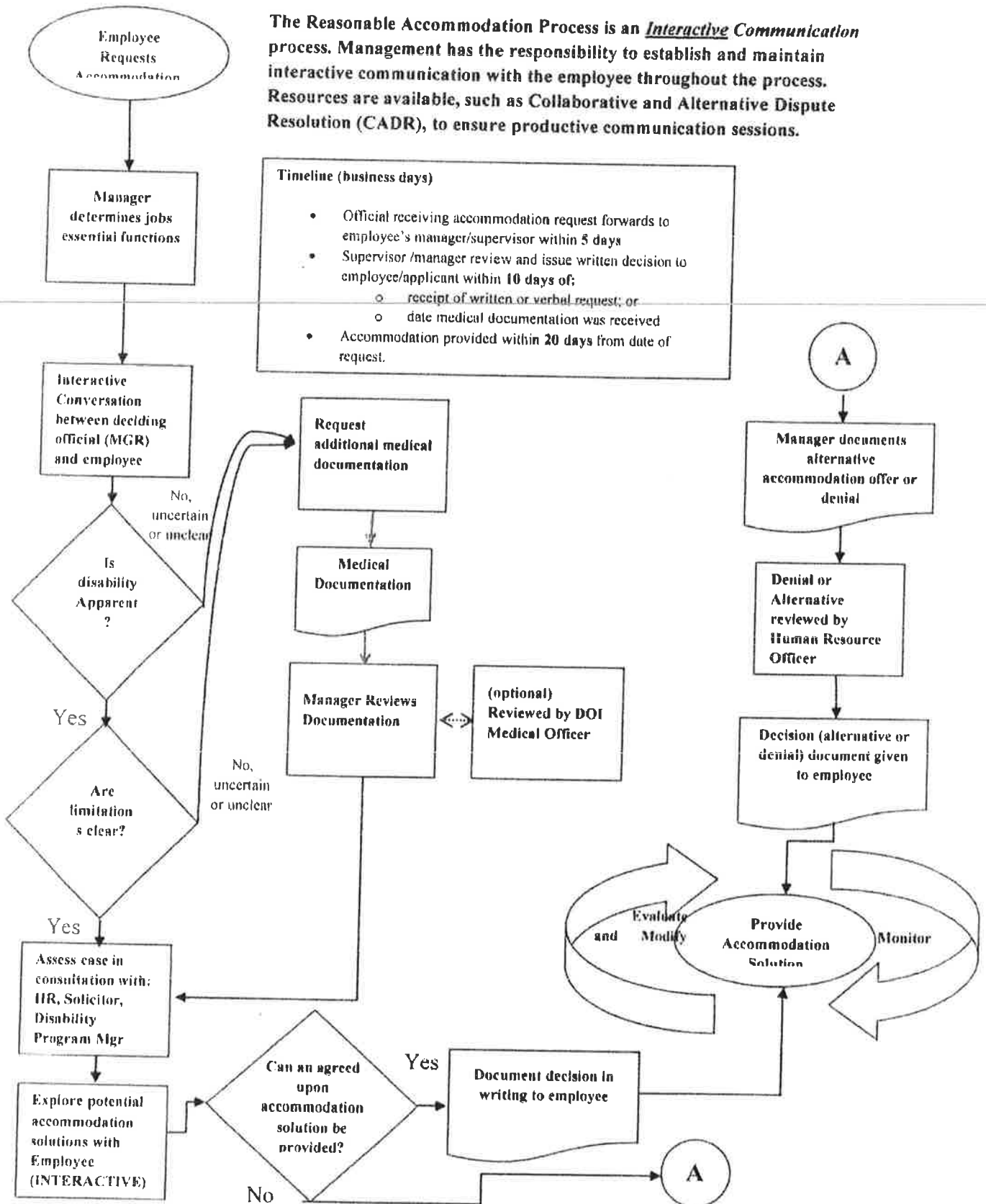
Date: _____

Phone Number: () _____

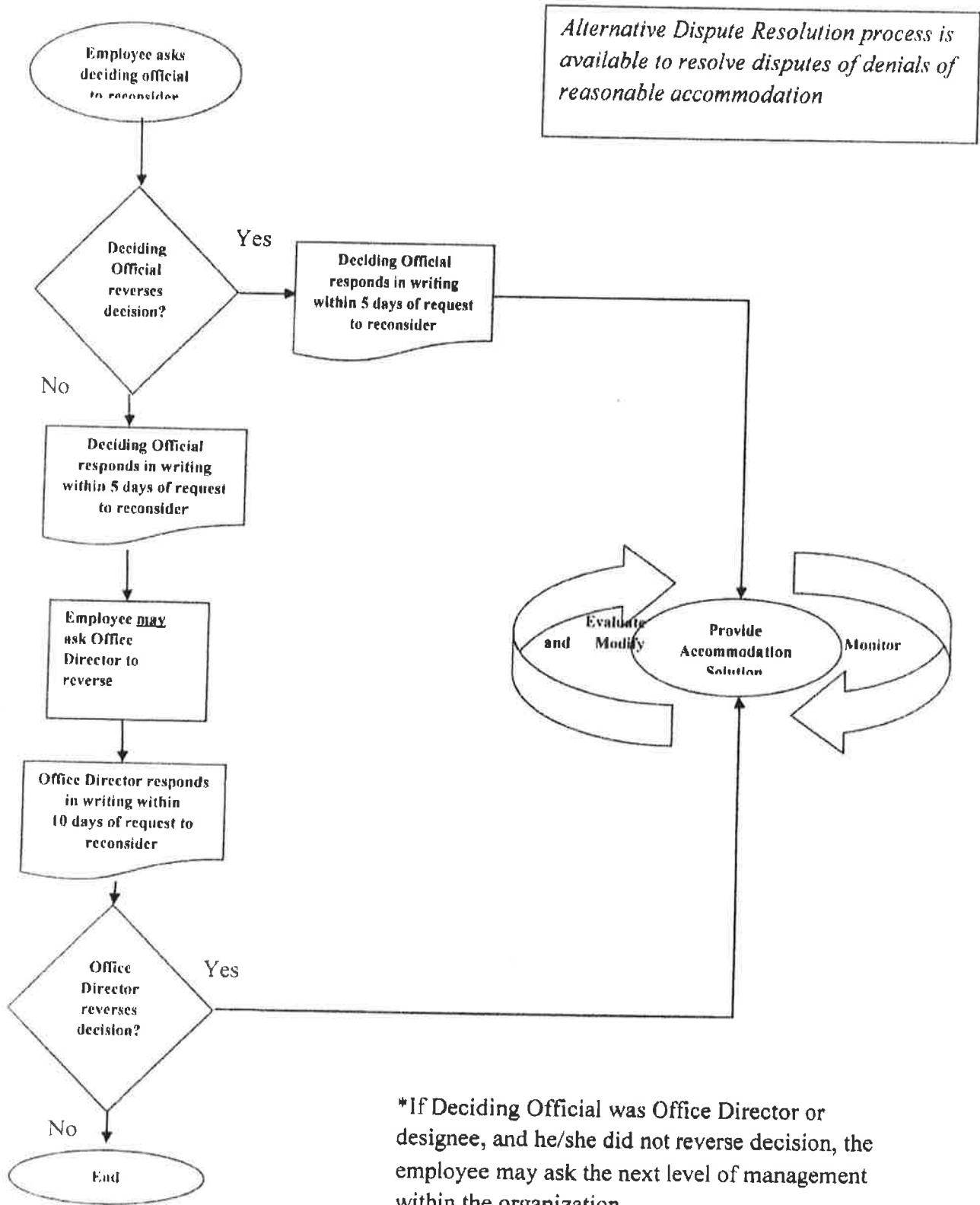
Attachment 4 Process Flow Chart

A 4.1- Reasonable Accommodation Process

The Reasonable Accommodation Process is an *Interactive Communication* process. Management has the responsibility to establish and maintain interactive communication with the employee throughout the process. Resources are available, such as Collaborative and Alternative Dispute Resolution (CADR), to ensure productive communication sessions.



A 4.2- Reconsideration Process



Attachment 5

Selected Reasonable Accommodation Resources

A5.1. U.S. Equal Employment Opportunity Commission. 1-800-669-3362 (Voice), 1-800-800-3302 (TTY), Web: <http://www.eeoc.gov/>

A5.1.1. The EEOC's Publication Center has many free documents on the Title I employment provisions of the ADA, including both the statute, 42 U.S.C. 12101 et seq., and the regulations, 29 C.F.R. 1630. In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The three main sources of interpretive information are: (1) the Interpretive Guidance accompanying the Title I regulations (also known as the "Appendix" to the regulations), 29 C.F.R. pt. 1630 app. 1630.2(o), (p), 1630.9; (2) Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act, and (3) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act. The Technical Assistance Manual includes a 200-page Resource Directory, including federal and state agencies and disability organizations that can provide assistance in identifying and locating reasonable accommodations.

A5.1.2. The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: (1) Enforcement Guidance: Pre-employment Disability-Related Questions and Medical Examinations; (2) Enforcement Guidance: Workers' Compensation and the ADA; (3) Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities; (4) Fact Sheet on the Family and Medical Leave Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964; and (5) Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act.

A5.1.3. All of the above-listed documents, with the exception of the Technical Assistance Manual is also available through the Internet at <http://www.eeoc.gov/policy/guidance.html/>. All of these documents provide guidance that applies to federal agencies through the Rehabilitation Act of 1973, 29 U.S.C. 791.

A5.1.4. The EEOC website also provides guidance on Executive Order 13145: To Prohibit Discrimination in Federal Employment Based on Genetic Information.

A5.2. Job Accommodation Network (JAN). 1-800-232-9675 (Voice/TTY), Web: <http://askjan.org>. JAN is a free consulting service that provides information about job accommodations, the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), and the employability of people with disabilities.

A5.3. Computer/Electronic Accommodations Program (CAP). (703) 681-8813 (Voice/TTY), Fax: (703) 681-9075, Web: <http://www.cap.mil>. CAP has a memorandum of understanding with the DOI to provide assistive technology and accommodation services for employees with disabilities.

A5.4. ADA Disability and Business Technical Assistance Centers (DBTACs). 1-800-949-4232 (Voice/TTY), Web: <http://www.adainfo.org>. The DBTACs consist of 10 federally funded regional centers that provide information, training, and technical assistance on the ADA. Each center works with local business, disability, governmental, rehabilitation, and other professional networks to provide current ADA information and assistance, and places special emphasis on

meeting the needs of small businesses. The DBTACs can make referrals to local sources of expertise in reasonable accommodations.

A5.5. Registry of Interpreters for the Deaf. (703) 838-0030 (Voice), (703) 838-0459 (TTY). Web: <http://www.rid.org>. The Registry offers information on locating and using interpreters and transliteration services.

A5.6. RESNA Technical Assistance Project. (703) 524-6686 (Voice), (703) 524-6639 (TTY). Web: <http://www.resna.org>. RESNA, the Rehabilitation Engineering and Assistive Technology Society of North America, can refer individuals to projects in all 50 states and the six territories offering technical assistance on technology-related services for individuals with disabilities. Services may include:

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

A5.7. Department of the Interior Access Center. (202) 208-5481 (Voice), (202) 208-6248 (TTY), Web: <http://www.doi.gov/access>. The DOI Access Center opened in October 2000 to support employees with disabilities by determining the appropriate assistive technology and ergonomic solutions for the individual. These accommodations are surprisingly affordable ways to enable employees with a disability to have equal access to information technology that is essential in today's workplace.

Attachment 6

Utilizing Sign Language Interpreters

A6.1. The individual or office scheduling a meeting or an event that will require interpreting services (staff meeting, training, office function, etc.) is responsible for arranging for the presence of interpreters.

A6.2. A DOI employee who knows sign language or who is taking a sign language class is not an acceptable substitute for an interpreter; the individual must be certified as a sign language interpreter. DOI bureaus may contract for such services.

A6.3. Bureaus will provide an interpreter for an employee who is hearing impaired and who, as part of his/her job, attends a DOI meeting or event outside of the workplace. If the employee attends a conference or training program sponsored by an outside organization, the sponsoring organization is principally responsible for providing interpreters. DOI will provide interpreters, however, if the sponsoring organization fails to do so.

Attachment 7

Sample Denial Letter

Memorandum

To: *(Name, Title)*

From: *(Name, Title of Deciding Official)*

Subject: Denial of Reasonable Accommodation Request

On *(insert date)* you requested the following type(s) of reasonable accommodation(s):

(List requested accommodations)

I am denying your request for reasonable accommodation because. *(check all that are applicable)*

_____ Accommodation Ineffective

_____ Accommodation would cause undue hardship

_____ Medical Documentation Inadequate

_____ Accommodation would require removal of essential function

_____ Accommodation would require lowering of performance or production standard

_____ Other (Please identify) _____

The detailed reason(s) for the denial of reasonable accommodation are *(insert specific details, e.g., why accommodation is ineffective or causes undue hardship)*.

On *(insert date)* you were offered an alternative reasonable accommodation, which you rejected on *(insert date)*. *(explain both the reasons for denial of the requested accommodation and why you believe the chosen accommodation would be effective, if the individual proposed one type of reasonable accommodation that is being denied, but rejected an offer of a different type of reasonable accommodation)*. ***(Used only if this applies)***

If you wish to request reconsideration of this decision, you may take the following steps:

- First, ask the deciding official to consider his/her denial. (Additional information may be presented to support this request)
- If the deciding official does not reverse the denial, the individual may ask the next higher level of management to do so.

You may also request alternative dispute resolution (ADR) to help ensure a productive communication process. ADR can be utilized throughout the reasonable accommodation process, to include the reconsideration and appeal phases. To request ADR, contact your servicing Disability Program Manager, Human Resources Officer, Equal Employment Opportunity Officer, or the DOI Office of Collaborative Action and Dispute Resolution.

If you wish to file an EEO complaint, or pursue MSPB and union grievance procedures, the following steps must be taken:

- For an EEO complaint pursuant to 29 CFR 1614, contact an EEO counselor in your Equal Employment Opportunity office within 45 days from the date of this notice of denial of reasonable accommodation; or
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement; or
- Initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 CFR § 1201.3.

Signature of Deciding Official

Date reasonable accommodation denied _____

Attachment 8

Sample Offer of an Alternate Accommodation

Memorandum

To: *(Name, Title)*

From: *(Name, Title of Deciding Official)*

Subject: Alternative Reasonable Accommodation Offer

After careful consideration of your request for a reasonable accommodation, I have determined that the following alternative reasonable accommodation(s) provide will enable you to successfully perform the essential functions.

(List the alternative reasonable accommodations).

This decision is based on my discussions with you, a review of your medical documentation (if provided), and consultation with the disability program manager. The reasons for offering an alternative reasonable accommodation are:

(List the reasons)

Please initial the appropriate item below, if you accept the alternative accommodation your request will be considered approved and I will immediately arrange for the accommodation. If there are delays in providing you this accommodation, you will be notified.

I accept the proposed alternative reasonable accommodation

I reject the proposed alternative reasonable accommodation

Signature of Deciding Official

Date: _____

Attachment 9

Request for Medical Information

Memorandum

To: Name, Title

From: Name, Title

Subject: Reasonable Accommodation Request

The purpose of reasonable accommodation is to enable qualified individuals with a disability to perform the essential functions of a particular job. You indicate that you requested an accommodation. However, the Agency is very unclear when you placed a request for accommodation. In addition, the Agency does not know what accommodation(s) you are requesting. To properly consider your request for accommodation, the Agency needs information relating to the nature of your impairment and your functional limitations within your job. You stated that you have bipolar disorder. At this time, the Agency needs further information to determine effective accommodation options.

It is your responsibility under 5 C.F.R. 339.104 to provide acceptable medical documentation as to the nature of your medical condition(s) and to specify any accommodation(s) you and your medical provider have determined may be required in order for you to perform the essential functions of your job. Please have your medical practitioner supply to your immediate supervisor, NAME the following:

- The nature of your impairment (i.e. your mental impairment);
- The activity or activities that the impairment limits;
- An explanation of the extent to which the impairment limits your ability to perform the essential functions of your job;
- The need for an accommodation(s);
- An explanation how the requested accommodation(s) will assist you to perform the essential functions of your job.

Per 5 C.F.R. 339.104, "to be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards." Please ensure that any psychiatric report meet the diagnostic criteria as outlined in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Addition (DSM-IV). In addition, please provide the requested documentation on your medical practitioner's letterhead stationery and ensure your medical practitioner dates and signs the report.

Pursuant to 29 C.F.R. 1635.8(b)(i)(B), "[t]he 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."

Attached is a copy of your current Position Description. So that your medical practitioner has sufficient information to respond to the above items concerning your ability to perform the essential functions of your position, and any accommodation(s) that might be requested, it is important that you provide him or her with your position description.

All information submitted in response to this letter will be handled as medically confidential and will only be used for the purpose of evaluating your request for accommodation. Please submit any medical documentation in a sealed envelope marked as "Medically Confidential." You remain responsible for any costs incurred in connection with obtaining this documentation. If you fail to provide this requested medical information, the Agency will make decisions on the basis of existing information. Please note that the Agency may submit the medical information for review by our Agency medical expert.

Please provide the requested medical information to your immediate supervisor, NAME by DATE. If you need additional time to gather the requested medical information, please place your request to NAME

If you have any questions concerning this request, please contact me at (###)

Attachment: Position Description