

# REASONABLE ACCOMMODATION PROCEDURES FOR EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

## SECTION 1. PURPOSE

1. The purpose of this Administrative Instruction (AI) is to set forth the policy of the U.S. Commission on Civil Rights (USCCR) with respect to the provision of reasonable accommodation and to establish current procedures to carry out the policy.

## SECTION 2. AUTHORITY/SCOPE

2. Executive Order 13164 “Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation” requires that each agency adopt effective written procedures for processing requests for reasonable accommodation for employees and applicants with disabilities. The Order helps to implement the requirement of the Rehabilitation Act of 1973 that Federal agencies provide reasonable accommodation to qualified employees and applicants with disabilities unless doing so would cause undue hardship.<sup>1</sup>

## SECTION 3. APPLICABILITY

3. These procedures apply to all qualified employees and applicants for employment, as defined by law, of the U.S. Commission on Civil Rights.

## SECTION 4. USCCR POLICY ON REASONABLE ACCOMMODATION

4. Section 501 of the Rehabilitation Act of 1973, as amended, and the regulations of the Equal Employment Opportunity Commission (EEOC), require federal agencies to provide reasonable accommodations to qualified employees or applicants with disabilities, unless to do so would cause undue hardship.<sup>2</sup> These regulations were amended to incorporate the standards of Title I of the Americans with Disabilities Act,<sup>3</sup> as amended, which prohibits employment discrimination on the basis of disability, into Section 501 of the Rehabilitation Act<sup>4</sup> which prohibits employment discrimination against individuals with disabilities in the federal sector.

It is USCCR’s policy to provide reasonable accommodation to its employees and applicants for employment to ensure that individuals with disabilities enjoy full access to equal employment opportunities at the agency. To that end, USCCR is committed to processing requests for reasonable accommodations in a prompt, fair, and efficient manner and without unreasonable delay and in accordance with the timeframes and procedures set forth below.

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<sup>1</sup> The Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355 (codified at 29 U.S.C. § 791 et seq.).

<sup>2</sup> 29 U.S.C. § 791; 29 C.F.R. § 1630.

<sup>3</sup> The Americans with Disabilities Act Amendments Act of 2008, Pub. L. 110-325 (ADAAA), codified at 42 U.S.C § 12101 et seq., further amended the definition of disability, emphasizing that the definition of disability should be construed in favor of broad coverage and changes the way the statutory terms should be interpreted.

<sup>4</sup> 29 U.S.C. § 791.

## SECTION 5. DEFINITIONS

5. Disability. A physical or mental impairment that substantially limits one or more major life activities; a record of impairment; or being regarded as having such an impairment.
- 5.1. Individual with a Disability. As defined by the Americans with Disabilities Act of 1990 (ADA): a physical or mental impairment that substantially limits one or more major life activity; a record or past history of an impairment, or being regarded as having an impairment.
- 5.2. Qualified Individual with a Disability. An individual with a disability is qualified if (1) s/he satisfies the requisite skill, experience, education, and other job-related requirements of the position; and (2) s/he can perform the essential functions of the position, with or without reasonable accommodation.
- 5.3. Reasonable Accommodation. Any change in the workplace or the way things are customarily done that provides an equal employment opportunity to an individual with a disability. While there are some things that are not considered reasonable accommodations (e.g., removal of an essential job function or personal use items such as a hearing aid that is needed on and off the job), reasonable accommodations can cover most things that enable an individual with a disability to apply for a job, perform a job, or have equal access to the workplace and employee benefits. There are three general categories of reasonable accommodations:
- modifications or adjustments to a job application process to permit an individual with a disability to be considered for a job;
  - modifications or adjustments that would enable a qualified individual with a disability to perform the essential functions of the job; and
  - modifications or adjustments that would enable employees with disabilities to enjoy equal access to benefits and privileges of employment (e.g., details, trainings, office sponsored events).

Possible types of accommodations include:

- modifying work schedules or supervisory methods.
- granting breaks or providing leave.
- altering how or when job duties are performed.
- removing and/or substituting a marginal function.
- moving to different office space.

- providing telework beyond that provided by AI 2-34 (Telework Program).
- making changes in workplace policies.
- providing assistive technology, including information technology and communications equipment or specially designed furniture.
- providing materials in alternative formats (e.g., Braille, large print).
- providing a reassignment to another job.

5.4 Undue Hardship. A significant difficulty or expense and focuses on the resources and circumstance of the agency, referring not only to financial difficulty, but reasonable accommodations that are unduly substantial or disruptive, or would fundamentally alter the nature of operation of the agency. The agency will assess on a case-by-case basis whether a particular reasonable accommodation would cause an undue hardship. Agencies are not required to provide reasonable accommodations that would impose an undue hardship on the operation of the agency.

In determining whether an accommodation would impose an undue hardship on the agency, the Commission will consider: (1) the overall size of the agency's program with respect to the number of employees, number and type of facilities, and size of the budget; (2) the type of agency operation, including the nature and composition of the agency's workforce; and (3) the nature and cost of the accommodation.

5.5 Essential Functions. Job duties that are so fundamental to the position that the individual cannot do the job without being able to perform them. A function can be "essential" for any of several reasons, including, but not limited to the following: if the position exists specifically to perform that function, there are a limited number of other employees who could perform the function if it were assigned to them, or the function is specialized and the incumbent is hired based on his/her ability to perform it.

5.6 Major Life Activities. Include activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. Major life activities also include the operation of major bodily functions, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The examples listed above are a non-exhaustive list.

5.7 Interactive Process. A collaborative effort in which the employer and the individual seeking an accommodation engage in dialogue to clarify what the individual needs and identify potential reasonable accommodations. This process begins upon receipt of an oral or written request for reasonable accommodation. USCCR initiates an informal information gathering process in conjunction with the participation of the individual requesting the reasonable accommodation, the supervisor, and if necessary, the individual's health care

provider. In addition, the person who is the decision maker on the reasonable accommodation request also participates in the process to collect whatever information is necessary to make an informed decision about whether the requestor is covered as an individual with a disability and if so, what reasonable accommodations will be effective to eliminate the barriers identified by the requestor.

## **SECTION 6. REQUESTING A REASONABLE ACCOMMODATION**

- 6.1 USCCR's duty to provide a reasonable accommodation is ongoing, thus an individual may request a reasonable accommodation at any time.
- 6.2 Initiating the Process. The reasonable accommodation process begins as soon as the oral or written request for accommodation is made to any supervisor or manager in an employee's chain of command. Generally, an applicant or employee must let the USCCR know that s/he needs an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a medical condition. That said, individuals need not have a particular accommodation in mind before making a request. An applicant or employee may request a reasonable accommodation at any time, orally or in writing. The reasonable accommodation request form is attached and can be provided in alternative formats if requested.
- 6.3 Making the Request. USCCR has designated the Human Resources Division (HRD) to oversee the agency's reasonable accommodation program, however, an individual may request a reasonable accommodation from his/her supervisor, a supervisor or manager in his/her immediate chain of command, the EEO office, the HRD, or in connection with the application process. It is important to note that while EEO officers may receive reasonable accommodation requests, they cannot be involved in the decision-making process for granting or denying the requests, because they are involved in the EEOC's Federal Sector complaint process. To ensure a firewall exists between the Reasonable Accommodation Program Manager and the Commission's EEO Office, any requests for accommodation received by the EEO Director will be handled by a neutral third party, office director, or manager. For applicants, information about contacting the HRD will be in the vacancy announcement and the letter of appointment.
- 6.4 Forward the Request to the HRD Within Two Business Days. If an employee makes a reasonable accommodation request to someone other than the HRD, the individual to whom the request was made, should forward the request to the HRD immediately and must do so within two (2) business days. Because the reasonable accommodation process begins as soon as the oral or written request for accommodation is made to any manager in an employee's chain of command, it is imperative that the request be forwarded to the HRD within two (2) business days.
- 6.5 Recognizing a Request for Reasonable Accommodation. Since the reasonable accommodation

process begins as soon as the oral or written request is made, managers and supervisors should be aware of how to recognize such requests. A request does not have to include any special words, such as “reasonable accommodation,” “disability,” or “Rehabilitation Act.” A request is any communication in which an individual asks or states that s/he needs USCCR to provide or to change something because of a medical condition. Any time an individual indicates a problem related to a medical condition, the supervisor or manager should inquire with the individual regarding a need for a reasonable accommodation.

If the nature of the initial communication is unclear, the supervisor, manager, or the HRD should ask an individual whether s/he is requesting a reasonable accommodation. The EEOC (Reasonable Accommodation and Undue Hardship (EEOC Guidance) at <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada>) <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada#reasonable> provides the following examples:

- Example A: An employee tells his supervisor, "I'm having trouble getting to work at my scheduled starting time because of medical treatments I'm under going." This is a request for a reasonable accommodation.
- Example B: An employee tells her supervisor, "I need six weeks off to get treatment for a back problem." This is a request for a reasonable accommodation.
- Example C: A new employee, who uses a wheelchair, informs the employer that his wheelchair cannot fit under the desk in her office. This is a request for reasonable accommodation. SSS Reasonable Accommodation Policy & Procedures – October 2018 Page 9.
- Example D: An employee tells her supervisor that she would like a new chair because her present one is uncomfortable. Although this is a request for a change at work, her statement is insufficient to put the employer on notice that she is requesting reasonable accommodation. She does not link her need for the new chair with a medical condition.

6.6 Supervisors' Responsibility for Knowledge of the Process. All management and supervisory personnel must be familiar with these Procedures and the EEOC's guidance on reasonable accommodations, such as "Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act," which contains significant information on the responsibilities of agency personnel involved in responding to a request for reasonable accommodation, as well as the rights and responsibilities of those requesting accommodation. This document is available at <https://www.eeoc.gov/policy/docs/accommodation.html>. They must also be familiar with the EEOC's guidance on inquiring into an applicant's medical status, "Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans With Disabilities Act," which can be found at: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>.

- 6.7 Requests Made on Behalf of an Employee/Applicant. A family member, health professional, or other representative may request an accommodation on behalf of an USSCR employee or applicant. For example, a doctor’s note outlining medical restrictions for an employee constitutes a request for reasonable accommodation. When an individual (or third party) makes an oral request, the HRD must ensure that the “Confirmation of Request” form is filled out (see Appendix A). The HRD must fill out the Form if the requestor does not. An oral request without a completed Confirmation Request form will not delay the process. The processing of a request for a reasonable accommodation will begin on the date of an oral or written request regardless as to whether the Confirmation of Request form is complete.
- 6.8 Reoccurring Reasonable Accommodations. An employee needing a reasonable accommodation on a recurring basis, such as the assistance of a sign language interpreter, must submit the Confirmation of Request form only for the first request. However, the employee requesting accommodation must give appropriate advance notice each subsequent time the accommodation is needed. If the accommodation is needed on a regular basis (e.g., a weekly staff meeting), the HRD should ensure that an employee’s supervisor makes the appropriate arrangements without requiring a request in advance of each occasion. (See Appendix D for information on requesting sign language interpreters.)
- 6.9 Changes in Limitations and Requests After Denial. An individual’s receipt or denial of an accommodation does not prevent the individual from making another request at a later time if circumstances change and s/he believes that an accommodation is needed due to limitations from a disability (e.g., the disability worsens or an employee is assigned new duties that require an additional or different reasonable accommodation). Additionally, the HRD may not refuse to process a request for reasonable accommodation, and a reasonable accommodation may not be denied, based on a belief that the accommodation should have been requested earlier (e.g., during the application process).

## **SECTION 7. PROCESSING THE REQUEST**

7. The HRD is responsible for processing requests for reasonable accommodation including facilitating the interactive process and reaching a resolution. The HRD will serve as a resource for all USSCR supervisors, employees, and applicants. Additionally, the Office of the General Counsel may serve as a resource regarding current regulations and EEOC guidance on reasonable accommodations. While the HRD has responsibility for processing requests for reasonable accommodation, the HRD will work closely with an employee’s supervisor or manager in responding to the request, particularly those involving performance of the job. The HRD will facilitate the interactive process including, if needed, consulting with an employee’s supervisor and/or office director to gather relevant information necessary to respond to a request and to assess whether a particular accommodation will be effective. No reasonable accommodation involving performance of the job will be provided without first informing an employee’s supervisor or, as appropriate, an office director. The requester may contact HRD via email at: [hrd@usccr.gov](mailto:hrd@usccr.gov).

## SECTION 8. THE INTERACTIVE PROCESS

8. Beginning the Interactive Process. After a request for accommodation has been made, the next step is for the parties to begin the interactive process to determine what, if any, accommodation should be provided. This means that the individual requesting the accommodation and the HRD must communicate about the request, the precise nature of the problem that is generating the request, how a disability is prompting a need for an accommodation, and alternative accommodations that may be effective in meeting an individual's needs.
- 8.1 Communication with the Employee after the Request. The HRD will contact the applicant or employee as soon as practicable, but preferably within 5 business days after the request is received. In addition, HRD will provide timely status updates throughout the interactive process concerning the requested accommodation.
- 8.2 Determining the Existence of a Disability. In some instances, the HRD may need to get information to determine if an individual's impairment is a "disability" under the Rehabilitation Act or to determine what would be an effective accommodation. Such information may not be necessary if an effective accommodation is obvious, if the disability is obvious (e.g., the requestor is blind or has paraplegia) or if the disability is already known to the USCCR (e.g., the requestor previously asked for an accommodation and information submitted at that time showed a disability existed and that there would be no change in the individual's medical condition).
- 8.3 Emphasis on Communication. Communication is a priority throughout the entire process, but particularly where the specific limitation, problem, or barrier is unclear; where an effective accommodation is not obvious; or where the parties are considering different forms of reasonable accommodation. Both the individual making the request and the decision maker should work together to identify effective accommodations. Appendix E, "Selected Reasonable Accommodation Resources" lists some suggested resources for identifying accommodations.
- 8.4 Involving Third Parties/Outside Sources. The HRD may need to consult with other USCCR personnel (e.g., an employee's supervisor, ASCD staff) or outside sources to obtain information necessary to make a determination about the request. The USCCR expects that all agency personnel will give a high priority to responding quickly to a HRD's request for information or assistance. Any delays by USCCR personnel may result in the agency's failing to meet the required time frame and may be cause for disciplinary action. The HRD shall keep all medical information confidential and follow the necessary confidentiality provisions under Section 10.
  - 8.4.1 Administrative Services Clearinghouse Division (ASCD). In instances where the accommodation is a specialized request that involves the use of computer technology, HRD and/or the supervisor will consult with Administrative Services Clearinghouse Division (ASCD) and ASCD will provide input on the technology aspects of the

request.

8.4.2 Procurement. If procurement is necessary to provide accommodation, the HRD will consult with Budget and Finance Division (BFD) to obtain input on the reasonableness of the cost of the requested accommodation. BFD will be responsible for purchasing or leasing equipment needed for a reasonable accommodation. The decisionmaker as outlined in Section 11 below will submit the request for accommodation and associated documentation, including a procurement request.

8.5 Verifying Requests Made on Behalf of an Employee/Applicant. When a third party (e.g., an individual's doctor) requests accommodation on behalf of an applicant or employee, the HRD should, if possible, confirm with the applicant or employee that he wants a reasonable accommodation before proceeding. Where this is not possible, for example, because the employee has been hospitalized in an acute condition, the HRD will process the third party's request if it seems appropriate (e.g., by granting immediate leave) and will consult directly with the individual needing the accommodation as soon as practicable.

8.6 Reassignment. There are specific considerations in the interactive process when an employee needs, or may need, a reassignment. Generally, reassignment to a vacant position for which an employee is qualified, and not just permission to compete for such position, is a reasonable accommodation; the Commission must consider providing reassignment to a vacant position as a reasonable accommodation when it determines that no other reasonable accommodation will permit an employee with a disability to perform the essential functions of his or her current position, or if the only effective accommodation would cause undue hardship. Reassignment is available only to employees, not to applicants and may only be made to a vacant position.

8.6.1 Employees must be qualified for the new positions. An employee is qualified if s/he (1) satisfies the requisite skill, experience, education, and other job-related requirements of the position, and (2) can perform the essential functions of the position with or without a reasonable accommodation. If the employee is qualified for the position, s/he should be reassigned to the job as a reasonable accommodation without the need to compete for the job.

8.6.2 Search for Available Vacancies. HRD will be responsible for conducting a search for available vacancies and must consult with the affected employee as necessary to determine: 1) whether there are limits on the search the employee would like USCCR to conduct; 2) whether the employee is qualified for the job; or, 3) whether the employee would need a reasonable accommodation to perform the essential functions of the new position.

8.6.3 Vacant Positions. In considering whether there are positions available for reassignment, the HRD will work with the employee requesting the reassignment to identify: (1) vacant positions within the agency for which the employee may be qualified, with or without reasonable accommodation; and (2) positions which HRD has reason to believe

will become vacant within 60 days from the date the search is initiated and for which the employee may be qualified.

- Example: If a search begins on May 1, then the HRD will inquire about any positions that are currently vacant or will become vacant between May 1 and June 30. The HRD does not have to hold open the search until July 1; if HRD finishes the search on May 15 and learns that no vacancies are currently available or anticipated by June 30, then the search is over and the results should be conveyed to the employee.

8.7 Relocation and Reassignment. Reassignment may be made to a vacant position outside of the employee's commuting area if the employee is willing to relocate. As with other transfers not required by management, USCCR will not pay for the employee's relocation costs.

## **SECTION 9. REQUESTS FOR MEDICAL INFORMATION**

9. Disability Not Obvious or Not Already Known. If a requestor's disability and/or need for accommodation are not obvious or unknown, USCCR (specifically the HRD) is entitled to ask for and receive medical information showing that the requestor has a covered disability that requires accommodation. A disability is obvious or already known when it is clearly visible or the individual previously provided medical information showing that the condition met the Rehabilitation Act definition.

9.1 The HRD Determines the Need for Medical Information. Only the HRD may determine whether medical information is needed and, if so, may request such information from the requestor and/or the appropriate health professional. Even if medical information is needed to process a request, the HRD does not necessarily have to request medical documentation from a health care provider; in many instances the requestor may be able to provide sufficient information that can substantiate the existence of a "disability" and/or need for a reasonable accommodation. (See Section 10 about the confidentiality of all medical information obtained in processing a request for accommodation.) If an individual has already submitted medical documentation in connection with a previous request for accommodation, the individual should immediately inform the HRD of this fact. The HRD will then determine whether additional medical information is needed to process the current request.

When medical information is required to support a reasonable accommodation request, it should describe the nature of the individual's disability, his or her need for reasonable accommodation, and how the requested accommodation will assist the individual to apply for a job, perform the essential functions of a job, or enjoy the benefits and privileges of the workplace.

9.2 Insufficient Medical Information Provided. If the initial information provided by the health professional or volunteered by the requestor is insufficient to enable the HRD to determine

whether the individual has a “disability” and/or that an accommodation is needed, the HRD will explain what additional information is needed. If necessary, the individual should then ask his/her health care provider or other appropriate professional to provide the missing information. The HRD may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual after several attempts, the HRD may ask the individual requesting accommodation to sign a limited release permitting the HRD to contact the provider for additional information. The HRD may have the medical information reviewed by a doctor of the agency’s choosing, at the agency’s expense.

9.2.1 In determining whether documentation is necessary to support a request for reasonable accommodation and whether an applicant or employee has a disability within the meaning of the Rehabilitation Act, the HRD will be guided by principles set forth in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA).<sup>5</sup> Specifically, the Act directs that the definition of “disability” be construed broadly and that the determination of whether an individual has a “disability” generally should not require extensive analysis. Notwithstanding, the HRD may require medical information in order to design an appropriate and effective accommodation.

9.3 Employee/Applicant is Responsible for Medical Information. It is the responsibility of the employee/applicant to provide appropriate medical information requested by the HRD where the disability and/or need for accommodation are not obvious or already known. Failure to provide necessary documentation where USCCR has requested information, could result in a denial of the reasonable accommodation. Notwithstanding, the HRD may require medical information in order to design an appropriate and effective accommodation.

9.4 Determining Whether an Accommodation is Still Needed. A supervisor or office director who believes that an employee may no longer need a reasonable accommodation should contact the HRD. The HRD will decide if there is a reason to contact the employee to discuss whether s/he has a continuing need for reasonable accommodation.

9.5 Title II of the Genetic Information Nondiscrimination Act and Requests for Medical Information. The Act protects individuals against employment discrimination on the basis of genetic information and prohibits the use of such information in making employment decisions, such as hiring, firing, advancement, compensation, and other terms, conditions, and privileges of employment.

The Act also prohibits employers from requesting, requiring, or purchasing genetic information about applicants or employees, except in very narrow circumstances. There are six very limited circumstances under which an employer may request, require, or purchase genetic information:

- Where the information is acquired inadvertently, in other words, accidentally;

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<sup>5</sup> The Americans with Disabilities Act Amendments Act of 2008, Pub. L. 110-325 (ADAAA), codified at 42 U.S.C § 12101 et seq.

- As part of a health or genetic service, such as a wellness program, that is provided by the employer on a voluntary basis;
- In the form of family medical history to comply with the certification requirements of the Family and Medical Leave Act, state or local leave laws, or certain employer leave policies;
- From sources that are commercially and publicly available, including newspapers, books, magazines, and electronic sources (such as websites accessible to the public);
- As part of genetic monitoring that is either required by law or provided on a voluntary basis; and
- By employers who conduct DNA testing for law enforcement purposes as a forensic lab or for human remains identification.

Because the Act prohibits employers from requesting, requiring, or purchasing genetic information about an individual, when an employer asks for information about an applicant's or employee's current health status (e.g., to support an employee's request for reasonable accommodation under the ADA or a request for sick leave), it should warn the employee and/or the employee's health care provider from whom it is requesting the information not to provide genetic information. An employer must tell its own health care providers not to collect genetic information as part of employment-related medical exams when it sends an applicant or employee for a medical examination.

## **SECTION 10. CONFIDENTIALITY REQUIREMENTS**

10. Confidentiality of Medical Information. Under the Rehabilitation Act, medical information obtained in connection with the reasonable accommodation process must be kept confidential. This means that all medical information that USCCR obtains in connection with a request for reasonable accommodation must be kept in files separate from the individual's personnel file. This includes the fact that an accommodation has been requested or approved and information about functional limitations. It also means that any USCCR employee who obtains or receives such information is strictly bound by these confidentiality requirements.
- 10.1 Limited Medical Information May be Shared. The HRD may share certain information with an employee's supervisor or other agency official(s) as necessary to make appropriate determinations on a reasonable accommodation request. Under these circumstances, the HRD will inform the recipients about these confidentiality requirements. The information disclosed will be no more than is necessary to process the request. In certain situations, the HRD will not necessarily need to reveal the name of the requestor and/or the office in which the requestor works, or even the name of the disability.
- 10.2 Additional Permitted Disclosures of Medical Information. In addition to disclosures of information needed to process a request for accommodation, other disclosures of medical information are permitted as follows:

- supervisors and managers are entitled to whatever information is necessary to implement restrictions on the work or duties of the employee or to provide a reasonable accommodation;
- first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment or assistance in evacuation;
- government officials may be given information necessary to investigate the agency's compliance with the Rehabilitation Act;
- The information may in certain circumstances be disclosed to worker's compensation offices or insurance carriers, and;
- Agency EEO offices may be given the information to maintain records and evaluate and report on the agency's performance in processing reasonable accommodation requests.
- Example: The Administrative Services and Clearinghouse Division (ASCD) generally will be consulted in connection with requests for assistive technology for computers. While ASCD needs to know the employee's functional limitations, it typically has no need to know the employee's specific disability.

10.3 Confidentiality Under the Genetic Information Nondiscrimination Act. Employers must also keep genetic information about applicants and employees confidential and, if the information is in writing, must keep it apart from other personnel information in separate medical files. There are six limited circumstances under which an employer may disclose genetic information:

- To the employee or family member about whom the information pertains upon receipt of the employee's or family member's written request;
- To an occupational or other health researcher conducting research in compliance with certain federal regulations;
- In response to a court order, except that the covered entity may disclose only the genetic information expressly authorized by the order;
- To government officials investigating compliance with Title II of GINA, if the information is relevant to the investigation;
- In accordance with the certification process for FMLA leave or state family and medical leave laws; or
- To a public health agency only with regard to information about the manifestation of a disease or disorder that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness.

## **SECTION 11. RESOLUTION OF THE REASONABLE ACCOMMODATION REQUEST**

11. Generally. Per Section 7, the HRD will be responsible for overseeing the reasonable accommodation process and may also serve as the decision maker. All decisions regarding a request for reasonable accommodation will be communicated to an applicant or employee

by use of the “Resolution of Request” form (see Appendix B), as well as orally. HRD staff or a supervisor, whomever make the final decision, will provide their contract information to the requester.

11.1 Levels of Review. There are three possible levels of review in the reasonable accommodations request process. They are:

11.1.1 Supervisor. In order to eliminate unnecessary levels of agency review, USCCR authorizes first-line supervisors to approve requests for reasonable accommodations wherever possible. First-line supervisors may approve requests for reasonable accommodations that is within their control. In the instance where the employee makes the request to a first-line supervisor, the supervisor will conduct a cursory evaluation to determine if this is a type of request that s/he can approve. Supervisors should consult the HRD with questions.

Where the supervisor approves the request, s/he will fill out the Resolution of Request form and submit it to the HRD along with the Confirmation of Request form.

If the supervisor believes the request should not be approved, the supervisor must elevate the request to the HRD. Supervisors may not deny a request for reasonable accommodation.

11.1.2 The HRD. Where the supervisor cannot approve the accommodation, or where the request is made directly to the HRD, the HRD will serve as the decision maker. Where the HRD serves as the decision maker, the HRD will fill out the Resolution of Request form. Where the HRD cannot approve the accommodation (see 11.1.3 below when the Staff Director’s approval is required), the HRD will elevate the request to the Staff Director.

11.1.3 Staff Director. In limited circumstances including expenditure of agency funds, reassignments, and requests that impact the mission of the agency, the Staff Director will serve as the decision maker. Where the Staff Director serves as the decision maker, the staff director will fill out the Resolution of Request form and submit it to the HRD.

11.2 Approvals. If the request is approved, the decision maker will fill out the Resolution of Request form (cc: to supervisor if decision maker is not the supervisor) and inform the HRD. The HRD will give the Resolution of Request form to the requestor and discuss implementation of the accommodation. The Resolution of Request form must be filled out even if the request is granted without determining whether the requestor has a “disability” and regardless of what type of change or modification is approved (e.g., USCCR grants a three-month removal of an essential function, which is not a form of reasonable accommodation but nonetheless must be specified on the Resolution form).

11.2.1 If the request is approved but the accommodation cannot be provided immediately, the

HRD will inform the individual in writing of the projected time frame for providing the accommodation.

11.2.2 A decision to provide an accommodation other than the one specifically requested will be considered a decision to grant an accommodation. The form will explain both the reasons for the denial of the individual's specific requested accommodation and why USCCR believes that the chosen accommodation will be effective.

11.3 Denials. If the request is denied, the decision maker will fill out the Resolution of Request form(cc: to supervisor if decision maker is not the supervisor) and clearly state the reasons for the denial and inform the HRD. The HRD will give the "Resolution of Request" form to the requestor and discuss the reason(s) for the denial. HRD will provide the job applicant or employee with written notice at the time of denial, and in an accessible format, if requested.

11.3.1 When completing the Resolution of Request form, the explanation for the denial will clearly state the specific reason(s) for the denial. This means that USCCR cannot simply state that a requested accommodation is denied because of "undue hardship" or because it would be "ineffective." Rather, the form will state and the HRD will explain specifically why the accommodation would result in undue hardship or why it would be ineffective.

11.3.2 The written denial, will inform the requester that s/he has the right to file an EEO complaint and also, identify and explain USCCR's informal dispute resolution procedures. The denial will also identify the individual or the office that made the decision.

11.3.3 If there is a legitimate reason to deny the specific reasonable accommodation requested (e.g., the accommodation poses an undue hardship or is not required by the Rehabilitation Act), the HRD will explore with the individual whether another accommodation would be possible. The fact that one accommodation proves ineffective or would cause undue hardship does not necessarily mean that this would be true of another accommodation. Similarly, if an employee requests removal of an essential function or some other action that is not required by law, the HRD will explore whether there is a reasonable accommodation that will meet the employee's needs.

11.3.4 If an accommodation other than the one requested, but the alternative accommodation is not accepted, the HRD will record the individual's rejection of the alternative accommodation on the "Resolution of Request" form.

11.3.5 The HRD will provide all forms used in connection with the reasonable accommodation request as an attachment to these procedures. Alternative formats are available, if requested.

11.4 Options for the requestor if the request is denied.

11.4.1 Offer his/her own alternative proposal;

11.4.2 Pursue a grievance or EEO complaint; or,

11.4.3 Accept the decision.

## **SECTION 12. INFORMAL DISPUTE RESOLUTION**

12. An individual dissatisfied with the resolution of a reasonable accommodation request can ask the Staff Director to reconsider that decision. An individual must request reconsideration within 10 business days of receiving notice that the request was denied. A request for reconsideration will not extend the time limits for initiating administrative, statutory, or collective bargaining claims. (See Section 15. below.)

## **SECTION 13. TIME FRAME FOR PROCESSING REQUESTS AND PROVIDING REASONABLE ACCOMMODATIONS**

13. Time frame generally. The time frame for processing a request (including providing accommodation, if approved) is as soon as possible but no later than 20 business days from the date the request is made. This 20-day period includes the 7-day time frame in which the HRD must contact the requestor after a request for reasonable accommodation is made.

USCCR will process requests and, where appropriate, provide accommodations in as short a period as reasonably possible. The time frame above indicates the maximum amount of time it will take to process a request and provide a reasonable accommodation or deny the request. The HRD will strive to process the request and provide an accommodation sooner, if possible. Unnecessary delays can result in a violation of the Rehabilitation Act.

- 13.1 The time frame begins when an oral or written request for reasonable accommodation is made, and not necessarily when it is received by the HRD. Therefore, everyone involved in processing a request should respond as quickly as possible. This includes referring a request to the HRD, contacting a doctor if medical information or documentation is needed, and providing technical assistance to the HRD regarding issues raised by a request (e.g., information from a supervisor regarding the essential functions of an employee's position, information from ASCD regarding compatibility of certain adaptive equipment with USCCR's technology).
- 13.2 Request for Medical Information Will Toll Processing Time. If the HRD must request medical information or documentation from a requestor's doctor or from the requestor, the time frame will stop on the day that the HRD makes a request to the individual to obtain medical information or sends out a request for information/documentation, and will resume

on the day that the information/documentation is received by the HRD. If an individual's health professional fails to provide documentation in a timely manner, USCCR will not be expected to adhere to the usual timeline.

If HRD is required to request medical information or documentation from a requestor's doctor or the requestor, the information provided must explain the nature of the individual's disability, his or her need for reasonable accommodation, and how the requested accommodation, if any, will assist the individual to apply for a job, perform essential functions of the job or enjoy the benefits and privileges of the workplace.

13.3 Entire 20 Days May Not be Necessary. If the disability is obvious or already known to the HRD, if it is clear why reasonable accommodation is needed, and if an accommodation can be provided quickly, then the HRD should not require the full 20 business days to process the request.

The following are examples of situations where the disability is obvious or already known and an accommodation can be provided in less than the allotted time frame:

- An employee with insulin-dependent diabetes who sits in an open area asks for three breaks a day to test her blood sugar levels in private.
- An employee with clinical depression who takes medication which makes it hard for her to get up in time to get to the office at 9:00 a.m., requests that s/he be allowed to start work at 10:00 a.m. and still work an eight-and-a-half-hour day.
- A supervisor distributes a detailed agenda at the beginning of each staff meeting. An employee with a serious learning disability asks that the agenda be distributed ahead of time because his disability makes it difficult to read quickly and he needs more time to prepare.

13.4 Expedited Processing of a Request. In certain circumstances, a request for reasonable accommodation requires an expedited review and decision. This includes where a reasonable accommodation is needed:

- to enable an applicant to apply for a job. Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job.
- to enable an employee to attend a meeting scheduled to occur soon. For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.

13.5 Extenuating Circumstances. These are circumstances that could not reasonably have been anticipated or avoided in advance of the request for accommodation, or that are beyond USCCR's ability to control. When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. Extensions will be limited to circumstances where

they are absolutely necessary and only for as long as required to deal with the extenuating circumstance. If there is a delay, the agency will investigate whether there are temporary measures that could be taken to assist the individual with a disability. When there is a delay in processing a request for or providing a reasonable accommodation, USCCR will notify the applicant of the reason for the delay, including any extenuating circumstances.

- 13.6 Interim Accommodations. When all the facts and circumstances known to USCCR make it reasonably likely that an individual will be entitled to a reasonable accommodation, but the accommodation cannot be provided immediately, the agency shall provide an interim accommodation that allows for the individual to perform some or all of the essential functions of his or her job, if it is possible to do so without imposing undue hardship on the agency.

## **SECTION 14. INFORMATION TRACKING AND REPORTING**

14. In order for USCCR to ensure compliance with these Procedures and the Rehabilitation Act, the HRD will complete the “Reasonable Accommodation Information Reporting” form (Appendix C) within 5 business days of issuing the decision. These forms will be the basis of an annual report that will provide a qualitative assessment of USCCR’s reasonable accommodation program, including any recommendations for improvement of USCCR’s reasonable accommodation policies and these Procedures. This annual report will not contain confidential information about specific requests for reasonable accommodations, such as the names of individuals that requested accommodations or the accommodations requested by specific individuals. Rather, this report will provide only general information, such as the total number of requests for accommodations, the types of accommodations requested, and the length of time taken to process requests.
- 14.1 Maintenance of Employee’s Records. USCCR will maintain the records related to an accommodation for the duration of the employee’s tenure with the agency. In addition, the agency will retain any cumulative records used to track the agency’s performance with regard to reasonable accommodation for at least three years.
- 14.2 Preservation of Internal Records. The USCCR will maintain records that it may use to determine whether it is complying with the nondiscrimination and affirmative action requirements imposed under Section 501, and will make the records available to the EEOC upon their request.
- 14.2.1 The HRD will maintain records relating to each applicant’s request for a reasonable accommodation, to include:
- The specific reasonable accommodation requested, if any;
  - The job (occupational series, grade level, and agency component) sought by the requesting applicant or held by the requesting employee;
  - 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;

- Whether the request was granted (which may include an accommodation different from the one requested) or denied;
- The identity of the deciding official; and
- If denied, the basis for such denial.

## **SECTION 15. RELATION OF PROCEDURES TO STATUTORY AND COLLECTIVE BARGAINING CLAIMS**

15. These Procedures do not limit or supplant statutory and collective bargaining protections for persons with disabilities and the remedies they provide for the denial of requests for reasonable accommodation. Requirements governing the initiation of statutory and collective bargaining claims remain unchanged, including the time frames for filing such claims.
- 15.1 The “Resolution of Request” form (Appendix B) provides information to individuals denied accommodation, or denied the accommodation of their choice, about their right to file an EEO complaint and their possible right to pursue MSPB and/or union grievance procedures.
- 15.2 An individual who chooses to pursue statutory or collective bargaining remedies for denial of reasonable accommodation must:
- 15.2.1 For an EEO complaint: contact an EEO counselor within 45 days from the date of receipt of the written resolution notice or a verbal response to the request (whichever comes first). The 45-day filing period may not be applicable where there is an unreasonable delay in making a decision regarding an accommodation and the applicant or employee files a challenge before the decision is made.
- 15.2.2 For a collective bargaining claim: file a written grievance in accordance with the provisions of the Collective Bargaining Agreement.
- 15.2.3 For adverse actions over which the Merits Systems Protection Board has jurisdiction: initiate an appeal to the MSPB within 30 days of the appealable adverse action as defined in 5 C.F.R. 1201.3.
- 15.3 These Procedures create no new enforceable rights under section 501 of the Rehabilitation Act, any other law, or the collective bargaining agreement. Executive Order 13164, which requires all Federal agencies to adopt reasonable accommodation procedures, explains in section 5(b) that the procedures are “intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, [or] its agencies.”

**SECTION 16. INQUIRIES AND DISTRIBUTION**

16. Any employee or applicant wanting further information concerning these Procedures may contact the HRD. For additional information about accommodations, please see the “Selected Reasonable Accommodation Resources” in Appendix E.

These Procedures shall be distributed to all employees upon issuance. They also will be posted on USCCR’s Shared drive, and will be available in USCCR’s library, in the Office of Equal Opportunity, the Human Resources Division, and posted on s USCCR’s public website under the EEO tab. They will also be distributed to all new employees as part of their orientation on their first day of work. These Procedures will be provided in alternative formats when requested from the HRD by, or on behalf of, any USCCR employee.

*Mauro Morales*  
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Mauro Morales  
Staff Director

01-10-2022  
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Date