

**SBA**

**SOP 37 17 1**

**Reasonable Accommodation and  
Personal Assistance Service Policy and  
Procedure**

*Office of Diversity, Inclusion and Civil Rights*

*U.S. Small Business Administration*

# **U.S. Small Business Administration Standard Operating Procedure Summary**

**S.O.P. Number:** 37-17-1

**Edition:** 01

**Series:** N/A

**Purpose:** To update the Reasonable Accommodation and Personal Assistant Policy and Procedures by including the periodic assessment of the Agency's Reasonable Accommodation process.

**Key Pages Affected in this Update:** Page #8/9, Section IV – ROLES AND RESPONSIBILITIES 4

## **B. Disability Employment Program Manager (DEPM) 4-2**

8. Assesses the effectiveness of the Reasonable Accommodation and Personal Assistant Program by conducting quarterly surveys to employees who have participated in the Reasonable Accommodation process.

**Stakeholders Affected:** All SBA employees.

**Originating Office:** The Office of Diversity, Inclusion and Civil Rights

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## Table Of Contents

<b>Reasonable Accommodation and Personal Assistance Service Policy and Procedure .....</b>	<b>1</b>
<b>I. PURPOSE AND SCOPE 1-1 .....</b>	<b>6</b>
<b>II. AUTHORITY 2-1.....</b>	<b>6</b>
<b>III. SBA POLICY ON REASONABLE ACCOMMODATIONS 3-1.....</b>	<b>6</b>
<b>IV. ROLES AND RESPONSIBILITIES 4.....</b>	<b>7</b>
A.The Office of Diversity, Inclusion & Civil Rights (ODI&CR) 4-1.....	7
B.Disability Employment Program Manager (DEPM) 4-2.....	7
C.Office of Human Resources 4-3 .....	8
D.Office of General Counsel (OGC) 4-4 .....	8
E. Office of the Chief Information Officer (OCIO) 4-5.....	8
F. Deciding Official (DO) 4-6 .....	9
G.Reviewing Official (RO) 4-7 .....	9
H.Employees and Applicants with a Disability 4-8 .....	9
<b>V. SBA PROCEDURES ON PROCESSING REASONABLE ACCOMMODATIONS 5 10</b>	
A.Requesting a Reasonable Accommodation 5-1 .....	10
B.Determining who will Process the Request 5-2.....	11
C.Timeframe for Processing Requests 5-3 .....	12
1. For Applicants .....	13
D.The Interactive Process 5-4 .....	14
E. Requests for Medical Information 5-5 .....	15
F. Confidentiality Requirements 5-6.....	17
G.Reassignment 5-7.....	18
H.Issuing the Reasonable Accommodation Decision 5-8 .....	21
1. Approval.....	22

2. Alternative Accommodation .....	22
3. Denial of a Request.....	22
4. Requests for Reconsideration.....	23
5. Re-evaluating Provided Accommodations.....	24
I. Relation of Procedures to Statutory and Collective Bargaining Claim Information Tracking 5-9.....	25
J. Information Tracking and Reporting 5-10 .....	25
1. Tracking .....	25
2. Reporting.....	25
<b>VI. Personal Assistance Services 6-1 .....</b>	<b>26</b>
<b>VII. APPENDICES.....</b>	<b>28</b>
APPENDIX A: Glossary .....	29
Architectural Barriers.....	29
Deciding Official .....	29
Disability Employment Program Manager (DEPM).....	29
Direct Threat.....	29
Effective .....	29
Essential Functions .....	30
Implementing Office.....	30
Interactive Process .....	30
Medical Documentation.....	30
Person with a Disability.....	30
Personal Assistance Service .....	31
Personal Assistance Service Provider .....	31
Qualified Employee or Applicant for Employment .....	32
Reasonable Accommodation .....	32

Reassignment .....	32
Reviewing Official (RO).....	33
Targeted Disabilities .....	33
Undue Hardship.....	33
APPENDIX B: Disability Services.....	34
Initiating Services .....	34
Employee Preference .....	34
Scheduling Services.....	34
Travel Services .....	35
Sign Language Interpreting (SLI) Specifications .....	35
Workplace Assistant Services (WPA) Specifications .....	36
Personal Assistance Services (PAS) Specifications .....	36
APPENDIX C: Reasonable Accommodation Resources.....	38
APPENDIX D: Avenues of Redress.....	40
APPENDIX E: SBA Reasonable Accommodation Forms .....	44
APPENDIX F: Reasonable Accommodation Resource Person.....	45

## **I. PURPOSE AND SCOPE 1-1**

The purpose of this policy manual is to present the Small Business Administration's (SBA) policies and procedures on processing reasonable accommodations for employees and applicants with disabilities. SBA developed procedures in compliance with the Equal Employment Opportunity Commission (EEOC) guidance.

## **II. AUTHORITY 2-1**

The following require Federal agencies to engage in affirmative action for individuals with disabilities: Rehabilitation Act of 1973, as amended (29 U.S.C. § 791 et seq.); the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12102, 12114, the Americans With Disabilities Act (ADA) Amendments Act of 2008); Federal regulations (29 U.S.C. § 791 et seq.); and 29 C.F.R. §1614 and 1630. 29 C.F.R. part 1630 implements the Americans with Disabilities Act.

## **III. SBA POLICY ON REASONABLE ACCOMMODATIONS 3-1**

SBA strives to create an inclusive environment where employees are fully engaged, and diversity is respected. As such, SBA is fully committed to providing reasonable accommodation to employees and applicants for employment as part of the larger effort to foster an inclusive organizational culture that empowers all employees to realize their full potential. SBA values its diverse employees and continues to invest in building a workforce prepared to deal with the challenges facing small businesses, today and in the future. To ensure the Agency recruits and retains qualified individuals with disabilities, managers are encouraged to provide voluntary modifications outside of the reasonable accommodation process when the request is easy, and it is inexpensive to do so. In an instance where a voluntary modification was made, the manager would reduce the modification to writing and provide the Disability Employment Program Manager (DEPM) with a copy.

In accordance with the Rehabilitation Act of 1973, as amended, and SBA's policy on reasonable accommodations, it is SBA's policy to provide reasonable accommodations for qualified individuals with disabilities who are SBA employees or applicants for employment, unless doing so would pose an undue hardship on the operations of the Agency. SBA's reasonable accommodation policy applies to the following:

1. The application/hiring process to provide a qualified applicant with a disability an equal opportunity to be considered for a position.
2. The performance of the essential functions of a job to enable a qualified person with a disability to perform the essential job duties sought or currently held.
3. The receipt of all employment benefits to enable an employee with a disability to enjoy employment benefits and privileges equal to those enjoyed by other similarly situated employees without disabilities.

The need for a reasonable accommodation is determined on a case-by-case basis, taking into consideration the applicant's or employee's specific disability and existing limitations to the performance of a particular job function, the essential duties of a job, the work environment, and whether the proposed accommodation would create an undue hardship to the Agency's operations.

SBA has authority to adopt flexible leave policies, subject to appropriate laws and regulations that will accommodate employees with disabilities. SBA is also encouraged to approve flexible or alternative work schedules for employees who cannot meet the requirements of the regularly scheduled tour of duty for their position for reasons associated with their disabilities. Use of SBA's telework program is encouraged when employees require use of alternative work locations. SBA may modify internal policies, subject to applicable laws and regulations, to accommodate employees with disabilities.

It is important to note the relevant terms such as "reasonable accommodation," "disability," "interactive process," "qualified," and "undue hardship," are used throughout this document. The definition of these terms is intended to be align with applicable statutory and regulatory definitions. To create a common understanding of terminology used during the reasonable accommodation process, definitions are provided in the glossary at the end of this document. See **Appendix A**.

#### **IV. ROLES AND RESPONSIBILITIES 4**

##### **A. The Office of Diversity, Inclusion & Civil Rights (ODI&CR) 4-1**

1. Develops and issues policies and procedures governing the provision of reasonable accommodation.
2. Advises Agency officials regarding laws, regulations, executive orders, and Agency policy related to the provision of reasonable accommodation.
3. Ensures compliance with the governing laws, regulations, executive orders, and Agency policy related to the provision of reasonable accommodation.

##### **B. Disability Employment Program Manager (DEPM) 4-2**

1. Manages the reasonable accommodation program for all SBA components.
2. Administers the reasonable accommodation program by reviewing requests from employees and applicants and assesses requests to determine whether the individual meets the definition of an individual with a disability and needs the accommodation requested.
3. Obtains and evaluates documentation supporting an accommodation request (such as medical information) when the disability and/or need for accommodation is not obvious.
4. Works with the employee's supervisor to ensure that any accommodation, if appropriate, meets the individual's disability-related needs, does not entail eliminating essential functions of the position, is feasible, and does not pose an undue hardship.
5. Works with applicants with disabilities who need accommodation to apply for or interview for a job.

6. Makes the final decision on requests as outlined in Section V (B) below.
7. Administers the Agency-wide budget to cover all costs associated with providing reasonable accommodations, including sign language interpreters, furniture, technology, and other significant purchases.
8. Assesses the effectiveness of the Reasonable Accommodation and Personal Assistant Program by conducting quarterly surveys to employees who have participated in the Reasonable Accommodation process. Survey results will help to identify any potential barrier to employee retention, identify potential risk and put appropriate measures in place if any such barriers are identified.

**C. Office of Human Resources 4-3**

1. Ensures job vacancy announcements include a notice to applicants on how to request reasonable accommodations and the appropriate Human Resources (HR) staffing contact.
2. Forwards all requests for reasonable accommodations from applicants to DEPM within two (2) business days of receiving the request.
3. Identifies vacant positions for which an employee is qualified in cases where reassignment is being considered as a possible reasonable accommodation.
4. Forwards the “Agency Certification of Reassignment and Accommodation Efforts” package, SF 3112D, to the DEPM when an employee requests disability retirement.
5. Provides the DEPM with an employee/applicant’s Schedule A documentation if requested by DEPM.
6. Serves as a primary expert resource to DEPM and Deciding Officials when an accommodation request is complicated by performance, conduct, terms of employment, or leave issues; a workers’ compensation claim; or involves reallocation of tasks, telework, reassignment, revision of standards, or other adjustments ordinarily accomplished with the assistance of HR staff.

**D. Office of General Counsel (OGC) 4-4**

1. Serves as a resource to the DEPM and management officials for consultation.

**E. Office of the Chief Information Officer (OCIO) 4-5**

- a. Ensures all electronic information technology hardware and software are fully accessible to employees with disabilities in SBA’s workplace, in compliance with Section 508 of the Rehabilitation Act of 1973, as amended. OCIO is also responsible for implementing or reviewing any reasonable accommodations that require technological upgrade or changes. The DEPM will notify OCIO of requests for technological upgrades or changes.



**F. Deciding Official (DO) 4-6**

1. Engages in the interactive communication process with the person requesting the reasonable accommodation.
2. Confirms, whenever possible, that the employee wants a reasonable accommodation when a family member, health professional or representative requests a reasonable accommodation on an employee's behalf.
3. Contacts the DEPM within three (3) business days of receiving a request for a reasonable accommodation and provides him/her with a copy of the request form and any other documentation or communication submitted by the employee.
4. Determines whether the Agency will approve, modify, or deny the reasonable accommodation.
5. Continues to inform the DEPM when employee requests amendments to a reasonable accommodation or when the provided accommodation is no longer effective.
6. Extends, when extenuating circumstances are present, the time frame for processing a request and providing the accommodation, as necessary. The Deciding Official must promptly notify the employee, in writing, of the reason for the extension.

**G. Reviewing Official (RO) 4-7**

1. Receives employee's request for reconsideration of the decision the Deciding Official renders.
2. Reviews evidence employee submits when a request for reconsideration is received and renders a final decision on the accommodation request after a review of all supporting documentation.

**H. Employees and Applicants with a Disability 4-8**

1. Cooperates in the interactive process throughout the reasonable accommodation process (failure on the part of the employee or applicant to cooperate in the interactive process may result in a denial of the reasonable accommodation request).
2. Promptly provides any requested medical information about the disability, limitations, and need for accommodation, to the Deciding Official, Reviewing Official, or the DEPM.

3. Submits any requests for reconsideration on reasonable accommodation decisions, within fifteen (15) calendar days of receipt of the Deciding Official's determination, to the Reviewing Official with a copy to the DEPM.
4. Applicants must submit their request for reconsideration to the DEPM.
5. Promptly notifies the DEPM when a previously provided accommodation is no longer needed.
6. Promptly notifies the DEPM upon reassignment to a new manager, including the name of their new manager. Also, notify the DEPM whether there is a continued need for the previously approved reasonable accommodation.

## **V. SBA PROCEDURES ON PROCESSING REASONABLE ACCOMMODATIONS 5**

### **A. Requesting a Reasonable Accommodation 5-1**

The reasonable accommodation process begins as soon as an employee, applicant, or a representative on behalf of the employee or applicant makes a request for a reasonable accommodation. A request for a reasonable accommodation is a statement that an individual needs an adjustment at work, in the application process, or in a benefit or privilege of employment for a reason related to a medical condition. Individuals need not have a specific accommodation in mind at the time they initiate a request, and the request does not have to use any special words, such as "reasonable accommodation," "disability," or "Rehabilitation Act." An individual with a disability may request a reasonable accommodation whenever he/she chooses, even if he/she has not previously disclosed the existence of a disability.

- a. For SBA Employees: Requests for accommodation may be submitted directly to the employee's immediate supervisor (defined as the Deciding Official). However, the request may also be made to another management official in the employee's chain of command, or to the SBA Disability Employment Program Manager in the Office of Diversity, Inclusion, and Civil Rights.
- b. For SBA Job Applicants: The procedures governing the provision of reasonable accommodations to applicants for employment with the SBA are generally the same as those that apply to SBA employees, with the following exceptions:
  1. Applicants requesting reasonable accommodation, seeking accommodation related to an SBA vacancy announcement or application process, must submit accommodation requests to the Human Resource Specialist identified as the Agency Point of Contact on the vacancy announcement or the DEPM.
  2. The Human Resource Specialist or the DEPM will contact the applicant within two (2) business days after the request for the reasonable accommodation is received to request that the applicant complete and submit SBA Form 2431-1, Request for Reasonable Accommodation, explain the Agency's procedures for processing the request, and obtain any additional information from the applicant necessary to process the requested accommodation.

3. Once the DEPM receives the request, the DEPM and the applicant will engage in the interactive process.
  4. Depending on the timetable for receiving applications, conducting interviews, and making hiring decisions, a need may arise to expedite the request to ensure the applicant has an equal opportunity to apply for a position. Absent extenuating circumstances, the DEPM will make a determination, in consultation with the hiring manager, and issue the decision memorandum swiftly, within three (3) business days after the request is initially made or before the situation necessitating the provision of the accommodation (i.e., the interview) occurs.
- c. Third Party Requests: A family member, healthcare professional, or other representative may request a reasonable accommodation on behalf of an employee or applicant. The request should go to one of the same persons to whom the employee or applicant would make the request. When a third party requests an accommodation i, the Deciding Official should, whenever possible, confirm with the applicant or employee with a disability that he/she, in fact, wants a reasonable accommodation before proceeding. After confirming that the employee or applicant wants to proceed, he/she must complete a medical release form to enable the DEPM to engage with the third party. If the employee is incapacitated, or is for example, hospitalized due to an acute condition, SBA will process the third party's request and consult directly with the individual needing the accommodation as soon as practicable.

Although a request for a reasonable accommodation may be made orally or in writing, for accurate recordkeeping and tracking purposes, SBA employees should prepare the "Request for a Reasonable Accommodation (SBA 2431-1)" form when submitting a request.

When an employee needs a re-occurring accommodation (e.g., sign language interpreter, workplace assistant, alternative materials or trainings, etc.) the employee is only required to move through the reasonable accommodation request process at the time of the initial request. If the employee is approved for a re-occurring accommodation, all subsequent requests simply require advanced notice to the appropriate point of contact.

## **B. Determining who will Process the Request 5-2**

The EEOC requires agencies to take steps to anticipate and limit impediments that may cause unnecessary delays in providing an RA. This includes evaluating and implementing practices that reduce bureaucratic barriers which make it difficult to provide effective accommodations. SBA is committed to implementing mechanisms, including funding mechanisms (e.g., a centralized accommodation fund), that streamlines the reasonable accommodation process and eliminate the need for individual Program Offices to pay for approved accommodations. Accordingly, the employee's first line supervisor will make decisions on all reasonable accommodation requests. In some instances, another manager in the employee's supervisory chain may need to serve as the Deciding Official. The Disability Employment Program Manager will make decisions on all other requests to include the following:

- a. Requests from applicants.
- b. Requests for disability services (e.g., readers, sign language interpreters, or other workplace/personal assistants services) that enable employees to perform their job functions.
- c. Requests for materials in alternative formats (e.g., Braille).
- d. Requests for reassignment to another job in coordination with the Office of Human Resources Solutions or Office of Disaster Personnel.

### C. **Timeframe for Processing Requests 5-3**

Absent any extenuating circumstances, the time frame for processing a request, notifying the requester of the outcome, and providing accommodation, if granted, is as soon as possible but no later than thirty (30) business days from the date the request is made. All SBA staff members are expected to act quickly in processing requests and providing accommodation in as short a time as possible. While the timelines outlined below are guidelines, it is important to note that some accommodations can be provided in less time and the failure to respond promptly to a request for a reasonable accommodation, or an unnecessary delay when implementing a reasonable accommodation, may result in a violation of the Rehabilitation Act of 1973.

- a. If the disability is obvious and already known to the Deciding Official, and it is clear why the accommodation is needed and if it could be provided quickly, then it is not necessary to wait thirty (30) business days to process the request. The request shall be approved or denied as soon as possible but no more than **fifteen (15) business days** from the date the individual makes the request and provides all necessary documentation.
- b. The accommodation, if approved, will be provided as soon as possible but no later than **thirty (30) business days** from the date the request was approved.
- c. If medical documentation is required:
  1. The DEPM will work with the Deciding Official to request that the employee contact his/her health care provider to obtain medical documentation in support of his/her request.
  2. Agency time frames are suspended until the requested medical documentation is submitted.
  3. The request will resume and be processed in accordance with aforementioned timeframes when the responsive medical documentation is received.
  4. During the review process, the employee may be afforded an interim accommodation, where possible.

5. The Agency has the right to have medical information reviewed by a medical expert of the Agency's choosing and at the Agency's expense. As such, when necessary, and as determined by the DEPM and with the employee's consent, supporting medical documentation will be forwarded for review by Federal Occupational Health (FOH) with whom the Agency has a service agreement, and FOH will provide a recommendation.
- a. Expedited Processing of a reasonable accommodation is required under the following circumstances:
    1. For Applicants:
      - 1) The Agency will make every effort to process the request and provide the accommodation to ensure that the applicant with the disability has equal access to apply for a job vacancy. Applicants will need to timely request an accommodation to navigate the job hiring process.
      - 2) The HR Specialist involved with the job announcement will act as quickly as possible, but not later than two (2) business days, to notify the DEPM who will review the request and try to provide the requested accommodation, if appropriate, within the timetable.
    2. For Employees:
      - 1) To enable an employee to attend a meeting or event on short notice. For example, an employee may need a sign language interpreter for a meeting within a short time frame.
  - b. Extenuating Circumstances cover limited situations, in which unforeseen or unavoidable events occur beyond the control of SBA personnel, preventing the processing and delivery of an accommodation within the time frames listed above. The following are examples, not intended to be exhaustive, of extenuating circumstances:
    1. Delivery of equipment may take longer than thirty (30) business days.
    2. Equipment must be back ordered, or a workspace reconfigured.
    3. Cases sent to FOH for review.
    4. New staff must be hired, or new contracts must be issued. It is important to note that ODI&CR has centralized contracts so that the Agency can solicit from a pool of vendors who can provide disability services such as sign language interpreting, workplace assistant, and personal assistant services. (See **Appendix B**).
    5. Architectural barriers must be removed.

6. If a request violates the terms of the Master Labor Agreement, the Deciding Official, OGC Representative, OHRS Representative and DEPM will meet with a union official, after obtaining a signed medical release form from the employee, to discuss variances to the MLA to allow for the accommodation.
7. When extenuating circumstances are present, the time frame for processing a request and providing the accommodation may be extended as necessary; however, the employee may be afforded an interim accommodation where possible. *Upon notification of the delay, the Deciding Official must promptly notify the employee, in writing, of the reason for the extension.* Any further developments or changes should also be communicated promptly in writing to the employee.

If there is a delay in providing an approved accommodation, the Deciding Official must determine if temporary measures (an interim accommodation) can assist the employee. This could include providing the requested accommodation on a temporary basis or temporarily providing a less effective form of accommodation. Deciding Officials who approve temporary measures are responsible for assuring that these temporary measures do not take the place of permanent accommodations and that all necessary steps to secure permanent accommodation are being taken.

If the employee needs to try various accommodations to find one that is suitable, the time frame for providing the accommodation will be expanded by mutual consent between the employee and Deciding Official.

#### D. **The Interactive Process 5-4**

Communication between the individual requesting the accommodation, and the Deciding Official, as well as with the DEPM, is a priority throughout the entire process. To the extent possible, employees should participate in identifying effective accommodations.

In cases where the disability, the need for accommodation, and the type of accommodation to be provided are clear, extensive discussions are not necessary. If the need for an accommodation is not immediately obvious or if there are several options for providing accommodations, the requesting individual and the Deciding Official will enter into the interactive process, through which the Deciding Official will arrive at a decision on a reasonable accommodation.

The DEPM is available to provide technical assistance to both SBA employees and supervisors throughout this process, particularly when the specific limitation, problem, or barrier is unclear, or where an effective accommodation is not obvious.

When engaging in an interactive process, focus should be placed on:

- a. The essential functions and purpose of the employee's job.
- b. The essential functions and purpose of the employee's job.
- c. The functional limitations imposed by the employee's disability or medical condition.

- d. The factors in the work environment or job tasks that pose difficulties to the individual's performance of a job function.
- e. Possible accommodations that have the potential to remove the difficulties, either in the work environment or job tasks, and which would allow the individual to perform the essential functions of the job.
- f. The effectiveness of possible accommodations and whether the various accommodations would pose an undue hardship on the Agency.

As part of the interactive process, the supervisor may consult with the DEPM, who may offer alternative suggestions for reasonable accommodations and discuss their effectiveness in removing the workplace barrier that is impeding the individual with the disability. The Agency may choose among effective accommodations, and thus, is not required to provide the specific accommodation requested by the employee.

Resources available to help both the supervisor and the individual requesting the accommodation to identify possible accommodations are listed in Appendix C.

As soon as the Deciding Official determines that a reasonable accommodation will be provided, the decision should be immediately communicated to the employee or applicant. If the accommodation cannot be provided immediately, the Deciding Official, in collaboration with the DEPM, must inform the individual, in writing, of the projected time frame for providing the accommodation.

#### **E. Requests for Medical Information 5-5**

If a requestor's disability and/or need for accommodation are not obvious or already known, the Agency may require the individual to provide medical information that is sufficient to explain the nature of the disability and the functional limitations that require reasonable accommodation. The DEPM and Deciding Official will require medical information showing that the requestor has a covered disability that requires accommodation. The medical information must explain the nature of the disability, the individual's need for reasonable accommodation, and how the requested accommodation will assist the individual apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace. A disability is obvious or already known when it is clearly visible or where the SBA already has information from the individual showing that the condition met the Rehabilitation Act definition. It is the applicant's/employee's responsibility to provide appropriate medical information requested by the DEPM or Deciding Official where the disability and/or need for accommodation are not obvious or already known. Only the DEPM may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate health care professional (for example, a doctor, psychologist, clinical social worker, physical therapist, or rehabilitation counselor).

If the initial information provided by the health care professional or volunteered by the requestor is insufficient for the DEPM to determine whether the individual has a claimed "disability" and/or that an accommodation is needed, then the supervisor or DEPM may request medical information. The DEPM or Deciding Official will explain to the applicant/employee what additional information is needed and why.

Documentation also might be insufficient when:

- a. The functional limitations caused by the disability and the need for the accommodation are not obvious.
- b. The extent, duration, or effectiveness of a requested accommodation is not clear.
- c. The health care professional does not have the expertise to give an opinion about the employee's medical condition and the limitations imposed by it.
- d. Other factors indicate that the information provided is not credible or is fraudulent.
- e. If an employee provides insufficient documentation; the Agency does not have to provide reasonable accommodation until sufficient documentation is provided.

In the event the Agency receives insufficient medical documentation, then the following actions may include but are not limited to:

1. The Deciding Official, in consultation with the DEPM, may request additional information by explaining to the individual seeking the accommodation, in specific terms, why the information provided is insufficient, what additional information is needed, and why it is necessary for a determination of the reasonable accommodation request. The DEPM may provide a list of specific questions to send to the individual's health care provider.
2. With the agreement of the employee, the DEPM may request that he/she sign a limited release permitting the DEPM to directly contact the individual's health care provider for additional information. An individual's refusal to provide information requested, may result in a decision not to provide the requested reasonable accommodation. In situations where the applicant or employee elects not to provide the requested medical information to the Deciding Official, he/she may submit the information directly to the DEPM.
3. As noted in Section V. C. c2., the Agency will suspend the processing of a case and will not be expected to adhere to its usual timelines if an individual's health care professional fails to provide the necessary documentation in a timely manner.
4. The DEPM will advise the Deciding Official whether the medical documentation demonstrates that a reasonable accommodation is appropriate and will provide, as necessary, additional relevant information about the individual's functional limitations. Work products and communications created during the review of medical documentation, including but not limited to findings submitted by FOH, are confidentially maintained by the DEPM and will not be shared, except as required under Section V. F. of this policy.



If the DEPM makes a determination that the provided medical documentation does not provide adequate information to make a determination on whether the individual has a covered disability, or does not address what the functional limitations are, then, on a case-by-case basis and with the consent of the individual, the case will be forwarded to FOH requesting a review of the medical condition and appropriateness of the requested reasonable accommodations.

#### F. **Confidentiality Requirements 5-6**

Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must remain confidential. Any SBA employee who obtains or receives such information is strictly bound by these confidentiality requirements. In addition, all requests for and provision of reasonable accommodations must be kept confidential pursuant to EEOC guidance including [Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act](#).

All medical information that is obtained in connection with a request for reasonable accommodation, including information about functional limitations and reasonable accommodation needs, will be kept in a separate file record that is maintained by the DEPM. Records will be maintained in accordance with the Privacy Act, EEOC regulations, General Records Schedule, and SBA records management policy.

The DEPM will respond to all requests for disclosure of the records. This information may be disclosed only as follows:

1. Supervisors and managers with a need to know may be told about necessary restrictions on the work or duties of the employee and about the necessary accommodation(s).
2. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.
3. Government officials may be given information necessary to investigate or provide technical assistance to ensure compliance with the Rehabilitation Act.
4. In certain circumstances, medical information may be disclosed to Workers' Compensation offices or insurance carriers.

Whenever medical information is disclosed, the individual disclosing the information must inform the recipients of the information about the confidentiality requirements.

Any SBA official who receives information in connection with a request for reasonable accommodation may share information connected with that request with other Agency officials only when the officials need to know the information in order to make determinations on a reasonable accommodation request. Supervisors should contact the DEPM to obtain guidance, as necessary, to ensure that the proper procedures are followed. An example could involve the Office of Chief Information Officer (OCIO) where that office would only need to know the individual's functional limitations and how the limitations affect technology needs.

Any supervisor or manager, who has concerns about confidentiality, including how to respond to other employees' inquiries without violating confidentiality, should speak with the DEPM. Supervisors or managers may also find question 42 of the EEOC's Enforcement Guidance: [Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act](#) to be useful as well.

#### G. **Reassignment 5-7**

Reassignment is a form of reasonable accommodation that may be provided, absent undue hardship, to employees who, because of a disability can no longer perform the essential functions of their position, with or without a reasonable accommodation. Reassignment may only be considered if there is no other effective accommodation that would enable the employee to perform the essential functions of the current job, or if all other possible accommodations would pose an undue hardship on the Agency. Accordingly, it is considered the "accommodation of last resort." Reassignment is only available to employees, not job applicants.

The DEPM will evaluate requests for reassignment and, if the request meets the aforementioned criteria, help to facilitate the reassignment process by working with the Deciding or Reviewing Official, and the servicing Human Resources office to determine where there are equivalent positions available for reassignment. The Agency shall offer to reassign the individual to an open, funded, vacant position at an equal or lower grade, without save pay, (the Agency's search should be within or outside of the local fifty (50) mile commuting area if the employee is willing to relocate) for which the employee is qualified, unless such a reassignment would impose an undue hardship on the Agency. Reassignment cannot be made to a position with greater promotion potential than the original position held by the employee.

A position is considered vacant even if the Agency has posted a notice or announcement seeking applications for that position. The employee does not have to be the best qualified, but simply has to be qualified for the position.

The interactive process is especially critical when a reassignment is being considered as an accommodation. During the interactive process and before the Agency conducts a search on a possible reassignment opportunity, the Deciding or Reviewing Official should engage the employee about the possibility of being reassigned to a different job series; a lower graded position, a position that is outside of their current office or fifty (50) mile commuting area, or a part-time position.

If the employee is interested in proceeding with the reassignment job search, and the Deciding or Reviewing Official determines that a reassignment is the last resort accommodation option, then the Deciding Official will work with the DEPM to follow through with the following steps to facilitate the reassignment search:

- a. Request that the employee:
  1. Provide an updated resume.
  2. Indicate whether they are interested in a position at a lower grade and identify the range of grades for which they would be interested.

3. Indicate whether they are interested in a position outside of their current fifty (50)-mile commuting area.
4. Clarify whether there are any specific medical restrictions regarding job duties that should be considered in determining if they are qualified and able to perform the essential functions of an open, vacant, funded SBA position.
5. If the employee does not provide the necessary information, then the Agency is unable to complete the reassignment search as a reasonable accommodation.

The reassignment is non-competitive, and the process should be completed within sixty (60) calendar days from the date the Agency commences the search for an appropriate position.

- b. The Office of Human Resources plays a vital role in the reassignment search process and will work in conjunction with the DEPM as follows:
  1. The DEPM will obtain the employee's resume and provide it to the appropriate HR Office. The DEPM will notify the HR Office of the range of grades to search and the specific location parameters. Additionally, the DEPM will share the specific medical restrictions with the HR Office after a funded position has been identified.
  2. The HR Office will search for suitable job openings, including positions that will be open within the next sixty (60) calendar days, at the employee's current duty location or within the fifty (50) mile commuting area. The essential elements of the jobs as described in the job announcement or position description should not exceed the employee's physical limitations, when appropriate accommodations are considered. HR will email the hiring officials at the employee's location to request information on any vacancies expected to open in the next sixty (60) calendar days and inquire if there are any known pending retirements for the job series and pay level identified by the employee. HR should also review all pending SBA job vacancy announcements.
  3. Once a position is identified, HR will consult with the hiring official to confirm the requisite skill sets, duties, etc. to make a qualifications determination. At this point, HR should not mention the reassignment attempt to the hiring official.
  4. Once HR has ascertained all the requirements for the positions, it will compare them to the employee's skills, experience and knowledge. If the employee qualifies for the position and can perform the essential functions of the position, with or without accommodations, HR will inform the hiring official, without providing the name of the employee, that the position must be held.
  5. If the employee meets the minimum qualifications for the position identified, the placement should be non-competitive. Thus, there is no interview or ranking process.

6. If no position is found at the current location, HR will share the employee's resume and job/pay choice with the other departments within the Agency identified by the employee. The HR staff at that location or those locations will follow the guidance in 1 - 4 above.
7. For the purposes of reassignments, all departments within SBA are considered one agency. All HR offices within SBA, when asked, must cooperate with the job search for a suitable position as a last resort reassignment for an employee who requires this as a reasonable accommodation.
8. This process will continue until a position is found, expiration of the sixty (60) calendar days or if the employee would only consider a job in a specific office, or a specific grade and there is no foreseeable expectation that a job will become vacant and funded within the sixty (60) calendar day period.
9. Reassignment in the same location will be sought first but if the employee agrees to a broader search, reassignment can be made to positions within SBA beyond the department or location where the requestor was originally employed. Relocation costs will be provided only if indicated in the vacancy announcement or if relocation expenses are normally paid with respect to the position identified. If the employee elects to take a lower graded position, no pay retention at their current grade will be offered.
10. Once the employee accepts the reassignment offer, then the HR staff should explain to the hiring manager for the identified vacancy:

*“Your vacancy was identified as a suitable position for an employee who needs reassignment as an accommodation. SBA is required to follow U.S. Equal Employment Opportunity Commission (EEOC) guidance in this matter; the EEOC interprets agency obligations under the Rehabilitation Act of 1973, as amended. Therefore, this reassignment is non-competitive. The Staffing Specialist reviewed the job description and compared it to the employee's resume, and he/she was found to be qualified. If you wish to meet the employee before he/she comes on board, you may do so, but we need to stress that this is not an interview. It has already been decided that this employee will be reassigned to this position. Please note that an individual's disability status is private information and may not be shared with anyone not having a bona fide, business related need to know. Thank you for your support of SBA's effort to comply with legal requirements.”*

Reassignment must be considered as an accommodation prior to terminating an employee with a disability who cannot be accommodated in his or her current position. In this situation, reassignment should be considered even if not specifically requested. If the reassignment search was offered and the employee failed to respond within a reasonable time period, the Agency will consider the lack of response to indicate the employee is not requesting the Agency perform a reassignment search as a reasonable accommodation.

### c. Offer of Reassignment

1. The DEPM will provide the employee with the Offer of Reassignment. The employee will then have fourteen (14) calendar days from his or her receipt of the offer, to decide whether to accept the offered reassignment. If the position is being advertised under an open vacancy announcement, then the identified vacancy must remain open during this time. The Offer of Reassignment will identify the available position, grade, job series, position description, and location.
2. If the employee declines an open, vacant position within the search parameters and medical restriction, with or without a reasonable accommodation, the reassignment search ends.
3. If the employee is moving to a new physical location and has been previously provided SBA or Computer/Electronic Accommodation Program (CAP) issued equipment as a reasonable accommodation, only that equipment (provided as a reasonable accommodation) follows the employee to the new location.
4. If other SBA employees applied for the slot that will be filled by the reassigned employee, the manager/supervisor at the new location may only tell the unsuccessful candidates that the individual "...was selected in compliance with applicable laws." Under no circumstances should the manager/supervisor tell anyone that the individual was placed as a reasonable accommodation, and no mention should be made of the disability.
5. If the employee has identified a vacant, funded position, the essential functions of which he or she claims he or she can perform, HR must make a sufficient inquiry to determine whether the reassignment proposed by the employee would effectively accommodate his or her disability, and whether the position is otherwise suitable. The employee must meet all education, certification and/or training qualification requirements. If so, the employee should be offered and placed in the position non-competitively.
6. If HR is unable to identify a suitable position to which the employee can be reassigned, the reassignment request will be denied, and the employee will be advised as to avenues of redress. This information can be found under "Denial" Section V. H. 3.

### H. Issuing the Reasonable Accommodation Decision 5-8

Following the engagement in the interactive process, once the Deciding Official reaches a final decision regarding a requested accommodation the individual will be provided a timely written response. Determination is made on an individual case-by-case basis and may be approved as requested; an alternative accommodation provided; reassignment as a last resort; or administratively closed for reasons to include non-responsiveness from the employee for up to fourteen (14) calendar days, or at the request of the employee; or denied.

### 1. **Approval**

If the request for accommodation is approved, the Deciding Official will provide a clear statement, containing the following:

1. A statement describing the approved accommodation(s); and
2. The responsibilities and expectations of all parties.

### 2. **Alternative Accommodation**

If alternative accommodation(s) to those requested by the employee are selected:

1. The reason(s) for the denial of the requested accommodation; and
2. The reason(s) that the decision maker believes that the alternative accommodation(s) will be effective.

### 3. **Denial of a Request**

After consultation with the DEPM, if a request for reasonable accommodation is denied, the Deciding Official must provide a clear justification, stating the specific reason(s) for the denial, in an accessible format, complete the Reasonable Accommodation Request Denial, SBA Form 2431-2 (or Letter); and provide a signed copy of the form to the DEPM for retention in the reasonable accommodation case files.

When the Deciding Official denies the specific requested accommodation, but offers an alternate accommodation in its place, which was not requested during the interactive process, the denial notice should explain both the reasons for the denial of the requested accommodation and the reasons that he/she believes the chosen accommodation will be effective.

Common reasons for the denial of a request for reasonable accommodation include those identified below:

1. The requested accommodation would not be effective.
2. The requested accommodation would result in undue hardship. Before reaching this determination, the Deciding Official and the DEPM must have explored whether other effective accommodation options exist that would not pose undue hardship. A determination of undue hardship means that a specific accommodation would result in significant difficulty or expense or would fundamentally alter the nature of SBA's operations. When evaluating budgetary or administrative concerns to determine if undue hardship exists, SBA will follow the standards enunciated in the regulations and in the EEOC's [\*Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act\*](#), [\*Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act\*](#), or any superseding subsequent guidance.

3. Medical documentation is inadequate to establish that the individual has a disability and/or needs a reasonable accommodation.
4. The requested accommodation would require the removal of any essential job function.
5. The requested accommodation would require the lowering of a performance or production standard.
6. The employee failed to provide appropriate documentation or cooperate with the management official's efforts to obtain necessary information to address the request for RA.
7. The employee did not accept an alternative, effective accommodation.
8. The disability or condition is not covered by the Rehabilitation Act.
9. The request is due to a family member's medical condition.

The written notice of denial must inform the individual he/she may request reconsideration or choose to pursue any of the courses of action noted in the Avenues of Redress at **Appendix D**, which include:

- a. Initiating an Equal Employment Opportunity (EEO) complaint by contacting the Office of Diversity, Inclusion, and Civil Rights for assignment of an EEO Counselor within **forty-five (45) calendar days** of receipt of the initial written denial.
- b. Bargaining unit employees may file a grievance with AFGE under the collective bargaining agreement consistent with the collective bargaining agreement deadlines of the initial denial or file a formal EEO Complaint, but not both.
- c. No bargaining unit employees may file a dispute in accordance with grievance procedures, as outlined in SOP 37 71 04, The Employee Dispute Resolution Process, within **fifteen (15) calendar days** of receipt of the initial written denial. However, employees may not use the dispute procedure if they are alleging discrimination as the basis for denial, but instead must use the Agency's procedures outlined in Chapter 2 of the EEO SOP 37 13 3 (for initiating and processing discrimination complaints against the Agency that are within the jurisdiction of the EEOC).

**PLEASE NOTE:** *An individual's participation in the **Alternative Dispute Resolution (ADR)** process does not toll the time requirements for bringing a claim under EEO, MSPB, Administrative Grievance process or union grievance procedures or any other applicable statutory process. The time limit for filing such a claim begins once the requested accommodation is denied.*

#### 4. Requests for Reconsideration

Upon receipt of a written denial, the employee may:

- a. a. Within fifteen (15) calendar days of receipt of the written denial, submit a written request for reconsideration, along with supporting documentation to the Reviewing Official, or his/her designee, explaining why the Deciding Official's decision to deny the accommodation is incorrect. The Reviewing Official is generally the employee's second line supervisor and last option for reconsideration. Her or his decision is final, and after the issuance of this decision, the reconsideration process is complete. If requesting reconsideration, the employee must include relevant supporting documentation that the employee requests the Reviewing Official consider in reaching their decision and must provide a copy of the request for reconsideration package to the DEPM.
- b. The Reviewing Official will have fourteen (14) calendar days to render a decision after reviewing all documents submitted, to include the originally submitted medical information.

### 5. Re-evaluating Provided Accommodations

The Deciding Official, with the guidance of the DEPM, will re-evaluate accommodations to ensure continued effectiveness, in cases where the accommodation appears to have become ineffective, and may require updated medical information as necessary. Examples of when a re-evaluation may be done include:

1. The employee's essential job duties have changed.
2. The disability has changed.
3. The duration of the impairment is uncertain.
4. The employee requests an additional accommodation for the impairment or modify the existing accommodation.

The re-evaluation process is intended to allow the Agency to ensure that a previously granted accommodation, is effective, still appropriate, and not causing an undue burden to the overall operation of the Agency and operating components.

The Deciding Official, manager, or other Agency official within the employee's immediate supervisory chain may request the DEPM consider a re-evaluation of an existing accommodation if there is reason to believe the reasonable accommodation is no longer required and the employee refuses to or has not come forward with information justifying the continuation of the accommodation. Requests for a re-evaluation should be submitted in writing to the DEPM.

Re-evaluation of an existing accommodation will not be initiated as a form of disciplinary action, retaliation, or reprisal. Such actions are a violation of the Rehabilitation Act.

The DEPM may initiate a re-evaluation of an existing accommodation upon a change of medical condition, work conditions, or within a reasonable period of time (a minimum of two years) after the original decision at the request of the supervisor, manager, or other designated Agency official.



The DEPM is responsible for conducting all re-evaluations and determining if they are appropriate. If the DEPM determines that a re-evaluation is appropriate, the DEPM will notify the Deciding Official, Manager, or other Agency official within the employee's immediate supervisory chain, in writing within ten (10) calendar days of the request.

In determining whether a change is necessary, the DEPM will work with the employee's supervisor and the employee to determine what change, if any, is necessary.

#### **I. Relation of Procedures to Statutory and Collective Bargaining Claim Information Tracking 5-9**

This policy is in addition to statutory and collective bargaining agreements for persons with disabilities and the remedies these protections provide for the denial of requests for reasonable accommodation and does not replace those provisions. Requirements governing the initiation of statutory and or grievances filed under the negotiated grievance procedures as outlined in the Master Labor Agreement, including time frames for filing such claims, remain unchanged. **See Appendix D.**

#### **J. Information Tracking and Reporting 5-10**

##### **1. Tracking**

The DEPM maintains current information about the status of each request and documents each step of the reasonable accommodation process in writing to the Deciding Official and provides due dates and next steps. The employee or Deciding Official (supervisor) may contact the DEPM at any time to inquire about the status of a request.

In order for the SBA to ensure compliance with this policy and its procedures, as well as Section 501 of the Rehabilitation Act and EEOC policy guidance, the DEPM is responsible for ensuring that all reasonable accommodation records are maintained in accordance with the Privacy Act and the Federal Records Act. These records will be maintained for the duration of the employee's tenure with the SBA, or three (3) years, after the employee separates from the Agency or all appeals are concluded, whichever is later.

##### **2. Reporting**

Specifically, the following information should be documented and maintained for each requested accommodation:

1. The specific reasonable accommodation requested and the identity of the deciding official.

2. The number and cost of requested accommodations and whether the accommodation was needed to apply for a job, perform the essential functions of a job or enjoy the benefits and privileges of employment. Records must also reflect whether those requests were granted or denied.
3. The jobs (occupational series, pay grade and organizational element) for which reasonable accommodations were requested.
4. The types of reasonable accommodation that were requested for each of the jobs cited above.
5. The number and types of reasonable accommodation requests by employees, the number and types of accommodation that were approved, and the number and types of accommodation that were 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 in working to identify possible reasonable accommodations.
9. A qualitative assessment of SBA's reasonable accommodation program, including any recommendations for improvement of policies and procedures.
10. Any other records necessary to determine the SBA's compliance with the nondiscrimination and affirmative action requirements imposed under Section 501 of the Rehabilitation Act, and EEOC guidance. Any such records or reports will be made available to the EEOC upon request.

## **VI. Personal Assistance Services 6-1**

Pursuant to 29 C.F.R. § 1614.203(d)(5), federal agencies, as an aspect of affirmative action, are required to provide personal assistance services (PAS) to employees who need them because of a targeted disability, unless doing so would impose an undue hardship on the Agency. PAS assist with performing activities of daily living that an individual would typically perform if he or she did not have a targeted disability.

For the purposes of determining an individual's eligibility to receive PAS, the Office of Personnel Management (OPM) has identified the following as targeted disabilities: deafness, blindness, missing extremities, partial paralysis, complete paralysis, convulsive disorders, intellectual disabilities, mental illness, and distortion of limb and/or spine. The EEOC states that not everyone with a targeted disability will be entitled to PAS; only those individuals with a targeted disability who require assistance with activities of daily living may receive PAS. 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.

The process for requesting a PAS, determining whether such services are required, and the Agency's right to deny such a request, are the same as the process for requesting reasonable accommodation. Employees in need of PAS should reach out to their supervisor, who, in turn, works with the DEPM to facilitate the request. If the disability is not obvious the employee will be required to provide the medical documentation to support their request.

## **VII. APPENDICES**

## **APPENDIX A: Glossary**

### **Architectural Barriers**

Architectural barriers are physical features that limit or prevent people with disabilities from obtaining the goods or services that are offered.

### **Deciding Official**

The first-line supervisor, or alternatively, a supervisor in an employee's chain of command who decides whether the Agency shall provide a requested reasonable accommodation. There may be exceptions where the Deciding Official could potentially be a higher-level official within the employee's supervisory chain. The Deciding Official may seek guidance from the Disability Employment Program Manager. Additionally, the Deciding Official may also seek legal advice from the Office of General Counsel (OGC), if needed. In the case of an applicant, the DEPM will serve as the Deciding Official.

### **Disability Employment Program Manager (DEPM)**

The Agency's person who is responsible for and has oversight of the Reasonable Accommodation Program.

### **Direct Threat**

A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

1. The duration of the risk.
2. The nature and severity of the potential harm.
3. The likelihood that the potential harm will occur; and
4. The imminence of the potential harm.

### **Effective**

The accommodation provided does not need to be the one that was requested, but if an alternative is suggested, the alternative accommodation must be effective in meeting the needs of the individual by addressing the barrier created by the functional limitations. When there are two or more accommodations that would be equally effective, the Deciding Official (DO) may choose the one that is easier or less expensive to provide. If more than one accommodation is effective, the preference of the employee should be given consideration. However, the DO has the ultimate discretion to choose between effective accommodations.

## **Essential Functions**

Those job duties that are so fundamental to the position that the individual holds or desires that he/she 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 other 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 position description.

## **Implementing Office**

The Division/Office responsible for the acquisition of equipment or services or making the facilities readily accessible to accommodate an employee or, applicant for employment, with a disability. The Implementing Office should notify the DEPM when the reasonable accommodation is implemented or if there are any delays.

Note that in some cases, the ODI&CR may serve as the Implementing Office.

## **Interactive Process**

The process used to determine what, if any, accommodation will be provided after an individual has been determined to be an “individual with a disability.” This means that the individual requesting the accommodation, the Deciding Official (and in most cases the DEPM) must communicate with each other about the request. This can include, but is not limited to:

- The precise nature of the disability or medical condition that is generating the request.
- How the individual’s functional limitations impact the ability to perform the essential functions of the position; and
- Alternative accommodations that may be effective in meeting an individual’s need.

## **Medical Documentation**

Documentation from a health care provider that is needed to establish that an individual has a disability that necessitates a reasonable accommodation.

## **Person with a Disability**

A person who has: a physical and/or mental impairment that substantially limits one or more major life activities or major bodily functions; has a record of such impairment; or is regarded as having such impairment.

- A “Physical and/or mental impairment” includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory (including speech organs); cardiovascular; reproductive; digestive; genitourinary; immune, circulatory, hemic, lymphatic, skin and endocrine. They also

cover a mental or psychological disorder, such as intellectual disability; organic brain syndrome; emotional or mental illness; and specific learning disabilities.

- “Major life activities” are basic activities that an average person in the general population can perform with little or no difficulty. Examples include but are not limited to walking; speaking; breathing; performing manual tasks; seeing; hearing; learning; caring for oneself, sitting, standing, lifting, reaching, bending, reading, thinking, interacting with other people, communicating, concentrating, eating, sleeping, reproduction, or working.
- “Major bodily functions” include but are not limited to: functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, or reproductive functions.
- “Substantially limits” means unable to perform a major life activity that most people in the general population can perform means, or is significantly restricted as to the condition, manner, or duration under which an individual can perform a particular major life activity as compared to the general population.
- A “record of impairment” means that an individual has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.
- “Is regarded as having impairment,” means that individuals (e.g., supervisors, managers and/or other employees) believe that the individual has a disability, whether the individual actually has a disability or not.

### **Personal Assistance Service**

Personal assistance service does not help individuals with disabilities perform their specific job function. Neither the Americans with Disabilities Act (ADA) nor Section 501 requires PAS as a reasonable accommodation, except when needed for work-related travel. However, effective January 3, 2018, the Section 501 regulations require federal agencies to provide PAS on the job as part of their affirmative action requirements. This requirement is in addition to existing requirements for non-discrimination and reasonable accommodation. Only employees with targeted disabilities are entitled to PAS and then only when providing PAS (along with any accommodations that are needed) enables the employee to perform the essential functions of his or her position. The term targeted disability means a disability that is designated as a “targeted disability or health condition” on the Office of Personnel Management's [Standard Form 256](#).

### **Personal Assistance Service Provider**

An employee or independent contractor whose primary job functions include provision of personal assistance services.

## **Qualified Employee or Applicant for Employment**

In respect to an individual with a disability, “qualified” means that the individual satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. Whether an employee is also a “person with a disability” for purposes of reasonable accommodation will be decided on a case-by-case basis.

## **Reasonable Accommodation**

A reasonable accommodation is a statement that an individual needs an adjustment or change at work, or during the job application process, for a reason related to a medical condition so that the individual may enjoy the same benefits and privileges of employment as are available to a similarly situated individual without a disability. If requested or identified, reasonable accommodations are addressed in three aspects of employment:

1. In the job application process: A reasonable accommodation is provided in the job application process to provide a qualified job applicant with a disability an equal opportunity to be considered for the position being sought.
2. In the performance of the essential functions of a job: a reasonable accommodation is provided to enable a qualified employee with a disability to perform the essential duties of the job currently held. This may include modification or adjustments to the work environment and to the way duties are customarily performed.
3. In receipt of all benefits of employment: A reasonable accommodation is provided to enable an employee with a disability to enjoy benefits and privileges of employment equal to those enjoyed by other similarly situated employees without disabilities. This would include equal access to buildings, conferences and meetings that are agency-sponsored services and events.

It is important to note that reasonable accommodation is not the creation of a new position or the intentional altering of the position of record beyond its grade controlling factors. Additionally, Temporary Illnesses or Injuries generally do not constitute a disability under the Rehabilitation Act, as they usually do not substantially limit one or more life activities when limited in duration and will have no long-term effect. The DEPM will determine whether a reasonable accommodation is legally required for a temporary condition on a case-by-case basis. An employee with a temporary illness or injury should adhere to the reasonable accommodation request process outlined in this policy.

## **Reassignment**

Is a form of reasonable accommodation that, absent undue hardship, is provided to employees (not applicants) who, because of a disability, can no longer perform the essential functions of their job, with or without reasonable accommodation.



**Reviewing Official (RO)**

The employee's second line supervisor, or potentially be a higher-level official within the employee's supervisory chain who reviews the Deciding Official's decision when a request for reasonable accommodation is denied and the employee has filed a request for reconsideration. For applicants for employment with the OIG, the RO is the Inspector General or his /her designee. The RO has the authority to uphold, modify, or reverse the decision to deny the reasonable accommodation. The RO may consult with the Deciding Official and the DEPM to help make a determination.

**Substantially Limits**

An impairment that limits the ability of an individual to perform a major life activity as compared to most people in the general population.

**Targeted Disabilities**

Targeted disabilities are a subset of the larger disability category that the federal government has recognized that qualified individuals with certain disabilities face significant barriers to employment above and beyond the barriers faced by people with the broader range of disabilities. Some examples include developmental disabilities, epilepsy, partial or complete paralysis, missing extremities, blindness, etc. See [Standard Form 256](#) for a complete listing.

**Undue Hardship**

The significant difficulty or expense incurred or anticipated should the Agency provide a particular accommodation. The following are some examples of the criterion used to determine undue hardship:

1. Nature and cost of the accommodation. In determining whether an accommodation is too costly, the financial resources of the Agency as a whole should be considered, not just those resources of the individual office.
2. The impact of the accommodation on the operation of the office, including the impact on the ability of other employees to perform their duties and the impact on the office's ability to conduct business.

## APPENDIX B: Disability Services

### **SBA may provide the following support services when requested:**

- **Sign Language Interpreting:** Support provided to individuals who are deaf or hard of hearing.
- **Workplace Assistance:** Administrative support such as notetaking, escorts, and readers.
- **Personal Assistance:** Support with activities of daily living such as eating, dressing/undressing and transferring.

The DEPM approves, manages requests and coordinates services for all service type. Once an employee is approved for disability service, the employee and supervisor should work directly with the DEPM to ensure the needs of the employee are met.

#### **Initiating Services**

The DEPM will meet with each employee to discuss functional limits and the scope of services which will be provided based on individualized needs. Approved services will be documented.

#### **Employee Preference**

SBA utilizes vendor assigned contractors to provide services for all disability services. Accordingly, SBA cannot guarantee that all employees will be serviced by the same contractor on a regular or on-going basis. To ensure that employees are provided services in a consistent manner, the DEPM will work with the employee to develop a profile of needs and preferences. The DEPM will also work with the employee to develop and maintain additional documentation, as needed. This may include but is not limited to a glossary of common terms, inventory of specialized equipment, and instructions for use of or assistance with specialized equipment. Any such profiles and documents will be provided to contractors before they begin working with an employee. It is important to note that, due to the nature of the services provided, the DEPM will work with employees needing Personal Assistant Services to ensure that primary consideration is given to the employee's preferences for assigned contractors.

#### **Scheduling Services**

The employee and or supervisor should contact the DEPM directly at: [reasonableaccommodation@sba.gov](mailto:reasonableaccommodation@sba.gov) to request services.

- a. Advance scheduling - preferably one to two weeks (10- calendar days) - is strongly encouraged. Although it is not possible to foresee every occasion for which services may be required, failure to schedule services well in advance may result in the necessity to reschedule meetings until services are available. Any service request received with less than three (3) business days' notice is not guaranteed.

- b. For impromptu meetings or events and those not scheduled in advance, employees and supervisors should contact the DEPM to check service availability. Such requests will be honored whenever possible based on service availability. Several factors influence scheduling of services. For example, any Sign Language Interpreting assignment that extends beyond one hour or is heavily technical, may require two interpreters.

### **Travel Services**

- a. Services are available for employees on travel when requested in advance. The employee and/or supervisor must, at a minimum, specify that the services are needed for travel, the exact travel location, and the specific duration of the travel at the time of the request. However, that request may only be submitted after the employee's travel request has been approved by his/her supervisor or other appropriate authority, with assurances that the employee's travel request is in accordance with SBA's travel procedures. Requests for services submitted prior to obtaining these approvals will not be processed. Requests which are submitted in accordance with these requirements will be processed by the DEPM who will then work with the vendor to coordinate services.
- b. With the exception of Personal Assistant Services, services provided during official travel are limited to assistance with job-related tasks when the employee is attending conferences, meetings, training, etc., including overnight stays. In order to provide services, SBA will pay the wages for a locally recruited contractor (i.e. a person resident in the location where the employee is travelling to). In the event that a locally recruited contractor cannot be secured, SBA will pay the travel expenses for a vendor assigned contractor to travel with the employee, if such a contractor is available.
- c. For Personal Assistant Services, all approved support will be made available for official travel. If the employee's needs on travel are different than the employee's needs during the workday (e.g., bathing, dressing/undressing, etc.), the employee must specify the services needed to the DEPM when making the request.

### **Sign Language Interpreting (SLI) Specifications**

The following items are unique to SLI services:

- a. Per SBA's contract, vendor assigned contractors hold national interpreter certification and are certified members, in good standing of Registry of Interpreters for the Deaf (RID) and/or the National Association of the Deaf (NAD), and strictly adhere to the RID-NAD Code of Professional Conduct (CPC).
- b. Requests for Sign Language Interpreting Services must be received, at a minimum, ten (10) business days before the required date of service.
- c. Two interpreters are required for meetings lasting over one (1) hour.
- d. Every effort should be made to include the deaf or hard of hearing employees in all necessary interactions/exchanges/meetings. The lack of an available sign language

interpreter should not result in the exclusion of the deaf or hard of hearing employee as an alternative mode of communication should be utilized.

- e. If the employee attends a conference or training program sponsored by an outside organization, the sponsoring organization is principally responsible for providing interpreters. It is the responsibility of the employee and supervisor to check with the sponsoring organization to see if interpreting services will be provided. If not, a request containing all relevant information should be submitted to the DEPM.

### **Workplace Assistant Services (WPA) Specifications**

The following items are unique to WPA services:

- a. Every effort should be made to include the employee using WPA in all necessary interactions/exchanges/meetings. The lack of an available WPA should not result in the exclusion of the employee as an alternative form of support should be utilized.
- b. If WPA services are not available the supervisor must decide whether to provide alternative assistance from among the members of his/her staff, or to reschedule the meeting/event/training request for a later date when a WPA is available.

### **Personal Assistance Services (PAS) Specifications**

As specified in this reasonable accommodation SOP, under Section 501 of the Rehabilitation Act of 1973, provision of PAS is a required aspect of affirmative action for employees who need such services because of a targeted disability, unless doing so would impose an undue hardship on the Agency. This is because PAS allows an employee with a targeted disability to participate and/or be in the workplace whereas reasonable accommodation is job-related allowing an individual with a disability to apply for the job, perform job functions, or enjoy benefits and privileges of a job. However, like RA, employees requesting PAS will work with the DEPM so that the Agency can conduct an individual assessment of the employee's needs. SBA may only deny a request for PAS if the difficulty or cost of providing the service would be an undue hardship. The process of determining whether providing personal assistance services is an undue hardship is the same as the process the Agency uses to determine whether a reasonable accommodation poses an undue hardship. For this and other reasons (e.g., confidentiality, tracking timeliness of responses), requests for PAS will be centrally recorded in the Agency's system of records for RA.

#### **The following items are unique to PAS:**

1. Per SBA's contract, vendor assigned contractors are Certified Nursing Assistant (CNA) from an accredited Nurse Assistant Program, or equivalent, and are in good standing with the certifying organization.
2. Services provided by an assigned contractor are non-medical, meaning that services will not include medication delivery, wound care, or any other medical service.

3. As previously stated, due to the nature of the services provided, the DEPM will work with employees needing PAS to ensure that primary consideration is given to the employee's preferences for assigned contractors.
4. Employees may request to bring their own PAS provider into the workplace. In such situations, the employee should work with the DEPM to ensure that all security requirements are met to allow the preferred PAS provider to accompany the employee into the workplace.
5. If PAS is not available, the supervisor must consult with the DEPM and the employee to determine if other options are available to provide the necessary support.

## **APPENDIX C: Reasonable Accommodation Resources**

### **U.S. Equal Employment Opportunity Commission** <https://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. (1994), and the regulations, 29 C.F.R. § 1630 (1997). In addition, the EEOC has published a great deal of basic information about reasonable accommodation and undue hardship. The two 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 (1997); and (2) A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act III, 8 FEP Manual (BNA) 405:6981, 6998-7018 (1992). The Manual includes a 200-page Resource Directory, including federal and state agencies, and disability organizations that can provide assistance in identifying and locating RAs.

Additionally, as an aid to supervisors and managers, please see EEOC's Enforcement Guidance at: [Disability-related-inquiries-and-medical-examinations-employees](#) and

[Guidance for reasonable accommodation and undue hardship under ADA.](#)

### **Job Accommodation Network (JAN)** <https://askjan.org/>

1-800-232-9675 (Voice/TTY)

A service of the Department of Labor's Office of Disability Employment Policy, JAN can provide information, free-of-charge, about many types of RA.

### **Registry of Interpreters for the Deaf**

(703) 838-0030 (Voice) (703) 838-0459 (TTY)

The Registry of Interpreters for the Deaf, Inc. (RID), is a national membership organization of professionals who provide sign language interpreting/translation services for Deaf and Hard of Hearing persons. It is the goal of RID to promote the profession of interpreting and translation of both American Sign Language and English. RID's mission is to provide international, national, regional, state, and local forums by providing an organizational structure for the continued growth and development of the professions of interpretation and translation of American Sign Language and English.

The RID national office has at its disposal a vast array of informational resources on the field of interpreting, including papers on Interpreting Standards and Practices and How to Hire and Work with an Interpreter.

### **RESNA Technical Assistance Project** <https://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 databases 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.

**Computer/Electronic Accommodation Program (CAP)** <https://www.cap.mil/>

(833) 227-3272 or (703) 614-8416, (571) 384-5629 VP, or anytime by email at [cap@mail.mil](mailto:cap@mail.mil)

The Department of Defense (DoD) established CAP in 1990 to eliminate employment barriers for its employees with disabilities. The mission of CAP is to provide real solutions for real needs to ensure that people with disabilities have equal access to the information, environment, and opportunities in the Federal Government.

**Rehabilitation Services Agencies**

Rehabilitation Services Agencies are state agencies that provide support for the employment, economic self-sufficiency, and independence of individuals with disabilities. Local phone book should list them under state services. Sometimes they are listed by Vocational Rehabilitation Offices.

**APPENDIX D: Avenues of Redress**

This chart is intended to assist employees and supervisors with quickly identifying the various avenues of redress that are available to address and resolve employment-related issues, concerns, and/or disputes. Employees should not rely solely on the information provided in this chart for guidance. Rather, they should refer to the relevant regulations and standard operating procedures cited within the chart to ensure that they fully understand, and do not waive, any rights made available to them under law.



Who	What It Covers	For More Information
<b>Employee Chain of Command</b>	All employees who wish to address work-related concerns or issues with their immediate supervisor, prior to pursuing other remedies. If after meeting with the supervisor, the employee believes the dispute has not been satisfactorily resolved, he/she may pursue his/her concern through the appropriate administrative chain of command.	Contact individuals within the supervisory chain of command.
<b>SBA Conflict Resolution Center (CRC)</b>	The CRC is an informal, confidential and neutral resource for employees and supervisors who need practical tools and guidance to address a workplace conflict proactively. The CRC can facilitate informal discussions to help an individual problem solve in a way that creates better solutions for those involved. The CRC's services include: Conflict Coaching, Facilitated Discussion and Group Facilitation.	This resource is for any type of relationship (peer-to-peer; manager-to-manager; employee-to-supervisor). Bargaining Unit employees can utilize the CRC in a manner consistent with labor agreement policies and procedures (see VI. Policies & Procedures section of SOP). To request services, contact the CRC by email or phone to schedule an initial consultation appointment: <a href="mailto:ConflictResolutionCenter@sba.gov">ConflictResolutionCenter@sba.gov</a> or by calling 202-401-9272 or for more information visit the intranet at:  <a href="#">About the CRC (sharepoint.com)</a>
<b>Negotiated Grievance Procedure- Available for bargaining unit employees</b>	Bargaining unit employees may use this avenue to address most matters related to employment and claims of violation, misinterpretations and misapplication of the master labor agreement, laws, rules, or regulations, unless otherwise excluded.  For claims of discrimination, a bargaining unit employee may raise claims either under the EEO complaint procedure or the Negotiated Grievance Procedure, but not both. Whichever forum is first elected is the forum that must be used.	Copies of applicable collective bargaining agreements are available from the human resource office. Collective bargaining Agreements are located on the intranet at :  <a href="#">AFGE SBA revisedMLAasof10-5-17.pdf (sharepoint.com)</a>

<p><b>Administrative Grievance Procedure— Available for non-bargaining unit employees/SBA Office of Hearings and Appeals (OHA) Appeals Process</b></p>	<p>Non-bargaining unit employees, or any employee in a bargaining unit that does not have or is ineligible to use a negotiated grievance procedure, can use this avenue to address any dissatisfaction, grievance, or complaint that is not specifically excluded by the Chapter 1, Paragraph 7 of SOP 37 71 4. Employees who have filed an administrative grievance may appeal the Appropriate Management Official (AMO) decision to OHA by filing a petition of appeal within 15 calendar days from receipt of the AMO's decision.</p>	<p>Information and procedures are contained in SBA SOP 37 71 4</p> <p>For additional information visit the intranet at:</p> <p><a href="#">Employee Dispute Resolution Process (sharepoint.com)</a></p>
<p><b>SBA Office of Diversity, Inclusion, and Civil Rights (formerly Equal Employment Opportunity &amp; Civil Rights Compliance)</b></p>	<p>Covers applicants, current, and former employees who believe they have been discriminated against based on race, color, religion, national origin, sex (including sexual harassment and gender identity), age (40 and over), disability (physical or mental) and/or retaliation.</p> <p>A discrimination complaint in connection with an adverse action that is appealable to the EEOC may be filed with EEOC or MSPB, but not both. Whichever forum is first elected is the forum that must be used.</p>	<p>Claims may be filed by contacting the Office of Diversity, Inclusion, and Civil Rights by calling: 202-205-6750</p> <p>or write to <a href="mailto:eeoinquiries@sba.gov">eeoinquiries@sba.gov</a>:</p> <p>US SBA, ATTN: Assistant Administrator 409 Third Street SW DC., Suite 6400 Washington DC 20416</p> <p>Information and procedures are contained at 29 CFR or in SBA SOP 37 13 3.</p> <p>For additional information visit the intranet at:</p> <p><a href="#">EEO (Sharepoint.com)</a></p>

<p><b>U.S. Merit Systems Protection Board (MSPB)</b></p>	<p>All employees can use this avenue to appeal some adverse personnel actions or certain prohibited personnel practices. Additionally, after exhausting required steps with the Office of Special Counsel, a whistleblower retaliation complaint may be filed with MSPB.</p>	<p>Information and procedures for filing complaints may be found at: <a href="http://www.mspb.gov">www.mspb.gov</a></p> <p>You may also contact the appropriate Regional Office listed at: <a href="#">U.S. Merit Systems Protection Board</a> or call: 1-800-209-8960 or 1-800-877-8339(TDD)</p>
<p><b>U.S. Office of Special Counsel (OSC)</b></p>	<p>This avenue provides protections for employees and applicants from prohibited personnel practices, including reprisal for whistleblowing. OSC also enforces restrictions on political activity of federal employees and protects employment and reemployment rights of veterans, guardsmen and reservists.</p>	<p>Information and procedures for filing complaints may be found at: <a href="http://www.osc.gov">www.osc.gov</a></p> <p>or</p> <p><a href="#">OSC - File a Complaint Web page</a></p> <p>Employees may also seek more information concerning whistleblower retaliation from the OIG Whistleblower Ombudsman by contacting <a href="mailto:OIGombudsman@sba.gov">OIGombudsman@sba.gov</a>. The OIG Ombudsman's role is to educate agency employees about prohibitions on retaliation for protected disclosures, and educate agency employees who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures. The Ombudsman is prohibited from acting as an employee's or former employee's legal representative, agent, or advocate.</p>
<p><b>SBA Office of Inspector General (OIG) (for limited whistleblower retaliation claims.)</b></p>	<p>Any employee who believes that the Agency has made a decision/recommendation impacting the employee's eligibility for access to classified information as reprisal for a Protected Disclosure, may file a complaint of reprisal with OIG.</p>	<p>SOP 90 22 (Rev. 5B), <a href="#">Chapter 8, Section 22 (PDF)</a> (effective July 8, 2013).</p> <p><a href="https://sba123.sharepoint.com/sops/Documents/9022/SOP%2090%2022%205B%20Chapter%20VIII.7-9-13.pdf">https://sba123.sharepoint.com/sops/Documents/9022/SOP%2090%2022%205B%20Chapter%20VIII.7-9-13.pdf</a></p>

**APPENDIX E: SBA Reasonable Accommodation Forms**

To initiate the Reasonable Accommodation process, employees may make their request verbally or in writing; however, for documentation purposes, the SBA Form 2431-1 and 2431-2 will be required for record keeping purposes. These forms can be found online

at [Disability Awareness \(sharepoint.com\)](#)

and are only available to SBA employees with the use of a PIV card. As noted on all postings on [USAJobs.gov](#), job applicants may contact the sponsoring Human Resource office or HR Specialist indicated on the Job Announcement, to make a request for reasonable accommodation and also track the status and outcome of such a request.

**APPENDIX F: Reasonable Accommodation Resource Person**

**Disability Employment Program Manager**

Office of Diversity, Inclusion and Civil Rights

Office: (202) 205-6750

OR

[reasonableaccommodation@sba.gov](mailto:reasonableaccommodation@sba.gov)