



UNITED STATES DEPARTMENT OF JUSTICE



UNITED STATES MARSHALS SERVICE

Reasonable Accommodation Procedures for Individuals with Disabilities

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**UNITED STATES MARSHALS SERVICE
PROCEDURES ON REASONABLE ACCOMMODATION
FOR INDIVIDUALS WITH DISABILITIES**

The United States Marshals Service, a component agency of the United States Department of Justice is committed to providing reasonable accommodation to all employees and applicants with disabilities consistent with guidance from the United States Equal Employment Opportunity Commission. This policy supports the government's national policy to expand employment opportunities for individuals with disabilities. It also supports the President's New Freedom Initiative, which includes components to help promote full access and integration of Americans with Disabilities into the workforce. Questions on policy or procedural guidance on reasonable accommodation within the Marshals Service headquarters and Districts offices, please contact Katrina Queen, Office of Equal Employment Opportunity, (703) 740-8510.

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REASONABLE ACCOMMODATION PROCEDURES FOR INDIVIDUALS WITH DISABILITIES

1. **POLICY** In accordance with Section 501 of the Rehabilitation Act of 1973, as amended, Equal Employment Opportunity Commission (EEOC) Management Directive 715, and EEOC Regulations at 29 CFR Part 1614 (Federal Sector Equal Employment Opportunity), the U.S. Marshals Service (USMS) will make reasonable accommodation for the known physical or mental limitations of a qualified employee or applicant with a disability unless the accommodation would impose an undue hardship to the agency.

2. **PURPOSE** Executive Order 13164 required each federal agency to establish effective written procedures for processing requests for reasonable accommodation. This document provides a description of the Marshals Service's procedures for providing reasonable accommodations for individuals with disabilities. The document establishes requirements and provides instructions for acting on requests from employees or applicants.

3. **APPLICABILITY** These procedures apply only to employees and applicants who have a disability as defined in 4.A. below.

4. **DEFINITIONS**
 - A. **INDIVIDUAL WITH A DISABILITY** is an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or is regarded as having such impairment.

 - B. **PHYSICAL OR MENTAL IMPAIRMENT** is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, cardiovascular, reproductive, digestive, respiratory, genitourinary, hemic and lymphatic, skin, and endocrine, or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

 - C. **MAJOR LIFE ACTIVITIES** are functions such as caring but not limited to: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, sitting, standing, reaching, interacting with others, concentrating, lifting, sleeping, reproduction, running and working.

 - D. **HAS A RECORD OF SUCH AN IMPAIRMENT** is defined as having a history of, or being classified (or misclassified) as having, a mental or physical disability that substantially limits one or more major life activities.

E. REGARDED AS HAVING SUCH AN IMPAIRMENT is defined as having a physical or mental impairment that does not substantially limit major life activities, but is treated by an employer as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such an impairment; or has none of the impairments defined above but is treated by an employer as having such a limitation.

F. A QUALIFIED INDIVIDUAL WITH A DISABILITY is an individual who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desire, and who, with or without reasonable accommodation, can perform the essential functions or such position.

G. ESSENTIAL FUNCTIONS OF THE POSITION are those job duties that are so fundamental to the position that the individual holds or desires that she/he cannot do the job without performing them. A function can be “essential” if, among other things: the position exists specifically to perform that function; there are a limited number of employees who could perform the function; or the function is specialized and the individual is hired based on his/her ability to perform it. Determination of the essential functions of a position must be done on a case-by-case basis so that it reflects the job as actually performed, and not simply the components of a generic job description.

H. UNDUE HARDSHIP occurs if a specific type of reasonable accommodation causes significant difficulty or expense to accomplish. In this 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 that include the nature and cost of the reasonable accommodation needed and the impact of the reasonable accommodation on the organization. Overall resources of the Marshals Service will be taken into consideration.

I. PERSONAL ASSISTANCE SERVICES 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.

J. INTERACTIVE PROCESS refers to the informal and flexible communication the parties should engage in to identify the precise limitations of the individual and what accommodations could overcome those limitations.

5. RESPONSIBILITIES

A. THE EEO OFFICER AND/OR CHIEF AFFIRMATIVE EMPLOYMENT PROGRAMS will oversee the USMS reasonable accommodation program and ensure fair and equitable application to all affected employees. Provide technical assistance, guidance and oversight to management officials, and the Disability Program Manager. Identify barriers to the implementation of the reasonable accommodation program.

B. THE DISABILITY PROGRAM MANAGER is responsible for interpreting this policy and providing guidance to all USMS HQ/District offices, managers, supervisors, employees, and applicants on matters related to reasonable accommodation. If the Disability Program Manager has had any involvement with the processing of a request for reasonable accommodation, he/she must reclude him/herself from any involvement in the processing of an EEO claim in connection with that request.

C. THE HUMAN RESOURCES SERVICES DIVISION (HRD) or designated staff serves as the employment expert and is responsible for conducting job analyses on vacancies to ensure that the knowledge, skills and abilities identified are related to the essential functions of the job, and that artificial barriers are removed from the hiring process.

D. USMS SUPERVISORS AND MANAGERS or designated staff shall serve as deciding officials on requests for reasonable accommodations. First-line supervisors are authorized to respond and make determinations on requests for reasonable accommodation. These determinations will be made in consultation with appropriate management officials such as Facilities Managers, Information Technology Management Specialists, Physicians, Medical Specialists or other individuals to include the Disability Program Manager and organizations that can assist in determining appropriate accommodations. All USMS supervisors and managers are responsible for ensuring that selections of qualified individuals with disabilities are made in a non-discriminatory manner and that the procedures for the reasonable accommodation of individuals with disabilities are implemented.

E. EMPLOYEES AND APPLICANTS are responsible for bringing their requests for reasonable accommodation to the attention of the appropriate official. Provide appropriate medical information related to the functional impairment and the requested accommodation. When required, provide additional medical documentation during the evaluation of the request to the requesting management official or Disability Program Manager. Failure to do so could result in the denial of the request due to lack of medical documentation. Additional information may be obtained through the interactive process which follows the request.

6. GUIDELINES FOR ASSESSING AND PROVIDING REASONABLE ACCOMMODATION

A. **Overview.** Reasonable accommodation is a logical change or adjustment to a job or worksite that makes it possible for otherwise qualified employees with disabilities to perform the essential functions of the position. The other two categories of reasonable accommodation: modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job; and modifications or adjustments that enable employees with disabilities to enjoy equal benefits and privileges of employment.

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 of the proposed accommodation.
2. In all cases where an accommodation request is not approved, the individual with a disability must be consulted before an alternative accommodation is provided. An accommodation must be work-related and not for personal needs or use such as providing eye glasses, hearing aids or transportation to work. The responsibility to provide reasonable accommodation does not end when the individual with a disability is placed in a position. The accommodation must also be considered in training, merit staffing processes, and any other aspect of employment that would be adversely affected if the Service failed to provide reasonable accommodation.

B. **Reasonable Accommodation Assessment.** All USMS Offices are required to make reasonable accommodation for a qualified individual with a disability unless it can be demonstrated that the accommodation would impose an undue hardship to the Service. Such a determination must be made on an individual basis. All alternatives will be explored to determine if the reasonable accommodation is the most effective one for both the individual with a disability and the Service.

1. The first step in determining an appropriate accommodation after a request is received from a qualified individual with a disability is to review the accommodation requested to determine if it is reasonable. The reasonableness of the proposed accommodation means that the accommodation “seems reasonable on its face, i.e., ordinarily or in the run of cases,” “plausible,” or “feasible,” as defined by the Supreme Court in *U.S. Airways v. Barnett*, 535 U.S. 391 (2002). Furthermore, an accommodation must also be effective. An accommodation is effective if it meets the needs of the individual in question. In the context of job performance, this means that the reasonable accommodation enables the individual to perform the essential functions of the position. Similarly, a

reasonable accommodation enables an applicant with a disability to have an equal opportunity to participate in the application process and be considered for the job. A reasonable accommodation allows an employee with a disability an equal opportunity to enjoy the benefits and privileges of employment that employees without disabilities enjoy. If it is determined that the requested accommodation is not “reasonable,” the supervisor or manager who made the determination must consult with the employee with the disability and ask for suggestions as to what accommodations would enable him/her to perform the essential functions of the job.

2. When providing auxiliary aids, the supervisor or manager should give preference to that requested by the individual with the disability, unless that which was requested constitutes an undue hardship.

3. Accommodations need to be made to the known physical or mental limitations. All USMS Offices are not obligated to make an accommodation for a job interview, or for an existing job, until the applicant or employee has communicated his/her needs. All responsible officials involved in the application process should ensure that vacancy announcements explain what the application process involves and indicate to whom interested parties should make requests for reasonable accommodation if needed for the application process. Supervisors and managers should review EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (revised October 17, 2002), Question 40, which describes a situation in which a supervisor might have to ask an employee if he/she needs a reasonable accommodation even if the employee does not communicate a need for one.

4. The value and nature of a particular accommodation may be clarified by considering the following questions:

a. Is the accommodation necessary for the performance of essential duties?

b. What effect will the accommodation have on the HQ/District Office’s operation and the employee’s job performance?

c. To what extent does the accommodation compensate for the limitations of an employee with a disability?

d. Will the accommodation give the employee the opportunity to function, participate, or compete on a more equal basis with co-workers?

e. Are there alternatives that would accomplish the same purpose?

7. MEANS OF REASONABLE ACCOMMODATIONS

Examples of the kinds of actions that may constitute reasonable accommodation are listed below. Reasonable accommodation includes, but shall not be limited to the following:

- A. Making facilities readily accessible to and usable by a person with a disability.
- B. Job restructuring, including part-time or modified work schedules.
- C. Acquisition or modification of equipment or devices.
- D. Appropriate adjustment or modification of examinations.
- E. Provision of readers and interpreters.
- F. Accommodations for meetings, conferences, training and seminars.
- G. As a last resort, reassignment.

8. FACTORS IN DETERMINING UNDUE HARDSHIP

- A. The following are some factors that may be considered in determining whether an employee's or applicant's requested accommodation would impose undue hardship.
 - 1. The overall size of the program with respect to the number of employees, number and type of facilities, and size of budget.
 - 2. The type of operation, including composition and structure of the workforce.
 - 3. The nature and cost of the accommodation.
- B. The Service, in identifying resources for providing reasonable accommodations, must exhaust all USMS sources of funding before rendering any determination that an accommodation presents an undue hardship. The Service must include the entire Department of Justice when considering sources of funding available to the USMS. Further, the USMS may seek assistance through other independent sources (See Appendix I for additional resources).

9. ACTING ON REASONABLE ACCOMMODATION REQUESTS

A. Initiating Request for Reasonable Accommodation. When an employee or applicant makes a request for reasonable accommodation, either on his/her own behalf, or through a family member, health professional, or other representative acting on the individual's behalf, the following requirements apply:

1. For an employee, the *request may be made verbally or in writing* to his/her supervisor or manager, the Equal Employment Opportunity Office, the Disability Program Manager, the Human Resources Services Division or other appropriate office. An applicant makes his/her verbal or written request to the Human Resources Services Division, the Equal Employment Opportunity Office, the Disability Program Manager, the interviewer from the office having the vacancy for which he/she wants to be considered, or any USMS Office employee with whom he/she has had contact. *A verbal request for accommodation is acceptable when made.* For record-keeping purposes only, the employee or applicant may also submit the request in writing. Otherwise, the request for accommodation will be documented by the individual to whom the request was made. The appropriate USMS Office must not wait until a written request or other recordkeeping form is received before processing a verbal request for reasonable accommodation. All forms related to the reasonable accommodation procedures are available in a fillable format via the USMS intranet. Employees and applicants who use assistive technology (e.g., Braille reader, screen reader, TTY, etc.) may contact the Disability Program Manager and request their preferred format in which to receive materials.
2. The request must state, at a minimum, that the individual needs an adjustment or change at work or in the applicant process for a reason related to a medical condition.
3. All USMS Offices must not require the requesting individual to use any particular words, as examples the Rehabilitation Act and the phrase "reasonable accommodation," when requesting reasonable accommodation.
4. If a requested accommodation is approved and is of the type that will be needed on a repeated basis (e.g., sign language interpreter), the individual does not have to submit an additional request each time the accommodation is needed. In such cases, the USMS Office must provide the accommodation on an as needed basis. The EEOC has issued federal sector decisions holding that in some circumstances where an individual has a recurring, predictable need for accommodation, the agency may be obligated to provide the accommodation as needed, whether or not the individual has requested it.

5. All requests for and provision of reasonable accommodations must be kept confidential. Supervisors and Managers should review EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (revised October 17, 2002), Question 42, which provides guidance on ways to respond to other employees' inquiries without violating confidentiality.

B. Timelines for Acting on Requests for Reasonable Accommodation.

1. Upon receipt of the request for reasonable accommodation, the supervisor or manager who received the request should forward it to the Disability Program Manager for further guidance in no more than *five (5) business days*. The supervisor/manager or Disability Program Manager must review the request and issue a written decision to the employee or applicant within *ten (10) business days* from the date that the initial request was received the verbal or written request. The written decision must state whether the proposed accommodation will be made and include a specific description of the actions to be taken. After the issuance of a written decision to grant an accommodation, the deciding official will provide the accommodation within *twenty (20) business days* from the date the request was received by the deciding official absent such extenuating circumstances as described in B.4. (below). In any event, the deciding official will keep the employee or applicant informed on delivery of the accommodation. Notwithstanding the timeframes authorized by these procedures, some accommodations can be provided in less time, and the failure to respond promptly to a request for reasonable accommodation may result in a violation of the Rehabilitation Act. In instances where reasonable accommodations can be provided in less time than prescribed in these procedures, all USMS Offices must make every effort to do so.

2. If medical documentation is required, he/she will issue a written decision to the employee in no more than *ten (10) business days* from the date the medical documentation is received. Medical information submitted in connection with a request for reasonable accommodation may be reviewed by USMS medical staff will provide an advisory opinion to the deciding official. The USMS Office also has the right to have medical information provided by the employee or applicant reviewed, at the organization's expense, by a medical expert of the organization's choosing. USMS Offices must not request medical documentation in support of every accommodation request, regardless of circumstances.

3. Pursuant to the Privacy Act, medical documentation submitted in support of any request for reasonable accommodation will be sealed and maintained in secure storage, separate from Official Personnel Files. All medical documentation should be forwarded to the Disability Program Manager. In addition, individuals who have access to information necessary to make a decision about whether to grant a requested accommodation may not disclose this information except as follows:

- a. supervisors/managers who need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s);
- b. first aid and safety personnel may be told if the disability might require emergency treatment;
- c. government officials may be given information necessary to investigate USMS Offices' compliance with the Rehabilitation Act;
- d. the information may in certain circumstances be disclosed to workers' compensation offices or insurance carriers;
- e. EEO officials may be given the information to maintain records, evaluate and report on USMS Offices' performance.

Where medical information is disclosed to any of the foregoing officials, USMS Office officials must inform those individuals about the confidentiality requirements attached to such information.

4. Extenuating circumstances may delay the provision of reasonable accommodation within the stated time frame. Extenuating circumstances are factors that could not reasonably have been anticipated or avoided in advance of the request for accommodation. These can include, but are not limited to, situations in which equipment must be back ordered, the vendor typically used by the organization has unexpectedly gone out of business, or the accommodation requires restructuring facilities. Every attempt must be made to process requests for reasonable accommodation in as short of a time as possible.

5. The supervisor/manager, Disability Program Manager, or designee, who is responsible for making a decision on a request for accommodation will identify him/herself as the deciding official to the employee or applicant and consider the following in determining whether an accommodation can be provided:

- a. the employee's or applicant's specific disability and existing limitations;
- b. the essential duties of the particular job;
- c. the work environment; and
- d. whether the proposed accommodation would result in undue hardship for the organization.

6. The supervisor/manager, Disability Program Manager, or designee, must confer with the employee or applicant where the specific limitation, problem, or barrier is unclear, where an effective accommodation is not obvious, or where the parties are choosing between different possible reasonable accommodations. Information about reasonable accommodations, including telephone help for identifying specific reasonable accommodations, is at Appendix I - additional resources.

7. The supervisor/manager, Disability Program Manager, or designee, and the employee or applicant should engage in the interactive process as soon as the request for accommodation is made (and periodically thereafter, as needed) to ensure a full exchange of relevant information regarding the request. The interactive process includes, but is not limited to; a review of the job description of the position of record to identify essential and non-essential tasks, a review of possible accommodations including those proposed by the employee or applicant, and general discussion(s) concerning effective strategies to best meet the needs of the employee or applicant while still fulfilling the mission of the work unit/USMS.

8. The supervisor/manager, Disability Program Manager, or designee, may consult with other management officials, such as Facilities Managers, Information Technology Management Specialists or Physicians to process requests for reasonable accommodation, if necessary.

9. When necessary, expedited processing of a request for an accommodation should occur. Expedited processing might be necessary where the accommodation is needed to apply for a position or to participate in a specific activity that is scheduled to occur shortly. Failure to respond promptly to a request for reasonable accommodation, especially in those situations where the accommodation could be provided in an expedited manner, may result in a violation of the Rehabilitation Act.

10. If there is either a delay in processing a request for reasonable accommodation, or after a request is approved, a delay in delivering the accommodation, the deciding official must notify the employee or applicant of the reason for the delay, and to the extent possible, keep the employee or applicant informed of the date on which the request is expected to be completed. In the event of such a delay, the supervisor/manager, or deciding official, must investigate whether there are temporary measures that could be taken to assist the individual with a disability.

11. Supervisors and managers are strongly encouraged to implement practices that will reduce barriers that could make it difficult to provide effective accommodations. Possible practices include: establishing a central pool of readers and interpreters, and implementing funding mechanisms that will avoid charging individual offices for the cost of

accommodations. (See EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (October 20, 2000), Question 12, available on the EEOC's website).

12. All USMS Offices are reminded that it should take steps to anticipate and limit impediments that may cause unnecessary delay in providing reasonable accommodation, by reviewing and modifying, in advance of a specific request, any policies that might affect the agency's ability to respond promptly to requests for reasonable accommodation. Among the policies that should be reviewed are those that affect: 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. (See EEOC Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation (October 20, 2000), Question 15, available on the EEOC's website).

C. Requesting Medical Information

1. The deciding official may request medical information sufficient to substantiate that the individual has a disability and needs reasonable accommodation, but must not request medical documentation where:

a. the disability and need for accommodation are obvious or otherwise already known; or

b. the individual has already provided the Service with sufficient information to document the existence of the disability and his/her functional limitations. Requests for medical information will follow the requirements set forth in the EEOC's Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (July 27, 2000), available on EEOC's website.

2. When the standards for requesting medical information have been met (1.a. and 1.b. above), the deciding official may request information or documentation regarding:

a. the nature, severity, and duration of the individual's impairment;

b. the activities that the impairment limits;

c. the extent to which the impairment limits the individual's ability to perform the activities; and/or;

d. why the individual requires reasonable accommodation or the particular reasonable accommodation requested, as well as how

the reasonable accommodation will assist the individual to apply for a job, perform the essential functions of the job, or enjoy a benefit of the workforce.

3. The deciding official has the right to request relevant supplemental medical information *only if* the initial medical documentation submitted did not clearly explain the nature of the disability, or the need for the reasonable accommodation, or did not otherwise clarify how the requested accommodation will assist the employee to perform the essential functions of the job or to enjoy the benefits and privileges of the workplace, or, in the case of an applicant, assist him/her with the application process. If relevant supplemental medical information is requested, the deciding official must explain to the employee or applicant why the documentation already submitted was insufficient and articulate what medical documentation is still needed.

4. If the employee or applicant is still 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.

D. **Reassignment.** Reassignment is a "last resort" form of reasonable accommodation that must be provided, absent undue hardship, to an employee who, because of a disability, can no longer perform the essential functions of the position he/she holds, with or without reasonable accommodation. Reassignment is available only to employees, not to applicants. Reassignment 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. Reassignment to a position for which an employee is qualified, and not just permission to compete for such a position, is a reasonable accommodation.

1. 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 Human Resources Services Division. If a position(s) is identified, a determination will be made as to whether the employee would need an accommodation to perform that position.

2. Reassignment to a vacant funded position may occur first within the current assigned HQ/District office and geographical area where the employee is already employed. 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 HQ/District office, provided the employee has indicated the new geographical location is acceptable to him/her.

3. If an employee is reassigned to a different geographical area, the employee must pay for any relocation expenses unless the Service routinely pays such expenses when granting voluntary transfers to other employees. If the employee is willing to be reassigned to a different geographical area, the Disability Program Manager will coordinate with the Human Resources Services Division 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 that position. If a suitable position is identified the position must be offered to the employee.

E. Denial of Request for Reasonable Accommodation

1. A decision denying a request for reasonable accommodation must be in writing and specifically explain the reasons why the request was denied (e.g. why the medical documentation was inadequate to establish that the individual has a disability or needs reasonable accommodation, why the requested accommodation would not be effective, or why the accommodation would pose an undue hardship).

2. A decision denying the proposed accommodation but offering an alternate accommodation in its place, must explain both the reason for the denial of the requested accommodation and the reason that the alternate accommodation will be effective.

3. All denials of reasonable accommodation must be reviewed by the Disability Program Manager and the EEO Officer, or designee, prior to issuance. If the issue is availability of resources for the proposed accommodation, then the EEO Officer, or designee, will seek assistance from all sources in determining the availability of additional resources prior to an issuance of denial.

4. A written copy of each denial of reasonable accommodation will be provided to the employee and the Disability Program Manager by the deciding official (i.e., supervisor, manager or designee). A copy of the decision will be retained by the Disability Program Manager. The written notice of denial must inform the individual that if he/she believes that he/she has been subjected to illegal discrimination, he/she has the right to file a Complaint of Discrimination, in accordance with 29 CFR 1614. In addition, the individual may have rights to pursue his/her claim with the Merit Systems Protection Board (MSPB) or the negotiated grievance procedures.

10. **RECONSIDERATION**

A. Individuals with disabilities can request prompt reconsideration of a denial of reasonable accommodation.

B. If an individual wishes reconsideration, he/she should first ask the deciding official to reconsider the decision. The individual may present additional information in support of his/her request. The deciding official must respond to the request for reconsideration within *five (5) business days* of receipt of the request.

C. If the deciding official does not reverse his/her decision, the individual may ask the next management official in his/her chain of command, to do so. The management official, or designee, must respond to this request within *ten (10) business days* of receipt.

D. If the deciding official was the management official or designee, and he/she did not reverse the decision, the individual may ask the next level of management within the organization, or his/her designee, to do so. Such requests must be responded to within *ten (10) business days* of receipt.

E. Alternate dispute resolution (ADR) processes may also be used to resolve disputes of denials of reasonable accommodation. Whether under the EEO process, MSPB process, grievance process, or informal dispute resolution processes, where available, the objective is to permit quick and thoughtful reconsideration of a denial.

F. Pursuing any of the reconsideration procedures identified above, including seeking reconsideration from the deciding official, appealing to the next level of management within the organization and participating in informal dispute resolution process, *does not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in any or all informal dispute resolution processes does not satisfy the requirements for bringing a claim under EEO, MSPB, or negotiated grievance procedures.*

11. **EMPLOYEE RIGHTS**

Existing procedures for informal dispute resolution may include any of the following processes: reconsideration of denial, review by a second-line supervisor or review by another neutral party.

The USMS Reasonable Accommodation Program is in addition to statutory and collective bargaining protections for persons with disabilities and the remedies those protections provide for the denial of requests for reasonable accommodation. If a request for accommodation has been denied or an unacceptable alternative has been proposed, the employee may exercise his or her right to seek informal resolution

of the matter by contacting the Office of EEO. Reconsideration, review, and use of alternative resources do not affect the time limits for initiating statutory and collective bargaining claims. An individual's participation in informal dispute resolution processes will neither satisfy nor delay the time restrictions.

For employees who wish to file an EEO complaint, contact must be made with an EEO counselor within 45 calendar days of the date of receipt of the denial of the accommodation.

For collective bargaining claims, a grievance must be filed in accordance with the provisions of the applicable Collective Bargaining Agreement.

Where denial of a request results in an adverse action, an appeal must be initiated with the Merit Systems Protection Board within 30 days of an appealable adverse action as defined in 5 C.F.R. ' 1201.3.

The Individuals with Disabilities Program Manager will not participate in the processing of any EEO complaints filed related to a denial of request for reasonable accommodation to avoid a conflict of interest.

Any EEO representative that serves as an Accommodation Coordinator cannot participate in any processing of a subsequent complaint filed in reference to a denial or outcome of a request for reasonable accommodation to avoid a conflict of interest.

12. INFORMATION TRACKING AND REPORTING

A. The deciding official must complete the "Information Reporting Form" (Appendix III) and submit it to the Disability Program Manager within *10 business days* of the decision. The deciding official must attach to the form copies of all information he/she received as part of processing the request. Medical documents must be sealed, marked as **Confidential Medical Information**, and maintained in a secure storage by the Disability Program Manager. Such medical documents will not be kept with the employee's Official Personnel Folder. Such medical documents may only be reviewed by a USMS official who is involved in making a determination concerning a subsequent request by the employee for an accommodation to his/her disability when the disability and need for accommodation are not obvious or otherwise already known, or to the Office of EEO officials responsible for preparing the report listed in 11.C. below.

B. The Office of EEO must maintain these records for the length of the employee's tenure with the Service or for five (5) years, whichever is longer.

C. The Disability Program Manager will prepare an annual report, to be made available to the EEO Officer. The report will contain the following information, presented in aggregate:

1. the number of reasonable accommodations, by type, that have been requested in the application process and whether those requests have been granted or denied;
2. the jobs (occupational series, grade level, and office) for which reasonable accommodations have been requested;
3. the types of reasonable accommodations that have been requested for each of those jobs;
4. the number of reasonable accommodations, by type, for each job that have been approved, and the number of accommodations, by type, that have been denied;
5. the number of requests for reasonable accommodations, by type, that relate to the benefits or privileges of employment, and whether those requests have been 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; and
8. the sources of technical assistance that have been consulted in trying to identify possible reasonable accommodations.

D. The Office of EEO shall retain for at least 3 years, and be able to provide to the U.S. Equal Employment Opportunity Commission, information or any cumulative records used to prepare annual report which tracks the Service's performance with regard to reasonable accommodation. Tracking performance over a three-year period is critical to enable an agency to assess whether it has adequately processed and provided accommodations.

E. Applicants and employees may track the processing of reasonable accommodation requests by sending a status request to EEO.BOX@usdoj.gov.

13. PERSONAL ASSISTANCE SERVICES (PAS)

- A. The USMS is obligated to provide personal assistance services (PAS) during work hours and job-related travel to employees as mandated in 5 USC § 3102 and described in 29 C.F.R. 1614.203.

B. Definitions

1. PERSONAL ASSISTANCE SERVICE PROVIDER an employee or independent contractor whose primary job function includes provision of personal assistance services.
2. PERSONAL ASSISTANCE SERVICES 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. Examples include removing and putting on clothing, eating, and using the restroom.

C. Funding PAS – PAS activities are centrally funded by the USMS. District and Division work plans will not be affected. District and Division Administrative Officers (AO) may contact the Office of EEO (AO) to coordinate funding once PAS activities are approved.

D. Requesting PAS – Procedures outlined above for requesting reasonable accommodation will be utilized to request PAS.

E. The mandate requires that services must be performed by a personal assistant services provider. The USMS can require that provider to provide services to more than one employee. The provider can also be required to perform task unrelated to personal assistance services, but only to the extent that doing so does not result in failure to provide PAS as required in a timely manner.

F. No adverse action – The law prohibits any agency from taking adverse action against any job applicant or employee based on their need for, or perceived need for PAS.

G. Consideration to the employee when selecting for a single individual in the selection of the PAS provider is allowable to the extent as permitted by the law.

Existing procedures as described in Section 11. Employee Rights apply to employees denied PAS.

APPENDIX I

Reasonable Accommodation Program Internet Resources

U.S. Equal Employment Opportunity Commission (EEOC)

1-800-669-3362 (Voice), 1-800-800-3302 (TTY), Web: www.eeoc.gov

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 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. 1930.2(o), (p), 1630 app. 1630.9; Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (revised October 17, 2002).

The EEOC also has discussed issues involving reasonable accommodation in the following guidance and documents: Pre-employment Disability-Related Questions and Medical Examinations; Enforcement Guidance: Workers' Compensation and the ADA; Enforcement Guidance: The Americans with Disabilities Act and Psychiatric Disabilities; 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 Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act.

All of the above-listed documents are available through the internet at <http://www.eeoc.gov/eeoc-publications>. All of these documents provide guidance that applies to federal agencies through the Rehabilitation Act of 1973, 29 U.S.C. 791.

Job Accommodation Network (JAN)

1-800-232-9675 (Voice/TTY), Web: <http://janweb.icdi.wvu.edu>

Jan is a free consulting service that provides information about job accommodations, the Americans with Disabilities Act (ADA), and the employability of individuals with disabilities.

Computer/Electronic Accommodation Program (CAP)

703-681-8813 (Voice/TTY), 703-681-9075 (Fax), Web: <http://www.tricare.osd.mil/cap>

CAP provides assistive technology and accommodation services for employees with disabilities.

ADA Disability and Business Technical Assistance Center (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 accommodation.

Registry of Interpreters for the Deaf

703-838-0030 (Voice), 703-838-0459 (TTY), Web: <http://rid.org>

This registry offers information on locating and using interpreters and transliteration services.

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 American, 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 such as: information and referral centers to help determine what devices may assist a person with a disability, centers where individuals can try out devices and equipment; assistance in obtaining funding for and repairing devices and equipment; and equipment exchange and recycling programs.

Personal Assistance Services (PAS) Resource**U.S. Equal Employment Opportunity Commission**

1-800-669-3362 (Voice), 1-800-800-3302 (TTY), Web: www.eeoc.gov

The EEOC issued guidance through questions and answers to Federal Agencies' addressing the obligation to provide personal assistance services under Section 501 of the Rehabilitation Act. It can be located at: <https://www.eeoc.gov/federal/directives/personal-assistance-services.cfm>.



DOJ Form 100A Request for Reasonable Accommodation

(To be maintained separate and apart from personnel files and for the duration of the individual's employment.)

1.

Employee's Name

Employee's Telephone No.

Title/Series/Grade

E-mail Address

Date of Request

Employee's Office

2. Accommodation Requested. *(Be as specific as possible, e.g., adaptive equipment, reader, interpreter)*

3. Reason for Request.

If accommodation is time sensitive, please explain:

(Submit this Form to Decision Maker)

DOJ Form 100A

For Questions regarding this form, please contact Katrina Queen, (202) 307-9638.

PRIVACY ACT STATEMENT

(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below.)

1. **FORM NUMBER/TITLE/DATE:** DOJ Form 100A /Request for Reasonable Accommodation/ October 17, 2002; DOJ Form 100B/Reasonable Accommodation Information Reporting Form/ October 17, 2002; or DOJ Form 100C/Denial of Reasonable Accommodation/October 17, 2002.
2. **AUTHORITY:** The Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; Executive Order 13164, dated July 26, 2000, Section 1(b)(9); and Equal Employment Opportunity Commission's Policy Guidance on Executive Order 13164: Establishing Procedures to Facilitate the Provision of Reasonable Accommodation, Directives Transmittal Number 915.003, October 20, 2000.
3. **PRINCIPAL PURPOSE:** To record and track requests for reasonable accommodation by individuals with disabilities, their provision, and the disposition of such requests for the Department of Justice only.
4. **ROUTINE USES:** Pursuant to subsection (b)(3) of the Privacy Act, information may be disclosed from this system as follows: To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of an individual who is the subject of the record. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, to any civil or criminal law enforcement authority or other appropriate agency, whether federal, state, local, foreign, or tribal, charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing a statute, rule, regulation, or order. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by DOJ to be arguably relevant to the proceeding. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings. To a federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation, or pursuit of other appropriate personnel matter. To a federal, state, local, or tribal agency or entity that requires information relevant to a decision concerning the letting of a license or permit, the issuance of a grant or benefit, or other need for the information in performance of official duties. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records. To a former employee of the Department for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)) for Executive Branch coordination of activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.
5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION:** The provision of information for Form 100A is voluntary; however, if you do not provide this information, the Department may not provide you with an accommodation, and you may not receive important information. Forms 100B and 100C are mandatory for Decision Makers.



DOJ Form 100B Reasonable Accommodation Information Reporting Form

(To be maintained separate and apart from personnel files and for the duration of the individual's employment. A copy must be provided by the Decision Maker to the appropriate Accommodation Coordinator.)

Name of employee requesting reasonable accommodation: _____

Office of employee: _____

1. Reasonable accommodation: *(check one)*
 - Approved (If approved, attach copy of DOJ Form 100A.)
 - Denied (If denied, attach copy of DOJ Form 100A, DOJ Form 100C and any related written denial letter/memo.)
2. Date reasonable accommodation requested: _____
Who received request: _____
3. Name of Decision Maker if different from person identified directly above: _____
4. Date reasonable accommodation approved or denied: _____
5. Date reasonable accommodation provided *(if different from date approved)*: _____
6. Interim measures provided, if any:
7. If time frames outlined in the Reasonable Accommodation Procedures were not met, please explain why.
8. Job held by individual requesting reasonable accommodation *(including title, occupational series, grade level, and office)*:

For questions regarding this form, please contact Katrina Queen, 202-307-9638.

9. Reasonable accommodation needed for: (check one)

- Performing Job Functions or Accessing the Work Environment
- Accessing a Benefit or Privilege of Employment (e.g., attending a training program or social event)

10. Type(s) of reasonable accommodation requested (Circle one: Personnel Action, Adaptive Equipment (including Information Technology and Communications Equipment); Specially Designed Furniture; Removal of an Architectural Barrier(s) (including reconfigured work spaces); Accessible Parking; Materials in Alternative Formats (e.g., Braille, Large Print); Job Restructuring; Retraining; Adjusting Schedules; Flexible Leave Policies; Alternate Work Schedule; Alternate Work Site; Reassignment To Another Job; Reader, Sign Language Interpreter, or other Staff Assistant; or explain other: _____)

11. Type(s) of reasonable accommodation provided (if different from what was requested):

12. Was medical or other appropriate supporting information required to process this request? If yes, explain why.

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

14. Comments:

Submitted by: _____ Phone: _____

Title: _____

Attach DOJ Form 100A, DOJ Form 100C (if required) and copies of all documents obtained or developed in processing this request.

DOJ Form 100B

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3. **PRINCIPAL PURPOSE:** To record and track requests for reasonable accommodation by individuals with disabilities, their provision, and the disposition of such requests for the Department of Justice only.
4. **ROUTINE USES:** Pursuant to subsection (b)(3) of the Privacy Act, information may be disclosed from this system as follows: To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of an individual who is the subject of the record. To the General Services Administration and National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, to any civil or criminal law enforcement authority or other appropriate agency, whether federal, state, local, foreign, or tribal, charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing a statute, rule, regulation, or order. In an appropriate proceeding before a court, grand jury, or administrative or regulatory body when records are determined by DOJ to be arguably relevant to the proceeding. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion on such matters as settlement, plea bargaining, or in informal discovery proceedings. To a federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation, or pursuit of other appropriate personnel matter. To a federal, state, local, or tribal agency or entity that requires information relevant to a decision concerning the letting of a license or permit, the issuance of a grant or benefit, or other need for the information in performance of official duties. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records. To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility. To the White House (the President, Vice President, their staffs, and other entities of the Executive Office of the President (EOP)) for Executive Branch coordination of activities which relate to or have an effect upon the carrying out of the constitutional, statutory, or other official or ceremonial duties of the President. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.
5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION:** The provision of information for Form 100A is voluntary; however, if you do not provide this information, the Department may not provide you with an accommodation, and you may not receive important information. Forms 100B and 100C are mandatory for Decision Makers.



DOJ Form 100C Denial of Reasonable Accommodation

(To be maintained separate and apart from personnel files and for the duration of the individual's employment. Decision Maker must complete numbers 1-4 and complete number 5, if applicable.)

1. Name of employee requesting reasonable accommodation:

2. Type(s) of reasonable accommodation requested:

3. Request for reasonable accommodation denied because: *(may check more than one box)*
 - Accommodation Ineffective
 - Accommodation Would Cause Undue Hardship
 - Medical Documentation Inadequate
 - Accommodation Would Require Removal of an Essential Job Function
 - Accommodation Would Require Lowering of Performance or Production Standard
 - Other (Please identify) _____

4. Detailed reason(s) for the denial of reasonable accommodation *(Must be specific, e.g., why accommodation is ineffective or causes undue hardship)*:

5. If the individual proposed one type of reasonable accommodation which was denied, but rejected an offer of an alternative type of accommodation, explain both the reasons for denial of the requested accommodation and why the offered accommodation would be effective.

For questions regarding this form, please contact Katrina Queen, 202-307-9638.

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5. **WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION:** The provision of information for Form 100A is voluntary; however, if you do not provide this information, the Department may not provide you with an accommodation, and you may not receive important information. Forms 100B and 100C are mandatory for Decision Makers.